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2 89th General Assembly
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4

A Bill

SENATE BILL 187

5 By: Senator D. Johnson
6 By: Representatives Williams, Vines
7

For An Act To Be Entitled

8
9 AN ACT TO MAKE TECHNICAL CORRECTIONS TO TITLE 18 OF
10 THE ARKANSAS CODE CONCERNING PROPERTY RIGHTS AND
11 INTERESTS; AND FOR OTHER PURPOSES.
12
13

Subtitle

14
15 AN ACT TO MAKE TECHNICAL CORRECTIONS TO
16 TITLE 18 OF THE ARKANSAS CODE CONCERNING
17 PROPERTY RIGHTS AND INTERESTS.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code § 18-15-501 is amended to read as follows to
23 remove terminology that relied on the repealed Electric Consumer Choice Act
24 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed
25 before the enactment of that chapter:

26 18-15-501. Right-of-way construed.

27 The right-of-way provided for under this section and §§ 18-15-502-- 18-
28 15-509 shall be construed to include all lands necessary for dams and the
29 backwater resulting there from, levees, approaches, abutments, canals,
30 reservoirs, powerhouses, and other purposes incident to the business of
31 generating, transmitting, distributing, or supplying electricity to or for
32 the public for compensation or for public use by ~~an electric utility, as~~
33 ~~defined in § 18-15-512~~ a corporation.
34

35 SECTION 2. Arkansas Code § 18-15-502 is amended to read as follows to
36 remove terminology that relies on the repealed Electric Consumer Choice Act



1 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed
2 before the enactment of that chapter:

3 18-15-502. Exception.

4 No action to condemn the right-of-way over, upon, or along any street
5 or alley in any city or incorporated town shall be instituted or maintained
6 by ~~an electric utility~~ a corporation as against any city or incorporated
7 town.

8

9 SECTION 3. Arkansas Code § 18-15-503 is amended to read as follows to
10 remove terminology that relies on the repealed Electric Consumer Choice Act
11 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed
12 before the enactment of that chapter and make technical corrections:

13 18-15-503. Powers.

14 (a)(1)(A) ~~Any electric utility~~ A corporation organized or domesticated
15 under the laws of this state for the purpose of generating, transmitting,
16 distributing, or supplying electricity to or for the public for compensation
17 or for public use may construct, operate, and maintain such lines of wire,
18 cables, poles, or other structures necessary for the transmission or
19 distribution of electricity and broadband services:

20 (i) Along and over the public highways and the
21 streets of the cities and towns of the state;

22 (ii) Across or under the waters of the state;

23 (iii) Over any lands or public works belonging to
24 the state;

25 (iv) On and over the lands of private individuals or
26 other persons;

27 (v) Upon, along, and parallel to any railroad or
28 turnpike of the state; and

29 (vi) On and over the bridges, trestles, and
30 structures of railroads.

31 (B) In constructing such dams as the ~~electric utility~~
32 corporation may be authorized to construct for the purpose of generating
33 electricity by water power, the ~~electric utility~~ corporation may flow the
34 lands above the dams with backwater resulting from construction.

35 (2)(A) However, the ordinary use of the public highways,
36 streets, works, railroads, bridges, trestles, or structures and turnpikes

1 shall not be obstructed, nor the navigation of the waters impeded, and just
 2 damages shall be paid to the owners of such lands, railroads, and turnpikes.

3 (B) The permission of the proper municipal authorities
 4 shall be obtained for the use of the streets.

5 (b)(1) In the event that ~~an electric utility~~ a corporation, upon
 6 application to the individual, railroad, turnpike company, or other persons,
 7 should fail to secure by consent, contract, or agreement, a right-of-way for
 8 the purposes enumerated in subsection (a) of this section, then the ~~electric~~
 9 ~~utility~~ corporation shall have the right to proceed to procure the
 10 condemnation of the property, lands, rights, privileges, and easements in the
 11 manner prescribed in this subchapter.

12 (2) However, ~~no electric utility~~ the corporation shall not be
 13 required to secure by consent, contract, or agreement or to procure by
 14 condemnation the right to provide broadband services over its own lines of
 15 wire, cables, poles, or other structures that are in service at the time that
 16 the ~~electric utility~~ corporation provides broadband services over the lines
 17 of wire, cables, poles, or other structures.

18 (c) Whenever ~~an electric utility~~ a corporation desires to construct
 19 its line on or along the lands of individuals or other persons or on the
 20 right-of-way and the structures of any railroad or upon and along any
 21 turnpike, the ~~electric utility~~ corporation, by its agent, shall have the
 22 right to enter peacefully upon the lands, structures, or right-of-way and
 23 survey, locate, and lay out its line thereon, being liable, however, for any
 24 damage that may result by reason of the acts.

25
 26 SECTION 4. Arkansas Code § 18-15-504 is amended to read as follows to
 27 remove terminology that relies on the repealed Electric Consumer Choice Act
 28 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed
 29 before the enactment of that chapter and to make technical corrections:

30 18-15-504. Petition for assessment of damages.

31 (a) If ~~any electric utility~~ a corporation, having surveyed and located
 32 its line under the power conferred by this section, §§ 18-15-501--18-15-503,
 33 and §§ 18-15-505--18-15-509, fails to obtain, by agreement with the owner of
 34 the property through which the line may be located, the right-of-way over the
 35 property, it may apply by petition to the circuit court of the county in
 36 which the property is situated to have the damages for the right-of-way

1 assessed, giving the owner of the property at least ten (10) days' notice in
2 writing by certified mail, return receipt requested, of the time and place
3 where the petition will be heard.

4 (b) In case property sought to be condemned is owned by any individual
5 or corporation and is located in more than one (1) county, the petition may
6 be filed in the circuit court of any county in which the whole or a part of
7 the property may be located, and proceedings had therein will apply to all
8 property designated in the petition.

9 (c) If the owners of the property are nonresidents of the state,
10 infants, or persons of unsound mind, the notice shall be given as follows:

11 (1)(A) By publication in any newspaper in the county which is
12 authorized by law to publish legal notices.

13 (B) The notices shall be published for the same length of
14 time as may be required in other civil causes;

15 (2) If there is no such newspaper published in the county, then
16 the publication shall be made in some newspaper designated by the circuit
17 clerk and one (1) written or printed notice thereof posted on the door of the
18 courthouse of the county; and

19 (3) In writing by certified mail, return receipt requested, to
20 the address of the owners of the property as it appears on the records in the
21 office of the county sheriff or county tax assessor for the mailing of
22 statements of taxes, as provided in § 26-35-705.

23 (d) As nearly as may be, the petition shall describe the lands over
24 which the right-of-way is located and for which damages are asked to be
25 assessed, whether improved or unimproved, and be sworn to.

26 (e)(1) No ~~electric-utility~~ corporation shall be required to petition a
27 court in order to provide broadband services over its own lines of wire,
28 cables, poles, or other structures that are in service at the time that the
29 ~~electric-utility~~ corporation provides broadband services over the lines of
30 wire, cables, poles, or other structures.

31 (2) An owner of property upon which ~~an electric-utility's~~ a
32 corporation's lines of wire, cables, poles, or other structures are located
33 may petition the circuit court of the county in which the property is
34 situated for any compensation to which it might be entitled under this
35 subchapter.

36

1 SECTION 5. Arkansas Code § 18-15-506 is amended to read as follows to
2 remove terminology that relies on the repealed Electric Consumer Choice Act
3 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed
4 before the enactment of that chapter:

5 18-15-506. Trial by jury.

6 It shall be the duty of the court to impanel a jury of twelve (12)
7 persons, as in other civil cases, to ascertain the amount of compensation
8 which the ~~electric utility~~ corporation shall pay, and the matter shall
9 proceed and be determined as other civil causes.

10
11 SECTION 6. Arkansas Code § 18-15-507 is amended to read as follows to
12 remove terminology that relies on the repealed Electric Consumer Choice Act
13 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed
14 before the enactment of that chapter and make technical corrections:

15 18-15-507. Damages.

16 (a)(1) The amount of damages to be paid the owner of the lands for the
17 right-of-way for the use of the ~~electric utility~~ corporation shall be
18 determined and assessed irrespective of any other benefit that the owner may
19 receive from any improvement proposed by the ~~electric utility~~ corporation.

20 (2)(A) If an owner of property petitions a court under § 18-15-
21 504(e), the amount of damages, if any, payable to the owner for the use of
22 preexisting lines of wire, cables, poles, or other structures by ~~an electric~~
23 ~~utility~~ a corporation to provide broadband services shall be limited to an
24 amount sufficient to compensate the property owner for the increased
25 interference, if any, with the owner's use of the property caused by any new
26 or additional physical attachments to the preexisting facility for the
27 purpose of providing broadband services.

28 (B) Evidence of revenues or profits derived by ~~an electric~~
29 ~~utility~~ a corporation from providing broadband services is not admissible for
30 any purpose in a proceeding under § 18-15-504(e).

31 (b) In all cases in which damages for the right-of-way for the use of
32 the ~~electric utility~~ electric power corporation shall have been assessed in
33 the manner provided, it shall be the duty of the ~~electric utility~~ corporation
34 to deposit with the court or pay to the owners the amount so assessed and pay
35 such costs as may in the discretion of the court be adjudged against it
36 within thirty (30) days after the assessment. Whereupon, it shall and may be

1 lawful for the ~~electric utility~~ corporation to enter upon, use, and have the
 2 right-of-way over the lands forever.

3 (c) In all cases in which the ~~electric utility~~ corporation shall not
 4 pay or deposit the amount of damages assessed pursuant to this section, §§
 5 18-15-501--18-15-506, § 18-15-508, and § 18-15-509 within thirty (30) days
 6 after the assessment, the electric utility shall forfeit all rights in the
 7 premises.

8

9 SECTION 7. Arkansas Code § 18-15-508 is amended to read as follows to
 10 remove terminology that relies on the repealed Electric Consumer Choice Act
 11 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed
 12 before the enactment of that chapter and make technical corrections:

13 18-15-508. Deposit in case of controversy.

14 (a) When the determination of questions in controversy in the
 15 proceedings is likely to retard the progress of work on or the business of
 16 the ~~electric utility~~ corporation, the court or judge in vacation shall
 17 designate an amount of money to be deposited by the ~~electric utility~~
 18 corporation, subject to the order of the court, and for the purpose of making
 19 compensation when the amount thereof has been assessed, as provided in § 18-
 20 15-507, and the judge shall designate the place of deposit.

21 (b) Whenever the deposit has been made in compliance with the order of
 22 the court or judge, it shall be lawful for the ~~electric utility~~ corporation
 23 to enter upon the land and proceed with its work, through and over the lands
 24 in controversy, prior to the assessment and payment of damages for the use
 25 and right to be determined as provided in this section, §§ 18-15-501 - 18-15-
 26 507, and § 18-15-509.

27

28 SECTION 8. Arkansas Code § 18-15-509 is amended to read as follows to
 29 remove terminology that relies on the repealed Electric Consumer Choice Act
 30 of 1999, § 23-19-101 et seq., and to restate the terminology as it existed
 31 before the enactment of that chapter and make technical corrections:

32 18-15-509. Destruction or injury to company property.

33 ~~Any~~ A person who ~~shall destroy or injure~~ destroys or injures the wire,
 34 cable, pole, dam, reservoir, canal, power house, machinery, or appliances
 35 therein of the ~~electric utility~~ corporation ~~shall be~~ is guilty of a
 36 misdemeanor and upon conviction shall be fined in any sum not less than fifty

1 dollars (\$50.00) nor more than one thousand dollars (\$1,000) and imprisoned
 2 in the county jail for a period of not less than ten (10) days nor more than
 3 six (6) months.

4
 5 SECTION 9. Arkansas Code § 18-15-511 is repealed because it relied on
 6 the repealed Electric Consumer Choice Act of 1999, § 23-19-101 et seq., and
 7 thus is no longer applicable.

8 ~~18-15-511. Declaration of public interest.~~

9 ~~The business of generating electricity, transmitting electricity,
 10 distributing electricity, or supplying electricity to or for the public for
 11 compensation or for public use is declared to be in the public interest.~~

12
 13 SECTION 10. Arkansas Code § 18-15-512 is repealed because it relied on
 14 the repealed Electric Consumer Choice Act of 1999, § 23-19-101 et seq., and
 15 thus is no longer applicable.

16 ~~18-15-512. Definition of electric utility.~~

17 ~~As used in this subchapter, the term electric utility means an electric
 18 utility as defined by § 23-19-102(9) [repealed] or an independent
 19 transmission system operator, independent transmission company, independent
 20 regional transmission group, or other independent transmission entity
 21 operating transmission facilities in this state under § 23-19-103(g)
 22 [repealed].~~

23
 24 SECTION 11. Arkansas Code § 18-28-403(a)(1)(B) is amended to correct a
 25 reference and make technical corrections to read as follows:

26 (B) Abandoned mineral proceeds ~~shall be~~ are subject to the
 27 unclaimed property provisions of ~~the Uniform Disposition of Unclaimed
 28 Property Act,~~ § 18-28-201 et seq., except that funds received by the Auditor
 29 of State pursuant to this section shall be deposited by the Auditor of State
 30 ~~in~~ into a special trust fund to be known as the Abandoned Mineral Proceeds
 31 Trust Fund.

32
 33 SECTION 12. DO NOT CODIFY. Acts 2001, No. 1291, amended several
 34 sections in § 18-15-501 et seq. in reliance on the former Electric Consumer
 35 Choice Act of 1999, § 23-19-101 et seq., which was enacted by Acts 1999, No.
 36 1556, § 1, and was later repealed by Acts 2003, No. 204, § 18. Despite the

1 repeal of the former Electric Consumer Choice Act of 1999, § 23-19-101 et
2 seq., the amendments made to § 18-15-501 et seq. by Acts 2001, No. 1291 in
3 reliance on the now repealed chapter were never addressed. Sections 1-10 of
4 this act amend the affected sections in § 18-15-501 et seq. to remove
5 terminology that relied on the repealed Electric Consumer Choice Act of 1999,
6 § 23-19-101 et seq., and to restate the terminology as it existed before the
7 enactment of that chapter.

8
9 SECTION 13. DO NOT CODIFY. The enactment and adoption of this act
10 shall not repeal, expressly or impliedly, the acts passed at the regular
11 session of the Eighty-Ninth General Assembly. All such acts shall have the
12 full force and effect and, so far as those acts intentionally vary from or
13 conflict with any provision contained in this act, those acts shall have the
14 effect of subsequent acts and as amending or repealing the appropriate parts
15 of the Arkansas Code of 1987.