

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas *As Engrossed: S3/4/21 H3/10/21 H4/5/21*
2 93rd General Assembly **A Bill**
3 Regular Session, 2021

SENATE BILL 335

4
5 By: Senators B. Ballinger, M. Johnson
6 By: Representatives Gonzales, *A. Collins*

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8 **For An Act To Be Entitled**

9 AN ACT TO AMEND THE LAW CONCERNING THE USE OF EMINENT
10 DOMAIN BY A LOCAL GOVERNMENT; TO ADD NEW DEFINITIONS
11 UNDER EMINENT DOMAIN; AND FOR OTHER PURPOSES.

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14 **Subtitle**

15 TO AMEND THE LAW CONCERNING THE USE OF
16 EMINENT DOMAIN BY A LOCAL GOVERNMENT; AND
17 TO ADD NEW DEFINITIONS UNDER EMINENT
18 DOMAIN.

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

22
23 SECTION 1. DO NOT CODIFY. Legislative intent.

24 (a) The General Assembly finds that:

25 (1) Public use is a legal requirement under the takings clause
26 of the Fifth Amendment to the United States Constitution, which stipulates
27 owners of real property seized for public use be paid just compensation;

28 (2) Over two hundred (200) years of case law exists in the State
29 of Arkansas establishing the legal definition of "public use";

30 (3) It is necessary to codify current case law defining "public
31 use" in the State of Arkansas so that the system of eminent domain is
32 preserved; and

33 (4) It is in the best interest of the people of the State of
34 Arkansas for property owners to be protected from being subjected to a taking
35 by the federal, state, or local government unless that property is taken by
36 the government for public use and just compensation is received.



1 (b) It is the intent of the General Assembly to amend § 18-15-101 et
2 seq. so that the language of § 18-15-101 et seq. reflects current case law,
3 decisions, and precedent and to preserve the status quo of the eminent domain
4 process in the state.

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6 SECTION 2. Arkansas Code Title 18, Chapter 15, Subchapter 1, is
7 amended to add an additional section to read as follows:

8 18-15-104. Definitions.

9 As used in this chapter:

10 (1) "Abandoned property" means property that:

11 (A) Has not been occupied or used for a commercial or
12 residential purpose for at least one (1) year by a person with a legal or
13 equitable right to occupy or use the property;

14 (B) Has been cited for a violation of a housing, building,
15 or fire code that has not been remedied within one hundred eighty (180) days
16 from the date the citation was issued; and

17 (C) Has accrued at least two (2) years of delinquent
18 property taxes;

19 (2) "Blighted property" means a building, in its current
20 condition, that has been designated and cited as unfit for human use or
21 habitation by the agency responsible for enforcement of housing, building, or
22 fire codes because the:

23 (A) Building is dilapidated, unsanitary, or unsafe;

24 (B) Building is a fire hazard; or

25 (C) Electricity, heating, or plumbing has been destroyed
26 or removed;

27 (3)(A) "Local government" means the elected governing body of a
28 city, county, or township.

29 (B) "Local government" does not include municipally owned
30 utilities; and

31 (4)(A) "Public use" means the taking of private property by an
32 entity authorized under this chapter using the power of eminent domain for
33 the purpose of:

34 (i) Possessing, developing, occupying, and owning
35 property for the enjoyment of the general public or public agency;

36 (ii) Possessing, occupying, and owning property for

1 the necessary operations of a utility or common carrier that the general
2 public has a right to use;

3 (iii) Remediating and reselling blighted property;

4 or

5 (iv) Possessing and reselling abandoned property.

6 (B)(i) "Public use" does not include the taking of private
7 property for the economic benefit of the general public, including without
8 limitation for the purpose of an increase in the tax base, tax revenues, or
9 employment.

10 (ii) However, a taking of private property for a
11 public use as defined in subdivision (4)(A) of this section is not prohibited
12 because the public use also provides ancillary economic benefits.

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14 SECTION 3. Arkansas Code Title 18, Chapter 15, Subchapter 2, is
15 amended to add additional sections to read as follows:

16 18-15-203. Administrative warrant.

17 (a) For the purposes of establishing the basis for the use of eminent
18 domain for the remediation of a blighted property or for the possession of an
19 abandoned property, a local government may request an administrative warrant
20 from a judge or magistrate to gain access to inspect a building on the
21 property.

22 (b)(1) The judge or magistrate may allow the local government to
23 present evidence that shows that there is probable cause that a violation
24 occurred, notice of the violation has been served on the owner of the
25 property, the owner has failed to cure the violation, and the owner has
26 denied the local government access to the building.

27 (2) The local government may use evidence to support a
28 conclusion of probable cause, including without limitation evidence of:

29 (A) A recent fire or police inspection;

30 (B) Deterioration of the building's exterior; or

31 (C) Other violations of the municipal code in the
32 building.

33
34 18-15-204. Cause of action.

35 (a) Unless otherwise agreed by the parties or determined by a court of
36 law, the owner of private property may raise a defense or bring a cause of

1 action in circuit court to determine whether his or her private property is
2 lawfully being taken:

3 (1) For a public use;

4 (2) As blighted property;

5 (3) As abandoned property; or

6 (4) As necessary to achieve a public use.

7 (b) A local government has the burden of proof to show by a
8 preponderance of the evidence that the private property is lawfully being
9 taken for the purposes authorized under subsection (a) of this section.

10 (c) In a challenge to whether the taking is necessary to achieve a
11 public use, the local government bears the burden of proving by the
12 preponderance of the evidence that the:

13 (1) Land, real estate, premises, or other property the local
14 government seeks to acquire is required for a public use;

15 (2) Local government has plans that reflect a reasonable
16 schedule to complete the public use after the local government takes
17 ownership of the property;

18 (3) Local government has access to funding to complete the
19 public use; and

20 (4) Public use cannot be accomplished by using or acquiring
21 other property with the consent of the owner of the property without an
22 unreasonable increase in cost or delay.

23 (d) A cause of action under this section shall not be exercised more
24 than one hundred eighty (180) days after the date the owner of the property
25 received reasonable notice of a condemnation under this chapter.

26
27 SECTION 4. Arkansas Code § 18-15-1202(b), concerning railroad
28 condemnation proceedings, is amended to read as follows:

29 (b)(1) In case the property sought to be condemned for public use is
30 owned by ~~any~~ an individual or corporation and is located in more than one (1)
31 county, the petition may be filed in ~~any~~ a circuit court having jurisdiction
32 in any county in which the whole or a part of the property ~~may be~~ is located.

33 (2) Proceedings had in the circuit court ~~will~~ shall apply to all
34 property designated in the petition.

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/s/B. Ballinger

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