

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 418 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

A Bill

HOUSE BILL 1622

4
5 By: Representatives Overbey, Wills, T. Baker, Carroll, Cash, Davis, Gaskill, Hawkins, Hyde, Ingram,
6 Kidd, Nix, Patterson, Powers, J. Roebuck, Tyler, Wagner, Wells, B. Wilkins
7 By: Senators G. Baker, Bookout, Broadway, Bryles, Luker, Salmon, Teague, R. Thompson, D. Wyatt

For An Act To Be Entitled

11 AN ACT TO AMEND ARKANSAS CODE § 18-15-301 AND TO
12 MODIFY THE PROCEDURES CONCERNING A CERTIFICATE OF
13 CONVENIENCE AND NECESSITY FOR MUNICIPALLY OWNED
14 ELECTRIC UTILITIES FROM THE ARKANSAS PUBLIC
15 SERVICE COMMISSION; AND FOR OTHER PURPOSES.

Subtitle

18 TO AMEND ARKANSAS CODE § 18-15-301 AND
19 TO MODIFY THE PROCEDURES CONCERNING A
20 CERTIFICATE OF CONVENIENCE AND NECESSITY
21 FOR MUNICIPALLY OWNED ELECTRIC UTILITIES
22 FROM THE ARKANSAS PUBLIC SERVICE
23 COMMISSION.

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

28 SECTION 1. Arkansas Code § 18-15-301 is amended to read as follows:

29 18-15-301. Municipal corporations - Power to condemn generally.

30 (a)(1) The right and power of eminent domain is conferred upon
31 municipal corporations to enter upon, take, and condemn private property for
32 the construction of wharves, levees, parks, squares, market places, or other
33 lawful purposes.

34 (2) The term "or other lawful purposes", as used in this
35 section, ~~shall include~~ includes a waterworks ~~or system, an~~ electric



1 transmission system, or an electric distribution system in its entirety or
2 any integral part thereof or any extension, addition, betterment, or
3 improvement to an existing waterworks ~~or system, an~~ electric transmission
4 system, or an electric distribution system owned or operated by a municipal
5 corporation.

6 (b)(1) For ~~water works~~ waterworks systems, it shall be no objection to
7 the exercise of power that the property to be condemned is located in a
8 different county from the municipal corporation.

9 (2) In addition, for electric transmission systems and electric
10 distribution systems, it shall be no objection to the exercise of power that
11 the property to be condemned is located outside the corporate limits of the
12 municipal corporation or in a county other than the one wherein the municipal
13 corporation is located.

14 (3) A municipal corporation shall have the power of eminent
15 domain for its electric transmission system and electric distribution system,
16 outside of its corporate limits without annexation of such territory,
17 regardless of whether the territory has been allocated to an electric public
18 utility or electric cooperative corporation, pursuant to a certificate of
19 convenience and necessity or other authority from the Arkansas Public Service
20 Commission, as long as the electric transmission system or electric
21 distribution system being constructed by the municipal corporation is only
22 for the purpose of serving customers of the municipal corporation and not for
23 the purpose of serving electric public utility customers or electric
24 cooperative customers at retail inside the territory allocated to an electric
25 public utility or electric cooperative corporation pursuant to a certificate
26 of convenience and necessity or other authority from the Arkansas Public
27 Service Commission.

28 (4)(A) Before a municipal corporation exercises the power of
29 eminent domain under this section, the municipal corporation shall provide
30 written notice to any electric public utility or electric cooperative
31 corporation that has received a certificate of convenience and necessity or
32 other authority from the Arkansas Public Service Commission to serve retail
33 customers in any area in which the power of eminent domain is to be
34 exercised.

35 (B)(i) The municipal corporation shall also file a copy of
36 the written notice required under subdivision (b)(4)(A) with the Arkansas

1 Public Service Commission.

2 (ii) The notice shall contain information regarding
 3 the facilities to be constructed by the municipal corporation in conjunction
 4 with the exercise of eminent domain, including without limitation routing,
 5 size, and voltage, in sufficient detail to reasonably allow the electric
 6 public utility or electric cooperative corporation to fully evaluate the
 7 impact of the facilities on public safety, reliability of the system of the
 8 electric public utility or electric distribution cooperative, or future
 9 system expansion plans of the electric public utility or electric cooperative
 10 corporation.

11 (C)(i) A municipal corporation shall not exercise the
 12 power of eminent domain under this section without obtaining a certificate of
 13 convenience and necessity from the Arkansas Public Service Commission if the
 14 electric public utility or electric cooperative corporation notifies the
 15 municipal corporation in writing within forty five (45) days of its receipt
 16 of such notice that the exercise of the power of eminent domain would
 17 specifically endanger public safety, negatively impact reliability, or
 18 conflict with future construction plans of the electric public utility or
 19 electric cooperative corporation.

20 (ii)(a) The written notice shall be in sufficient
 21 detail to reasonably allow the municipal corporation to fully evaluate the
 22 problems identified.

23 (b) In such event, the municipal corporation
 24 may seek from the Arkansas Public Service Commission, in accordance with law,
 25 a certificate of convenience and necessity and exercise the power of eminent
 26 domain as may be required by the municipal corporation.

27 (c)(1) It shall be no objection to the exercise of power that the
 28 property to be condemned is a cemetery, ~~provided that~~ if the purpose for
 29 which the cemetery is being taken is for an impounding lake for a supply of
 30 water or to supplement a supply of water for the waterworks system of the
 31 municipality, including land occupied by the cemetery adjacent to the
 32 impounding lake taken to prevent pollution of the supply or for an impounding
 33 dam to create the impounding lake.

34 (2) The power of a municipality to condemn a cemetery for those
 35 purposes shall extend to all cemeteries except those owned by the United
 36 States of America, the State of Arkansas, a county of the State of Arkansas,

1 or a municipality of the State of Arkansas.

2 (d)(1) In case of water pipelines ~~or~~, electric transmission
 3 facilities, or electric distribution facilities, a right-of-way or easement
 4 therefor may be condemned, and rights-of-way and easements for the pipelines
 5 ~~or~~, electric transmission facilities, or electric distribution facilities may
 6 be condemned along and under railroad rights-of-way, ~~provided that~~ if the
 7 ordinary use of the railroad rights-of-way are not obstructed thereby.

8 (2) The water pipelines ~~or~~, electric transmission facilities, or
 9 electric distribution facilities may be constructed and maintained across and
 10 under lands and waters of the state, but the ordinary use of the lands and
 11 waters shall not be unduly obstructed thereby.

12 (3)(A) The water pipelines ~~or~~, electric transmission facilities,
 13 or electric distribution facilities may be constructed and maintained under,
 14 across, and along public highways, roads, streets, and alleys, but the
 15 ordinary use of the public highways, roads, streets, and alleys shall not be
 16 unduly obstructed thereby.

17 (B) At its own expense, the municipality constructing the
 18 water pipelines ~~or~~, electric transmission facilities, or electric
 19 distribution facilities shall properly backfill the trench in which the
 20 pipeline ~~or~~, electric transmission lines, or electric distribution lines are
 21 laid and shall restore any sidewalks, curbs, gutters, pavements, or surfacing
 22 cut or damaged by the construction or maintenance.

23 (e)(1) As used in this section, the terms "electric transmission
 24 system or systems", "electric transmission facilities", and "electric
 25 transmission lines" mean electric utility properties and facilities necessary
 26 for transmitting electricity at sixty-nine ~~(69)~~ kilovolts (69 kV) phase-to-
 27 phase or higher and not for service to a directly tapped, retail, end-use
 28 customer or customers or any wholesale customer or customers, except
 29 municipal corporations. Any electric utility properties and facilities
 30 necessary for transmitting electricity at sixty-nine ~~(69)~~ kilovolts (69 kV)
 31 phase-to-phase or higher constructed on lands acquired in whole or in part by
 32 the municipal corporation utilizing the power of eminent domain granted in
 33 this section may be connected only with the following defined entities for
 34 the life of the properties and facilities and no others:

35 (A) The municipal corporation's electric generation or
 36 transmission or distribution system;

1 (B) Any electric utility or an independent transmission
2 system operator, independent transmission company, independent regional
3 transmission group, or other independent transmission entity operating
4 transmission facilities in this state; and

5 (C) The electric generation or transmission or
6 distribution system owned by other municipal corporations owning an electric
7 system.

8 (2) As used in this subsection, "electric distribution system",
9 "electric distribution facilities", and "electric distribution lines" means
10 electric utility properties and facilities necessary for distributing
11 electricity below sixty-nine ~~(69)~~ kilovolts (69 kV) phase-to-phase to a
12 municipal corporation's retail customers within its corporate limits or
13 within any other area served by the municipal corporation pursuant to any
14 grant of authority by the Arkansas Public Service Commission or any other
15 municipality contiguous municipal corporation pursuant to a franchise
16 agreement or other grant of authority for retail electric service.

17 ~~(f) Prior to availing itself of the power of eminent domain as~~
18 ~~provided in this section for the purpose of acquiring properties or~~
19 ~~constructing facilities necessary for transmitting electricity outside the~~
20 ~~corporate limits of the municipal corporation, a municipal corporation shall~~
21 ~~obtain from the commission a certificate of convenience and necessity~~
22 ~~pursuant to § 23-3-201 et seq.~~

23 ~~(g)~~ (f) For purposes of this section, "municipal corporations" shall
24 include consolidated municipal utility improvement districts owning an
25 electric system.

26
27 **APPROVED: 3/13/2009**
28
29
30
31
32
33
34
35
36