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2 91st General Assembly
3 Regular Session, 2017
4

As Engrossed: H3/14/17

A Bill

HOUSE BILL 2086

5 By: Representatives Sabin, Pilkington
6

For An Act To Be Entitled

8 AN ACT TO PROTECT THE PROPERTY RIGHTS OF CITIZENS; TO
9 PREVENT THE ABUSE OF THE POWER OF EMINENT DOMAIN BY
10 PRIVATE PIPELINE COMPANIES; TO DECLARE AN EMERGENCY;
11 AND FOR OTHER PURPOSES.
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Subtitle

14 TO PROTECT THE PROPERTY RIGHTS OF
15 CITIZENS; TO PREVENT THE ABUSE OF THE
16 POWER OF EMINENT DOMAIN BY PRIVATE
17 PIPELINE COMPANIES; AND TO DECLARE AN
18 EMERGENCY.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. DO NOT CODIFY. Title – Purpose – Construction.

25 (a) This act shall be known and may be cited as the "Property Rights
26 Protection Act".

27 (b) The purpose of this act is to:

28 (1) Empower landowners who are facing the seizure of their
29 property by a pipeline company using the power of eminent domain;

30 (2) Bring accountability to the process by which a pipeline
31 company uses the power of eminent domain;

32 (3) Prevent a pipeline company's abuse of the power of eminent
33 domain; and

34 (4) Ensure that the taking of private property by a pipeline
35 company occurs only to further the public good.

36 (c) This act shall be liberally construed to effectuate its purposes.



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SECTION 2. Arkansas Code § 23-15-101 is amended to read as follows:

23-15-101. Common carriers – Eminent domain – Definitions.

(a) ~~All pipeline companies~~ A pipeline company operating in this state ~~are given~~ is given the right of eminent domain ~~and are declared to be common carriers, except pipelines operated for conveying natural gas for public utility service~~ if:

(1) The pipeline company is a natural gas public utility as defined in § 23-1-101(9)(A)(i) or a municipal natural gas utility providing service under § 14-54-701 et seq.; or

(2) The pipeline company:

(A) Is exercising the right of eminent domain in connection with the operation of a common carrier facility;

(B) Obtains an order verifying it will operate a common carrier facility from the Arkansas Public Service Commission under § 23-15-106; and

(C) Is granted a permit by the Arkansas Department of Environmental Quality under § 23-15-107.

(b) ~~The~~ Except as provided in this subchapter, the procedure to be followed in the exercise of the right of eminent domain shall be the same as prescribed in § 18-15-1201 et seq. relating to railroad companies, telegraph companies, and telephone companies.

(c) As used in this subchapter:

(1) "Common carrier facility" means pipeline equipment or facilities by or through which services are provided without discrimination to or for the public in this state for hire; and

(2) "Pipeline company" means a person or a corporation and its lessees, trustees, and receivers, that owns or operates pipeline equipment or facilities used for gathering, transmitting, or transporting natural gas, crude oil, other petroleum products, or ammonia and other substances and materials composing commercial fertilizer or used in manufacturing commercial fertilizer.

SECTION 3. Arkansas Code Title 23, Chapter 15, Subchapter 1, is amended to add an additional section to read as follows:

23-15-102. Notice – Filing requirements.

1 (a) At least thirty (30) days before requesting an order from the
2 Arkansas Public Service Commission under § 23-15-106 and a permit from the
3 Arkansas Department of Environmental Quality under § 23-15-107, a pipeline
4 company as specified in § 23-15-101(a)(2) shall provide notice of its intent
5 to exercise a right of eminent domain, as follows:

6 (1) Designate on a plat or map prepared by the pipeline company
7 and file with the county clerk of each county in which the proposed site of
8 the pipeline is to be located the:

9 (A) Width of the strip of land needed to be condemned for
10 the purposes of the pipeline;

11 (B) Location of the land; and

12 (C) Depths to which the pipeline is to be laid;

13 (2) Deliver by certified mail, return receipt requested, to each
14 owner of real property whose property may be within the site of the proposed
15 pipeline a written notice of intent to exercise a right of eminent domain
16 that contains:

17 (A) A copy of this section and §§ 23-15-106 – 23-15-108;

18 (B) A copy of the plat or map prepared by the pipeline
19 company under subdivision (a)(1) of this section; and

20 (C) The following language in boldface type:

21 "(1) THE ATTACHED ARKANSAS CODE SECTIONS 23-15-102 AND 23-15-106 THROUGH 23-
22 15-108 PROVIDE:

23 (a) SPECIFIC REQUIREMENTS THAT MUST BE FOLLOWED BY A PIPELINE COMPANY
24 BEFORE THE PIPELINE COMPANY MAY EXERCISE THE RIGHT TO ACQUIRE AN EASEMENT
25 ACROSS YOUR PROPERTY OR CONDEMN YOUR PROPERTY USING EMINENT DOMAIN; AND

26 (b) SPECIFIC RIGHTS FOR YOUR PROTECTION.

27 (2) YOU SHOULD MAKE YOURSELF FAMILIAR WITH THE REQUIREMENTS AND YOUR RIGHTS
28 BEFORE NEGOTIATING WITH A PIPELINE COMPANY OR THE PIPELINE COMPANY'S AGENT
29 CONCERNING THE ACQUISITION OF AN EASEMENT ACROSS YOUR PROPERTY BY A PIPELINE
30 COMPANY OR THE CONDEMNATION OF YOUR PROPERTY BY A PIPELINE COMPANY USING
31 EMINENT DOMAIN."

32 (b) The written notice of intent to exercise a right of eminent domain
33 to the owner of real property required by this section shall be directed to
34 the address of the owner of the real property as it appears on the records in
35 the office of the county sheriff or county tax assessor for the mailing of
36 statements of taxes as provided in § 26-35-705.

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2 SECTION 4. Arkansas Code Title 23, Chapter 15, Subchapter 1, is
3 amended to add additional sections to read as follows:

4 23-15-106. Verification of common carrier facility operation required.

5 (a) Before exercising the right of eminent domain under this
6 subchapter, a pipeline company as specified in § 23-15-101(a)(2) shall obtain
7 an order from the Arkansas Public Service Commission verifying that the
8 pipeline company will operate a common carrier facility.

9 (b)(1) The application for the order verifying that the pipeline
10 company as specified in § 23-15-101(a)(2) will operate a common carrier
11 facility shall include:

12 (A) A description of the proposed project, including its
13 proposed route;

14 (B) A detailed explanation of how the proposed project
15 meets the definition of a common carrier facility under § 23-15-101(c)(1);
16 and

17 (C) Proof that notice of intent to exercise a right of
18 eminent domain has been given under § 23-15-102.

19 (2) The commission shall hold a hearing, unless waived by the
20 parties, on the application within ninety (90) days of filing the
21 application.

22 (c)(1) An applicant for an order under subsection (a) of this section
23 shall give notice of the application, the proposed route of the pipeline, and
24 the date, time, and place of the hearing, by:

25 (A) Sending notice by certified mail, return receipt
26 requested, to all owners of real property as described in § 23-15-102(b), on
27 the proposed route of the pipeline no more than five (5) days after the date
28 of the order setting the hearing on the application; and

29 (B) Within thirty (30) days of the filing of the
30 application, publishing notice of the application under subdivision (b)(1) of
31 this section one (1) time a week for two (2) consecutive weeks in a newspaper
32 of general circulation in each county where land within the proposed site of
33 the pipeline is located.

34 (2) The notice shall specify the date of the filing of the
35 application and include a statement that interested individuals may file a
36 request for intervention with the commission.

1 (c) The commission shall render its decision on the application for
2 the order within forty-five (45) days from the conclusion of the hearing.

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4 23-15-107. Permit from Director of the Arkansas Department of
5 Environmental Quality required.

6 (a) Before exercising the right of eminent domain under this
7 subchapter, a pipeline company as specified in § 23-15-101(a)(2) shall obtain
8 a permit to construct the pipeline from the Director of the Arkansas
9 Department of Environmental Quality.

10 (b) The director shall establish by rule the requirements deemed
11 necessary or desirable for determining whether the permit should be granted,
12 including without limitation:

13 (1) That the application for the permit include:

14 (A) A description of the proposed project, including its
15 proposed route;

16 (B) The width of the proposed pipeline corridor;

17 (C) An environmental assessment of the proposed project;

18 and

19 (D) A detailed explanation of the environmental impact of
20 the proposed project and a certification that the location, construction, and
21 maintenance of the proposed pipeline does not constitute an undue hazard to
22 the environment and natural resources of the state;

23 (2) That a hearing be held before the director on the
24 application and any objections to the application within sixty (60) days of
25 filing the application; and

26 (3)(A) That reasonable notice of the application, the proposed
27 route, and the date, time, and place of the hearing be:

28 (i) Sent by certified mail, return receipt
29 requested, to all landowners within the proposed route; and

30 (ii) On the Sunday or Wednesday no more than
31 eighteen (18) days nor less than ten (10) days before the hearing, published
32 in a newspaper of general circulation in each county where land within the
33 proposed site of the pipeline is located.

34 (B) The notice shall include a procedure for filing a
35 written objection to the application or proposed route with the director.

36 (c) The director shall render a decision on the application for the

1 permit within sixty (60) days of the hearing.

2 (d) The director shall not grant the permit unless the director finds
3 that:

4 (1) The application complies with subsection (b) of this
5 section;

6 (2) Appropriate notice was given to affected parties; and

7 (3) The location, construction, and maintenance of the proposed
8 pipeline do not constitute an undue hazard to the environment or natural
9 resources of the state with due consideration of the following factors:

10 (A) Whether the proposed route of the pipeline is an
11 environmentally reasonable route;

12 (B) Whether other corridors of public utilities already in
13 existence may reasonably be used for the pipeline;

14 (C) Compliance with local zoning ordinances, unless
15 compliance would impose an unreasonable burden on the project as weighed
16 against the purpose of the local zoning ordinances; and

17 (D) Whether ample opportunity has been afforded for public
18 comment, specifically including without limitation comment by the governing
19 body and citizenry of any municipality or county within which the proposed
20 project or any part thereof is to be located, as well as by landowners
21 affected by the proposed pipeline.

22 (e) The director may grant the permit subject to reasonable conditions
23 that will allow the director to monitor the effect of the pipeline upon the
24 property subjected to eminent domain and upon the surrounding environment and
25 natural resources.

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27 23-15-108. Compensation for damage to property surveyed, used for
28 maintenance, or not acquired.

29 (a) A pipeline company as specified in § 23-15-101(a)(2) is liable to
30 the owner of an interest in property that is damaged from an entry upon land
31 to:

32 (1) Survey a pipeline route or proposed route; or

33 (2) Obtain access to, maintain, or relocate a pipeline or
34 proposed pipeline route.

35 (b) If the chosen and approved pipeline route damages any other
36 property of an owner that was not acquired by eminent domain by the pipeline

1 company for the pipeline project, the owner shall be compensated under the
2 laws of eminent domain for the fair market value of the damage to the other
3 property upon the trial of the case of the property taken by eminent domain.

4 (c) Any disputes regarding compensation for damage to property
5 surveyed, used for maintenance, or not acquired shall be resolved in the
6 circuit court with jurisdiction to hear such matters.

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8 23-15-109. Applicability.

9 If no increase in the width of an existing easement or right-of-way is
10 required, the restrictions and conditions on the right of eminent domain
11 imposed by this subchapter do not apply for the:

12 (1) Replacement or expansion of an existing pipeline with
13 similar equipment or facilities in substantially the same location; or

14 (2) The rebuilding, upgrading, modernizing, or reconstructing of
15 equipment or facilities that increase the capacity of the pipeline.

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17 SECTION 5. Arkansas Code § 18-15-1302 is amended to read as follows:

18 18-15-1302. Right to enter, survey, etc. – Plat or map.

19 (a)~~(1) Whenever~~ If a corporation desires to construct a pipeline or
20 build a logging railway upon or under the lands of individuals, or right-of-
21 way of any railroad, or any turnpike,

22 (1) the The corporation, by and its agents, shall have the right
23 to enter peacefully upon the lands or rights-of-way and survey, locate, and
24 lay out its pipeline, thereon, or ~~tram road or logging road,~~ tram roads or
25 logging roads; and

26 (2) However, the The corporation shall be is liable for any
27 damages that may result by reason of such acts from the corporation's
28 surveying, locating, laying out, or constructing pipelines, tram roads, or
29 logging roads.

30 (b) The corporation shall designate on a plat or map to be made and
31 filed with the county clerk of the county in which the pipeline or logging
32 railway is located the width of the strip of land needed to be condemned for
33 its purposes, the land's location, and the depth to which the pipes are to be
34 laid if the project is a pipeline.

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36 SECTION 6. Arkansas Code § 18-15-1303 is amended to read as follows:

1 18-15-1303. Procedure for condemnation.

2 (a) In the event any company fails, If upon application to
3 individuals, railroads, or turnpike companies, a lumber company fails to
4 secure the right-of-way by consent, contract, or agreement, then the
5 corporation lumber company shall have the right to proceed to procure the
6 condemnation of condemn the property, lands, rights, privileges, and
7 easements in the manner provided by law for taking private property for
8 right-of-way for railroads as provided by §§ 18-15-1201—18-15-1207 under §
9 18-15-1201 et seq., including the procedure for providing notice by
10 publication and by certified mail in under § 18-15-1202.

11 (b) If upon application to individuals, railroads, or turnpike
12 companies a pipeline company fails to secure the right-of-way by consent,
13 contract, or agreement, then the pipeline company may condemn the property,
14 lands, rights, privileges, and easements in the manner provided by § 23-15-
15 101 et seq.

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17 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
18 General Assembly of the State of Arkansas that landowners should be protected
19 from unwarranted intrusions and appropriately compensated when pipeline
20 companies exercise the power of eminent domain; that the seizure of private
21 property for pipeline purposes should be permitted only after a proposed
22 project is reviewed and verified to be a common carrier facility; and that
23 this act is immediately necessary to ensure that appropriate safeguards are
24 in place so that landowners are protected from unwarranted intrusions that
25 impede the use and enjoyment of their property and are appropriately
26 compensated when the power of eminent domain is exercised by a pipeline
27 company, to prevent abuse of the eminent domain power, and to prevent harm to
28 the environment or natural resources of the state. Therefore, an emergency is
29 declared to exist, and this act being immediately necessary for the
30 preservation of the public peace, health, and safety shall become effective
31 on:

32 (1) The date of its approval by the Governor;

33 (2) If the bill is neither approved nor vetoed by the Governor,
34 the expiration of the period of time during which the Governor may veto the
35 bill; or

36 (3) If the bill is vetoed by the Governor and the veto is

1 overridden, the date the last house overrides the veto.

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/s/Sabin

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