

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

HOUSE BILL 1139

By: Representative J. Dickinson

For An Act To Be Entitled

AN ACT CONCERNING ACCESS TO A PUBLIC UTILITY
EASEMENT; TO DESIGNATE THE MEANS OF ACCESS; TO
PROVIDE PENALTIES; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING ACCESS TO A PUBLIC UTILITY
EASEMENT; TO DESIGNATE THE MEANS OF
ACCESS; AND TO PROVIDE PENALTIES.

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

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

23-1-116. Access to public utility easements – Procedure – Designation of access route – Penalty – Applicability.

(a) As used in this section:

(1) "Public utility" means a public utility as defined in § 23-1-101;

(2) "Public utility easement" means the right of a public utility to use or control land for a limited purpose;

(3) "Surface estate" means the land burdened by an easement; and

(4) "Surface owner" means the owner of the land burdened by an easement.

(b)(1) At least thirty (30) days before exercising a right under a public utility easement, the public utility shall give the surface owner actual notice or written notice by certified mail of the public utility's



intention to exercise the right under the public utility easement.

(2) The notice shall include with respect to each right to be exercised under the public utility easement:

(A) The proposed location of each site that will be used;

(B) The proposed means of access to and travel across the surface estate to exercise each right under the public utility easement;

(C) The proposed date on or after which the exercise of a right under the public utility easement will begin;

(D) An offer of the public utility to consult with the surface owner to review and discuss the location of the means of access to and travel across the surface estate to exercise a right under the public utility easement;

(E) A full disclosure of the surface owner's rights under this section; and

(F) The name, address, telephone number, and title of a contact person employed by or representing the public utility whom the surface owner may contact during the thirty-day period following receipt of the notice concerning the location of the means of access to and travel across the surface estate to exercise a right under the public utility easement.

(c)(1) Except as provided in subdivision (c)(2) of this section, within the period described in subdivision (b)(1) of this section, the surface owner may select the locations of the means of access to and travel across the surface estate to exercise a right granted under the public utility easement that:

(A) Are preferable to the surface owner; and

(B) May increase the costs to the public utility to exercise a right granted under the public utility easement.

(2) The surface owner shall not select locations that make it impossible due to geographic or geologic obstacles for the public utility to exercise a right granted under the public utility easement.

(3) The surface owner's selection shall be in writing and delivered to the contact person specified under subdivision (b)(2)(F) of this section.

(4) If the surface owner does not make the selection within the time and in the manner required by this subsection, the surface owner shall

be deemed to have accepted the locations proposed by the public utility to exercise a right granted under the public utility easement.

(d) A means of access to and travel across the surface estate to exercise a right granted under the public utility easement established under this section shall be used for the future exercise of a right granted under the public utility easement unless:

(1) The public utility and surface owner agree in writing to a different means of access to and travel across the surface estate to exercise a right granted under the public utility easement; or

(2) A different means of access to and travel across the surface estate to exercise a right granted under the public utility easement is designated by following the procedure established by this section.

(e) A violation of this section by a public utility:

(1) Is a Class A misdemeanor; and

(2) Entitles the surface owner to recover two (2) times the amount of damages caused by the violation.

(f) This section does not apply to the exercise by a public utility of a right granted under a public utility easement that is accomplished through public access to the surface estate without using a means of access to or travel across the surface estate.