

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

State of Arkansas
89th General Assembly
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As Engrossed: S3/18/13 S3/27/13 S4/1/13

A Bill

SENATE BILL 819

By: Senator A. Clark

For An Act To Be Entitled

AN ACT TO REVISE THE LAW CONCERNING THE PROCESS FOR A COUNTY JUDGE TO ESTABLISH ACCESS EASEMENTS FOR LANDLOCKED OWNERS OF REAL PROPERTY TO PREVENT A TAKING OF PROPERTY WITHOUT DUE PROCESS; AND FOR OTHER PURPOSES.

Subtitle

TO REVISE THE LAW CONCERNING THE PROCESS FOR A COUNTY JUDGE TO ESTABLISH ACCESS EASEMENTS FOR LANDLOCKED OWNERS OF REAL PROPERTY TO COMPORT WITH DUE PROCESS.

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

SECTION 1. Arkansas Code § 27-66-401(d), concerning the establishment of certain access easements, is amended to read as follows:

(d) After the petition is filed, the county court shall issue a notice setting the time, date, and location of a preliminary hearing, and the hearing shall not be any earlier than sixty (60) days from the date of the petition filing.

SECTION 2. Arkansas Code § 27-66-401(f)(2), concerning the establishment of certain access easements, is amended to read as follows:

(2)(A)(i) If the court determines at the preliminary hearing that required notices and service have been provided to the respondent adjoining owner who has refused the landlocked petitioner an access easement or to any other adjoining owner that has been included in the petition and



the petition sufficiently demonstrates the requirements of subsection (b) of this section, the court shall appoint viewers as provided under this section.

(ii) The court shall give each party at least ten (10) business days to submit up to three (3) potential viewers.

(iii) The court shall give due consideration to all potential viewers that were submitted by the parties and shall select one (1) of the potential viewers submitted from each party and one (1) or more viewers selected by the court for a total of three (3) viewers.

(B) If viewers are appointed by the court, the court shall:

(i) Issue a preliminary order directing the landlocked petitioner to deposit into the registry of the court an estimated sum sufficient for payment of ~~damages and for payment of the costs and expenses accruing on account of the petition, notice, view, and survey for the access easement; and:~~

(a) Viewers' fees and expenses;

(b) The survey cost;

(c) Damages related to the adjoining owner's property, including without limitation an estimate of:

(1) The loss of property value for the area of acquisition;

(2) The loss of exclusive use the adjoining owner will realize; and

(3) Damages to the owner's remaining property; and

(d) Notice and publication costs if any;

(ii) Set the time, date, and location of the evidentiary hearing; and

(iii) Require the funds deposited to be used exclusively for the purposes stated under this subsection.

SECTION 3. Arkansas Code § 27-66-402(c), concerning the duties of viewers, is amended to read as follows:

(c) If ~~they or~~ a majority of ~~them~~ the viewers are of the opinion state under oath that ~~a road~~ an access easement is necessary and proper, as prayed in the petition, ~~they~~ the viewers shall lay out and describe the ~~road access easement~~ in a manner that produces the least inconvenience, damage, and devaluation of the property to the parties through whose land the road shall

~~pass adjoining owners.~~

SECTION 4. Arkansas Code § 27-66-402(d)(1), concerning the duties of viewers, is amended to read as follows:

(d)(1)(A) The viewers shall make a written report under oath to the county court, describing the route of the road and the land through which it shall pass to allow location and identification of the access easement by land records, naming the owner, if known, and by decision of a majority of the viewers the damages sustained by each owner of lands through which the road passes. The damages shall include the value of each owner's land sought to be appropriated.

(B)(i) The parties shall stipulate to or dispute the report of the viewers.

(ii) Each party shall be given at least ten (10) business days to respond in writing to the viewers' report.

SECTION 5. Arkansas Code § 27-66-403(a)(3)(A), concerning the court order, is amended to read as follows:

~~(3)(A)(i) If the petitioner complies with the court's order under § 27-66-401 and deposits into the registry of the county court the estimated sum, the~~ The evidentiary hearing may be held ~~and the opportunity to present evidence and cross-examine witnesses if:~~

(a) At least sixty (60) days have passed since the initial petition was filed;

(b) The landlocked petitioner has complied with the court's order under § 27-66-401; and

(c) The landlocked petitioner has deposited the estimated sum under § 27-66-401.

(ii) At the evidentiary hearing, all parties shall have the opportunity to present evidence and cross-examine witnesses.

SECTION 6. Arkansas Code § 27-66-403(b), concerning the court order, is amended to read as follows:

(b)(1) Either party may appeal to the circuit court from the final order or judgment of the county court within thirty (30) days from the entry of the order and not thereafter.

(2) The review by the circuit court shall be de novo and for strict compliance with this subchapter and any additional violations of the due process rights of the parties.

/s/A. Clark