

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

State of Arkansas
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As Engrossed: H3/15/23
A Bill

HOUSE BILL 1408

By: Representative M. Brown
By: Senator C. Tucker

For An Act To Be Entitled

AN ACT TO CREATE THE UNIFORM EASEMENT RELOCATION ACT;
AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE UNIFORM EASEMENT RELOCATION
ACT.

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

SECTION 1. Arkansas Code Title 18, Chapter 11, is amended to add an additional subchapter to read as follows:

Subchapter 7 – Uniform Easement Relocation Act

18-11-701. Short title.

This subchapter may be cited as the Uniform Easement Relocation Act.

18-11-702. Definitions.

In this subchapter:

(1) "Appurtenant easement" means an easement tied to or dependent on ownership or occupancy of a unit or a parcel of real property.

(2) "Conservation easement" means a nonpossessory property interest created for one or more of the following conservation purposes:

(A) retaining or protecting the natural, scenic, wildlife, wildlife-habitat, biological, ecological, or open-space values of real property;

(B) ensuring the availability of real property for



agricultural, forest, outdoor-recreational, or open-space uses;

(C) protecting natural resources including wetlands, grasslands, and riparian areas;

(D) maintaining or enhancing air or water quality; or

(E) preserving the historical, architectural, archeological, paleontological, or cultural aspects of real property.

(3) "Dominant estate" means an estate or interest in real property benefitted by an appurtenant easement.

(4) "Easement" means a nonpossessory property interest that:

(A) provides a right to enter, use, or enjoy real property owned by or in the possession of another; and

(B) imposes on the owner or possessor a duty not to interfere with the entry, use, or enjoyment permitted by the instrument creating the easement or, in the case of an easement not established by express grant or reservation, the entry, use, or enjoyment authorized by law.

(5) "Easement holder" means:

(A) in the case of an appurtenant easement, the dominant estate owner; or

(B) in the case of an easement in gross, public-utility easement, telecommunications easement, conservation easement, or negative easement, the grantee of the easement or a successor.

(6) "Easement in gross" means an easement not tied to or dependent on ownership or occupancy of a unit or a parcel of real property.

(7) "Lessee of record" means a person holding a lessee's interest under a recorded lease or memorandum of lease.

(8) "Negative easement" means a nonpossessory property interest whose primary purpose is to impose on a servient estate owner a duty not to engage in a specified use of the estate.

(9) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(10) "Public-utility easement" means a nonpossessory property interest in which the easement holder is a publicly regulated or publicly owned utility under federal law or law of this state or a municipality. The term includes an easement benefiting an intrastate utility, an interstate utility, utility cooperative, or a Class I, Class II, or Class III railroad.

(11) "Real property" means an estate or interest in, over, or under land, including structures, fixtures, and other things that by custom, usage, or law pass with a conveyance of land whether or not described or mentioned in the contract of sale or instrument of conveyance. The term includes the interest of a lessor and lessee and, unless the interest is personal property under law of this state other than this subchapter, an interest in a common-interest community.

(12) "Record", used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Security instrument" means a mortgage, deed of trust, security deed, contract for deed, lease, or other record that creates or provides for an interest in real property to secure payment or performance of an obligation, whether by acquisition or retention of a lien, a lessor's interest under a lease, or title to the real property. The term includes:

(A) a security instrument that also creates or provides for a security interest in personal property;

(B) a modification or amendment of a security instrument;
and

(C) a record creating a lien on real property to secure an obligation under a covenant running with the real property or owed by a unit owner to a common-interest community association.

(14) "Security-interest holder of record" means a person holding an interest in real property created by a recorded security instrument.

(15) "Servient estate" means an estate or interest in real property that is burdened by an easement.

(16) "Telecommunications easement" means a nonpossessory property interest in which the easement holder is a telecommunications, cable, or broadband provider.

(17) "Title evidence" means a title insurance policy, preliminary title report or binder, title insurance commitment, abstract of title, attorney's opinion of title based on examination of public records or an abstract of title, or any other means or reporting the state of title to real property which is customary in the locality.

(18) "Unit" means a physical portion of a common-interest community designated for separate ownership or occupancy with boundaries

described in a declaration establishing the common-interest community.

(19) "Utility cooperative" means a non-profit entity whose purpose is to deliver a utility service, such as electricity, oil, natural gas, water, sanitary sewer, storm water, or telecommunication, to its customers or members and includes an electric cooperative, rural electric cooperative, rural water district, and rural water association.

18-11-703. Scope – Exclusions.

(a) Except as otherwise provided in subsection (b), this subchapter applies to an easement established by express grant or reservation or by prescription, implication, necessity, estoppel, or other method.

(b) This subchapter may not be used to relocate:

(1) a public-utility easement, telecommunications easement, conservation easement, or negative easement;

(2) an easement if the proposed location would encroach on an area of an estate burdened by a conservation easement or would interfere with the use or enjoyment of a public-utility easement, telecommunications easement, or an easement appurtenant to a conservation easement;

(3) An easement used by the State Highway Commission for highway purposes; or

(4) An easement or right-of-way held by a public entity.

(c) This subchapter does not apply to relocation of an easement by consent.

18-11-704. Right of servient estate owner to relocate easement.

A servient estate owner may relocate an easement under this act only if the relocation does not materially;

(1) lessen the utility of the easement;

(2) after the relocation, increase the burden on the easement holder in its reasonable use and enjoyment of the easement;

(3) impair an affirmative, easement-related purpose for which the easement was created;

(4) during or after the relocation, impair the safety of the easement holder or another entitled to use and enjoy the easement;

(5) during the relocation, disrupt the use and enjoyment of the easement by the easement holder or another entitled to use and enjoy the

easement unless the servient estate owner substantially mitigates the duration and nature of the disruption;

(6) impair the physical condition, use, or value of the dominant estate or improvements on the dominant estate; or

(7) impair the value of the collateral of a security-interest holder of record in the servient estate or dominant estate, impair a real-property interest of a lessee of record in the dominant estate, or impair a recorded real-property interest of any other person in the servient estate or dominant estate.

18-11-705. Commencement of civil action.

(a) To obtain an order to relocate an easement under this subchapter, a servient estate owner must commence a civil action.

(b) A servient estate owner that commences a civil action under subsection (a):

(1) shall serve a summons and petition on:

(A) the easement holder whose easement is the subject of the relocation;

(B) a security-interest holder of record of an interest in the servient estate or dominant estate;

(C) a lessee of record of an interest in the dominant estate;

(D) except as otherwise provided in paragraph (2), any other owner of a recorded real-property interest if the relocation would encroach on an area of the servient estate or dominant estate burdened by the interest; and

(2) is not required to serve a summons and petition on the owner of a recorded real-property interest in oil, gas, or minerals unless the interest includes an easement to facilitate oil, gas, or mineral development.

(c) A petition under this section must state:

(1) the intent of the servient estate owner to seek the relocation;

(2) the nature, extent, and anticipated dates of commencement and completion of the proposed relocation;

(3) the current and proposed locations of the easement;

(4) the reason the easement is eligible for relocation under §

18-11-703;

(5) the reason the proposed relocation satisfies the conditions for relocation under § 18-11-704; and

(6) that the servient estate owner has made a reasonable attempt to notify the holders of any public-utility easement, telecommunications easement, conservation easement, or negative easement on the servient estate or dominant estate of the proposed relocation.

(d) At any time before the court renders a final order in an action under subsection (a), a person served under subsection (b)(1)(B), (C), or (D) may file a document, in recordable form, that waives its rights to contest or obtain relief in connection with the relocation or subordinates its interests to the relocation. On filing of the document, the court may order that the person is not required to answer or participate further in the action.

18-11-706. Required findings – Order.

(a) The court may not approve relocation of an easement under this subchapter unless the servient estate owner:

(1) establishes that the easement is eligible for relocation under § 18-11-703; and

(2) satisfies the conditions for relocation under § 18-11-704.

(b) An order under this subchapter approving relocation of an easement must:

(1) state that the order is issued in accordance with this subchapter;

(2) recite the recording data of the instrument creating the easement, if any, and any amendments;

(3) identify the immediately preceding location of the easement;

(4) describe in a legally sufficient manner the new location of the easement;

(5) describe mitigation required of the servient estate owner during relocation;

(6) refer in detail to the plans and specifications of improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;

(7) specify conditions to be satisfied by the servient estate owner to relocate the easement and construct improvements necessary for the

easement holder to enter, use, and enjoy the easement in the new location;

(8) include a provision for payment by the servient estate owner of expenses under § 18-11-707;

(9) include a provision for compliance by the parties with the obligation of good faith under § 18-11-708; and

(10) instruct the servient estate owner to record an affidavit, if required under § 18-11-709(a), when the servient estate owner substantially completes relocation.

(c) An order under subsection (b) may include any other provision consistent with this subchapter for the fair and equitable relocation of the easement.

(d) Before a servient estate owner proceeds with relocation of an easement under this act, the owner must record, in the land records of each jurisdiction where the servient estate is located, a certified copy of the order under subsection (b).

18-11-707. Expenses of relocation.

A servient estate owner is responsible for reasonable expenses of relocation of an easement under this subchapter, including the expense of:

(1) constructing improvements on the servient estate or dominant estate in accordance with an order under § 18-11-706;

(2) during the relocation, mitigating disruption in the use and enjoyment of the easement by the easement holder or another person entitled to use and enjoy the easement;

(3) obtaining a governmental approval or permit to relocate the easement and construct necessary improvements;

(4) preparing and recording the certified copy required by § 18-11-706(d) and any other document required to be recorded;

(5) any title work required to complete the relocation or required by a party to the civil action as a result of the relocation;

(6) applicable premiums for title insurance related to the relocation;

(7) any expert necessary to review plans and specifications for an improvement to be constructed in the relocated easement or on the dominant estate and to confirm compliance with the plans and specifications referred to in the order under § 18-11-706(b)(6);

(8) payment of any maintenance cost associated with the relocated easement which is greater than the maintenance cost associated with the easement before relocation; and

(9) obtaining any third-party consent required to relocate the easement.

18-11-708. Duty to act in good faith.

After the court, under § 18-10-706, approves relocation of an easement and the servient estate owner commences the relocation, the servient estate owner, the easement holder, and other parties in the civil action shall act in good faith to facilitate the relocation in compliance with this subchapter.

18-11-709. Relocation affidavit.

(a) If an order under § 18-11-706 requires the construction of an improvement as a condition for relocation of an easement, relocation is substantially complete, and the easement holder is able to enter, use, and enjoy the easement in the new location, the servient estate owner shall:

(1) record, in the land records of each jurisdiction where the servient estate is located, an affidavit certifying that the easement has been relocated; and

(2) send, by certified mail, a copy of the recorded affidavit to the easement holder and parties to the civil action.

(b) Until an affidavit under subsection (a) is recorded and sent, the easement holder may enter, use, and enjoy the easement in the current location, subject to the court's order under § 18-11-706 approving relocation.

(c) If an order under § 18-11-706 does not require an improvement to be constructed as a condition of the relocation, recording the order under § 18-11-706(d) constitutes relocation.

18-11-710. Limited effect of relocation.

(a) Relocation of an easement under this subchapter:

(1) is not a new transfer or a new grant of an interest in the servient estate or the dominant estate;

(2) is not a breach or default of, and does not trigger, a due-

on-sale clause or other transfer-restriction clause under a security instrument, except as otherwise determined by a court under law other than this subchapter;

(3) is not a breach or default of a lease, except as otherwise determined by a court under law other than this subchapter;

(4) is not a breach or default by the servient estate owner of a recorded document affected by the relocation, except as otherwise determined by a court under law other than this subchapter;

(5) does not affect the priority of the easement with respect to other recorded real-property interests burdening the area of the servient estate where the easement was located before the relocation; and

(6) is not a fraudulent conveyance or voidable transaction under law.

(b) This subchapter does not affect any other method of relocating an easement permitted under law of this state other than this act.

18-11-711. Non-waiver.

The right of a servient estate owner to relocate an easement under this subchapter may not be waived, excluded or restricted by agreement even if:

(1) the instrument creating the easement prohibits relocation or contains a waiver, exclusion, or restriction of this subchapter;

(2) the instrument creating the easement requires consent of the easement holder to amend the terms of the easement; or

(3) the location of the easement is fixed by the instrument creating the easement, another agreement, previous conduct, acquiescence, estoppel, or implication.

18-11-712. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

18-11-713. Relocation to Electronic Signatures in Global and National Commerce Act.

This subchapter modifies, limits, or supersedes the Electronic Signatures in Global National Commerce Act, 15 U.S.C. Section 7001 et seq.,

but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

18-11-714. Transitional provision.

This subchapter applies to an easement created before, on, or after the effective date of this subchapter.

/s/M. Brown