

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 1200 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/14/05 H3/17/05

A Bill

HOUSE BILL 1981

5 By: Representatives Scroggin, *Everett, Cooper, Medley*
6 By: Senator J. Taylor
7
8

For An Act To Be Entitled

10 AN ACT TO AMEND CERTAIN STATUTES CONCERNING THE
11 ESTABLISHMENT, ALTERATION, AND VACATION OF COUNTY
12 ROADS; AND FOR OTHER PURPOSES.
13

Subtitle

14 AN ACT TO AMEND CERTAIN STATUTES
15 CONCERNING THE ESTABLISHMENT,
16 ALTERATION, AND VACATION OF COUNTY
17 ROADS.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 14-298-105(b), regarding duties of viewers,
24 is amended to read as follows:

25 (b) The county court shall issue its order directing the viewers to
26 proceed, on a day to be named in the order ~~or, on their failing to meet on~~
27 ~~that day, within five (5) days thereafter,~~ to view, survey, and lay out or
28 alter the road, and also determine whether the public convenience requires
29 that the road, or any part thereof, shall be established.
30

31 SECTION 2. Arkansas Code § 14-298-107 is repealed.

32 ~~14-298-107. Penalty for neglect or refusal of viewers, reviewers, or~~
33 ~~surveyors to perform duties.~~

34 ~~If any person shall be appointed by the county court as a viewer or~~
35 ~~reviewer, or shall be appointed by the viewers or reviewers as a surveyor of~~



1 ~~any road, and shall refuse or neglect to perform the duties required by this~~
2 ~~chapter, without making satisfactory or legal excuse therefor, that person~~
3 ~~shall be fined in any sum not less than twenty dollars (\$20.00) nor more than~~
4 ~~fifty dollars (\$50.00). This sum is to be recovered by action in the name of~~
5 ~~the county, before any justice of the peace of the county; and the amount of~~
6 ~~the fine, when collected, shall be paid into the county treasury, to be~~
7 ~~disposed of according to law.~~

8
9 SECTION 3. Arkansas Code § 14-298-108 is amended to read as follows:

10 14-298-108. Notices to landowners and viewers.

11 (a) It shall be the duty of one (1) of the petitioners to give at
12 least ~~five (5) days'~~ thirty (30) days' notice in writing to:

13 (1) The owner, or his agents, if residing within the county, or,
14 if the owner is ~~a minor, idiot, or insane person~~ an incapacitated person as
15 defined by § 28-65-104, then to the guardian of that person, if a resident of
16 the county, through whose land the road is proposed to be laid out and
17 established; and

18 (2) The viewers named in the order of the county court of the
19 time and place of meeting as specified in the order.

20 (b) It is further made the duty of the principal petitioner, if the
21 road is proposed to be laid out on or through any land owned by nonresidents
22 of the county, to cause notice to the nonresidents of the county to be erved
23 as provided by the Arkansas Rules of Civil Procedure, and if service is not
24 obtained, then the notice shall be published one (1) time per week for two
25 (2) consecutive weeks in some newspaper of general circulation published in
26 the county. If there is no newspaper published in the county, then notice
27 shall be given to the nonresident by posting a notice of the time and place
28 of meeting of the viewers as specified in the order of the county court. The
29 substance of the petition for the road shall also be posted upon the door of
30 the office of the clerk of the county court for at least two (2) weeks before
31 the time fixed for the meeting of the viewers.

32
33 SECTION 4. Arkansas Code § 14-298-109 is amended to read as follows:

34 14-298-109. Viewing, surveying, and laying out road.

35 It shall be the duty of the viewers to meet at the time and place
36 specified in the order, ~~or within five (5) days thereafter~~. After taking an

1 oath or affirmation to faithfully and impartially discharge the duties of
2 their appointments, respectively, they shall take to their assistance two (2)
3 suitable persons as chain carriers and one (1) person as marker and proceed
4 to view, survey, and lay out or alter the roads as prayed for in the
5 petition, or as near the same as, in their opinion, a good road can be made
6 with reasonable expense, taking into consideration the ground, convenience,
7 and inconvenience and expense, which will result to individuals as well as to
8 the public if the road shall be established, or any part thereof, or altered
9 as prayed for. In laying out or altering or establishing public highways, the
10 highways shall be located as near as practicable on section and subdivision
11 lines.

12

13 SECTION 5. Arkansas Code § 14-298-110 is amended to read as follows:
14 14-298-110. Determination of road width.

15 (a) The viewers shall report what width the road should be to promote
16 public convenience.

17 (b) However, the county courts shall have power to determine what
18 shall be the width of each road in their respective counties.

19 (c) The presumed width of a public road shall be fifty feet (50'),
20 providing a minimum of twenty-five feet (25') of right-of-way on either side
21 of the center line.

22

23 SECTION 6. Arkansas Code § 14-298-113 is amended to read as follows:
24 14-298-113. Proceedings on report - Compensation and damages.

25 (a) The county court, on receiving the reports of the viewers as set
26 out in § 14-298-112, shall cause the report to be available to all parties
27 and shall cause a hearing to be held in which the report is read publicly on
28 the second day of the session.

29 ~~(1)~~(b) If no legal objection shall be made to the reports by the
30 parties and the court is satisfied that the road, or any part thereof, will
31 be of sufficient importance to the public to cause the damages and the
32 compensation which have been assessed as set out in § 14-298-111 to be paid
33 by the county, and that the amount so assessed is reasonable and just, and
34 the report of the viewers being favorable thereto, the court shall order the
35 damages to be paid to the persons entitled thereto from the county treasury,
36 and thenceforth the road shall be considered a public road.

1 ~~(2)(c)~~ If the court shall be of the opinion that the road is not
2 of sufficient public utility for the county to pay the compensation and
3 damages assessed as set out in § 14-298-111 and the petitioners refuse to pay
4 the compensation and damages, then the road shall not be declared a public
5 highway or road and the costs accruing by reason of the application shall be
6 paid by the petitioners, as provided in § 14-298-104. If the report of the
7 viewers is against the proposed road or alteration, or if, in the opinion of
8 the court, the road is not of public utility, then no further proceedings
9 shall be had thereon and the obligors in the bond securing costs and expenses
10 shall be liable for the full amount of the costs and expenses.

11
12 SECTION 7. Arkansas Code § 14-298-114 is amended to read as follows:
13 14-298-114. Order opening road.

14 After any road has been established and declared a public ~~highway road~~,
15 the county court shall cause an order to be issued ~~to the overseer of the~~
16 ~~proper road district directing~~ declaring the road to be opened and the order
17 shall be filed of record with the county clerk.

18
19 SECTION 8. Arkansas Code § 14-298-115 is amended to read as follows:
20 14-298-115. Review.

21 (a) After the viewers of any county road shall have made return in
22 favor of the road and before the road shall have been established, any
23 citizen of the county whose lands are affected by the road may apply to the
24 county court by petition for a review of the road, as provided in § 14-298-
25 104.

26 (b) The court, on being satisfied from the petition that a review
27 should be granted, shall appoint three (3) disinterested freeholders of the
28 county to review the road and issue their order to the reviewers directing
29 them to meet at a time and place therein specified, ~~or within five (5) days~~
30 ~~thereafter~~. After taking the oath required of viewers, they shall proceed to
31 examine the route surveyed for the road by the former viewers and make a
32 report in writing to the court stating their opinion in favor of or against
33 the establishment of the road, or any part thereof, and their reasons
34 therefor.

35 (c) The petitioners for review shall cause at least ~~five (5) days~~²
36 thirty (30) days' notice to be given to the principal petitioner for the road

1 of the time and place of meeting of the reviewers.

2 (d) If a review is granted, then no further proceedings shall be had
3 until the reviewers have reported their action to the county court.

4 (e)(1) If the report of the reviewers is in favor of the road, the
5 road shall be established, recorded, and opened, and the persons bound for
6 the review shall pay into the county treasury the amount of the costs of the
7 review.

8 (2) If the report is against the establishment of the road, no
9 further proceedings shall be had about the road before the court, and the
10 persons executing the first bond shall pay into the county treasury the costs
11 and expenses of the views, survey, and review of the road.

12

13 SECTION 9. Arkansas Code § 14-298-116 is amended to read as follows:

14 14-298-116. Appeal to circuit court.

15 (a) An appeal from the final decision of the county court for a new
16 county road or for vacating, altering, or reviewing any county road shall be
17 allowed to the circuit court; ~~notice.~~ Notice of the appeal is given by the
18 appellant during the same term of the county court at which the decision was
19 made shall be given within thirty (30) days from the date the order of the
20 county court is filed of record with the county clerk.

21 (b) The appellant shall, within ~~ten (10) days~~ thirty (30) days
22 following the decision, enter into bond, with good and sufficient security,
23 to be approved by the clerk of the county court, for the payment of all costs
24 and expenses arising from the appeal.

25 (c) ~~Minors, idiots, and lunatics~~ Incapacitated persons as defined by §
26 28-65-104, or their guardians, may appeal without giving bond.

27 (d) The circuit court may order another view or review of the road or
28 make other orders as justice of the case demands.

29 (e) The county court, after notice of appeal has been given, shall not
30 issue any order in the premises until after ~~ten (10) days~~ thirty (30) days
31 have expired from the time of making the decision appealed from.

32 (f) If the appeal has not been perfected agreeably to the provisions
33 of this chapter, the clerk shall issue the order for the opening of the road.

34 (g) The decisions of the circuit court on petitions for roads taken
35 into the county by appeal shall be recorded in the record of the county court
36 from which the appeal is taken.

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SECTION 10. Arkansas Code § 14-298-117(a), concerning a petition for vacation of a road, is amended to read as follows:

(a) When any county road, or any part of any county road, shall be considered useless, any ten (10) citizens residing in that portion of the county may make application by petition agreeable to § 14-298-124 to the county court to vacate the road, setting forth in the petition the reason why the road ought to be vacated, which petition shall be publicly read ~~at a regular session of~~ by the county court at the hearing on petition, with the proof of notice and publication required by this chapter. ~~No further proceedings shall be had thereon until the next regular session of the court.~~

SECTION 11. Arkansas Code § 14-298-118(a), concerning compensation of road workers, is amended to read as follows:

(a) All persons required to render services under the provisions of this chapter as viewers or reviewers, chain carriers, markers, or surveyors shall be paid the following reasonable costs and expenses based upon the current market rate out of the county treasury registry of the court for each day necessarily employed, payments to be charged as costs and expenses against the petitioner.

~~(1) Viewers or reviewers~~

.....\$1.50

~~(2) Chain carriers~~

.....1.50

~~(3) Markers~~

.....1.50

~~(4) Surveyors~~

.....5.00

SECTION 12. Arkansas Code § 14-298-120 is amended to read as follows:

14-298-120. Opening, changing, and classifying roads, etc., by order of county court.

1 (a)(1) The county courts shall have power to:

2 (A) Open new roads;

3 (B) Make changes in old roads as they deem necessary and
4 proper; and

5 (C) Classify the roads and bridges in their respective
6 counties for the purposes of this section and § 27-67-212.

7 (2) When the change shall be made or any new road opened, the
8 road shall be located on section lines as nearly as may be, taking into
9 consideration the conveniences of the public travel, contour of the country,
10 etc. ~~First class roads~~ Roads hereafter established or opened as a public road
11 shall not be less than fifty feet (50') wide, providing a minimum of twenty-
12 five feet (25') of right-of-way on either side of the center line.

13 (3) An appropriate order of the county court shall be made and
14 entered of record therefor.

15 (b) Any five (5) or more interested landowners may petition the county
16 court for the opening of any road as a public road. The petition shall give
17 the starting point and terminus of the road, as well as intermediate points,
18 and such other description or plat as will permit the location of the road by
19 the county surveyor.

20 (c)(1) The petition shall be accompanied by a bond signed by at least
21 one (1) of the petitioners and by other good and sufficient sureties, which
22 bond shall provide for reimbursing the county for any claims that may be
23 sustained *against the county for lands taken by opening of the road.*

24 (2) The petitioners shall cause notice to be served upon the
25 landowners as provided by the Arkansas Rules of Civil Procedure.

26 (d) On filing the petition, the county court shall set a date for the
27 hearing, ~~which date shall not be more than thirty (30) days from the filing~~
28 ~~thereof. The~~ If service is not obtained, the county clerk shall publish for
29 one (1) insertion for two (2) weeks in some newspaper having a ~~bona fide~~
30 general circulation in the county at least ~~ten (10)~~ thirty (30) days before
31 the date of the hearing a notice as to the filing of the petition and naming
32 the day on which the county court will hear the parties, and those for and
33 those against the opening of the road.

34 (e) On the day named, the county court shall hear those for and
35 against the opening of the petitioned road and shall grant or deny the prayer
36 of the petitioners as may be deemed wise and expedient by the court and shall

1 make and cause to be entered an appropriate court order either laying out or
2 changing the road, or denying the petition.

3 (f) Upon the entry of the foregoing order of the county court, the
4 clerk of the court within ten (10) days shall cause to be served, upon each
5 of the owners of record of any lands affected by the order, a copy of the
6 order, which service shall be in the form and manner provided by law for
7 service in civil actions.

8 (g) Upon return to be made by the sheriff showing service of the order
9 upon any landowner, the clerk shall note in the records of the county court
10 the record of the service, showing the date thereof and the person served,
11 which shall be and become a part of the permanent records of the court.

12 (h) Upon the entry of the order by the county court, the records shall
13 constitute valid constructive notice to all subsequent purchasers of the
14 lands and all other persons acquiring or holding the lands by or through the
15 landowners affected.

16 (i) If the owner of the land over which any road shall hereafter be so
17 laid out by the court shall refuse to give a right-of-way therefor, then the
18 owner shall have the right to present his verified claim to the county court
19 for damages he may claim by reason of the road being laid out on his land.

20 (j) If he is not satisfied with the amount allowed by the court, he
21 shall have the right to appeal as now provided by law from judgments of the
22 county court.

23 (k) However, no claim shall be presented for such damages after twelve
24 (12) months from the date of the service of the order as provided in this
25 section. When the order is made and entered of record laying out or changing
26 any road, the county court or judge thereof shall have the right to enter
27 upon the lands of the owner and proceed with the construction of the road.
28 All damages allowed under this section shall be paid out of any funds
29 appropriated for roads and bridges and, if no funds are so appropriated, then
30 damages shall be paid out of the general revenue fund of the county.

31 (l) This section and § 27-67-212 shall be cumulative to all existing
32 laws and parts of laws, and shall not be construed as to repeal any existing
33 laws, or part of laws, unless they are in conflict herewith, and then only to
34 the extent of the conflict.

35

36 SECTION 13. Arkansas Code § 14-298-121 is amended to read as follows:

1 14-298-121. Opening or altering roads in counties voting for road tax
2 generally.

3 (a)(1) The county courts shall have power to:

4 (A) Open new roads;

5 (B) Make changes in old roads as they may deem necessary
6 and proper; and

7 (C) Classify the roads and bridges in their respective
8 counties for the purpose of this chapter.

9 (2) When the change shall be made or any new road opened, the
10 road shall be located on section lines as nearly as may be, taking into
11 consideration the conveniences of the public travel, contour of the country,
12 etc. ~~First-class roads~~ Roads hereafter established or opened as a public road
13 shall not be less than fifty feet (50') wide, providing a minimum of twenty-
14 five feet (25') of right-of-way on either side of the center line.

15 (3) An appropriate order of the county court shall be made and
16 entered of record therefor.

17 (b) Any five (5) or more interested landowners may petition the county
18 court for the opening of any road as a public road. The petition shall give
19 the starting point and terminus of the road, as well as intermediate points,
20 and other description or plat which permits the location of the road by the
21 county surveyor.

22 (c) The petition shall be accompanied by a bond signed by at least one
23 (1) of the petitioners and by other good and sufficient sureties. The bond
24 shall provide for reimbursing the county for any claims that may be sustained
25 against the county for lands taken by opening of the road.

26 (d) On filing the petition, the county court shall set a date for the
27 hearing, ~~which date shall not be more than thirty (30) days from the filing~~
28 ~~thereof.~~ It shall be the duty of one (1) of the petitioners to give at least
29 thirty (30) days' notice in writing to the owners as required by § 14-298-
30 108. If service is not obtained, then ~~The~~ the county clerk shall publish for
31 one (1) insertion ~~for two (2) weeks~~ in some newspaper published and having a
32 ~~bona fide~~ general circulation in the county a notice as to the filing of the
33 petition and naming the day on which the county court will hear the parties,
34 and those for and those against the opening of the road.

35 (e) On the day named, the county court shall hear those for and
36 against the opening of the petitioned-for road and shall grant or deny the

1 prayer of the petitioners as they may be deemed wise and expedient by the
2 court and shall make and cause to be entered an appropriate court order
3 either laying out the road or denying the petition.

4 (f) If the owner of the land over which any road shall hereafter be so
5 laid out by the court shall refuse to give a right-of-way therefor, or to
6 agree upon the damages therefor, then that owner shall have the right to
7 present his verified claim to the county court for such damages as ~~he~~ the
8 owner may claim by reason of the road being laid out on his or her land and,
9 if ~~he~~ the owner is not satisfied with the amount allowed by the court, ~~he~~ the
10 owner shall have the right to appeal as now provided by law from judgments of
11 the county court.

12 (g) However, no claim shall be presented for the damages after twelve
13 (12) months from the date of the order laying out or changing any road. When
14 the order is made and entered of record laying out or changing any road the
15 county court or judge thereof shall have the right to enter upon the lands of
16 the owner and proceed with the construction of the road. All damages allowed
17 under this chapter shall be paid out of any funds appropriated for roads and
18 bridges, and, if no such funds exist, then damages shall be paid out of the
19 general revenue fund of the county.

20 ~~(h) The provisions of this section shall not apply to the counties of~~
21 ~~Craighead, Greene, Clay, Hempstead, Nevada, Lincoln, Cleveland, Dallas, Pike,~~
22 ~~Clark, Benton, Yell, Logan, Saline, Hot Spring, Grant, Little River, Sevier,~~
23 ~~Howard, Conway, Arkansas, Baxter, Columbia, Johnson, Calhoun, Stone, Fulton,~~
24 ~~Bradley, Faulkner, Prairie, Madison, Searcy, Marion, Lawrence, Carroll,~~
25 ~~Sharp, Newton, Randolph, White, Jackson, Van Buren, Monroe, Lafayette,~~
26 ~~Independence, Crawford, and Franklin.~~

27
28 SECTION 14. Arkansas Code § 14-298-123(a), regarding witnesses of a
29 washed-out road, is amended to read as follows:

30 (a) When any county road may be injured or destroyed by washing of any
31 lake, river, or creek, ~~it shall be the duty of the overseer of the road~~
32 ~~district in which the injury or destruction may occur to immediately notify~~
33 the judge of the county court shall be notified by any witness in writing of
34 the nature and extent of the injury.

35
36 SECTION 15. Arkansas Code § 14-298-124 is amended to read as follows:

1 14-298-124. Altering public roads on private land.

2 (a) If any person through whose land a public road is or may be
3 established shall be desirous of turning the road through any other part of
4 his land, that person shall, by petition, apply to the county court to permit
5 him to turn the road through any other part of his land on as good ground and
6 without increasing the distance to the injury of the public. Upon
7 presentation of the petition, the person shall present a ~~certificate from the~~
8 ~~overseer of the road, endorsed by the approval of a majority of the road~~
9 ~~hands working under the overseer~~ supporting affidavit to the effect that the
10 proposed change will not materially increase the distance to the injury of
11 the public, together with ~~their~~ opinions by supporting affidavits in writing
12 as to the utility or practicability of the alteration.

13 (b)~~(1)~~ The court shall declare the new road a public highway if:

14 ~~(A)(1)~~ The ~~certificate of the overseer shall show to the court~~
15 finds that the prayer of the petition is reasonable and the alteration will
16 not place the road on worse ground, or increase the distance to the injury of
17 the public; ~~and~~

18 ~~(B)(2)~~ The court is satisfied that the new road will be opened
19 by the petitioner a legal width and in all respects made as good as the old
20 road was for the convenience of travelers; and

21 ~~(C)(3)~~ In the opinion of the court, the petition shall be just
22 and reasonable; ~~or,~~

23 ~~(2) In the absence of a certificate from the overseer, a~~
24 ~~petition is signed or endorsed by two thirds (2/3) of the road hands, subject~~
25 ~~to road duty on the road, then the court shall order the change and declare~~
26 ~~the new road a public highway.~~

27 (c) A person desiring the alteration provided in this section shall
28 pay all the cost incident to the proceedings, and no damages shall be allowed
29 under the provisions of this section by reason of any such change to any
30 petitioner.

31
32 /s/ Scroggin, et al

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35 APPROVED: 3/24/2005

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