

1 State of Arkansas *As Engrossed: S3/18/13 S3/27/13 S4/1/13*

2 89th General Assembly

A Bill

3 Regular Session, 2013

SENATE BILL 819

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5 By: Senator A. Clark

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For An Act To Be Entitled

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AN ACT TO REVISE THE LAW CONCERNING THE PROCESS FOR A

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COUNTY JUDGE TO ESTABLISH ACCESS EASEMENTS FOR

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LANDLOCKED OWNERS OF REAL PROPERTY TO PREVENT A

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TAKING OF PROPERTY WITHOUT DUE PROCESS; AND FOR OTHER

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PURPOSES.

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Subtitle

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TO REVISE THE LAW CONCERNING THE PROCESS

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FOR A COUNTY JUDGE TO ESTABLISH ACCESS

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EASEMENTS FOR LANDLOCKED OWNERS OF REAL

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PROPERTY TO COMPORT WITH DUE PROCESS.

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

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24 SECTION 1. Arkansas Code § 27-66-401(d), concerning the establishment

25 of certain access easements, is amended to read as follows:

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

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

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



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

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

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

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

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

15 (a) Viewers' fees and expenses;

16 (b) The survey cost;

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

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

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

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

24 (d) Notice and publication costs if any;

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

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

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

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

1 ~~pass~~ adjoining owners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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5 /s/A. Clark
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8 **APPROVED: 04/11/2013**
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