

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

Bureau of Legislative Research

CONFIDENTIAL

A Bill

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023

HOUSE BILL 1408

REVIEWED
By: [redacted] on: [redacted] Mar 06, 2023

4
5 By: Representative M. Brown

For An Act To Be Entitled

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

Subtitle

12 TO CREATE THE UNIFORM EASEMENT RELOCATION
13 ACT.

14
15
16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

Subchapter 7 – Uniform Easement Relocation Act

21
22
23 18-11-701. Short title.

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

25
26 18-11-702. Definitions.

27 In this subchapter:

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

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

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

35 (B) ensuring the availability of real property for
36 agricultural, forest, outdoor-recreational, or open-space uses;



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

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

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

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

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

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

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

15 (5) "Easement holder" means:

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

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

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

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

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

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

31 (10) "Public-utility easement" means a nonpossessory property
32 interest in which the easement holder is a publicly regulated or publicly
33 owned utility under federal law or law of this state or a municipality. The
34 term includes an easement benefiting an intrastate utility, an interstate
35 utility, or a utility cooperative.

36 (11) "Real property" means an estate or interest in, over, or

1 under land, including structures, fixtures, and other things that by custom,
2 usage, or law pass with a conveyance of land whether or not described or
3 mentioned in the contract of sale or instrument of conveyance. The term
4 includes the interest of a lessor and lessee and, unless the interest is
5 personal property under law of this state other than this subchapter, an
6 interest in a common-interest community.

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

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

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

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

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

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

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

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

31 (17) "Unit" means a physical portion of a common-interest
32 community designated for separate ownership or occupancy with boundaries
33 described in a declaration establishing the common-interest community.

34 (18) "Utility cooperative" means a non-profit entity whose
35 purpose is to deliver a utility service, such as electricity, oil, natural
36 gas, water, sanitary sewer, storm water, or telecommunication, to its

1 customers or members and includes an electric cooperative, rural electric
2 cooperative, rural water district, and rural water association.

3
4 18-11-703. Scope – Exclusions.

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

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

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

11 (2) an easement if the proposed location would encroach on an
12 area of an estate burdened by a conservation easement or would interfere with
13 the use or enjoyment of a public-utility easement or an easement appurtenant
14 to a conservation easement.

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

17
18 18-11-704. Right of servient estate owner to relocate easement.

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

21 (1) lessen the utility of the easement;

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

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

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

28 (5) during the relocation, disrupt the use and enjoyment of the
29 easement by the easement holder or another entitled to use and enjoy the
30 easement unless the servient estate owner substantially mitigates the
31 duration and nature of the disruption;

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

34 (7) impair the value of the collateral of a security-interest
35 holder of record in the servient estate or dominant estate, impair a real-
36 property interest of a lessee of record in the dominant estate, or impair a

1 recorded real-property interest of any other person in the servient estate or
2 dominant estate.

3
4 18-11-705. Commencement of civil action.

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

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

9 (1) shall serve a summons and petition on:

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

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

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

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

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

23 (c) A petition under this section must state:

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

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

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

29 (4) the reason the easement is eligible for relocation under §
30 18-11-703;

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

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

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

7
8 18-11-706. Required findings – Order.

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

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

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

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

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

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

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

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

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

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

28 (7) specify conditions to be satisfied by the servient estate
29 owner to relocate the easement and construct improvements necessary for the
30 easement holder to enter, use, and enjoy the easement in the new location;

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

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

35 (10) instruct the servient estate owner to record an affidavit,
36 if required under § 18-11-709(a), when the servient estate owner

1 substantially completes relocation.

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

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

9
10 18-11-707. Expenses of relocation.

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

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

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

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

20 (4) preparing and recording the certified copy required by § 18-
21 11-706(d) and any other document required to be recorded;

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

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

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

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

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

35
36 18-11-708. Duty to act in good faith.

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

6
7 18-11-709. Relocation affidavit.

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

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

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

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

21 (c) If an order under § 18-11-706 does not require an improvement to
22 be constructed as a condition of the relocation, recording the order under §
23 18-11-706(d) constitutes relocation.

24
25 18-11-710. Limited effect of relocation.

26 (a) Relocation of an easement under this subchapter:

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

29 (2) is not a breach or default of, and does not trigger, a due-
30 on-sale clause or other transfer-restriction clause under a security
31 instrument, except as otherwise determined by a court under law other than
32 this subchapter;

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

35 (4) is not a breach or default by the servient estate owner of a
36 recorded document affected by the relocation, except as otherwise determined

1 by a court under law other than this subchapter;

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

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

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

9
10 18-11-711. Non-waiver.

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

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

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

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

20
21 18-11-712. Uniformity of application and construction.

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

25
26 18-11-713. Relocation to Electronic Signatures in Global and National
27 Commerce Act.

28 This subchapter modifies, limits, or supersedes the Electronic
29 Signatures in Global National Commerce Act, 15 U.S.C. Section 7001 et seq.,
30 but does not modify, limit, or supersede Section 101(c) of that act, 15
31 U.S.C. Section 7001(c), or authorize electronic delivery of any of the
32 notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

33
34 18-11-714. Transitional provision.

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