

2 State of Arkansas
3 88th General Assembly
4 Regular Session, 2011

As Engrossed: H3/21/11 H3/24/11

A Bill

HOUSE BILL 2229

5
6 By: Representative Dale

7 Filed with: Interim House Committee on Agriculture, Forestry and Economic Development
8 pursuant to A.C.A. §10-3-217.

9 **For An Act To Be Entitled**

10 AN ACT CONCERNING ROUTE-OF-EASEMENT ISSUES IN
11 CONDEMNATION PROCEEDINGS; AND FOR OTHER PURPOSES.

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13
14 **Subtitle**

15 CONCERNING ROUTE-OF-EASEMENT ISSUES IN
16 CONDEMNATION PROCEEDINGS.

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

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21 SECTION 1. Arkansas Code § 18-15-1303 is amended to read as follows:
22 18-15-1303. Procedure for condemnation.

23 In the event ~~any~~ a company fails, upon application to individuals,
24 railroads, or turnpike companies, to secure the right-of-way by consent,
25 contract, or agreement, then the ~~corporation shall have the right to~~ company
26 may proceed to procure the condemnation of the property, lands, rights,
27 privileges, and easements in the manner provided by law for taking private
28 property for right-of-way for railroads as provided by §§ 18-15-1201 – 18-15-
29 1207, including the procedure for providing notice by publication and by
30 certified mail in § 18-15-1202~~r~~, subject to the following conditions:

31 (1)(A) In any instance in which a route of a right-of-way
32 proposed by a company, other than a public utility, specified under § 18-15-
33 1301(a) is objected to by the owner of the property, the owner may file with
34 the circuit court an objection to the route of the right-of-way.

35 (B) If an owner objects under subdivision (1)(A) of this
36 section, the circuit court, within thirty (30) days of the filing of the

1 objection, shall hold a hearing on the owner's objection, and based on the
2 information provided by the parties at the hearing, the circuit court shall
3 determine whether:

4 (i) The proposed route of the right-of-way should be
5 accepted notwithstanding the objections raised by the owner of the property;
6 or

7 (ii) Another route for the right-of-way should be
8 proposed for condemnation purposes; and

9 (2)(A) If a circuit court conducts a hearing under subdivision
10 (1) of this section, the circuit court shall render its determination within
11 fifteen (15) days following the conclusion of the hearing.

12 (B) In making a determination under this section, the
13 circuit court shall consider all potentially relevant factors, including
14 without limitation the following factors:

15 (i) The factual basis of the property owner's
16 objection;

17 (ii) Other access and routes available to the
18 company;

19 (iii) The costs associated with the construction and
20 use of any alternative routes;

21 (iv) Safety issues;

22 (v) Potential obstructions;

23 (vi) The relative impact on agricultural and
24 silvicultural productivity; and

25 (vii) Other economic and noneconomic factors.

26
27 SECTION 2. Arkansas Code § 18-15-1202(a), concerning petition for
28 condemnation, is amended to read as follows:

29 (a)(1) ~~Any~~ A railroad, telegraph, or telephone company, organized
30 under the laws of ~~this~~ the state, after having surveyed and located its lines
31 of railroad, telegraph, or telephone, in all cases in which the ~~companies~~
32 ~~fail~~ company fails to obtain the right-of-way over the property by agreement
33 with the owner of the property through which the lines of railroad,
34 telegraph, or telephone may be located, shall apply to the circuit court of
35 the county in which the property is situated.

1 (2) Application to have the damages for the right-of-way
2 assessed or for any other purpose under this section shall be made by
3 petition ~~to have the damages for the right-of-way assessed~~, giving the owner
4 of the property at least ~~ten (10)~~ twenty (20) days' notice in writing by
5 certified mail, return receipt requested, of the time and place where the
6 petition will be heard.

7 (3)(A) If an owner of property objects to the route of the
8 right-of-way under § 18-15-1303, the owner shall file the objection in
9 response to the petition filed under subdivision (a)(2) of this section
10 within ten (10) days of receiving the notice provided under subdivision
11 (a)(2) of this section.

12 (B) The timely filing of an objection under subdivision
13 (a)(3)(A) of this section stays further proceedings on the petition for
14 condemnation until the circuit court issues an order under § 18-15-1303.

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16 /s/Dale

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18 Referred by the Arkansas House of Representatives
19 Prepared by: JLL/VJF
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