

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.

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

A Bill

HOUSE BILL 1981

4
5 By: Representative Scroggin
6 By: Senator J. Taylor

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.

Subtitle

15 AN ACT TO AMEND CERTAIN STATUTES
16 CONCERNING THE ESTABLISHMENT,
17 ALTERATION, AND VACATION OF COUNTY
18 ROADS.

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

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.

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 Arkansas Code § 14-298-107 is repealed.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~~
36 ~~any road, and shall refuse or neglect to perform the duties required by this~~



chapter, without making satisfactory or legal excuse therefor, that person shall be fined in any sum not less than twenty dollars (\$20.00) nor more than fifty dollars (\$50.00). This sum is to be recovered by action in the name of the county, before any justice of the peace of the county; and the amount of the fine, when collected, shall be paid into the county treasury, to be disposed of according to law.

SECTION 3. Arkansas Code § 14-298-108 is amended to read as follows:
14-298-108. Notices to landowners and viewers.

(a) It shall be the duty of one (1) of the petitioners to give at least ~~five (5) days'~~ twenty (20) days' notice in writing to:

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

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

(b) It is further made the duty of the principal petitioner, if the road is proposed to be laid out on or through any land owned by nonresidents of the county, to cause notice to the nonresidents of the county to be served as provided by the Arkansas Rules of Civil Procedure, and if service is unsuccessful, then the notice shall be published one (1) time per week for two (2) consecutive weeks in some newspaper published in the county. If there is no newspaper published in the county, then notice shall be given to the nonresident by posting a notice of the time and place of meeting of the viewers as specified in the order of the county court. The substance of the petition for the road shall also be posted upon the door of the office of the clerk of the county court for at least two (2) weeks before the time fixed for the meeting of the viewers.

SECTION 4. Arkansas Code § 14-298-109 is amended to read as follows:
14-298-109. Viewing, surveying, and laying out road.

It shall be the duty of the viewers to meet at the time and place specified in the order, ~~or within five (5) days thereafter~~. After taking an oath or affirmation to faithfully and impartially discharge the duties of

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

11

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

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

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

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

21

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

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

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

36 ~~(2)~~(c) If the court shall be of the opinion that the road is not

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

10
 11 SECTION 7. Arkansas Code § 14-298-114 is amended to read as follows:
 12 14-298-114. Order opening road.

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

17
 18 SECTION 8. Arkansas Code § 14-298-115 is amended to read as follows:
 19 14-298-115. Review.

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

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

34 (c) The petitioners for review shall cause at least ~~five (5) days~~²
 35 twenty (20) days' notice to be given to the principal petitioner for the road
 36 of the time and place of meeting of the reviewers.

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

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

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

11
 12 SECTION 9. Arkansas Code § 14-298-116 is amended to read as follows:
 13 14-298-116. Appeal to circuit court.

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

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

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

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

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

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

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

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~~ current market rate out of the county treasury for each day necessarily employed, payments to be charged as costs and expenses+.

~~(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.

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

(A) Open new roads;

1 (B) Make changes in old roads as they deem necessary and
 2 proper; and

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

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

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

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

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

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

29 (e) On the day named, the county court shall hear those for and
 30 against the opening of the petitioned road and shall grant or deny the prayer
 31 of the petitioners as may be deemed wise and expedient by the court and shall
 32 make and cause to be entered an appropriate court order either laying out or
 33 changing the road, or denying the petition.

34 (f) Upon the entry of the foregoing order of the county court, the
 35 clerk of the court within ten (10) days shall cause to be served, upon each
 36 of the owners of record of any lands affected by the order, a copy of the

1 order, which service shall be in the form and manner provided by law for
 2 service in civil actions.

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

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

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

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

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

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

30

31 SECTION 13. Arkansas Code § 14-298-121 is amended to read as follows:
 32 14-298-121. Opening or altering roads in counties voting for road tax
 33 generally.

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

35 (A) Open new roads;

36 (B) Make changes in old roads as they may deem necessary

1 and proper; and

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

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

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

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

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

21 (d) On filing the petition, the county court shall set a date for the
22 hearing, ~~which date shall not be more than thirty (30) days from the filing~~
23 ~~thereof.~~ It shall be the duty of one (1) of the petitioners to give at least
24 twenty (20) days' notice in writing to the owners as required by § 14-298-
25 108. The county clerk shall publish for one (1) insertion in some newspaper
26 published and having a bona fide circulation in the county a notice as to the
27 filing of the petition and naming the day on which the county court will hear
28 the parties, and those for and those against the opening of the road.

29 (e) On the day named, the county court shall hear those for and
30 against the opening of the petitioned-for road and shall grant or deny the
31 prayer of the petitioners as they may be deemed wise and expedient by the
32 court and shall make and cause to be entered an appropriate court order
33 either laying out the road or denying the petition.

34 (f) If the owner of the land over which any road shall hereafter be so
35 laid out by the court shall refuse to give a right-of-way therefor, or to
36 agree upon the damages therefor, then that owner shall have the right to

1 present his verified claim to the county court for such damages as ~~he~~ the
 2 owner may claim by reason of the road being laid out on his or her land and,
 3 if ~~he~~ the owner is not satisfied with the amount allowed by the court, ~~he~~ the
 4 owner shall have the right to appeal as now provided by law from judgments of
 5 the county court.

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

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

21
 22 SECTION 14. Arkansas Code § 14-298-123(a), regarding witnesses of a
 23 washed-out road, is amended to read as follows:

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

29
 30 SECTION 15. Arkansas Code § 14-298-124 is amended to read as follows:
 31 14-298-124. Altering public roads on private land.

32 (a) If any person through whose land a public road is or may be
 33 established shall be desirous of turning the road through any other part of
 34 his land, that person shall, by petition, apply to the county court to permit
 35 him to turn the road through any other part of his land on as good ground and
 36 without increasing the distance to the injury of the public. Upon

1 presentation of the petition, the person shall present a ~~certificate from the~~
2 ~~overseer of the road, endorsed by the approval of a majority of the road~~
3 ~~hands working under the overseer~~ supporting affidavit to the effect that the
4 proposed change will not materially increase the distance to the injury of
5 the public, together with ~~their~~ opinions by supporting affidavits in writing
6 as to the utility or practicability of the alteration.

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

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

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

15 ~~(C)(3)~~ In the opinion of the court, the petition shall be just
16 and reasonable; ~~or.~~

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

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

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