

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
4

As Engrossed: H3/14/05

A Bill

HOUSE BILL 1981

5 By: Representative Scroggin
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.
18
19
20

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 Arkansas Code § 14-298-107 is repealed.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



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

7
 8 SECTION 3. Arkansas Code § 14-298-108 is amended to read as follows:
 9 14-298-108. Notices to landowners and viewers.

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

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

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

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

31
 32 SECTION 4. Arkansas Code § 14-298-109 is amended to read as follows:
 33 14-298-109. Viewing, surveying, and laying out road.

34 It shall be the duty of the viewers to meet at the time and place
 35 specified in the order, ~~or within five (5) days thereafter~~. After taking an
 36 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 thirty (30) 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.

36

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.

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

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

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

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

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

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

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

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

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

33 (e) On the day named, the county court shall hear those for and
34 against the opening of the petitioned road and shall grant or deny the prayer
35 of the petitioners as may be deemed wise and expedient by the court and shall
36 make and cause to be entered an appropriate court order either laying out or

1 changing the road, or denying the petition.

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

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

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

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

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

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

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

34

35 SECTION 13. Arkansas Code § 14-298-121 is amended to read as follows:
36 14-298-121. Opening or altering roads in counties voting for road tax

1 generally.

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

3 (A) Open new roads;

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

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

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

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

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

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

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

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

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

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

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

26
27 SECTION 14. Arkansas Code § 14-298-123(a), regarding witnesses of a
28 washed-out road, is amended to read as follows:

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

34
35 SECTION 15. Arkansas Code § 14-298-124 is amended to read as follows:
36 14-298-124. Altering public roads on private land.

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

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

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

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

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

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

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

30
31 /s/ Scroggin
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36