

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 87th General Assembly  
3 Regular Session, 2009  
4

*As Engrossed: S3/2/09*  
**A Bill**

SENATE BILL 399

5 By: Senator Wyatt  
6  
7

8 **For An Act To Be Entitled**

9 AN ACT TO UPDATE THE PROCEDURE FOR ACQUIRING AN  
10 ACCESS EASEMENT; AND FOR OTHER PURPOSES.

11  
12 **Subtitle**

13 TO UPDATE THE PROCEDURE FOR ACQUIRING AN  
14 ACCESS EASEMENT.  
15  
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 SECTION 1. Arkansas Code Title 27, Chapter 66, Subchapter 4 is amended  
20 to read as follows:

21 27-66-401. Establishment.

22 (a) When the lands, dwelling house, or plantation of any owner is so  
23 situated as to render it necessary to have a ~~private~~ road from such lands,  
24 dwelling house, or plantation to any public road or navigable watercourse  
25 over the lands of any other person and the other person refuses to allow that  
26 owner the ~~private~~ road, ~~then it shall be the duty of the owner~~ may petition  
27 the county court to appoint viewers to lay off the road, provided the owner+  
28 ~~(1) Gives~~ gives written notice to ~~such~~ the person twenty (20)  
29 days before application to the court, and attaches the written notice to the  
30 petition.

31 ~~(2) Petitions the court;~~

32 ~~(3) Shows necessity for the private road;~~

33 ~~(4) Shows that the person refuses to allow the road; and~~

34 ~~(5) Deposits with the clerk of the court sufficient money to pay~~  
35 ~~all costs and expenses accruing on account of the petition, notice, view, and~~  
36 ~~survey of the private road.~~



1           (b) The petition for an easement for ingress and egress to and from  
2 the petitioner's lands over, through, and across the respondent's lands to  
3 any public road or navigable watercourse shall be filed with the clerk of the  
4 county court and shall allege with particularity facts demonstrating that:

5                   (1) The written notice was provided by the petitioner to the  
6 respondent twenty (20) days before application to the court;

7                   (2) The respondent refused to convey to the petitioner the  
8 requested access easement; and

9                   (3) The petitioner lacked the legal right of ingress and egress  
10 to and from his or her lands across the respondent's lands or otherwise to a  
11 public road.

12           (c) Copies of abstracts, deeds, or plats referenced in the petition  
13 shall be attached to the petition.

14           (d) After the petition is filed, the county court shall issue a notice  
15 setting the time, date, and location of a preliminary hearing.

16           (e)(1) In accordance with the Arkansas Rules of Civil Procedure, the  
17 petitioner shall serve the resident or nonresident respondent with a:

18                   (A) Summons;

19                   (B) Copy of the petition and any exhibits; and

20                   (C) Copy of the court notice of the preliminary hearing.

21                   (2) If service is not obtained, the notice shall be published  
22 one (1) time per week for two (2) consecutive weeks in a newspaper of general  
23 circulation in the county at the petitioner's expense. If there is no  
24 newspaper of general circulation in the county, the notice shall be posted at  
25 the county courthouse.

26           (f)(1) The court may dismiss the case without prejudice and allow the  
27 petition to be refiled within one (1) year from dismissal if the court  
28 determines at the preliminary hearing that:

29                   (A) Required notices and service have not been provided to  
30 the respondent; or

31                   (B) The petition fails to sufficiently demonstrate the  
32 requirements of subsection (b) of this section.

33                   (2)(A) If the court determines at the preliminary hearing that  
34 required notices and service have been provided to the respondent and the  
35 petition sufficiently demonstrates the requirements of subsection (b) of this  
36 section, the court shall appoint viewers.

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

3                   (i) Issue a preliminary order directing the  
4 petitioner to deposit into the registry of the court an estimated sum  
5 sufficient for payment of damages and for payment of the costs and expenses  
6 accruing on account of the petition, notice, view, and survey for the access  
7 easement; and

8                   (ii) Set the time, date, and location of the  
9 evidentiary hearing.

10                  (C) Either party may file with the court legal  
11 instruments, plats, surveys, or other documentary evidence to be reviewed by  
12 the viewers.

13                  (D) The parties shall immediately open their property to  
14 inspection by the viewers and surveyors.

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16                  27-66-402. Duty of viewers.

17                  (a) Viewers shall take the same oath and shall be governed in all  
18 respects as viewers appointed to public roads are governed under this act.

19                  (b) They shall examine the route proposed for the road and any other  
20 route which they may deem proper.

21                  (c) If they or a majority of them ~~shall be~~ are of the opinion that a  
22 ~~private~~ road is necessary and proper, as prayed in the petition, they shall  
23 lay out and describe the road in a manner that produces the least  
24 inconvenience to the parties through whose land the road shall pass.

25                  (d)(1) The viewers shall make a written report to the county court,  
26 describing their opinions as to the necessity and the route of the road and  
27 the land through which it shall pass to allow location and identification of  
28 the access easement by land records, naming the owner, if known, and by  
29 decision of a majority of the viewers the damages sustained by each owner of  
30 lands through which the road passes. The damages shall include the value of  
31 the land of each owner sought to be appropriated.

32                  (2) The measure of damages shall be the difference in the fair  
33 market value of the lands immediately before the access easement is ordered  
34 and the fair market value of the lands after the access easement is ordered.

35                  (e) The report shall be ~~recorded on~~ filed with the county clerk for  
36 the records of the county court.

1       (f)(1) A person who renders services under this subchapter as a viewer  
2 or reviewer, chain carrier, marker, or surveyor shall be paid reasonable  
3 costs and expenses based upon the current market rate for each day  
4 necessarily employed.

5       (2) Payments are to be charged as costs and expenses against the  
6 funds deposited by the petitioner.

7       (3) The amount due each person and the number of days employed  
8 shall be certified under oath by the viewers.

9       (4) The court by order may direct the county clerk to receipt  
10 payment by the petitioner of the directed sum into the registry of the court  
11 and to issue payment.

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13       27-66-403. Court order.

14       (a)(1) If the petitioner has not complied with the court's order under  
15 § 27-66-401 and paid into the registry of the county court the estimated sum,  
16 the court may dismiss the case without prejudice and provide that the matter  
17 may be refiled within one (1) year from dismissal in accordance with the  
18 Arkansas Rules of Civil Procedure.

19       (2) If during the pendency of the proceedings the county court  
20 determines that the circuit court has jurisdiction over the matter, the  
21 county court may stay the proceedings or dismiss the case without prejudice  
22 and provide that the matter may be refiled within one (1) year from dismissal  
23 in accordance with the Arkansas Rules of Civil Procedure.

24       (3)(A) If the petitioner complies with the court's order under §  
25 27-66-401 and deposits into the registry of the county court the estimated  
26 sum, the evidentiary hearing may be held and the opportunity to present  
27 evidence and cross-examine witnesses.

28       (B)(i) If, upon the return after considering the report of  
29 the viewers, the evidence, the law, and all other proper and sufficient  
30 matters the court shall be is of the opinion that it is necessary for the  
31 petitioner to have the road from his or her lands, dwelling house, or  
32 plantation to the public road, or navigable watercourse, an order shall is to  
33 be made establishing the road as a private road not exceeding thirty feet  
34 (30') wide not to exceed fifty feet (50') in width and determining the  
35 damages sustained by each owner of lands through which the access easement  
36 passes.

1                                   (ii)(a) ~~The petitioner may proceed to open the~~  
 2 ~~road, provided that the petitioner pays~~ access easement of ingress and egress  
 3 to and from the petitioner's lands to, through, over, and across the  
 4 respondent's lands shall be described in the final order or judgment of the  
 5 court and shall be appurtenant to the petitioner's lands.

6                                   (b) The order shall direct return of  
 7 excess funds, if any, to the petitioner and any further deposits necessary to  
 8 be made by the petitioners for the payment of all costs and expenses,  
 9 including reasonable attorney's fees and costs, accruing and remaining unpaid  
 10 on account of the petition for the private road, and all things relating  
 11 thereto and following therefrom, including the view and survey of the road  
 12 and damages sustained by each owner of the lands over which the road passes.

13                                   (iii) The petitioner shall be solely responsible for  
 14 the maintenance of the road established under this subchapter.

15                                   (iv) The respondent shall have no responsibility for  
 16 the maintenance of the road established under this subchapter.

17                                   (b) Either party may appeal to the circuit court from the final order  
 18 or judgment of the county court within ~~sixty (60)~~ thirty (30) days from the  
 19 ~~rendition~~ entry of the order and not thereafter.

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 21                                   27-66-404. Penalty for obstructing.

22                                   (a) ~~If any person shall obstruct any~~ obstructs a private road  
 23 established under the laws of this state by felling any trees across it or by  
 24 placing any an obstruction thereon on the road, he or she shall be guilty of  
 25 a Class C misdemeanor. ~~Upon conviction, he shall be fined in any sum not~~  
 26 ~~exceeding fifty dollars (\$50.00) and~~

27                                   (b) The person also shall forfeit ~~two dollars (\$2.00)~~ one hundred  
 28 dollars (\$100) for every day he or she ~~shall allow~~ allows the obstruction to  
 29 remain after he or she has been notified to remove it.

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 31                                   /s/ D. Wyatt  
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