

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

As Engrossed: H3/21/11

A Bill

HOUSE BILL 2229

5 By: Representative Dale
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For An Act To Be Entitled

8 AN ACT CONCERNING ROUTE-OF-EASEMENT ISSUES IN
9 CONDEMNATION PROCEEDINGS; AND FOR OTHER PURPOSES.
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Subtitle

11 CONCERNING ROUTE-OF-EASEMENT ISSUES IN
12 CONDEMNATION PROCEEDINGS.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code § 18-15-1303 is amended to read as follows:
20 18-15-1303. Procedure for condemnation.

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

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

33 (B) If an owner objects under subdivision (1)(A) of this
34 section, the circuit court, within thirty (30) days of the filing of the
35 objection, shall hold a hearing on the owner's objection, and based on the
36 information provided by the parties at the hearing, the circuit court shall



1 determine whether:

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

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

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

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

13 (i) The factual basis of the property owner's
 14 objection;

15 (ii) Other access and routes available to the
 16 company;

17 (iii) The relative costs associated with the
 18 construction and use of any alternative routes;

19 (iv) Safety issues;

20 (v) Potential obstructions;

21 (vi) The relative impact on agricultural and
 22 silvicultural productivity; and

23 (vii) Other economic and noneconomic factors.

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

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

34 (2) Application to have the damages for the right-of-way
 35 assessed or for any other purpose under this section shall be made by
 36 ~~petition to have the damages for the right-of-way assessed~~, giving the owner

1 of the property at least ~~ten (10)~~ twenty (20) days' notice in writing by
2 certified mail, return receipt requested, of the time and place where the
3 petition will be heard.

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

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

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12 /s/Dale
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