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4
5 By: Senator A. Clark
6

A Bill

SENATE BILL 819

For An Act To Be Entitled

8 AN ACT TO REVISE THE LAW CONCERNING THE PROCESS FOR A
9 COUNTY JUDGE TO ESTABLISH ACCESS EASEMENTS FOR
10 LANDLOCKED OWNERS OF REAL PROPERTY TO PREVENT A
11 TAKING OF PROPERTY WITHOUT DUE PROCESS; AND FOR OTHER
12 PURPOSES.

Subtitle

16 TO REVISE THE LAW CONCERNING THE PROCESS
17 FOR A COUNTY JUDGE TO ESTABLISH ACCESS
18 EASEMENTS FOR LANDLOCKED OWNERS OF REAL
19 PROPERTY TO COMPORT WITH DUE PROCESS.

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

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

26 27-66-401. ~~Establishment~~ Petition for access easement for landlocked
27 property.

28 (a) As used in this subchapter:

29 (1)(A) "Access easement" means a route:

30 (i) To be used for ingress and egress to and from
31 the landlocked property over, through, and across an adjoining owner's real
32 property; and

33 (ii) That connects to a publicly owned street, road,
34 highway, or navigable watercourse.

35 (B) "Access easement" does not include a route that:

36 (i) Exceeds twenty (20') feet in width;



1 (ii) Causes damage to any structure or drainage and
2 grading on the adjoining owner's property; or

3 (iii) Requires the adjoining property owner to
4 maintain or improve his or her real property.

5 (C) "Access easement" does not include the transfer of
6 title to the land over which the easement passes;

7 (2) "Adjoining owner" means the owner of land, a dwelling house,
8 a plantation, or an easement that borders or touches the real property of the
9 landlocked petitioner;

10 (3) "Landlocked property" means the land, dwelling house, or
11 plantation of an owner that is not usable unless accessible by one (1) of the
12 following:

13 (A) A publicly owned street, road, or highway;

14 (B) A navigable watercourse; or

15 (C) A privately owned easement or road; and

16 (4) "Landlocked petitioner" means a person who owns property
17 that he or she claims is landlocked property under this subchapter.

18 ~~(a)(1)(b)(1) When the lands, dwelling house, or plantation of any~~
19 ~~owner is so situated as to render it necessary to have a road from such~~
20 ~~lands, dwelling house, or plantation to any public road or navigable~~
21 ~~watercourse over the lands of any other person and the other person refuses~~
22 ~~to allow that owner the road, the owner~~ If an adjoining owner refuses to
23 allow a landlocked petitioner use of a privately owned easement or road, the
24 landlocked petitioner may petition the county court to appoint viewers to lay
25 off the road, examine the disputed property and evaluate whether an access
26 easement is necessary.

27 ~~(2)(A) provided the owner gives~~ The landlocked petitioner shall
28 provide written notice to the adjoining owner of the proposed route for an
29 access easement ~~written notice to the person twenty (20)~~ thirty (30) days
30 before application to the court and attaches ~~attach~~ the written notice to the
31 petition.

32 ~~(2)(B)~~ The written notice shall include the amount of
33 payment the ~~owner~~ landlocked petitioner offers the adjoining owner for the
34 road proposed route for an access easement.

35 ~~(b)(c)(1)~~ The petition for an access easement for ingress and egress
36 to and from the petitioner's lands over, through, and across the

1 ~~respondent's lands to any public road or navigable watercourse~~ shall be filed
 2 with the clerk of the county court and shall allege with particularity facts
 3 demonstrating that:

4 ~~(1)(A)~~ The written notice was provided by the landlocked
 5 petitioner to the ~~respondent twenty (20)~~ adjoining owner thirty (30) days
 6 before ~~application to the court~~ the petition was filed;

7 ~~(2)(B)~~ The ~~respondent~~ adjoining owner refused to convey to
 8 the landlocked petitioner the requested access easement for the amount the
 9 landlocked petitioner offered; and

10 (C) The amount of money the landlocked petitioner offered
 11 the adjoining owner for the access easement before filing the petition for an
 12 access easement; and

13 ~~(3)(D)~~ The landlocked petitioner lacked the legal right of
 14 ingress and egress to and from his or her lands across ~~the respondent's any~~
 15 adjoining owner's lands ~~or otherwise to a public~~ at least one (1) publicly
 16 owned street, road, highway, navigable watercourse, or privately owned
 17 easement or road, with supporting documentation.

18 (2) The petition shall be certified under oath as true and
 19 correct by the landlocked petitioner.

20 ~~(e)(d)~~ Copies of abstracts, deeds, or plats referenced in the petition
 21 shall be attached to the petition.

22 ~~(d)(e)~~ After the petition is filed, the county court shall issue a
 23 notice setting the time, date, and location of a preliminary hearing, and the
 24 hearing shall not be any earlier than sixty (60) days from the date of the
 25 petition filing.

26 ~~(e)(1)(f)(1)~~ In accordance with the Arkansas Rules of Civil Procedure,
 27 the landlocked petitioner shall serve ~~the resident or nonresident respondent~~
 28 the adjoining owner who has refused the landlocked petitioner an easement
 29 with a:

- 30 (A) Summons;
- 31 (B) Copy of the petition and any exhibits; and
- 32 (C) Copy of the court notice of the preliminary hearing.

33 (2)(A) If service is not obtained after due diligence, the
 34 notice shall be published one (1) time per week for two (2) consecutive weeks
 35 in a newspaper of general circulation in the county at the landlocked
 36 petitioner's expense.

1 (B) If there is no newspaper of general circulation in the
 2 county, the notice shall be posted at the county courthouse.

3 (g)(1) If the landlocked petitioner has not filed a petition against
 4 each adjoining owner, any adjoining owner who is named in the petition may
 5 file a petition to include other adjoining owners in the matter within thirty
 6 (30) days after receipt of the landlocked petitioner’s petition or within
 7 thirty (30) days after the petition was filed, whichever is longer.

8 (2) If an adjoining owner files a petition to include other
 9 adjoining owners under this subsection, the adjoining owner shall serve each
 10 adjoining owner as provided under subsection (f) of this section.

11 ~~(f)(1)~~(h) The court may dismiss the case without prejudice and allow
 12 the petition to be refiled within one (1) year from dismissal if the court
 13 determines at the preliminary hearing that:

14 ~~(A)(1)~~ Required notices and service have not been provided
 15 to the ~~respondent~~ the adjoining owner who has refused the landlocked
 16 petitioner an access easement or any other adjoining owner that has been
 17 included in the petition; or

18 ~~(B)(2)~~ The petition fails to sufficiently demonstrate the
 19 requirements of subsection ~~(b)(c)~~ of this section.

20 ~~(2)(A)(i)(1)~~ If the court determines at the preliminary hearing that
 21 required notices and service have been provided to the ~~respondent~~ adjoining
 22 owner who has refused the landlocked petitioner an access easement or any
 23 other adjoining owner that has been included in the petition and the petition
 24 sufficiently demonstrates the requirements of subsection ~~(b)(c)~~ of this
 25 section, the court shall appoint viewers as provided under subsection (j) of
 26 this section.

27 (2) The court shall give each party at least ten (10)
 28 business days to submit three (3) potential viewers.

29 (3) The court shall give due consideration to all
 30 potential viewers that were submitted by the parties and shall select at
 31 least two (2) of the potential viewers submitted by the parties.

32 ~~(B)(j)~~ If viewers are appointed by the court, the court shall:

33 ~~(i)(1)~~ Issue a preliminary order directing the landlocked
 34 petitioner to deposit into the registry of the court an estimated sum
 35 sufficient for payment of ~~damages and for payment of the costs and expenses~~
 36 ~~accruing on account of the petition, notice, view, and survey for the access~~

1 ~~easement; and:~~

2 (A) Viewers' fees and expenses;

3 (B) The survey cost; and

4 (C) Damages related to the adjoining owner's property,
5 including without limitation an estimate of:

6 (i) The loss of property value;

7 (ii) The loss of exclusive use the adjoining owner
8 will realize; and

9 (iii) Any actual damage to the adjoining owner's
10 property;

11 ~~(ii)(2)~~ Set the time, date, and location of the evidentiary
12 hearing;

13 (3) Require the funds deposited to be used exclusively for the
14 purposes stated under this subsection;

15 (4) Require each viewer to certify under oath that he or she:

16 (A) Does not have an interest in any land related to the
17 access easement; and

18 (B) Is not related to any party to the petition for access
19 easement; and

20 (5) Prohibit the landlocked petitioner from recovering the
21 deposited funds against an adjoining owner as any type of fee or cost,
22 including without limitation attorney's fees or court costs.

23 ~~(C)(k)(1)~~ ~~Either~~ Any party may file with the court legal instruments,
24 plats, surveys, or other documentary evidence to be reviewed by the viewers.

25 ~~(D)(2)~~ ~~The parties~~ Each party shall ~~immediately~~ open ~~their~~
26 his or her property to inspection by the viewers and surveyors at a time to
27 be determined by the court with input from all parties.

28
29 27-66-402. Duty of viewers.

30 (a)(1) Viewers shall take the same oath and ~~shall be governed in all~~
31 ~~respects as~~ shall act in the same official governmental capacity as viewers
32 appointed to public roads ~~are governed~~ under this ~~act~~ subchapter.

33 (2)(A) If a party to the petition files a written request with
34 the court to be present during the viewers' examination, the viewers are
35 required to allow that party to be present during the examination.

36 (B) If a viewer fails to include a party that has filed a

1 written request with the court to be present during the examination, the
 2 viewer's recommendation shall be disregarded by the court in evaluating the
 3 petition filed under this subchapter and excluded from the hearings related
 4 to the petition.

5 (b) ~~They~~ The viewers shall examine the route proposed for the ~~road~~
 6 access easement, all possible access routes to the alleged landlocked
 7 property, and any other route which they may deem proper.

8 (c) If ~~they or~~ a majority of ~~them~~ the viewers ~~are of the opinion~~ state
 9 under oath that ~~a road~~ an access easement is necessary and proper, as prayed
 10 in the petition, ~~they~~ the viewers shall lay out and describe the ~~road~~ access
 11 easement in a manner that produces the least inconvenience, damage, and
 12 devaluation of the property to the parties through whose land the road shall
 13 pass adjoining owners.

14 (d)(1)(A) The viewers shall make a written report under oath to the
 15 county court, ~~describing the route of the road and the land through which it~~
 16 ~~shall pass to allow location and identification of the access easement by~~
 17 ~~land records, naming the owner, if known, and by decision of a majority of~~
 18 ~~the viewers the damages sustained by each owner of lands through which the~~
 19 ~~road passes. The damages shall include the value of each owner's land sought~~
 20 ~~to be appropriated.~~

21 (B) The report shall:

22 (i) Include the names and addresses of all persons
 23 the viewers contacted about the access easement before, during, and after the
 24 viewing;

25 (ii) Include a description of all documents the
 26 viewers used to make the report;

27 (iii) Provide a description of the proposed access
 28 easement that includes without limitation:

29 (a) References to land records;

30 (b) Names of all affected adjoining owners, if
 31 known, and supporting documentation of research to locate all affected
 32 adjoining owners;

33 (c) Length and width of the access easement
 34 and location within the property; and

35 (d) Itemization of any potential damages to
 36 the lands over which the access easement passes; and

1 (iv) Include a determination of the damages that may
2 be sustained to each adjoining owner's lands through which the recommended
3 access easement passes.

4 (C) All papers, documents, and electronic communication
5 related to the viewers' examination of the property shall be provided as soon
6 as practicable for inspection and copying by any party who requests the
7 information.

8 ~~(B)(D)(i)~~ The parties shall stipulate to or dispute the
9 report of the viewers.

10 (ii) Each party shall be given at least ten (10)
11 business days to respond in writing to the viewers' report.

12 (2)(A) The measure of damages shall be the difference in the
13 fair market value of the lands immediately before the access easement is
14 ordered and the fair market value of the lands after the access easement is
15 ordered with consideration given to:

16 (i) The loss of property value;

17 (ii) The loss of exclusive use the adjoining owner
18 will realize; and

19 (iii) Any actual damage to the adjoining owner's
20 property.

21 (B)(i) If a determination of damages is only a nominal
22 amount, the court shall document in detail each reason for the nominal amount
23 of the award;

24 (ii) If the court finds only a nominal amount of
25 damage and that finding is appealed, there is a rebuttable presumption that
26 it is insufficient.

27 (e) The report shall be filed with the county clerk for the records of
28 the county court.

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

33 (2) Payments are to be charged as costs and expenses against the
34 funds deposited by the landlocked petitioner.

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

1 (4) The court by order may direct the county clerk to receipt
 2 payment by the landlocked petitioner of the directed sum into the registry of
 3 the court and to issue payment.

4 (5)(A) The landlocked petitioner who filed the original petition
 5 shall pay all costs associated with the viewers, and the moneys paid shall
 6 not be considered payment to an adjoining owner for loss of value, attorney's
 7 fees, or costs.

8 (B) If costs and expenses exceed the estimated funds
 9 deposited under § 27-66-401(j), the landlocked petitioner shall deposit
 10 sufficient funds to pay the costs before the hearing.

11
 12 27-66-403. Hearing – Court order.

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

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

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

27 (i) At least sixty (60) days have passed since the
 28 initial petition was filed;

29 (ii) All parties have had at least ten (10) business
 30 days to respond to or dispute the viewers' report required under § 27-66-402;

31 (iii) The viewers' report includes all of the
 32 information and documentation required under § 27-66-402;

33 (iv) The landlocked petitioner has complied with the
 34 court's order under § 27-66-401; and

35 (v) The landlocked petitioner has deposited the
 36 estimated sum under § 27-66-401(j).

1 (B) At the evidentiary hearing, all parties shall have the
2 opportunity to present evidence and cross-examine witnesses.

3 ~~(B)(i)(b)(1)~~ If, after considering the report of the viewers, the
4 evidence, the law, and all other proper and sufficient matters, the court ~~is~~
5 ~~of the opinion that~~ finds it ~~is~~ necessary for the landlocked petitioner to
6 have the road an access easement, from his or her lands, dwelling house, or
7 plantation to the public road or navigable watercourse, an order is to be
8 made establishing the road the court shall:

9 (A) Order an access easement as defined by and subject to
10 the limitations of this subchapter not to exceed fifty feet (50') in width;
11 and

12 (B) determining Determine and order payment of the damages
13 sustained by each adjoining owner ~~of lands~~ through which the access easement
14 passes as provided under this subchapter.

15 ~~(ii)(a) The access easement of ingress~~
16 ~~and egress to and from the petitioner's lands to, through, over, and across~~
17 ~~the respondent's lands shall be described in the final order or judgment of~~
18 ~~the court and shall be appurtenant to the petitioner's lands.~~

19 ~~(b)(1) The order shall direct~~
20 ~~return of excess funds, if any, to the petitioner and any further deposits~~
21 ~~necessary to be made by the petitioners for the payment of all costs and~~
22 ~~expenses, including reasonable attorney's fees and costs, accruing and~~
23 ~~remaining unpaid on account of the petition for the road, and all things~~
24 ~~relating thereto and following therefrom, including the view and survey of~~
25 ~~the road and damages sustained by each owner of the lands over which the road~~
26 ~~passes.~~

27 ~~(2)(A) If the respondent substantially~~
28 ~~prevails on the disputed issues in the case, the court shall award reasonable~~
29 ~~attorney's fees and costs to the respondent.~~

30 ~~(B) In determining whether the~~
31 ~~respondent substantially prevails on the disputed issues, the court shall~~
32 ~~consider the respondent's success on the merits regarding the:~~

- 33 ~~(i) Necessity of the road;~~
- 34 ~~(ii) Route of the road;~~
- 35 ~~(iii) Width of the road; and~~
- 36 ~~(iv) Damages to the lands~~

1 ~~over which the road passes.~~

2 ~~(c) The order shall state that:~~

3 ~~(1) The respondent retains title to the~~
4 ~~lands over which the road passes; and~~

5 ~~(2) The road is for an access easement~~
6 ~~only and is not an easement for any other purpose, including a public~~
7 ~~utility.~~

8 ~~(iii) The petitioner shall be solely responsible for~~
9 ~~the maintenance of the road established under this subchapter.~~

10 ~~(iv) The respondent shall have no responsibility for~~
11 ~~the maintenance of the road established under this subchapter.~~

12 ~~(v) A user of the road does so at his or her own~~
13 ~~risk and peril and does not have the right to file a cause of action against~~
14 ~~the petitioner or respondent for any injury to the user or the user's~~
15 ~~property.~~

16 (2) If the court grants an access easement under this
17 subchapter, the order shall state the following:

18 (A) That the landlocked petitioner lacks the legal right
19 of ingress and egress to and from a publicly owned street, road, highway,
20 navigable watercourse, or a privately owned easement or road, and that the
21 access easement is necessary;

22 (B) That the landlocked petitioner did not cause the
23 landlocked property condition, including without limitation by selling,
24 donating, or otherwise disposing of his or her interest in adjoining land
25 that created the landlocked property condition;

26 (C) A description of the route of the access easement that
27 includes without limitation:

28 (i) References to land records;

29 (ii) Names of all affected adjoining owners, if
30 known;

31 (iii) Length and width of the access easement; and

32 (iv) Itemization of any potential damages to the
33 lands over which the access easement passes;

34 (D) The amount of money the landlocked petitioner
35 originally offered the adjoining owner for an access easement before the
36 petition was filed, and that the offer was refused by the adjoining owner;

1 (E) The court’s determination of the damages sustained by
 2 each adjoining owner’s lands through which the recommended access easement
 3 passes, including without limitation the loss of property value, loss of
 4 marketability, loss of exclusive use of the adjoining owner’s property, and
 5 any actual damage to the adjoining owner’s property;

6 (F) That the landlocked petitioner provided the adjoining
 7 owner notice of the petition thirty (30) days before the petition was filed;

8 (G) That the hearing was held no earlier than sixty (60)
 9 days from the date of the petition filing;

10 (H) That any adjoining owners have had an opportunity to
 11 file a petition against any other adjoining owners who were not included in
 12 the landlocked petitioner’s petition, with supporting documentation;

13 (I) That all parties complied with the requirements
 14 concerning viewers under this subchapter;

15 (J) That the landlocked petitioner paid or is ordered to
 16 pay all fees related to:

17 (i) Viewer’s fees and expenses;

18 (ii) The survey cost;

19 (iii) Damages to the adjoining owner; and

20 (iv) Attorney’s fees for all parties.

21 (K) The amount of excess funds deposited to pay fees,
 22 expenses, costs, and damages that is to be returned to the landlocked
 23 petitioner;

24 (L) That the adjoining owner:

25 (i) Retains title to the lands over which the access
 26 easement passes; and

27 (ii) Is not responsible for maintaining or improving
 28 the property through which the access easement passes;

29 (M) That the landlocked petitioner is exclusively
 30 responsible for the maintenance of and improvement to the access easement
 31 with a description of any planned improvements;

32 (N) That the access easement is exclusively a route to the
 33 landlocked property and is not an easement for any other purpose, including
 34 without limitation a utility easement; and

35 (O) Notwithstanding any other provision of law to the
 36 contrary, that a user of the access easement uses it at his or her own risk

1 and peril and has no right to file a cause of action against the adjoining
2 owner or landlocked petitioner for any personal injury, death, or property
3 damage.

4 (3) If the court does not grant an access easement under this
5 subchapter, the order shall state at least one (1) of the following findings:

6 (A) The access easement is not necessary because the
7 landlocked petitioner has a legal right of ingress and egress to and from a
8 publicly owned street, road, highway, navigable watercourse, or privately
9 owned easement or road to the claimed landlocked property;

10 (B) The landlocked petitioner caused or created the
11 landlocked property condition; or

12 (C) The requirements of this subchapter were violated with
13 an explanation of the provisions that were violated.

14 ~~(b) Either party may appeal to the circuit court from the final order~~
15 ~~or judgment of the county court within thirty (30) days from the entry of the~~
16 ~~order and not thereafter.~~

17
18 27-66-404. Penalty for obstructing.

19 ~~(a)(1) If any person~~ Except as provided under subdivision (a)(2) of
20 this section, an adjoining owner who pleads guilty or nolo contendere to or
21 has been found guilty by a court of competent jurisdiction of obstructs a
22 road established under the laws of this state obstructing an access easement
23 created under this subchapter by felling any trees across it or by placing an
24 obstruction on the road, he or she shall be access easement is guilty of a
25 Class C misdemeanor.

26 (2)(A) An adjoining owner has a defense to a violation of this
27 section if the obstruction is caused by:

- 28 (i) Inclement weather;
- 29 (ii) A natural disaster;
- 30 (iii) Emergency conditions; or
- 31 (iv) Other acts of God.

32 (B) An adjoining owner does not have the responsibility to
33 remove any obstruction under subdivision (a)(2)(A) of this section.

34 ~~(b) The person also shall forfeit~~ The court may order a fine of one
35 hundred dollars (\$100) for every day he or she the adjoining owner allows the
36 obstruction to remain after he or she has been notified to remove it being

1 ordered to remove the obstruction by a court of competent jurisdiction.

2
3 27-66-405. Limitation of authority.

4 (a) A county court ~~may~~ shall not grant an easement for ingress and
5 egress over, through, or across a railroad right-of-way under this
6 subchapter.

7 (b) A county court shall not grant an easement for ingress and egress
8 over an adjoining owner's property to a landlocked petitioner if:

9 (1) An easement for ingress and egress to and from the claimed
10 landlocked property already exists through other adjoining property and the
11 landlocked petitioner is seeking an additional or alternative easement; or

12 (2) The landlocked petitioner created his or her landlocked
13 situation by selling, donating, or otherwise disposing of his or her interest
14 in adjoining lands.

15
16 27-66-406. Appeal.

17 (a) Any party may appeal the final order of the court to a circuit
18 court of competent jurisdiction.

19 (b) The review by the circuit court shall be de novo and for strict
20 compliance with this subchapter and any additional violations of the due
21 process rights of the parties.