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4

As Engrossed: H3/15/23

A Bill

HOUSE BILL 1408

5 By: Representative M. Brown
6 By: Senator C. Tucker
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE UNIFORM EASEMENT RELOCATION ACT;
10 AND FOR OTHER PURPOSES.
11

Subtitle

14 TO CREATE THE UNIFORM EASEMENT RELOCATION
15 ACT.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code Title 18, Chapter 11, is amended to add an
21 additional subchapter to read as follows:

Subchapter 7 – Uniform Easement Relocation Act

18-11-701. Short title.

This subchapter may be cited as the Uniform Easement Relocation Act.

18-11-702. Definitions.

In this subchapter:

29 (1) "Appurtenant easement" means an easement tied to or
30 dependent on ownership or occupancy of a unit or a parcel of real property.

31 (2) "Conservation easement" means a nonpossessory property
32 interest created for one or more of the following conservation purposes:

33 (A) retaining or protecting the natural, scenic, wildlife,
34 wildlife-habitat, biological, ecological, or open-space values of real
35 property;

36 (B) ensuring the availability of real property for



1 agricultural, forest, outdoor-recreational, or open-space uses;

2 (C) protecting natural resources including wetlands,
3 grasslands, and riparian areas;

4 (D) maintaining or enhancing air or water quality; or

5 (E) preserving the historical, architectural,
6 archeological, paleontological, or cultural aspects of real property.

7 (3) "Dominant estate" means an estate or interest in real
8 property benefitted by an appurtenant easement.

9 (4) "Easement" means a nonpossessory property interest that:

10 (A) provides a right to enter, use, or enjoy real property
11 owned by or in the possession of another; and

12 (B) imposes on the owner or possessor a duty not to
13 interfere with the entry, use, or enjoyment permitted by the instrument
14 creating the easement or, in the case of an easement not established by
15 express grant or reservation, the entry, use, or enjoyment authorized by law.

16 (5) "Easement holder" means:

17 (A) in the case of an appurtenant easement, the dominant
18 estate owner; or

19 (B) in the case of an easement in gross, public-utility
20 easement, telecommunications easement, conservation easement, or negative
21 easement, the grantee of the easement or a successor.

22 (6) "Easement in gross" means an easement not tied to or
23 dependent on ownership or occupancy of a unit or a parcel of real property.

24 (7) "Lessee of record" means a person holding a lessee's
25 interest under a recorded lease or memorandum of lease.

26 (8) "Negative easement" means a nonpossessory property interest
27 whose primary purpose is to impose on a servient estate owner a duty not to
28 engage in a specified use of the estate.

29 (9) "Person" means an individual, estate, business or nonprofit
30 entity, public corporation, government or governmental subdivision, agency,
31 or instrumentality, or other legal entity.

32 (10) "Public-utility easement" means a nonpossessory property
33 interest in which the easement holder is a publicly regulated or publicly
34 owned utility under federal law or law of this state or a municipality. The
35 term includes an easement benefiting an intrastate utility, an interstate
36 utility, utility cooperative, or a Class I, Class II, or Class III railroad.

1 (11) "Real property" means an estate or interest in, over, or
2 under land, including structures, fixtures, and other things that by custom,
3 usage, or law pass with a conveyance of land whether or not described or
4 mentioned in the contract of sale or instrument of conveyance. The term
5 includes the interest of a lessor and lessee and, unless the interest is
6 personal property under law of this state other than this subchapter, an
7 interest in a common-interest community.

8 (12) "Record", used as a noun, means information that is
9 inscribed on a tangible medium or that is stored in an electronic or other
10 medium and is retrievable in perceivable form.

11 (13) "Security instrument" means a mortgage, deed of trust,
12 security deed, contract for deed, lease, or other record that creates or
13 provides for an interest in real property to secure payment or performance of
14 an obligation, whether by acquisition or retention of a lien, a lessor's
15 interest under a lease, or title to the real property. The term includes:

16 (A) a security instrument that also creates or provides
17 for a security interest in personal property;

18 (B) a modification or amendment of a security instrument;
19 and

20 (C) a record creating a lien on real property to secure an
21 obligation under a covenant running with the real property or owed by a unit
22 owner to a common-interest community association.

23 (14) "Security-interest holder of record" means a person holding
24 an interest in real property created by a recorded security instrument.

25 (15) "Servient estate" means an estate or interest in real
26 property that is burdened by an easement.

27 (16) "Telecommunications easement" means a nonpossessory
28 property interest in which the easement holder is a telecommunications,
29 cable, or broadband provider.

30 (17) "Title evidence" means a title insurance policy,
31 preliminary title report or binder, title insurance commitment, abstract of
32 title, attorney's opinion of title based on examination of public records or
33 an abstract of title, or any other means or reporting the state of title to
34 real property which is customary in the locality.

35 (18) "Unit" means a physical portion of a common-interest
36 community designated for separate ownership or occupancy with boundaries

1 described in a declaration establishing the common-interest community.

2 (19) "Utility cooperative" means a non-profit entity whose
3 purpose is to deliver a utility service, such as electricity, oil, natural
4 gas, water, sanitary sewer, storm water, or telecommunication, to its
5 customers or members and includes an electric cooperative, rural electric
6 cooperative, rural water district, and rural water association.

7
8 18-11-703. Scope – Exclusions.

9 (a) Except as otherwise provided in subsection (b), this subchapter
10 applies to an easement established by express grant or reservation or by
11 prescription, implication, necessity, estoppel, or other method.

12 (b) This subchapter may not be used to relocate:

13 (1) a public-utility easement, telecommunications easement,
14 conservation easement, or negative easement;

15 (2) an easement if the proposed location would encroach on an
16 area of an estate burdened by a conservation easement or would interfere with
17 the use or enjoyment of a public-utility easement, telecommunications
18 easement, or an easement appurtenant to a conservation easement;

19 (3) An easement used by the State Highway Commission for highway
20 purposes; or

21 (4) An easement or right-of-way held by a public entity.

22 (c) This subchapter does not apply to relocation of an easement by
23 consent.

24
25 18-11-704. Right of servient estate owner to relocate easement.

26 A servient estate owner may relocate an easement under this act only if
27 the relocation does not materially;

28 (1) lessen the utility of the easement;

29 (2) after the relocation, increase the burden on the easement
30 holder in its reasonable use and enjoyment of the easement;

31 (3) impair an affirmative, easement-related purpose for which
32 the easement was created;

33 (4) during or after the relocation, impair the safety of the
34 easement holder or another entitled to use and enjoy the easement;

35 (5) during the relocation, disrupt the use and enjoyment of the
36 easement by the easement holder or another entitled to use and enjoy the

1 easement unless the servient estate owner substantially mitigates the
2 duration and nature of the disruption;

3 (6) impair the physical condition, use, or value of the dominant
4 estate or improvements on the dominant estate; or

5 (7) impair the value of the collateral of a security-interest
6 holder of record in the servient estate or dominant estate, impair a real-
7 property interest of a lessee of record in the dominant estate, or impair a
8 recorded real-property interest of any other person in the servient estate or
9 dominant estate.

10
11 18-11-705. Commencement of civil action.

12 (a) To obtain an order to relocate an easement under this subchapter,
13 a servient estate owner must commence a civil action.

14 (b) A servient estate owner that commences a civil action under
15 subsection (a):

16 (1) shall serve a summons and petition on:

17 (A) the easement holder whose easement is the subject of
18 the relocation;

19 (B) a security-interest holder of record of an interest in
20 the servient estate or dominant estate;

21 (C) a lessee of record of an interest in the dominant
22 estate;

23 (D) except as otherwise provided in paragraph (2), any
24 other owner of a recorded real-property interest if the relocation would
25 encroach on an area of the servient estate or dominant estate burdened by the
26 interest; and

27 (2) is not required to serve a summons and petition on the owner
28 of a recorded real-property interest in oil, gas, or minerals unless the
29 interest includes an easement to facilitate oil, gas, or mineral development.

30 (c) A petition under this section must state:

31 (1) the intent of the servient estate owner to seek the
32 relocation;

33 (2) the nature, extent, and anticipated dates of commencement
34 and completion of the proposed relocation;

35 (3) the current and proposed locations of the easement;

36 (4) the reason the easement is eligible for relocation under §

1 18-11-703;

2 (5) the reason the proposed relocation satisfies the conditions
3 for relocation under § 18-11-704; and

4 (6) that the servient estate owner has made a reasonable attempt
5 to notify the holders of any public-utility easement, telecommunications
6 easement, conservation easement, or negative easement on the servient estate
7 or dominant estate of the proposed relocation.

8 (d) At any time before the court renders a final order in an action
9 under subsection (a), a person served under subsection (b)(1)(B), (C), or (D)
10 may file a document, in recordable form, that waives its rights to contest or
11 obtain relief in connection with the relocation or subordinates its interests
12 to the relocation. On filing of the document, the court may order that the
13 person is not required to answer or participate further in the action.

14

15 18-11-706. Required findings – Order.

16 (a) The court may not approve relocation of an easement under this
17 subchapter unless the servient estate owner:

18 (1) establishes that the easement is eligible for relocation
19 under § 18-11-703; and

20 (2) satisfies the conditions for relocation under § 18-11-704.

21 (b) An order under this subchapter approving relocation of an easement
22 must:

23 (1) state that the order is issued in accordance with this
24 subchapter;

25 (2) recite the recording data of the instrument creating the
26 easement, if any, and any amendments;

27 (3) identify the immediately preceding location of the easement;

28 (4) describe in a legally sufficient manner the new location of
29 the easement;

30 (5) describe mitigation required of the servient estate owner
31 during relocation;

32 (6) refer in detail to the plans and specifications of
33 improvements necessary for the easement holder to enter, use, and enjoy the
34 easement in the new location;

35 (7) specify conditions to be satisfied by the servient estate
36 owner to relocate the easement and construct improvements necessary for the

1 easement holder to enter, use, and enjoy the easement in the new location;

2 (8) include a provision for payment by the servient estate owner
3 of expenses under § 18-11-707;

4 (9) include a provision for compliance by the parties with the
5 obligation of good faith under § 18-11-708; and

6 (10) instruct the servient estate owner to record an affidavit,
7 if required under § 18-11-709(a), when the servient estate owner
8 substantially completes relocation.

9 (c) An order under subsection (b) may include any other provision
10 consistent with this subchapter for the fair and equitable relocation of the
11 easement.

12 (d) Before a servient estate owner proceeds with relocation of an
13 easement under this act, the owner must record, in the land records of each
14 jurisdiction where the servient estate is located, a certified copy of the
15 order under subsection (b).

16
17 18-11-707. Expenses of relocation.

18 A servient estate owner is responsible for reasonable expenses of
19 relocation of an easement under this subchapter, including the expense of:

20 (1) constructing improvements on the servient estate or dominant
21 estate in accordance with an order under § 18-11-706;

22 (2) during the relocation, mitigating disruption in the use and
23 enjoyment of the easement by the easement holder or another person entitled
24 to use and enjoy the easement;

25 (3) obtaining a governmental approval or permit to relocate the
26 easement and construct necessary improvements;

27 (4) preparing and recording the certified copy required by § 18-
28 11-706(d) and any other document required to be recorded;

29 (5) any title work required to complete the relocation or
30 required by a party to the civil action as a result of the relocation;

31 (6) applicable premiums for title insurance related to the
32 relocation;

33 (7) any expert necessary to review plans and specifications for
34 an improvement to be constructed in the relocated easement or on the dominant
35 estate and to confirm compliance with the plans and specifications referred
36 to in the order under § 18-11-706(b)(6);

1 (8) payment of any maintenance cost associated with the
2 relocated easement which is greater than the maintenance cost associated with
3 the easement before relocation; and

4 (9) obtaining any third-party consent required to relocate the
5 easement.

6
7 18-11-708. Duty to act in good faith.

8 After the court, under § 18-10-706, approves relocation of an easement
9 and the servient estate owner commences the relocation, the servient estate
10 owner, the easement holder, and other parties in the civil action shall act
11 in good faith to facilitate the relocation in compliance with this
12 subchapter.

13
14 18-11-709. Relocation affidavit.

15 (a) If an order under § 18-11-706 requires the construction of an
16 improvement as a condition for relocation of an easement, relocation is
17 substantially complete, and the easement holder is able to enter, use, and
18 enjoy the easement in the new location, the servient estate owner shall:

19 (1) record, in the land records of each jurisdiction where the
20 servient estate is located, an affidavit certifying that the easement has
21 been relocated; and

22 (2) send, by certified mail, a copy of the recorded affidavit to
23 the easement holder and parties to the civil action.

24 (b) Until an affidavit under subsection (a) is recorded and sent, the
25 easement holder may enter, use, and enjoy the easement in the current
26 location, subject to the court's order under § 18-11-706 approving
27 relocation.

28 (c) If an order under § 18-11-706 does not require an improvement to
29 be constructed as a condition of the relocation, recording the order under §
30 18-11-706(d) constitutes relocation.

31
32 18-11-710. Limited effect of relocation.

33 (a) Relocation of an easement under this subchapter:

34 (1) is not a new transfer or a new grant of an interest in the
35 servient estate or the dominant estate;

36 (2) is not a breach or default of, and does not trigger, a due-

1 on-sale clause or other transfer-restriction clause under a security
2 instrument, except as otherwise determined by a court under law other than
3 this subchapter;

4 (3) is not a breach or default of a lease, except as otherwise
5 determined by a court under law other than this subchapter;

6 (4) is not a breach or default by the servient estate owner of a
7 recorded document affected by the relocation, except as otherwise determined
8 by a court under law other than this subchapter;

9 (5) does not affect the priority of the easement with respect to
10 other recorded real-property interests burdening the area of the servient
11 estate where the easement was located before the relocation; and

12 (6) is not a fraudulent conveyance or voidable transaction under
13 law.

14 (b) This subchapter does not affect any other method of relocating an
15 easement permitted under law of this state other than this act.

16
17 18-11-711. Non-waiver.

18 The right of a servient estate owner to relocate an easement under this
19 subchapter may not be waived, excluded or restricted by agreement even if:

20 (1) the instrument creating the easement prohibits relocation or
21 contains a waiver, exclusion, or restriction of this subchapter;

22 (2) the instrument creating the easement requires consent of the
23 easement holder to amend the terms of the easement; or

24 (3) the location of the easement is fixed by the instrument
25 creating the easement, another agreement, previous conduct, acquiescence,
26 estoppel, or implication.

27
28 18-11-712. Uniformity of application and construction.

29 In applying and construing this uniform act, consideration must be
30 given to the need to promote uniformity of the law with respect to its
31 subject matter among the states that enact it.

32
33 18-11-713. Relocation to Electronic Signatures in Global and National
34 Commerce Act.

35 This subchapter modifies, limits, or supersedes the Electronic
36 Signatures in Global National Commerce Act, 15 U.S.C. Section 7001 et seq.,

1 but does not modify, limit, or supersede Section 101(c) of that act, 15
2 U.S.C. Section 7001(c), or authorize electronic delivery of any of the
3 notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

4
5 18-11-714. Transitional provision.

6 This subchapter applies to an easement created before, on, or after the
7 effective date of this subchapter.

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9 */s/M. Brown*

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12 **APPROVED: 4/10/23**
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