BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: Z-0542.2/22 2nd draft
ATTY/TYPIST: AI:jlb
BRIEF DESCRIPTION: Enacting the uniform easement relocation act.
AN ACT Relating to the uniform easement relocation act; and adding a new chapter to Title 64 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. SHORT TITLE. This act may be known and cited as the uniform easement relocation act.

NEW SECTION. Sec. 2. DEFINITIONS. The following definitions apply throughout the section unless the context clearly requires otherwise.

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

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

   (a) Retaining or protecting the natural, scenic, wildlife, wildlife habitat, biological, ecological, or open space values of real property;

   (b) Ensuring the availability of real property for agricultural, forest, outdoor recreational, or open space uses;

   (c) Protecting natural resources, including wetlands, grasslands, and riparian areas;
(d) Maintaining or enhancing air or water quality; or

(e) Preserving the historical, architectural, archeological, paleontological, or cultural aspects of real property.

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

(4) "Easement" means a nonpossessory property interest that:
   (a) Provides a right to enter, use, or enjoy real property owned by or in the possession of another; and
   (b) Imposes on the owner or possessor a duty not to interfere with the entry, use, or enjoyment permitted by the instrument creating the easement or, in the case of an easement not established by express grant or reservation, the entry, use, or enjoyment authorized by law.

(5) "Easement holder" means:
   (a) In the case of an appurtenant easement, the dominant estate owner; or
   (b) In the case of an easement in gross, public utility easement, conservation easement, or negative easement, the grantee of the easement or a successor.

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

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

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

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

(10) "Public utility easement" means a nonpossessory property interest in which the easement holder is a publicly regulated or publicly owned utility under federal law or law of this state or a municipality. The term includes an easement benefiting an intrastate utility, an interstate utility, or a utility cooperative.

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

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

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

(a) A security instrument that also creates or provides for a security interest in personal property;
(b) A modification or amendment of a security instrument; and
(c) A record creating a lien on real property to secure an obligation under a covenant running with the real property or owed by a unit owner to a common interest community association.

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

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

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

(17) "Unit" means a physical portion of a common interest community designated for separate ownership or occupancy with boundaries described in a declaration establishing the common interest community.

(18) "Utility cooperative" means a nonprofit entity whose purpose is to deliver a utility service, such as electricity, oil, natural gas, water, sanitary sewer, stormwater, or telecommunications, to its customers or members and includes an electric cooperative, rural electric cooperative, rural water district, and rural water association.

NEW SECTION.  Sec. 3. SCOPE—EXCLUSIONS. (1) Except as otherwise provided in subsection (2) of this section, this chapter applies to...
an easement established by express grant or reservation or by
prescription, implication, necessity, estoppel, or other method.

(2) This chapter may not be used to relocate:

(a) A public utility easement, conservation easement, or negative
easement; or

(b) An easement if the proposed location would encroach on an
area of an estate burdened by a conservation easement or would
interfere with the use or enjoyment of a public utility easement or
an easement appurtenant to a conservation easement.

(3) This chapter does not apply to relocation of an easement by
consent.

NEW SECTION. Sec. 4. RIGHT OF SERVIENT ESTATE OWNER TO RELOCATE
EASEMENT. A servient estate owner may relocate an easement under this
chapter only if the relocation does not materially:

(1) Lessen the utility of the easement;

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

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

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

(5) During the relocation, disrupt the use and enjoyment of the
easement by the easement holder or another entitled to use and enjoy
the easement, unless the servient estate owner substantially
mitigates the duration and nature of the disruption;

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

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

NEW SECTION. Sec. 5. COMMENCEMENT OF CIVIL ACTION. (1) To
obtain an order to relocate an easement under this chapter, a
servient estate owner must commence a civil action.

(2) A servient estate owner that commences a civil action under
subsection (1) of this section:

(a) Shall serve a summons and complaint on:
(i) The easement holder whose easement is the subject of the
relocation;
(ii) A security interest holder of record of an interest in the
servient estate or dominant estate;
(iii) A lessee of record of an interest in the dominant estate;
and
(iv) Except as otherwise provided in (b) of this subsection, any
other owner of a recorded real property interest if the relocation
would encroach on an area of the servient estate or dominant estate
burdened by the interest; and
(b) Is not required to serve a summons and complaint on the owner
of a recorded real property interest in oil, gas, or minerals unless
the interest includes an easement to facilitate oil, gas, or mineral
development.
(3) A complaint under this section must state:
(a) The intent of the servient estate owner to seek the
relocation;
(b) The nature, extent, and anticipated dates of commencement and
completion of the proposed relocation;
(c) The current and proposed locations of the easement;
(d) The reason the easement is eligible for relocation under
section 3 of this act;
(e) The reason the proposed relocation satisfies the conditions
for relocation under section 4 of this act; and
(f) That the servient estate owner has made a reasonable attempt
to notify the holders of any public utility easement, conservation
easement, or negative easement on the servient estate or dominant
estate of the proposed relocation.
(4) At any time before the court renders a final order in an
action under subsection (1) of this section, a person served under
subsection (2)(a)(ii), (iii), or (iv) of this section may file a
document, in recordable form, that waives its rights to contest or
obtain relief in connection with the relocation or subordinates its
interests to the relocation. On filing of the document, the court may
order that the person is not required to answer or participate
further in the action.

NEW SECTION. Sec. 6. REQUIRED FINDINGS—ORDER. (1) The court may
not approve relocation of an easement under this chapter unless the
servient estate owner:
(a) Establishes that the easement is eligible for relocation under section 3 of this act; and
(b) Satisfies the conditions for relocation under section 4 of this act.
(2) An order under this chapter approving relocation of an easement must:
   (a) State that the order is issued in accordance with this chapter;
   (b) Recite the recording data of the instrument creating the easement, if any, any amendments, and any preservation notice;
   (c) Identify the immediately preceding location of the easement;
   (d) Describe in a legally sufficient manner the new location of the easement;
   (e) Describe mitigation required of the servient estate owner during relocation;
   (f) Refer in detail to the plans and specifications of improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;
   (g) Specify conditions to be satisfied by the servient estate owner to relocate the easement and construct improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;
   (h) Include a provision for payment by the servient estate owner of expenses under section 7 of this act;
   (i) Include a provision for compliance by the parties with the obligation of good faith under section 8 of this act; and
   (j) Instruct the servient estate owner to record an affidavit, if required under section 9(1) of this act, when the servient estate owner substantially completes relocation.
(3) An order under subsection (2) of this section may include any other provision consistent with this chapter for the fair and equitable relocation of the easement.
(4) Before a servient estate owner proceeds with relocation of an easement under this chapter, the owner must record, in the land records of each jurisdiction where the servient estate is located, a certified copy of the order under subsection (2) of this section.

NEW SECTION. Sec. 7. EXPENSES OF RELOCATION. A servient estate owner is responsible for reasonable expenses of relocation of an easement under this chapter, including the expense of:
(1) Constructing improvements on the servient estate or dominant estate in accordance with an order under section 6 of this act;

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

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

(4) Preparing and recording the certified copy required by section 6(4) of this act and any other document required to be recorded;

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

(6) Applicable premiums for title insurance related to the relocation;

(7) Any expert necessary to review plans and specifications for an improvement to be constructed in the relocated easement or on the dominant estate and to confirm compliance with the plans and specifications referred to in the order under section 6(2)(f) of this act;

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

(9) Obtaining any third-party consent required to relocate the easement.

NEW SECTION. Sec. 8. DUTY TO ACT IN GOOD FAITH. After the court, under section 6 of this act, approves relocation of an easement and the servient estate owner commences the relocation, the servient estate owner, the easement holder, and other parties in the civil action shall act in good faith to facilitate the relocation in compliance with this chapter.

NEW SECTION. Sec. 9. RELOCATION AFFIDAVIT. (1) If an order under section 6 of this act requires the construction of an improvement as a condition for relocation of an easement, relocation is substantially complete, and the easement holder is able to enter, use, and enjoy the easement in the new location, the servient estate owner shall:
(a) Record, in the land records of each jurisdiction where the servient estate is located, an affidavit certifying that the easement has been relocated; and

(b) Send, by certified mail, a copy of the recorded affidavit to the easement holder and parties to the civil action.

(2) Until an affidavit under subsection (1) of this section is recorded and sent, the easement holder may enter, use, and enjoy the easement in the current location, subject to the court's order under section 6 of this act approving relocation.

(3) If an order under section 6 of this act does not require an improvement to be constructed as a condition of the relocation, recording the order under section 6(4) of this act constitutes relocation.

NEW SECTION. Sec. 10. LIMITED EFFECT OF RELOCATION. (1) Relocation of an easement under this chapter:

(a) Is not a new transfer or a new grant of an interest in the servient estate or the dominant estate;

(b) Is not a breach or default of, and does not trigger, a due-on-sale clause or other transfer-restriction clause under a security instrument, except as otherwise determined by a court under law other than this chapter;

(c) Is not a breach or default of a lease, except as otherwise determined by a court under law other than this chapter;

(d) Is not a breach or default by the servient estate owner of a recorded document affected by the relocation, except as otherwise determined by a court under law other than this chapter;

(e) Does not affect the priority of the easement with respect to other recorded real property interests burdening the area of the servient estate where the easement was located before the relocation; and

(f) Is not a fraudulent conveyance or voidable transaction under law.

(2) This chapter does not affect any other method of relocating an easement permitted under law of this state other than this chapter.

NEW SECTION. Sec. 11. NONWAIVER. The right of a servient estate owner to relocate an easement under this chapter may not be waived, excluded, or restricted by agreement even if:
(1) The instrument creating the easement prohibits relocation or contains a waiver, exclusion, or restriction of this chapter;
(2) The instrument creating the easement requires consent of the easement holder to amend the terms of the easement; or
(3) The location of the easement is fixed by the instrument creating the easement, another agreement, previous conduct, acquiescence, estoppel, or implication.

NEW SECTION. Sec. 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

NEW SECTION. Sec. 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersedes section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

NEW SECTION. Sec. 14. TRANSITIONAL PROVISION. This chapter applies to an easement created before, on, or after the effective date of this section.

NEW SECTION. Sec. 15. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 16. Sections 1 through 14 of this act constitute a new chapter in Title 64 RCW.

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