

CONFERENCE COMMITTEE REPORT

HB 196

2015 Regular Session

Schexnayder

June 11, 2015

To the Honorable Speaker and Members of the House of Representatives and the Honorable President and Members of the Senate.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. 196 by Representative Schexnayder, recommend the following concerning the Engrossed bill:

1. That the set of Senate Committee Amendments proposed by the Senate Committee on Judiciary A and adopted by the Senate on May 27, 2015, be rejected.
2. That the set of Senate Floor Amendments consisting of five amendments proposed by Senator Nevers and adopted by the Senate on May 28, 2015, be rejected.
3. That the set of Senate Floor Amendments consisting of one amendment proposed by Senator Nevers and adopted by the Senate on May 28, 2015, be adopted.
4. That the following amendments to the Engrossed bill be adopted:

AMENDMENT NO. 1

On page 1, line 2, after "696.1," delete the remainder of the line and insert the following"

"and to enact Chapter 1-A of Code Title IV of Code Book II of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:1262 through 1268, relative to certain predial servitudes, rights of passage, and utility servitudes"

AMENDMENT NO. 2

On page 1, line 3, after "enclosed estates;" insert "to provide relative to enclosed estates; to provide for rights of passage to public roads; to provide relative to location of rights of passage;"

AMENDMENT NO. 3

On page 1, line 7, after "certain actions;" insert "to provide relative to the use of levees and levee roads;"

AMENDMENT NO. 4

On page 2, between lines 29 and 30, insert the following:

"Section 2. Chapter 1-A of Code Title IV of Code Book II of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:1262 through 1268, is hereby enacted to read as follows:

§1262. Servitude of passage on levees

The levee boards and drainage boards of this state are authorized to grant a servitude of passage along an existing levee road to the nearest public road and across the levee to reach the levee road for the benefit of an estate that has no access to a public road.

§1263. Passage to existing levee road for owner of enclosed estate

An owner of an estate that has no access to a public road may claim a servitude of passage across the neighbor's land to reach an existing levee road and to traverse the levee road to the nearest public road whether or not there is a public road nearer to the enclosed estate. No such claim may be made for a servitude of passage under this Chapter unless the levee or drainage board has authorized another person to ride, drive, or haul along the existing levee road pursuant to R.S. 38:213. If the levee district revokes the authority for use of the road by others, then the servitude of passage the owner of the enclosed estate previously obtained along the levee road shall, without any further action by any person, immediately cease to have effect.

§1264. Cost of connecting road

If the owner of an enclosed estate obtains a servitude of passage to run along a levee road that requires construction of a road connecting the enclosed estate to the levee road, the owner of the enclosed estate shall build the connecting road at his cost and that portion of the connecting road which crosses or is on the levee shall be built with such workmanship and materials as do not materially impair the safety and flood control integrity of the levee and in accord with any reasonable conditions imposed by the levee district.

§1265. Priority of servitudes of passage

The owner of an enclosed estate who avails himself of a servitude of passage along a levee road shall nonetheless retain his legal status as an owner without access to a public road and shall remain entitled to pursue a remedy against his neighbor as if he had not obtained a servitude of passage along a levee road. If the owner of the enclosed estate obtains a servitude of passage to a public road across his neighbor's land, then the servitude of passage he previously obtained along the levee road shall, without any further action by any person, immediately cease to have effect.

§1266. Rules for use of levee road servitude of passage

The levee board or drainage board whose levee road becomes subject to a servitude of passage shall be entitled to impose reasonable rules, costs, fees, and conditions for the use of the servitude passage, including but not limited to the condition that the owner of the enclosed estate be subject to any condition imposed on other authorized users of the levee road and the right to require locked gates to the levee road, but in such case, the levee board or drainage board shall provide the owner with keys or codes to open the gates. A servitude under this Chapter shall be subject to approval and concurrence, with or without conditions, of the Department of Transportation and Development, or for the levees or integrated coastal protection projects in the coastal area as defined in R.S. 49:214.2, the Coastal Protection and Restoration Authority.

§1267. Limitation of claims

If an owner of an enclosed estate obtains a servitude of passage, neither he, nor his agents, nor his invitees shall have any claims against the state, any division of the state, the levee board, or the drainage board from whom the owner obtains the servitude of passage or any owner of land over which the servitude of passage exists for any personal injury, property damage, or other loss, unless the state, or the division of the state, or the levee board or drainage board from which the owner obtained the servitude of passage or other landowner caused the injury or damage by a deliberate and wanton act or gross negligence. The limitation of liability set forth in this Section also applies to any officer, employee, or agent of the state, any division of the state, or any levee board or drainage board or landowner from which the servitude is obtained.

§1268. Application of rules governing predial servitudes

A servitude of passage granted under this Chapter is regulated by application of the rules governing predial servitudes to the extent their application is compatible with the rules of this Chapter and the statutory and regulatory authority of the levee or drainage district authorizing the servitude of passage."

AMENDMENT NO. 5

On page 2, line 30, change "Section 2." to "Section 3."

Respectfully submitted,

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Representative Clay Schexnayder

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Senator Ben Nevers

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Representative Neil C. Abramson

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Senator Rick Ward, III

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Representative John "Johnny" Berthelot

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Senator Robert Adley

## DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

## CONFERENCE COMMITTEE REPORT DIGEST

HB 196

2015 Regular Session

Schexnayder

**Keyword and oneliner of the instrument as it left the House**

PROPERTY/SERVITUDES: Provides relative to utility servitudes

**Report adopts Senate amendments to:**

1. Delete comments prepared by the Louisiana State Law Institute.

**Report rejects Senate amendments which would have:**

1. Made technical and substantive amendments to add provisions relative to a servitude of passage on or across levees for enclosed estates.

**Report amends the bill to:**

1. Provide detailed provisions establishing a servitude of passage on or across levees for enclosed estates.

**Digest of the bill as proposed by the Conference Committee**

Present law (C.C. Arts. 693, 694, and 696.1, as amended by Acts 2012, No. 739, apply, in addition to estates that have no access to a public road, to estates that have no access to a public utility. Accordingly, principles relative to utilities and utility servitudes have been combined with Civil Code Articles relative to the right of passage for enclosed estates.

Present law (C.C. Art. 693) provides that if an estate becomes enclosed as a result of a voluntary act or omission of its owner, the neighbors are not bound to furnish a passage to him or his successors.

Proposed law provides the same result relative to utility servitudes.

Present law (C.C. Art. 694) provides in cases of partition or voluntary alienation that the passage shall be furnished gratuitously even if the route is not the route that otherwise would be selected.

Proposed law retains present law and adds a similar provision for utility servitudes.

Present law (C.C. Art. 696.1) defines "utility" as a service such as electricity, water, sewer, gas, telephone, cable television, and other commonly used power and communication networks required for the operation of an ordinary household or business.

Proposed law provides instead that a utility is a service such as electricity, water, sewer, gas, telephone, cable, and power and communication networks of the kind commonly used in the operation of an ordinary household, whether the service is provided to a household or business.

Proposed law (C.C. Art. 696.1) specifies that the burden imposed on the servient estate shall not be substantially different from that required to provide the utility to an ordinary household.

Proposed law provides that any new or additional maintenance burden on the servient estate shall be the responsibility of the dominant estate.

Proposed law authorizes levee boards and drainage boards to grant servitudes of passage along existing levee roads.

Proposed law authorizes an owner of an estate that has no access to a public road to claim a servitude of passage across the neighbor's land to reach an existing levee road and to traverse the levee road to the nearest public road whether or not there is a public road nearer to the enclosed estate.

Proposed law provides that if an owner of an enclosed estate obtains a servitude of passage to run along a levee road that requires construction of a road connecting the enclosed estate to the levee road, the owner of the enclosed estate shall build the connecting road at his cost.

Proposed law provides that an owner of an enclosed estate who avails himself of a servitude of passage along a levee road shall retain his legal status as an owner without access to a public road and shall remain entitled to pursue a remedy against his neighbor as if he had not obtained a servitude of passage along a levee road.

Proposed law provides that the levee board or drainage board whose levee road becomes subject to a servitude of passage shall be entitled to impose reasonable rules, costs, fees, and conditions for the use of the servitude passage, including but not limited to the condition that the owner of the enclosed estate be subject to any condition imposed on other authorized users of the levee road and the right to require locked gates to the levee road, but in such case, the levee board or drainage board shall provide the owner with keys or codes to open the gates.

Proposed law provides that a servitude under proposed law shall be subject to approval and concurrence, with or without conditions, of the Department of Transportation and Development, or for the levees or integrated coastal protection projects in the coastal area as defined in R.S.49:214.2, the Coastal Protection and Restoration Authority.

Proposed law provides that if an owner of an enclosed estate obtains a servitude of passage, neither he, nor his agents, nor his invitees shall have any claims against the state, any division of the state, the levee board, or the drainage board from whom the owner obtains the servitude of passage or any owner of land over which the servitude of passage exists for any personal injury, property damage, or other loss, unless the state, or the division of the state, or the levee board or drainage board from which the owner obtained the servitude of passage.

Proposed law provides that a servitude of passage granted under proposed law is regulated by application of the rules governing predial servitudes to the extent their application is compatible with the rules of propose law and the statutory and regulatory authority of the levee or drainage district authorizing the servitude of passage.

Proposed law prohibits application of proposed law to any action brought pursuant to Title 19 of the Louisiana Revised Statutes of 1950.

(Amends C.C. Arts. 693, 694, and 696.1; Adds R.S. 9:1262 - 1268)