

Regular Session, 2014

HOUSE BILL NO. 615

BY REPRESENTATIVE ABRAMSON

(On Recommendation of the Louisiana State Law Institute)

PROPERTY/SERVITUDES: Provides for utility servitudes for enclosed estates

1 AN ACT

2 To amend and reenact Civil Code Articles 689 through 692, 694, and 705, to enact Chapter
3 1-A of Code Title IV of Code Book II of Title 9 of the Louisiana Revised Statutes
4 of 1950, to be comprised of R.S. 9:1261 through 1270, and to repeal Civil Code
5 Article 696.1, relative to utility servitudes for enclosed estates; to provide for utility
6 servitudes; to provide for the scope of the servitude; to provide for works necessary
7 for the servitude; to provide for the location of the right-of-way; to provide for
8 voluntary loss of utility access; to provide for loss of utility access due to partition
9 or alienation; to provide for relocation of the right-of-way; to provide for the
10 prescriptibility of actions for compensation and indemnity; and to provide for related
11 matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Civil Code Articles 689 through 692, 694, and 705 are hereby amended
14 and reenacted to read as follows:

15 Art. 689. Enclosed estate; right of passage

16 The owner of an estate that has no access to a public road or utility may claim
17 a right of passage over neighboring property to the nearest public road ~~or utility~~. He
18 is bound to compensate his neighbor for the right of passage acquired and to
19 indemnify his neighbor for the damage he may occasion.

1 exercised, even if it is not the shortest route to the public road ~~or utility~~, and even if
2 the act of alienation or partition does not mention a servitude of passage.

3 * * *

4 Art. 705. Servitude of passage

5 The servitude of passage is the right for the benefit of the dominant estate
6 whereby persons, animals, ~~utilities~~, or vehicles are permitted to pass through the
7 servient estate. Unless the title provides otherwise, the extent of the right and the
8 mode of its exercise shall be suitable for the kind of traffic ~~or utility~~ necessary for
9 the reasonable use of the dominant estate.

10 Section 2. Chapter 1-A of Code Title IV of Code Book II of Title 9 of the Louisiana
11 Revised Statutes of 1950, comprised of R.S. 9:1261 through 1270, is hereby enacted to read
12 as follows:

13 CHAPTER 1-A. UTILITY SERVITUDES

14 §1261. Estate having no access to utility; utility servitude

15 The owner of an estate that has no access to a public utility may claim a
16 utility servitude over neighboring property to the nearest public utility. He is bound
17 to compensate his neighbor for the utility servitude acquired and to indemnify him
18 for the damage he may occasion.

19 §1262. Scope of the utility servitude

20 The utility servitude shall be limited to the rights reasonably necessary to
21 provide utility services to the dominant estate.

22 §1263. Works

23 The owner of the dominant estate may construct on the right-of-way of the
24 utility servitude the works that are reasonably necessary for the exercise of the
25 servitude.

26 The works constructed on the servient estate shall not be substantially
27 different from those required to provide the utility to an ordinary household.

28 The works shall be constructed and maintained in compliance with applicable
29 federal and state standards and in a manner to lessen hazards posed by the servitude.

1 §1264. Location of the right-of-way

2 The owner of the dominant estate may not demand location of the
3 right-of-way anywhere he chooses. The right-of-way generally shall be taken along
4 the shortest route from the dominant estate to the public utility at the location least
5 injurious to the intervening lands.

6 The right-of-way shall not be fixed at a location that significantly affects the
7 safety of operations on, or unreasonably interferes with the enjoyment of, the
8 servient estate.

9 §1265. Voluntary loss of utility access

10 If the owner of an estate deprives himself of access to a public utility as a
11 result of his voluntary act or omission, his neighbors are not bound to furnish a
12 servitude to him or his successors for access to that utility.

13 §1266. Voluntary alienation or partition

14 When in the case of partition, or a voluntary alienation of an estate or of a
15 part thereof, property alienated or partitioned becomes deprived of access to a public
16 utility, a utility servitude shall be furnished gratuitously by the owner of the land on
17 which access to the public utility previously existed, even if it is not the shortest
18 route to the public utility, and even if the act of alienation or partition does not
19 mention a utility servitude.

20 §1267. Relocation of right-of-way

21 The owner of the dominant estate has no right to the relocation of the
22 right-of-way after it is fixed. The owner of the servient estate has the right to
23 demand relocation of the right-of-way to a more convenient place at his own
24 expense, provided that it affords the same facility to the owner of the dominant
25 estate.

26 §1268. Prescriptibility of action for compensation and indemnity

27 The right for compensation and indemnity against the owner of the dominant
28 estate may be lost by prescription. The accrual of this prescription has no effect on
29 the utility servitude.

1 §1269. Utility

2 As used in this Chapter, a utility is a service, such as electricity, water, sewer,
3 gas, telephone, cable television, and commonly used power and communication
4 networks, of the kind required for the operation of an ordinary household, whether
5 the service is provided to a household or business.

6 §1270. Regulation of the servitude

7 A utility servitude under this Chapter is regulated by application of the rules
8 governing predial servitudes to the extent that their application is compatible with
9 the rules governing a utility servitude.

10 Section 3. Civil Code Article 696.1 is hereby repealed in its entirety.

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)]

Abramson

HB No. 615

Abstract: Provides for utility servitudes for enclosed estates.

Present law (C.C. Art. 689) includes utilities in the right of passage for enclosed estates.

Proposed law (C.C. Art. 689) removes utilities from the right of passage.

Proposed law enacts Chapter 1-A of Code Title IV of Code Book II of Title 9, to be comprised of R.S. 9:1261 through 1270, establishing the right to a utility servitude for enclosed estates.

Proposed law (R.S. 9:1261) provides that the owner of an estate that has no access to a public utility may claim over neighboring property a utility servitude to the nearest public utility. Proposed law (R.S. 9:1261) provides that he is bound to compensate his neighbor for the utility servitude acquired and indemnify him for the damage he may occasion.

Present law (C.C. Art. 689) provides that new or additional maintenance burdens imposed upon the servient estate or intervening lands resulting from the utility servitude shall be the responsibility of the owner of the dominant estate.

Proposed law (C.C. Art. 689) repeals present law.

Proposed law (R.S. 9:1262) provides that the utility servitude shall be limited to the rights reasonably necessary to provide utility services to the dominant estate.

Proposed law (R.S. 9:1263) provides that the owner of the dominant estate may construct on the right-of-way of the utility servitude the works that are reasonably necessary for the exercise of the servitude. Provides that the works constructed on the servient estate shall not be substantially different from those required to provide the utility to an ordinary household.

Present law (C.C. Art. 691) provides that the utility crossing shall be constructed in compliance with all appropriate and applicable federal and state standards so as to mitigate all hazards posed by the passage and the particular conditions of the servient estate and intervening lands.

Proposed law (C.C. Art. 691) repeals present law.

Proposed law (R.S. 9:1263) provides that the works shall be constructed and maintained in compliance with applicable federal and state standards and in a manner to lessen hazards posed by the servitude.

Present law (C.C. Art. 692) provides that the location of the utility right-of-way shall coincide with the location of the servitude of passage unless an alternate location providing access to the nearest utility is least injurious to the servient estate and intervening lands.

Present law (C.C. Art. 692) provides that the court shall evaluate and determine that the location of the servitude of passage or utility shall not affect the safety of the operations or significantly interfere with the operations of the owner of the servient estate or intervening lands prior to the granting of the servitude of passage or utility.

Proposed law (C.C. Art. 692) repeals present law.

Proposed law (R.S. 9:1264) provides that the owner of the dominant estate may not demand location of the right-of-way anywhere he chooses. Provides that the right-of-way generally shall be taken along the shortest route from the dominant estate to the public utility at the location least injurious to the intervening lands. Further provides that the right-of-way shall not be fixed at a location that significantly affects the safety of operations on, or unreasonably interferes with the enjoyment of, the servient estate.

Proposed law (R.S. 9:1265) provides that if the owner of an estate deprives himself of access to a public utility as a result of his voluntary act or omission, his neighbors are not bound to furnish a servitude to him or his successors for access to that utility.

Proposed law (R.S. 9:1266) provides that when in the case of partition, or a voluntary alienation of an estate, property alienated or partitioned becomes deprived of access to a public utility, a utility servitude shall be furnished gratuitously by the owner of the land on which access to the public utility previously existed, even if it is not the shortest route to the public utility, and even if the act of alienation or partition does not mention a utility servitude.

Proposed law (R.S. 9:1267) provides that the owner of the dominant estate has no right to the relocation of the right-of-way after it is fixed. Provides that the owner of the servient estate has the right to demand relocation of the right-of-way to a more convenient place at his own expense, provided that it affords the same facility to the owner of the dominant estate.

Proposed law (R.S. 9:1268) provides that the right for compensation and indemnity against the owner of the dominant estate may be lost by prescription. Provides that the accrual of this prescription has no effect on the utility servitude.

Present law defines "utility" in Civil Code Article 696.1 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 repeals present law.

Proposed law (R.S. 9:1269) defines "utility" as a service such as electricity, water, sewer, gas, telephone, cable television, and other commonly used power and communication

networks of the kind required for the operation of an ordinary household, whether the service is provided to a household or business.

Proposed law (R.S. 9:1270) provides that a utility servitude under this Chapter is regulated by application of the rules governing predial servitudes to the extent that their application is compatible with the rules governing a utility servitude.

(Amends C.C. Arts. 689-692, 694, and 705; Adds R.S. 9:1261-1270; Repeals C.C. Art. 696.1)