

Regular Session, 2012

HOUSE BILL NO. 468

BY REPRESENTATIVES ABRAMSON AND THOMPSON

PROPERTY/SERVITUDES: Provides for utilities in the right of passage for enclosed estates

1 AN ACT

2 To amend and reenact Civil Code Articles 689, 690, 691, 692, 694, and 705 and to enact
3 Civil Code Article 696.1, relative to rights and servitudes of passage; to provide for
4 the right of passage for utilities; to provide for limitations and locations of a
5 servitude of passage; to provide for definitions; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Civil Code Articles 689, 690, 691, 692, 694, and 705 are hereby amended
8 and reenacted and Civil Code Article 696.1 is hereby enacted to read as follows:

9 Art. 689. Enclosed estate; right of passage

10 The owner of an estate that has no access to a public road or utility may claim
11 a right of passage over neighboring property to the nearest public road or utility. He
12 is bound to indemnify his neighbor for the damage he may occasion.

13 New or additional maintenance burdens imposed upon the servient estate or
14 intervening lands resulting from the utility servitude shall be the responsibility of
15 the owner of the dominant estate.

16 Art. 690. Extent of passage

17 The right of passage for the benefit of an enclosed estate shall be suitable for
18 the kind of traffic or utility that is reasonably necessary for the use of that estate.

1 Art. 691. Constructions

2 The owner of the enclosed estate may construct on the right of way the type
3 of road, utility, or railroad reasonably necessary for the exercise of the servitude.

4 The utility crossing shall be constructed in compliance with all appropriate
5 and applicable federal and state standards so as to mitigate all hazards posed by the
6 passage and the particular conditions of the servient estate and intervening lands.

7 Art. 692. Location of passage

8 The owner of the enclosed estate may not demand the right of passage or the
9 right-of-way for the utility anywhere he chooses. The passage generally shall be
10 taken along the shortest route from the enclosed estate to the public road or utility
11 at the location least injurious to the intervening lands.

12 The location of the utility right-of-way shall coincide with the location of the
13 servitude of passage unless an alternate location providing access to the nearest
14 utility is least injurious to the servient estate and intervening lands.

15 The court shall evaluate and determine that the location of the servitude of
16 passage or utility shall not affect the safety of the operations or significantly interfere
17 with the operations of the owner of the servient estate or intervening lands prior to
18 the granting of the servitude of passage or utility.

19 * * *

20 Art. 694. Enclosed estate; voluntary alienation or partition

21 When in the case of partition, or a voluntary alienation of an estate or of a
22 part thereof, property alienated or partitioned becomes enclosed, passage shall be
23 furnished gratuitously by the owner of the land on which the passage was previously
24 exercised, even if it is not the shortest route to the public road or utility, and even if
25 the act of alienation or partition does not mention a servitude of passage.

26 * * *

1 Art. 696.1. Utility

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

6 * * *

7 Art. 705. Servitude of passage

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

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. 468

Abstract: Includes utilities in the right of passage for enclosed estates.

Present law provides that the owner of an estate that has no access to a public road may claim a right of passage over neighboring property to the nearest public road and that he is bound to indemnify his neighbor for the damage he may occasion.

Present law provides for the extent, location, and relocation of passage, and the type of construction reasonably necessary for the exercise of the servitude.

Present law provides that the right for indemnity against the owner of the enclosed estate may be lost by prescription, but that the accrual of this prescription has no effect on the right of passage.

Proposed law retains present law and includes utilities in the right of passage for enclosed estates.

Proposed law provides that new or additional maintenance burdens resulting from a utility servitude shall be the responsibility of the owner of the dominant estate.

Proposed law requires utility crossings to be constructed in compliance with federal and state standards in order to mitigate hazards.

Proposed law requires utility servitudes to coincide with the servitude of passage unless a different location is less injurious to the servient estate and requires the court to evaluate the location of the servitude prior to granting the servitude.

Proposed law 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.

Present law defines the "servitude of passage" as the right for the benefit of the dominant estate whereby persons, animals, or vehicles are permitted to pass through the servient estate. Unless the title provides otherwise, the extent of the right and the mode of its exercise shall be suitable for the kind of traffic necessary for the reasonable use of the dominant estate.

Proposed law includes utilities in the definition of "servitude of passage".

(Amends C.C. Arts. 689, 690, 691, 692, 694, and 705; Adds C.C. Art. 696.1)

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Added provisions placing responsibility of additional maintenance of utility servitudes on the dominant estate.
2. Added requirement that utility crossings be constructed in compliance with state and federal standards.
3. Added provisions relative to the location of utility servitudes.
4. Deleted a utility servitude as an example of an apparent servitude.
5. Added technical amendments.