

2015 Regular Session

HOUSE BILL NO. 196

BY REPRESENTATIVES SCHEXNAYDER AND ABRAMSON

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PROPERTY/SERVITUDES: Provides relative to utility servitudes

1 AN ACT

2 To amend and reenact Civil Code Articles 689, 690, 691, 692, 694, and 705, to enact
3 Chapter 1-A of Code Title IV of Code Book II of Title 9 of the Louisiana Revised
4 Statutes of 1950, to be comprised of R.S. 9:1261 through 1270, and to repeal Civil
5 Code Article 696.1, relative to utility servitudes for enclosed estates; to provide for
6 utility servitudes; to provide for the scope of the utility servitude; to provide for
7 works necessary for the utility servitude; to provide for the location of the utility
8 servitude; to provide for voluntary loss of utility access; to provide for loss of utility
9 access due to partition or alienation; to provide for relocation of the utility servitude;
10 to provide for the prescriptibility of actions for compensation and indemnity; to
11 provide for a definition of utility; to provide for the application of the rules
12 governing predial servitudes; to provide for applicability relative to existing
13 servitudes; and to provide for related matters.

14 Be it enacted by the Legislature of Louisiana:

15 Section 1. Civil Code Articles 689, 690, 691, 692, 694, and 705 are hereby amended
16 and reenacted to read as follows:

17 Art. 689. Enclosed estate; right of passage

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

19 Comment - 2015

20 This Section and those that follow provide a means by which the owner of
21 an estate without access to a public utility can acquire a servitude for access to that
22 utility upon payment of compensation and damages. The servitude acquired is a
23 legal servitude. See C.C. Art. 659 et seq.

24 §1262. Scope of the utility servitude

25 A. The utility servitude shall be limited to the rights reasonably necessary
26 to provide utility services to the dominant estate. The burden imposed on the
27 servient estate shall not be substantially different from that required to provide the
28 utility to an ordinary household.

29 B. Any new or additional maintenance burden upon the servient estate
30 resulting from the utility servitude shall be the responsibility of the owner of the
31 dominant estate.

1 Comments - 2015

2 (a) This Section limits both the scope of the rights of the owner of the
3 dominant estate as well as the burden that can be imposed upon the servient estate.

4 (b) A utility servitude may be claimed under this Chapter regardless of
5 whether the dominant estate is used for residential, agricultural, or commercial
6 purposes. Nevertheless, the burden imposed upon the servient estate in any case
7 cannot be substantially different from the burden necessary to provide the utility to
8 an ordinary household.

9 §1263. Works

10 A. The owner of the dominant estate may construct on the location of the
11 utility servitude the works that are reasonably necessary for the exercise of the
12 servitude.

13 B. The works shall be constructed and maintained in compliance with
14 applicable federal and state standards and in a manner that reasonably lessens
15 hazards posed by the servitude.

16 Comments - 2015

17 (a) This Section permits the owner of the dominant estate to construct upon
18 the servient estate works that are reasonably necessary to the exercise of the utility
19 servitude. Because of the limitations imposed by the preceding Section, however,
20 those works cannot be substantially different from the works that would be required
21 to provide the utility to an ordinary household.

22 (b) This Section does not require the owner of the dominant estate himself
23 to construct the works on the servient estate. He may by juridical act grant to a third
24 person, such as a utility provider, the right to enter upon the servient estate for the
25 purpose of constructing or maintaining the necessary works, but he may not grant to
26 the third person any rights greater than those that he enjoys.

27 §1264. Location of the utility servitude

28 A. The owner of the dominant estate may not demand location of the utility
29 servitude anywhere he chooses. The location of the utility servitude generally shall
30 be taken along the shortest route from the dominant estate to the public utility at the
31 location least injurious to the intervening lands.

32 B. The location of the utility servitude shall not be fixed at a location that
33 significantly affects the safety of operations on, or unreasonably interferes with the
34 enjoyment of, the servient estate.

1 Comments - 2015

2 (a) The principles expressed in this Section are used not only to determine
3 which intervening lands will constitute the servient estate but also to fix the location
4 of the utility servitude within the servient estate.

5 (b) This Section expresses a general preference for locating the utility
6 servitude along the shortest route from the dominant estate to the public utility. The
7 court is also instructed, however, to determine the location least injurious to the
8 intervening lands and to select a location that neither poses a significant threat to
9 safety of operations on the servient estate nor otherwise unreasonably interferes with
10 the enjoyment of the servient estate. Thus, the court may fix the utility servitude at
11 a location that is not the shortest route if justified by relevant considerations. In
12 addition to safety concerns, the factors that a court might consider include the
13 existence of natural or man-made impediments to use of the shortest route, the costs
14 that the owner of the dominant estate will incur based on the route selected, and
15 available means of minimizing injury to the servient estate, such as by locating the
16 servitude along another existing servitude or roadway.

17 §1265. Voluntary loss of utility access

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

21 Comment - 2015

22 The owner of an estate deprives himself of access to a public utility only if
23 the estate had access to that utility at the time of the owner's voluntary act or
24 omission. Thus, the preclusion of this Section does not apply unless the public utility
25 actually existed, and the estate had access to it, at the time of the owner's voluntary
26 act or omission.

27 §1266. Voluntary alienation or partition

28 When in the case of partition, or a voluntary alienation of an estate or of a
29 part thereof, property alienated or partitioned becomes deprived of access to a public
30 utility, a utility servitude shall be furnished gratuitously by the owner of the land on
31 which access to the public utility previously existed, even if it is not the route that
32 otherwise would be selected under R.S. 9:1264, and even if the act of alienation or
33 partition does not mention a utility servitude.

34 Comment - 2015

35 In order for this Section to apply, the estate that is partitioned or wholly or
36 partially alienated must have had access to the public utility at the time of the
37 partition or alienation.
38

1 Comment - 2015

2 Servitudes established under this Chapter are by their nature predial
3 servitudes because they create a charge on one or more servient estates for the
4 benefit of a dominant estate. See C.C. Art. 646. Accordingly, they are subject to the
5 rules of the Civil Code applicable to predial servitudes except to the extent
6 incompatible with this Chapter.

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

8 Section 4. This Act applies to all rights of passage and utility servitudes within its
9 scope, including those that are in existence or that could be claimed on the effective date of
10 this Act, but no provision of this Act may be applied to divest already vested rights or impair
11 the obligation of contracts.

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)]

HB 196 Original

2015 Regular Session

Schexnayder

Abstract: Provides for utility servitudes for enclosed estates.

Present law (C.C. Arts. 689, 690, 691, 692, 694, 696.1, and 705), 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.

Proposed law removes from the Civil Code the amendments relative to utilities and utility servitudes that were enacted by Acts 2012, No. 739, and places those provisions in proposed law (R.S. 9:1261-1270) to provide for the right to a utility servitude for enclosed estates.

Proposed law retains the relocated provisions of present law except as follows:

Proposed law (R.S. 9:1262(A)) 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 (R.S. 9:1263(B)) specifies that the works shall be constructed and maintained in compliance with applicable federal and state standards and in a manner that reasonably lessens hazards posed by the servitude.

Proposed law (R.S. 9:1264(B)) specifies that the location of the utility servitude shall not be fixed at a location that significantly affects the safety of the operations on, or unreasonably interferes with the enjoyment of, the servient estate.

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 (R.S. 9:1265) provides the same result relative to utility servitudes.

Proposed law (R.S. 9:1266) retains the provisions of present law (C.C. Art. 694) but provides in cases of partition or voluntary alienation that the utility servitude shall be furnished gratuitously even if the route is not the route that otherwise would be selected under proposed law (R.S. 9:1264).

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 removes present law from the Civil Code by repealing C.C. Art. 696.1, and provides instead (R.S. 9:1269) 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 (R.S. 9:1270) provides that a utility servitude 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, 690, 691, 692, 694, and 705; Adds R.S. 9:1261-1270; Repeals C.C. Art. 696.1)