

GREEN SHEET REDIGEST

HB 196

2015 Regular Session

Schexnayder

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

PROPERTY/SERVITUDES. Provides relative to utility servitudes

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DIGEST

Present law (C.C. Arts. 692) provides that the owner of an enclosed estate may not demand the right of passage or the right-of-way for the utility anywhere he chooses. Provides that the passage generally shall be taken along the shortest route from the enclosed estate to the public road or utility at the location least injurious to the intervening lands. Further 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. Further 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 retains present law but adds that, if a levee authority permits the owners of property surrounding an enclosed estate to use the levee for passage to a public road, then the owner of the enclosed estate may use the levee for passage to a public road, even if that passage is not the shortest route from the enclosed estate to a public road.

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.

(Amends C.C. Arts. 692, 693, 694, and 696.1)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Retain but transfer to the Civil Code the proposed law provisions relative to the following: (a) an owner depriving himself of access to a public utility; (b) property alienated or partitioned resulting in loss of access to a public utility; (c) the definition of utility; (d) burden imposed on the servient estate; and (e) new or additional burdens imposed on the servient estate.
2. Add legislative intent as to applicability of proposed law to the laws on expropriation.
3. Delete all other provisions of proposed law.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the engrossed bill

1. Adds changes to Civil Code Article 692, providing for owners of enclosed estates to be able to use a levee for passage to a public road, even if it is not the shortest route from the enclosed estate to a public road.