

2015 Regular Session

HOUSE BILL NO. 196

BY REPRESENTATIVES SCHEXNAYDER AND ABRAMSON

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 693, 694, and 696.1, relative to utility servitudes
3 for enclosed estates; to provide for utility servitudes; to provide for the scope of the
4 utility servitude; to provide for voluntary loss of utility access; to provide for loss of
5 utility access due to partition or alienation; to provide a definition of utility; to
6 provide for limitations of the utility servitude; to provide for the imposition of
7 burdens; to provide for applicability to certain actions; and to provide for related
8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Civil Code Articles 693, 694, and 696.1 are hereby amended and
11 reenacted to read as follows:

12 Art. 693. Enclosed estate; voluntary act

13 If an estate becomes enclosed as a result of a voluntary act or omission of its
14 owner, the neighbors are not bound to furnish a passage to him or his successors.

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

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

19 When in the case of partition, or a voluntary alienation of an estate or of a
20 part thereof, property alienated or partitioned becomes enclosed, passage shall be
21 furnished gratuitously by the owner of the land on which the passage was previously

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 When in the case of partition, or a voluntary alienation of an estate or of a
4 part thereof, property alienated or partitioned becomes deprived of access to a public
5 utility, a utility servitude shall be furnished gratuitously by the owner of the land on
6 which access to the public utility previously existed, even if it is not the route that
7 otherwise would be selected under Article 692, and even if the act of alienation or
8 partition does not mention a utility servitude.

9 * * *

10 Art. 696.1. Utility; definition; scope

11 As used in this Section, a utility is a service such as electricity, water, sewer,
12 gas, telephone, cable ~~television~~, and ~~other commonly used~~ power and
13 communication networks, ~~required for the operation of an ordinary household or~~
14 ~~business~~ of the kind commonly used in the operation of an ordinary household,
15 whether the service is provided to a household or business.

16 The utility servitude shall be limited to the rights reasonably necessary to
17 provide utility services to the dominant estate. The burden imposed on the servient
18 estate shall not be substantially different from that required to provide the utility to
19 an ordinary household.

20 Any new or additional maintenance burden upon the servient estate resulting
21 from the utility servitude shall be the responsibility of the owner of the dominant
22 estate.

23 Comments - 2015

24 The reference to an "ordinary household" in this Section does not mean that
25 only an estate on which an ordinary household is located is entitled to a utility
26 servitude under this Chapter, nor that the utility may be used only for household
27 purposes. Nevertheless, a servitude is available under this Chapter only for a utility
28 that is commonly used in the operation of an ordinary household, regardless of the
29 nature of the dominant estate or its use of the utility for commercial purposes.

30 Section 2. The provisions of this Act shall not apply to any action brought pursuant
31 to Title 19 of the Louisiana Revised Statutes of 1950.

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 Engrossed

2015 Regular Session

Schexnayder

Abstract: Provides for utility servitudes for enclosed estates.

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. 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.