

FIRST REGULAR SESSION

# HOUSE BILL NO. 144

103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE FALKNER.

0317H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To amend chapter 442, RSMo, by adding thereto one new section relating to the uniform easement relocation act.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 442, RSMo, is amended by adding thereto one new section, to be known as section 442.671, to read as follows:

**442.671. 1. This section shall be known and may be cited as the "Uniform Easement Relocation Act".**

**2. As used in this section, the following terms mean:**

**(1) "Appurtenant easement", an easement tied to or dependent on ownership or occupancy of a unit or a parcel of real property;**

**(2) "Conservation easement", a nonpossessory property interest created for one or more of the following conservation purposes:**

**(a) Retaining or protecting the natural, scenic, wildlife, wildlife-habitat, biological, ecological, or open-space values of real property;**

**(b) Ensuring the availability of real property for agricultural, forest, outdoor-recreational, or open-space uses;**

**(c) Protecting natural resources, including wetlands, grasslands, and riparian areas;**

**(d) Maintaining or enhancing air or water quality;**

**(e) Preserving the historical, architectural, archeological, paleontological, or cultural aspects of real property; or**

**(f) Any other purpose served by a conservation easement under state law;**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 18           (3) **"Dominant estate"**, an estate or interest in real property benefitted by an  
19 **appurtenant easement;**
- 20           (4) **"Easement"**, a nonpossessory property interest that:
- 21           (a) **Provides a right to enter, use, or enjoy real property owned by or in the**  
22 **possession of another; and**
- 23           (b) **Imposes on the owner or possessor a duty not to interfere with the entry, use,**  
24 **or enjoyment permitted by the instrument creating the easement or, in the case of an**  
25 **easement not established by express grant or reservation, the entry, use, or enjoyment**  
26 **authorized by law;**
- 27           (5) **"Easement holder"**:
- 28           (a) **In the case of an appurtenant easement, the dominant estate owner; or**
- 29           (b) **In the case of an easement in gross, public utility easement, conservation**  
30 **easement, or negative easement, the grantee of the easement or a successor;**
- 31           (6) **"Easement in gross"**, an easement not tied to or dependent on ownership or  
32 **occupancy of a unit or a parcel of real property;**
- 33           (7) **"Lessee of record"**, a person holding a lessee's interest under a recorded  
34 **lease or memorandum of lease;**
- 35           (8) **"Negative easement"**, a nonpossessory property interest with a primary  
36 **purpose of imposing on a servient estate owner a duty not to engage in a specified use of**  
37 **the estate;**
- 38           (9) **"Person"**, an individual, estate, business or nonprofit entity, public  
39 **corporation, government or governmental subdivision, agency, or instrumentality, or**  
40 **other legal entity;**
- 41           (10) **"Public utility easement"**, a nonpossessory property interest in which the  
42 **easement holder is a publicly regulated or publicly owned utility under federal law or**  
43 **law of this state or a municipality. The term includes an easement benefitting an**  
44 **intrastate utility, an interstate utility, or a utility cooperative. The term includes, but is**  
45 **not limited to, property interests granted generally to the public for public utility use via**  
46 **plat or other instrument;**
- 47           (11) **"Real property"**, an estate or interest in, over, or under land, including  
48 **structures, fixtures, and other things that by custom, usage, or law pass with a**  
49 **conveyance of land whether or not described or mentioned in the contract of sale or**  
50 **instrument of conveyance. The term includes the interest of a lessor and lessee and,**  
51 **unless the interest is personal property under law of this state other than this section, an**  
52 **interest in a common-interest community;**

53 (12) "Record", used as a noun, information that is inscribed on a tangible  
54 medium or that is stored in an electronic or other medium and is retrievable in  
55 perceivable form;

56 (13) "Security instrument", a mortgage, deed of trust, security deed, contract  
57 for deed, lease, or other record that creates or provides for an interest in real property  
58 to secure payment or performance of an obligation, whether by acquisition or retention  
59 of a lien, a lessor's interest under a lease, or title to the real property. The term includes:

60 (a) A security instrument that also creates or provides for a security interest in  
61 personal property;

62 (b) A modification or amendment of a security instrument; and

63 (c) A record creating a lien on real property to secure an obligation under a  
64 covenant running with the real property or owed by a unit owner to a common-interest  
65 community association;

66 (14) "Security-interest holder of record", a person holding an interest in real  
67 property created by a recorded security instrument;

68 (15) "Servient estate", an estate or interest in real property that is burdened by  
69 an easement;

70 (16) "Title evidence", a title insurance policy, preliminary title report or binder,  
71 title insurance commitment, abstract of title, attorney's opinion of title based on  
72 examination of public records or an abstract of title, or any other means of reporting the  
73 state of title to real property which is customary in the locality;

74 (17) "Unit", a physical portion of a common-interest community designated for  
75 separate ownership or occupancy with boundaries described in a declaration  
76 establishing the common-interest community;

77 (18) "Utility cooperative", a nonprofit entity whose purpose is to deliver a utility  
78 service, such as electricity, oil, natural gas, water, sanitary sewer, storm water, or  
79 telecommunications, to its customers or members and includes an electric cooperative,  
80 rural electric cooperative, rural water district, and rural water association.

81 3. (1) Except as otherwise provided in subdivision (2) of this subsection, this  
82 section applies to an easement established by express grant or reservation or by  
83 prescription, implication, necessity, estoppel, or other method.

84 (2) This section shall not be used to relocate:

85 (a) A public utility easement, conservation easement, or negative easement; or

86 (b) An easement if the proposed location would encroach on an area of an estate  
87 burdened by a conservation easement or would interfere with the use or enjoyment of a  
88 public utility easement or an easement appurtenant to a conservation easement.

89 (3) This section does not apply to relocation of an easement by consent.

90           **4. A servient estate owner may relocate an easement under this section only if**  
91 **the relocation does not materially:**

92           **(1) Lessen the utility of the easement;**

93           **(2) After the relocation, increase the burden on the easement holder in its**  
94 **reasonable use and enjoyment of the easement;**

95           **(3) Impair an affirmative, easement-related purpose for which the easement was**  
96 **created;**

97           **(4) During or after the relocation, impair the safety of the easement holder or**  
98 **another entitled to use and enjoy the easement;**

99           **(5) During the relocation, disrupt the use and enjoyment of the easement by the**  
100 **easement holder or another entitled to use and enjoy the easement, unless the servient**  
101 **estate owner substantially mitigates the duration and nature of the disruption;**

102           **(6) Impair the physical condition, use, or value of the dominant estate or**  
103 **improvements on the dominant estate; or**

104           **(7) Impair the value of the collateral of a security-interest holder of record in the**  
105 **servient estate or dominant estate, impair a real-property interest of a lessee of record in**  
106 **the dominant estate, or impair a recorded real-property interest of any other person in**  
107 **the servient estate or dominant estate.**

108           **5. (1) To obtain an order to relocate an easement under this section, a servient**  
109 **estate owner shall commence a civil action.**

110           **(2) A servient estate owner that commences a civil action under subdivision (1)**  
111 **of this subsection:**

112           **(a) Shall serve a summons and a complaint or petition, or both, on:**

113           **a. The easement holder whose easement is the subject of the relocation;**

114           **b. A security-interest holder of record of an interest in the servient estate or**  
115 **dominant estate;**

116           **c. A lessee of record of an interest in the dominant estate; and**

117           **d. Except as otherwise provided in paragraph (b) of this subdivision, any other**  
118 **owner of a recorded real-property interest if the relocation would encroach on an area**  
119 **of the servient estate or dominant estate burdened by the interest; and**

120           **(b) Is not required to serve a summons and a complaint or petition, or both, on**  
121 **the owner of a recorded real-property interest in oil, gas, or minerals unless the interest**  
122 **includes an easement to facilitate oil, gas, or mineral development.**

123           **(3) A complaint or petition filed under this section shall state:**

124           **(a) The intent of the servient estate owner to seek the relocation;**

125           **(b) The nature, extent, and anticipated dates of commencement and completion**  
126 **of the proposed relocation;**

- 127           (c) **The current and proposed locations of the easement;**  
128           (d) **The reason the easement is eligible for relocation under subsection 3 of this**  
129 **section;**  
130           (e) **The reason the proposed relocation satisfies the conditions for relocation**  
131 **under subsection 4 of this section; and**  
132           (f) **That the servient estate owner has made a reasonable attempt to notify the**  
133 **holders of any public utility easement, conservation easement, or negative easement on**  
134 **the servient estate or dominant estate of the proposed relocation.**
- 135           (4) **At any time before the court renders a final order in an action under**  
136 **subdivision (1) of this subsection, a person served under subparagraph b., c., or d. of**  
137 **paragraph (a) of subdivision (2) of this subsection may file a document, in recordable**  
138 **form, that waives such person's rights to contest or obtain relief in connection with the**  
139 **relocation or subordinates such person's interests to the relocation. On filing of the**  
140 **document, the court may order that the person is not required to answer or participate**  
141 **further in the action.**
- 142           6. (1) **The court shall not approve relocation of an easement under this section**  
143 **unless the servient estate owner:**
- 144           (a) **Establishes that the easement is eligible for relocation under subsection 3 of**  
145 **this section; and**  
146           (b) **Satisfies the conditions for relocation under subsection 4 of this section.**
- 147           (2) **An order under this section approving relocation of an easement shall:**  
148           (a) **State that the order is issued in accordance with this section;**  
149           (b) **Recite the recording data of the instrument creating the easement, if any, any**  
150 **amendments, and any preservation notice required under state law;**  
151           (c) **Identify the immediately preceding location of the easement;**  
152           (d) **Describe in a legally sufficient manner the new location of the easement;**  
153           (e) **Describe mitigation required of the servient estate owner during relocation;**  
154           (f) **Refer in detail to the plans and specifications of improvements necessary for**  
155 **the easement holder to enter, use, and enjoy the easement in the new location;**  
156           (g) **Specify conditions to be satisfied by the servient estate owner to relocate the**  
157 **easement and construct improvements necessary for the easement holder to enter, use,**  
158 **and enjoy the easement in the new location;**  
159           (h) **Include a provision for payment by the servient estate owner of expenses**  
160 **under subsection 7 of this section;**  
161           (i) **Include a provision for compliance by the parties with the obligation of good**  
162 **faith under subsection 8 of this section; and**

163           (j) Instruct the servient estate owner to record an affidavit, if required under  
164 subdivision (1) of subsection 9 of this section, when the servient estate owner  
165 substantially completes relocation.

166           (3) An order under subdivision (2) of this subsection may include any other  
167 provision consistent with this section for the fair and equitable relocation of the  
168 easement.

169           (4) Before a servient estate owner proceeds with relocation of an easement under  
170 this section, the owner shall record, in the land records of each jurisdiction where the  
171 servient estate is located, a certified copy of the order under subdivision (2) of this  
172 subsection.

173           7. A servient estate owner is responsible for reasonable expenses of relocation of  
174 an easement under this section, including the expense of:

175           (1) Constructing improvements on the servient estate or dominant estate in  
176 accordance with an order under subsection 6 of this section;

177           (2) During the relocation, mitigating disruption in the use and enjoyment of the  
178 easement by the easement holder or another person entitled to use and enjoy the  
179 easement;

180           (3) Obtaining a governmental approval or permit to relocate the easement and  
181 construct necessary improvements;

182           (4) Preparing and recording the certified copy required by subdivision (4) of  
183 subsection 6 of this section and any other document required to be recorded;

184           (5) Any title work required to complete the relocation or required by a party to  
185 the civil action as a result of the relocation;

186           (6) Applicable premiums for title insurance related to the relocation;

187           (7) Any expert necessary to review plans and specifications for an improvement  
188 to be constructed in the relocated easement or on the dominant estate and to confirm  
189 compliance with the plans and specifications referred to in the order under paragraph  
190 (f) of subdivision (2) of subsection 6 of this section;

191           (8) Payment of any maintenance cost associated with the relocated easement that  
192 is greater than the maintenance cost associated with the easement before relocation; and

193           (9) Obtaining any third-party consent required to relocate the easement.

194           8. After the court, under subsection 6 of this section, approves relocation of an  
195 easement and the servient estate owner commences the relocation, the servient estate  
196 owner, the easement holder, and other parties in the civil action shall act in good faith to  
197 facilitate the relocation in compliance with this section.

198           9. (1) If an order under subsection 6 of this section requires the construction of  
199 an improvement as a condition for relocation of an easement, relocation is substantially

200 complete, and the easement holder is able to enter, use, and enjoy the easement in the  
201 new location, the servient estate owner shall:

202 (a) Record, in the land records of each jurisdiction where the servient estate is  
203 located, an affidavit certifying that the easement has been relocated; and

204 (b) Send, by certified mail, a copy of the recorded affidavit to the easement  
205 holder and parties to the civil action.

206 (2) Until an affidavit under subdivision (1) of this subsection is recorded and  
207 sent, the easement holder may enter, use, and enjoy the easement in the current location,  
208 subject to the court's order under subsection 6 of this section approving relocation.

209 (3) If an order under subsection 6 of this section does not require an  
210 improvement to be constructed as a condition of the relocation, recording the order  
211 under subdivision (4) of subsection 6 of this section constitutes relocation.

212 10. (1) Relocation of an easement under this section:

213 (a) Is not a new transfer or a new grant of an interest in the servient estate or the  
214 dominant estate;

215 (b) Is not a breach or default of, and does not trigger, a due-on-sale clause or  
216 other transfer-restriction clause under a security instrument, except as otherwise  
217 determined by a court under law other than this section;

218 (c) Is not a breach or default of a lease, except as otherwise determined by a  
219 court under law other than this section;

220 (d) Is not a breach or default by the servient estate owner of a recorded  
221 document affected by the relocation, except as otherwise determined by a court under  
222 law other than this section;

223 (e) Does not affect the priority of the easement with respect to other recorded  
224 real-property interests burdening the area of the servient estate where the easement was  
225 located before the relocation; and

226 (f) Is not a fraudulent conveyance or voidable transaction under law.

227 (2) This section does not affect any other method of relocating an easement  
228 permitted under law of this state other than this section.

229 11. The right of a servient estate owner to relocate an easement under this  
230 section shall not be waived, excluded, or restricted by agreement even if:

231 (1) The instrument creating the easement prohibits relocation or contains a  
232 waiver, exclusion, or restriction of this section;

233 (2) The instrument creating the easement requires consent of the easement  
234 holder to amend the terms of the easement; or

235 (3) The location of the easement is fixed by the instrument creating the easement,  
236 another agreement, previous conduct, acquiescence, estoppel, or implication.

237           **12. In applying and construing this section, consideration shall be given to the**  
238 **need to promote uniformity of the law with respect to its subject matter among the**  
239 **states that enact it.**

240           **13. This section modifies, limits, or supersedes the federal Electronic Signatures**  
241 **in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., as amended, but**  
242 **does not modify, limit, or supersede Section 101(c) of such federal act, 15 U.S.C. Section**  
243 **7001(c), as amended, or authorize electronic delivery of any of the notices described in**  
244 **Section 103(b) of such federal act, 15 U.S.C. Section 7003(b), as amended.**

245           **14. This section applies to an easement created before, on, or after the effective**  
246 **date of this section.**

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