

HOUSE BILL NO. 2862

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FALKNER.

5670H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

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

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 whose primary
36 purpose is to impose 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;

45 (11) **"Real property"**, an estate or interest in, over, or under land, including
46 structures, fixtures, and other things that by custom, usage, or law pass with a
47 conveyance of land whether or not described or mentioned in the contract of sale or
48 instrument of conveyance. The term includes the interest of a lessor and lessee and,
49 unless the interest is personal property under law of this state other than this section, an
50 interest in a common-interest community;

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

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

58 **(a) A security instrument that also creates or provides for a security interest in**
59 **personal property;**

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

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

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

66 **(15) "Servient estate", an estate or interest in real property that is burdened by**
67 **an easement;**

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

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

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

79 **3. (1) Except as otherwise provided in subdivision (2) of this subsection, this**
80 **section applies to an easement established by express grant or reservation or by**
81 **prescription, implication, necessity, estoppel, or other method.**

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

83 **(a) A public-utility easement, conservation easement, or negative easement; or**

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

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

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

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

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

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

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

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

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

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

106 **5. (1) To obtain an order to relocate an easement under this section, a servient**
107 **estate owner shall commence a civil action.**

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

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

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

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

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

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

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

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

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

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

125 **(c) The current and proposed locations of the easement;**

126 **(d) The reason the easement is eligible for relocation under subsection 3 of this**
127 **section;**

128 (e) The reason the proposed relocation satisfies the conditions for relocation
129 under subsection 4 of this section; and

130 (f) That the servient estate owner has made a reasonable attempt to notify the
131 holders of any public-utility easement, conservation easement, or negative easement on
132 the servient estate or dominant estate of the proposed relocation.

133 (4) At any time before the court renders a final order in an action under
134 subdivision (1) of this subsection, a person served under subparagraph b., c., or d. of
135 paragraph (a) of subdivision (2) of this subsection may file a document, in recordable
136 form, that waives such person's rights to contest or obtain relief in connection with the
137 relocation or subordinates such person's interests to the relocation. On filing of the
138 document, the court may order that the person is not required to answer or participate
139 further in the action.

140 6. (1) The court shall not approve relocation of an easement under this section
141 unless the servient estate owner:

142 (a) Establishes that the easement is eligible for relocation under subsection 3 of
143 this section; and

144 (b) Satisfies the conditions for relocation under subsection 4 of this section.

145 (2) An order under this section approving relocation of an easement shall:

146 (a) State that the order is issued in accordance with this section;

147 (b) Recite the recording data of the instrument creating the easement, if any, any
148 amendments, and any preservation notice required under state law;

149 (c) Identify the immediately preceding location of the easement;

150 (d) Describe in a legally sufficient manner the new location of the easement;

151 (e) Describe mitigation required of the servient estate owner during relocation;

152 (f) Refer in detail to the plans and specifications of improvements necessary for
153 the easement holder to enter, use, and enjoy the easement in the new location;

154 (g) Specify conditions to be satisfied by the servient estate owner to relocate the
155 easement and construct improvements necessary for the easement holder to enter, use,
156 and enjoy the easement in the new location;

157 (h) Include a provision for payment by the servient estate owner of expenses
158 under subsection 7 of this section;

159 (i) Include a provision for compliance by the parties with the obligation of good
160 faith under subsection 8 of this section; and

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

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

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

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

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

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

178 **(3) Obtaining a governmental approval or permit to relocate the easement and**
179 **construct necessary improvements;**

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

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

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

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

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

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

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

196 **9. (1) If an order under subsection 6 of this section requires the construction of**
197 **an improvement as a condition for relocation of an easement, relocation is substantially**
198 **complete, and the easement holder is able to enter, use, and enjoy the easement in the**
199 **new location, the servient estate owner shall:**

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

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

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

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

210 10. (1) Relocation of an easement under this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

✓