

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 501

Introduced by Flood, 19.

Read first time January 19, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to real property; to adopt the Uniform
- 2 Easement Relocation Act; and to provide severability.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 14 of this act shall be known and may be
2 cited as the Uniform Easement Relocation Act.

3 Sec. 2. In the Uniform Easement Relocation Act:

4 (1) Appurtenant easement means an easement tied to or dependent on
5 ownership or occupancy of a unit or a parcel of real property.

6 (2) Conservation easement means a nonpossessory property interest
7 created for one or more of the following conservation purposes:

8 (A) retaining or protecting the natural, scenic, wildlife, wildlife-
9 habitat, biological, ecological, or open-space values of real property;

10 (B) ensuring the availability of real property for agricultural,
11 forest, outdoor-recreational, or open-space uses;

12 (C) protecting natural resources, including wetlands, grasslands,
13 and riparian areas;

14 (D) maintaining or enhancing air or water quality;

15 (E) preserving the historical, architectural, archeological,
16 paleontological, or cultural aspects of real property; or

17 (F) any other purpose under the Conservation and Preservation
18 Easements Act.

19 (3) Dominant estate means an estate or interest in real property
20 benefited by an appurtenant easement.

21 (4) Easement means a nonpossessory property interest that:

22 (A) provides a right to enter, use, or enjoy real property owned by
23 or in the possession of another; and

24 (B) imposes on the owner or possessor a duty not to interfere with
25 the entry, use, or enjoyment permitted by the instrument creating the
26 easement or, in the case of an easement not established by express grant
27 or reservation, the entry, use, or enjoyment authorized by law.

28 (5) Easement holder means:

29 (A) in the case of an appurtenant easement, the dominant estate
30 owner; or

31 (B) in the case of an easement in gross, public-utility easement,

1 conservation easement, or negative easement, the grantee of the easement
2 or a successor.

3 (6) Easement in gross means an easement not tied to or dependent on
4 ownership or occupancy of a unit or a parcel of real property.

5 (7) Lessee of record means a person holding a lessee's interest
6 under a recorded lease or memorandum of lease.

7 (8) Negative easement means a nonpossessory property interest whose
8 primary purpose is to impose on a servient estate owner a duty not to
9 engage in a specified use of the estate.

10 (9) Person means an individual, estate, business or nonprofit
11 entity, public corporation, government or governmental subdivision,
12 agency, or instrumentality, or other legal entity.

13 (10) Public-utility easement means a nonpossessory property interest
14 in which the easement holder is a publicly regulated or publicly owned
15 utility under federal law or law of this state or a municipality. The
16 term includes an easement benefiting an intrastate utility, an interstate
17 utility, or a utility cooperative.

18 (11) Real property means an estate or interest in, over, or under
19 land, including structures, fixtures, and other things that by custom,
20 usage, or law pass with a conveyance of land whether or not described or
21 mentioned in the contract of sale or instrument of conveyance. The term
22 includes the interest of a lessor and lessee and, unless the interest is
23 personal property under law of this state other than the Uniform Easement
24 Relocation Act, an interest in a common-interest community.

25 (12) Record, used as a noun, means information that is inscribed on
26 a tangible medium or that is stored in an electronic or other medium and
27 is retrievable in perceivable form.

28 (13) Security instrument means a mortgage, deed of trust, security
29 deed, contract for deed, lease, or other record that creates or provides
30 for an interest in real property to secure payment or performance of an
31 obligation, whether by acquisition or retention of a lien, a lessor's

1 interest under a lease, or title to the real property. The term includes:

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

4 (B) a modification or amendment of a security instrument; and

5 (C) a record creating a lien on real property to secure an
6 obligation under a covenant running with the real property or owed by a
7 unit owner to a common-interest community association.

8 (14) Security-interest holder of record means a person holding an
9 interest in real property created by a recorded security instrument.

10 (15) Servient estate means an estate or interest in real property
11 that is burdened by an easement.

12 (16) Title evidence means a title insurance policy, preliminary
13 title report or binder, title insurance commitment, abstract of title,
14 attorney's opinion of title based on examination of public records or an
15 abstract of title, or any other means of reporting the state of title to
16 real property which is customary in the locality.

17 (17) Unit means a physical portion of a common-interest community
18 designated for separate ownership or occupancy with boundaries described
19 in a declaration establishing the common-interest community.

20 (18) Utility cooperative means a non-profit entity whose purpose is
21 to deliver a utility service, such as electricity, oil, natural gas,
22 water, sanitary sewer, storm water, or telecommunications, to its
23 customers or members and includes an electric cooperative, rural electric
24 cooperative, rural water district, and rural water association.

25 Sec. 3. (a) Except as otherwise provided in subsection (b) of this
26 section, the Uniform Easement Relocation Act applies to an easement
27 established by express grant or reservation or by prescription,
28 implication, necessity, estoppel, or other method.

29 (b) The Uniform Easement Relocation Act may not be used to relocate:

30 (1) a public-utility easement, conservation easement, or negative
31 easement; or

1 (2) an easement if the proposed location would encroach on an area
2 of an estate burdened by a conservation easement or would interfere with
3 the use or enjoyment of a public-utility easement or an easement
4 appurtenant to a conservation easement.

5 (c) The Uniform Easement Relocation Act does not apply to relocation
6 of an easement by consent.

7 Sec. 4. A servient estate owner may relocate an easement under the
8 Uniform Easement Relocation Act only if the relocation does not
9 materially:

10 (1) lessen the utility of the easement;

11 (2) after the relocation, increase the burden on the easement holder
12 in its reasonable use and enjoyment of the easement;

13 (3) impair an affirmative, easement-related purpose for which the
14 easement was created;

15 (4) during or after the relocation, impair the safety of the
16 easement holder or another entitled to use and enjoy the easement;

17 (5) during the relocation, disrupt the use and enjoyment of the
18 easement by the easement holder or another entitled to use and enjoy the
19 easement, unless the servient estate owner substantially mitigates the
20 duration and nature of the disruption;

21 (6) impair the physical condition, use, or value of the dominant
22 estate or improvements on the dominant estate; or

23 (7) impair the value of the collateral of a security-interest holder
24 of record in the servient estate or dominant estate, impair a real-
25 property interest of a lessee of record in the dominant estate, or impair
26 a recorded real-property interest of any other person in the servient
27 estate or dominant estate.

28 Sec. 5. (a) To obtain an order to relocate an easement under the
29 Uniform Easement Relocation Act, a servient estate owner must commence a
30 civil action.

31 (b) A servient estate owner that commences a civil action under

1 subsection (a) of this section:

2 (1) shall serve a summons and complaint on:

3 (A) the easement holder whose easement is the subject of the
4 relocation;

5 (B) a security-interest holder of record of an interest in the
6 servient estate or dominant estate;

7 (C) a lessee of record of an interest in the dominant estate; and

8 (D) except as otherwise provided in subdivision (2) of this
9 subsection, any other owner of a recorded real-property interest if the
10 relocation would encroach on an area of the servient estate or dominant
11 estate burdened by the interest; and

12 (2) is not required to serve a summons and complaint on the owner of
13 a recorded real-property interest in oil, gas, or minerals unless the
14 interest includes an easement to facilitate oil, gas, or mineral
15 development.

16 (c) A complaint under this section must state:

17 (1) the intent of the servient estate owner to seek the relocation;

18 (2) the nature, extent, and anticipated dates of commencement and
19 completion of the proposed relocation;

20 (3) the current and proposed locations of the easement;

21 (4) the reason the easement is eligible for relocation under section
22 3 of this act;

23 (5) the reason the proposed relocation satisfies the conditions for
24 relocation under section 4 of this act; and

25 (6) that the servient estate owner has made a reasonable attempt to
26 notify the holders of any public-utility easement, conservation easement,
27 or negative easement on the servient estate or dominant estate of the
28 proposed relocation.

29 (d) At any time before the court renders a final order in an action
30 under subsection (a) of this section, a person served under subdivision
31 (b)(1)(B), (C), or (D) of this section may file a document, in recordable

1 form, that waives its rights to contest or obtain relief in connection
2 with the relocation or subordinates its interests to the relocation. On
3 filing of the document, the court may order that the person is not
4 required to answer or participate further in the action.

5 Sec. 6. (a) The court may not approve relocation of an easement
6 under the Uniform Easement Relocation Act unless the servient estate
7 owner:

8 (1) establishes that the easement is eligible for relocation under
9 section 3 of this act; and

10 (2) satisfies the conditions for relocation under section 4 of this
11 act.

12 (b) An order under the Uniform Easement Relocation Act approving
13 relocation of an easement must:

14 (1) state that the order is issued in accordance with the Uniform
15 Easement Relocation Act;

16 (2) recite the recording data of the instrument creating the
17 easement, if any, any amendments, and any notice as described under
18 sections 76-288 to 76-298;

19 (3) identify the immediately preceding location of the easement;

20 (4) describe in a legally sufficient manner the new location of the
21 easement;

22 (5) describe mitigation required of the servient estate owner during
23 relocation;

24 (6) refer in detail to the plans and specifications of improvements
25 necessary for the easement holder to enter, use, and enjoy the easement
26 in the new location;

27 (7) specify conditions to be satisfied by the servient estate owner
28 to relocate the easement and construct improvements necessary for the
29 easement holder to enter, use, and enjoy the easement in the new
30 location;

31 (8) include a provision for payment by the servient estate owner of

1 expenses under section 7 of this act;

2 (9) include a provision for compliance by the parties with the
3 obligation of good faith under section 8 of this act; and

4 (10) instruct the servient estate owner to record an affidavit, if
5 required under subsection (a) of section 9 of this act, when the servient
6 estate owner substantially completes relocation.

7 (c) An order under subsection (b) of this section may include any
8 other provision consistent with the Uniform Easement Relocation Act for
9 the fair and equitable relocation of the easement.

10 (d) Before a servient estate owner proceeds with relocation of an
11 easement under the Uniform Easement Relocation Act, the owner must
12 record, in the land records of each jurisdiction where the servient
13 estate is located, a certified copy of the order under subsection (b) of
14 this section.

15 Sec. 7. A servient estate owner is responsible for reasonable
16 expenses of relocation of an easement under the Uniform Easement
17 Relocation Act, including the expense of:

18 (1) constructing improvements on the servient estate or dominant
19 estate in accordance with an order under section 6 of this act;

20 (2) during the relocation, mitigating disruption in the use and
21 enjoyment of the easement by the easement holder or another person
22 entitled to use and enjoy the easement;

23 (3) obtaining a governmental approval or permit to relocate the
24 easement and construct necessary improvements;

25 (4) preparing and recording the certified copy required by
26 subsection (d) of section 6 of this act and any other document required
27 to be recorded;

28 (5) any title work required to complete the relocation or required
29 by a party to the civil action as a result of the relocation;

30 (6) applicable premiums for title insurance related to the
31 relocation;

1 (7) any expert necessary to review plans and specifications for an
2 improvement to be constructed in the relocated easement or on the
3 dominant estate and to confirm compliance with the plans and
4 specifications referred to in the order under subdivision (b)(6) of
5 section 6 of this act;

6 (8) payment of any maintenance cost associated with the relocated
7 easement which is greater than the maintenance cost associated with the
8 easement before relocation; and

9 (9) obtaining any third-party consent required to relocate the
10 easement.

11 Sec. 8. After the court, under section 6 of this act, approves
12 relocation of an easement and the servient estate owner commences the
13 relocation, the servient estate owner, the easement holder, and other
14 parties in the civil action shall act in good faith to facilitate the
15 relocation in compliance with the Uniform Easement Relocation Act.

16 Sec. 9. (a) If an order under section 6 of this act requires the
17 construction of an improvement as a condition for relocation of an
18 easement, relocation is substantially complete, and the easement holder
19 is able to enter, use, and enjoy the easement in the new location, the
20 servient estate owner shall:

21 (1) record, in the land records of each jurisdiction where the
22 servient estate is located, an affidavit certifying that the easement has
23 been relocated; and

24 (2) send, by certified mail, a copy of the recorded affidavit to the
25 easement holder and parties to the civil action.

26 (b) Until an affidavit under subsection (a) of this section is
27 recorded and sent, the easement holder may enter, use, and enjoy the
28 easement in the current location, subject to the court's order under
29 section 6 of this act approving relocation.

30 (c) If an order under section 6 of this act does not require an
31 improvement to be constructed as a condition of the relocation, recording

1 the order under subsection (d) of section 6 of this act constitutes
2 relocation.

3 Sec. 10. (a) Relocation of an easement under the Uniform Easement
4 Relocation Act:

5 (1) is not a new transfer or a new grant of an interest in the
6 servient estate or the dominant estate;

7 (2) is not a breach or default of, and does not trigger, a due-on-
8 sale clause or other transfer-restriction clause under a security
9 instrument, except as otherwise determined by a court under law other
10 than the Uniform Easement Relocation Act;

11 (3) is not a breach or default of a lease, except as otherwise
12 determined by a court under law other than the Uniform Easement
13 Relocation Act;

14 (4) is not a breach or default by the servient estate owner of a
15 recorded document affected by the relocation, except as otherwise
16 determined by a court under law other than the Uniform Easement
17 Relocation Act;

18 (5) does not affect the priority of the easement with respect to
19 other recorded real-property interests burdening the area of the servient
20 estate where the easement was located before the relocation; and

21 (6) is not a fraudulent conveyance or voidable transaction under
22 law.

23 (b) The Uniform Easement Relocation Act does not affect any other
24 method of relocating an easement permitted under law of this state other
25 than the Uniform Easement Relocation Act.

26 Sec. 11. The right of a servient estate owner to relocate an
27 easement under the Uniform Easement Relocation Act may not be waived,
28 excluded, or restricted by agreement even if:

29 (1) the instrument creating the easement prohibits relocation or
30 contains a waiver, exclusion, or restriction of the Uniform Easement
31 Relocation Act;

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

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

6 Sec. 12. In applying and construing the Uniform Easement Relocation
7 Act, consideration must be given to the need to promote uniformity of the
8 law with respect to its subject matter among the states that enact it.

9 Sec. 13. The Uniform Easement Relocation Act modifies, limits, or
10 supersedes the Electronic Signatures in Global and National Commerce Act,
11 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section
12 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery
13 of any of the notices described in section 103(b) of that act, 15 U.S.C.
14 7003(b).

15 Sec. 14. The Uniform Easement Relocation Act applies to an easement
16 created before, on, or after the effective date of this act.

17 Sec. 15. If any section in this act or any part of any section is
18 declared invalid or unconstitutional, the declaration shall not affect
19 the validity or constitutionality of the remaining portions.