

Regular Session, 2012

HOUSE BILL NO. 471

BY REPRESENTATIVES ABRAMSON AND THOMPSON

PROPERTY/SERVITUDES: Provides that the servitude of passage to an enclosed estate includes the right to lay utilities

1 AN ACT

2 To enact R.S. 9:1256, relative to servitudes; to provide for the right of a utility servitude; to
3 provide for definitions; to provide procedures for the enforcement of a utility
4 servitude; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 9:1256 is hereby enacted to read as follows:

7 §1256. Enclosed estate; right of utilities servitude

8 A. For purposes of this Section:

9 (1) "Enclosed estate" means an estate which:

10 (a) Is not crossed by nor contiguous with land owned by a public utility, or
11 a public utility servitude or a public utility right of use of the type being requested.

12 (b) Has not been enclosed as a result of a voluntary act or omission of its
13 owner.

14 (2) "Public utility" means a utility supplier which is either owned by or
15 regulated by a village, town, city, parish, state, or federal government, or any agency
16 or district created by a governmental entity which supplies any of the following
17 services:

18 (a) Fresh or potable water.

19 (b) Sewage transportation or treatment.

20 (c) Trash or solid waste removal.

- 1 (d) Electricity.
- 2 (e) Natural gas, propane, or butane.
- 3 (f) Telephone.
- 4 (g) Cable television, cable Internet, and cable telephone.
- 5 (h) Fiber optic.
- 6 (i) Internet service.
- 7 (j) Any other type of service that may arise through scientific or
- 8 technological innovation.

9 B. The owner of an estate that has no access to a public utility may claim a
10 right of utility servitude over neighboring property to acquire service to and from a
11 public utility. In determining whether the estate has access to a public utility, the
12 court shall consider the alternative means available to the claimant seeking the
13 desired utility.

14 C. The court shall generally locate the route of the utility servitude to the
15 public utility along the shortest route at the location least injurious to the intervening
16 lands, but the court shall also consider all of the following:

17 (1) Whether there is an existing servitude of passage in which the utility
18 servitude route can also be located.

19 (2) Whether the request for the utility servitude is coupled with a request for
20 a servitude of passage in which the utility servitude can also be located.

21 (3) The comparative costs to the owner of the enclosed estate of the proposed
22 alternate routes for the utility servitude.

23 (4) The comparative burdens imposed upon the owner of the servient estate
24 of the proposed alternate routes for the utility servitude.

25 (5) The proposed use of the enclosed estate.

26 (6) Whether or not there are any existing utilities on the servient estate.

27 (7) The engineering feasibility of the proposed alternate routes for the utility
28 servitude.

1 D. The owner seeking a utility servitude is bound to compensate and
2 indemnify the owner of the servient estate for the damage he may occasion.

3 E. If all or a portion of the enclosed estate requiring the utility servitude was
4 created as a result of a partition, and if the court locates the servitude route across
5 property that was included in the partition, then the owner seeking the utility
6 servitude will not owe indemnity to the owner of that part of the land which was
7 included in the partition.

8 F. The utility servitude for the benefit of the enclosed estate shall be that
9 which is reasonably necessary for the use of that estate.

10 G. The owner of the enclosed estate shall be entitled to make such
11 constructions in and on the servitude of utility as are reasonably necessary for the
12 exercise of the servitude. The owner of the enclosed estate shall be entitled to enter
13 the utility servitude as is reasonable to make inspections and perform maintenance.

14 H. As to any matter relating to the creation, termination, and extent of use
15 of a predial servitude of utility not addressed in this Section, a court shall look to the
16 Civil Code articles governing predial servitudes in general.

17 I. Nothing in this Section shall create a cause of action in favor of one who
18 is insured by a title insurance policy as that term is defined in R.S. 22:512(18).

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)]

Abramson

HB No. 471

Abstract: Provides for the creation and right to a utility servitude for enclosed estates lacking access to public utilities.

Proposed law defines "enclosed estate" as an estate which is not crossed by nor contiguous with land owned by a public utility, or a public utility servitude or a public utility right of use of the type being requested, and which has not been enclosed as a result of a voluntary act or omission of its owner.

Proposed law defines "public utility" as a utility supplier which is either owned by or regulated by a village, town, city, parish, state, or federal government, or any agency or district created by a governmental entity which supplies any of the most common services.

Proposed law provides that the owner of an estate that has no access to a public utility may claim a right of utility servitude over neighboring property.

Proposed law provides the criteria for the court to consider when granting a utility servitude and provides that the owner seeking a utility servitude is bound to compensate and indemnify the owner of the servient estate for the damage caused.

Proposed law provides that if the court locates the servitude route across property that was included in a partition, then the owner seeking the utility servitude will not owe indemnity to the owner of that part of the land which was included in the partition.

Proposed law limits the utility servitude to that which is reasonably necessary for the use of that estate and authorizes the owner of the enclosed estate to make such constructions in and on the servitude of utility as are reasonably necessary for the exercise of the servitude.

Provides that the articles of the Civil Code governing predial servitudes shall apply where not in conflict with proposed law.

Proposed law shall not create a cause of action in favor of one who is insured by a title insurance policy.

(Adds R.S. 9:1256)