SLS 15RS-398 ORIGINAL

2015 Regular Session

SENATE BILL NO. 137

BY SENATOR ADLEY

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SERVITUDES. Provides relative to enclosed estates, right of passage, and use of levee roads. (8/1/15)

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To amend and reenact Civil Code Article 692, relative to predial servitudes and rights of passage; to provide relative to enclosed estates; to provide for rights of passage to public roads; to provide relative to location of rights of passage; to provide relative to use of levees; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Article 692 is hereby amended and reenacted to read as follows:

Art. 692. Location of passage

The owner of the enclosed estate may not demand the right of passage or the right-of-way for the utility anywhere he chooses. The passage generally shall be taken along the shortest route from the enclosed estate to the public road or utility at the location least injurious to the intervening lands. Nevertheless, if a levee authority permits the owners of property surrounding an enclosed estate to use the levee for passage to a public road, then the owner of the enclosed estate may use the levee for passage to a public road, even if that passage is not the shortest route from the enclosed estate to a public road.

The location of the utility right-of-way shall coincide with the location of the servitude of passage unless an alternate location providing access to the nearest utility is least injurious to the servient estate and intervening lands.

The court shall evaluate and determine that the location of the servitude of passage or utility shall not affect the safety of the operations or significantly interfere with the operations of the owner of the servient estate or intervening lands prior to the granting of the servitude of passage or utility.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Julie J. Baxter.

## DIGEST 2015 Regular Session

SB 137 Original

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Adley

<u>Present law</u> provides that the owner of the enclosed estate may not demand the right of passage or the right-of-way for the utility anywhere he chooses. Provides that the passage generally shall be taken along the shortest route from the enclosed estate to the public road or utility at the location least injurious to the intervening lands. <u>Present law</u> further provides that the location of the utility right-of-way shall coincide with the location of the servitude of passage unless an alternate location providing access to the nearest utility is least injurious to the servient estate and intervening lands. <u>Present law</u> further provides that the court shall evaluate and determine that the location of the servitude of passage or utility shall not affect the safety of the operations or significantly interfere with the operations of the owner of the servient estate or intervening lands prior to the granting of the servitude of passage or utility.

<u>Proposed law</u> retains <u>present law</u> and adds that if a levee authority permits the owners of property surrounding an enclosed estate to use the levee for passage to a public road, then the owner of the enclosed estate may use the levee for passage to a public road, even if that passage is not the shortest route from the enclosed estate to a public road.

Effective August 1, 2015.

(Amends C.C. Art. 692)