

## **BILL ANALYSIS**

C.S.H.B. 4618  
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Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Modern advances have changed the use of historic land and created additional pressure relating to access to that land. As more tracts of land are purchased in remote areas of Texas, courts must increasingly deal with legal issues related to access to those tracts.

A common issue arises when the nature and frequency of travel over a road on someone else's land is significantly altered from the prior use of the road. This issue is especially problematic for non-expressed easements because there are no written documents to ascertain the scope of the easement, and because the servient estate's (the land which is burdened by the easement) land values are diminished by increases in use without any compensation to the servient estate.

C.S.H.B. 4618 establishes that, in a suit regarding the scope of the easement permitting the use of a road over the servient tenement for the benefit of the dominant tenement, the area subject to an easement is prohibited from being extended by a court beyond the traveled surface of the road at the time a suit is filed, as determined by a professional survey.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 4618 amends the Property Code to establish that, in a suit regarding the scope of the easement permitting the use of a road over the servient tenement for the benefit of the dominant tenement, the area subject to an easement is prohibited from being extended by a court beyond the traveled surface of the road at the time the suit is filed, as determined by a professional survey. The bill requires an easement imposed by a court to be limited by the court in a manner that prevents a future increase in the impact of the easement on the servient tenement. The bill provides that an increase in the impact of an easement on a servient tenement for purposes of these provisions includes an increase in traffic on a road over the servient tenement caused by the use of the road for the benefit of the dominant tenement, an increase in the effect of traffic on a road over the servient tenement directly or indirectly caused by the use of the road for the benefit of the dominant tenement, any change in the nature or boundaries of a road over the servient tenement that is used for the benefit of the dominant tenement, and any other increase in the frequency or length of time of use of an easement for the benefit of the dominant tenement or change in the nature of the use of an easement for the benefit of the dominant tenement.

C.S.H.B. 4618 prohibits an easement imposed by a court from limiting the right of the owner or the servient tenement to place and operate manual or electronic gates or fences, trees or other vegetation, or stones or other material along the border of the area subject to the easement. The bill requires a person who uses an easement imposed by a court for the benefit of the dominant tenement to keep a gate or fence placed along the border of the area subject to the easement open or closed as directed by the owner of the servient tenement. The bill establishes that, if the

owner of the servient tenement installs a manual gate and an electronic gate along the border of an area subject to an easement imposed by a court, an electronic gate is allowed to be used for the benefit of the dominant tenement only with the permission of the owner of the servient tenement, and the owner of the dominant tenement, or another person using the electronic gate for the benefit of the dominant tenement, if applicable, is required to make any payment imposed for the use of the gate by the owner of the servient tenement.

C.S.H.B. 4618 makes its provisions applicable to an easement that permits a right-of-way over a servient tenement for the benefit of a dominant tenement and is not established by an express agreement between the owners of the dominant and servient tenements, including an easement by estoppel, implication, or prescription or an easement or way of necessity.

#### **EFFECTIVE DATE**

September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 4618 removes a provision in the original providing that an action concerning an easement filed before the effective date of the original is governed by the law in effect immediately before that effective date, and that law is continued in effect for that purpose. The substitute provides that the change in law made by the substitute applies to an action concerning an easement pending on the effective date of the substitute in addition to an action filed on or after that date. The substitute adds language not in the original to make the bill's provisions applicable to an easement that permits a right-of-way over a servient tenement for the benefit of a dominant tenement and is a way of necessity.