

By: Middleton

S.B. No. 1009

A BILL TO BE ENTITLED

AN ACT

relating to the adoption of the Uniform Easement Relocation Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 5, Property Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. UNIFORM EASEMENT RELOCATION ACT

Sec. 5.251. SHORT TITLE. This subchapter may be cited as the Uniform Easement Relocation Act.

Sec. 5.252. DEFINITIONS. In this subchapter:

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

(2) "Conservation easement" means 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;

1           (E) preserving the historical, architectural,  
2 archeological, paleontological, or cultural aspects of real  
3 property; or

4           (F) any other purpose under Chapter 183, Natural  
5 Resources Code.

6           (3) "Dominant estate" means an estate or interest in  
7 real property benefited by an appurtenant easement.

8           (4) "Easement" means a nonpossessory property  
9 interest that:

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

12           (B) imposes on the owner or possessor a duty not  
13 to interfere with the entry, use, or enjoyment permitted by the  
14 instrument creating the easement or, in the case of an easement not  
15 established by express grant or reservation, the entry, use, or  
16 enjoyment authorized by law. A duty not to interfere can be  
17 inferred from the scope and nature of:

18                   (i) a grant or reservation; or

19                   (ii) the entry, use, or enjoyment  
20 authorized by law.

21           (5) "Easement holder" means:

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

24           (B) in the case of an easement in gross, public  
25 utility easement, conservation easement, or negative easement, the  
26 grantee of the easement or a successor.

27           (6) "Easement in gross" means an easement not tied to

1 or dependent on ownership or occupancy of a unit or a parcel of real  
2 property.

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

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

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

11 (10) "Public utility easement" means a nonpossessory  
12 property interest in which the easement holder is a publicly  
13 regulated or publicly owned utility under federal law or law of this  
14 state or a municipality. The term includes an easement benefiting  
15 an intrastate utility, an interstate utility, a utility  
16 cooperative, a common carrier pipeline, a county, a municipality,  
17 or any entity created or operating under:

18 (A) Section 52, Article III, Texas Constitution;

19 (B) Section 59, Article XVI, Texas Constitution;

20 (C) Chapter 375, Local Government Code;

21 (D) Chapter 431, Transportation Code; or

22 (E) Chapter 49, Water Code.

23 (11) "Real property" means an estate or interest in,  
24 over, or under land, including structures, fixtures, and other  
25 things that by custom, usage, or law pass with a conveyance of land  
26 whether or not described or mentioned in the contract of sale or  
27 instrument of conveyance. The term includes the interest of a

1 lessor and lessee and, unless the interest is personal property  
2 under law of this state other than this subchapter, an interest in a  
3 common-interest community.

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

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

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

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

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

21 (14) "Security-interest holder of record" means a  
22 person holding an interest in real property created by a recorded  
23 security instrument.

24 (15) "Servient estate" means an estate or interest in  
25 real property that is burdened by an easement.

26 (16) "Unit" means a physical portion of a  
27 common-interest community designated for separate ownership or

1 occupancy with boundaries described in a declaration establishing  
2 the common-interest community.

3 (17) "Utility cooperative" means a nonprofit entity  
4 whose purpose is to deliver a utility service, such as electricity,  
5 oil, natural gas, water, sanitary sewer, storm water, or  
6 telecommunications, to its customers or members and includes an  
7 electric cooperative, rural electric cooperative, rural water  
8 district, and rural water association.

9 Sec. 5.253. SCOPE; EXCLUSIONS. (a) Except as otherwise  
10 provided in Subsection (b), this subchapter applies to an easement  
11 established by express grant or reservation or by prescription,  
12 implication, necessity, estoppel, or other method.

13 (b) For purposes of this subchapter, any of the following  
14 changes or modifications is considered to be a relocation of an  
15 easement:

16 (1) a change to the physical location of an easement;  
17 (2) a change to the dimensions of an easement; or  
18 (3) the modification of a blanket, undefined, or  
19 general easement to define the specific physical location of the  
20 easement.

21 (c) This subchapter may not be used to relocate:

22 (1) a public utility easement, conservation easement,  
23 or negative easement; or

24 (2) an easement the proposed location of which would  
25 encroach on an area of an estate burdened by a conservation easement  
26 or would interfere with the use or enjoyment of a public utility  
27 easement or an easement appurtenant to a conservation easement.

1        (d) This subchapter does not apply to relocation of an  
2 easement by consent.

3        Sec. 5.254. RIGHT OF SERVIENT ESTATE OWNER TO RELOCATE  
4 EASEMENT. A servient estate owner may relocate an easement under  
5 this subchapter only if the relocation does not materially:

6            (1) lessen the utility of the easement;

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

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

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

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

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

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

1       Sec. 5.255. COMMENCEMENT OF CIVIL ACTION. (a) To obtain an  
2 order to relocate an easement under this subchapter, a servient  
3 estate owner must commence a civil action.

4       (b) A servient estate owner that commences a civil action  
5 under Subsection (a):

6           (1) shall serve a summons and petition on:

7                   (A) the easement holder whose easement is the  
8 subject of the relocation;

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

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

13                   (D) except as otherwise provided in Subdivision  
14 (2), any other owner of a recorded real property interest if the  
15 relocation would encroach on an area of the servient estate or  
16 dominant estate burdened by the interest; and

17           (2) is not required to serve a summons and petition on  
18 the owner of a recorded real property interest in oil, gas, or  
19 minerals unless the interest includes an easement to facilitate  
20 oil, gas, or mineral development.

21       (c) A petition under this section must state:

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

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

26           (3) the current and proposed locations of the  
27 easement;

1           (4) the reason the easement is eligible for relocation  
2 under Section 5.253;

3           (5) the reason the proposed relocation satisfies the  
4 conditions for relocation under Section 5.254; and

5           (6) that the servient estate owner has made a  
6 reasonable attempt to notify the holders of any public utility  
7 easement, conservation easement, or negative easement on the  
8 servient estate or dominant estate of the proposed relocation.

9           (d) At any time before the court renders a final order in an  
10 action under Subsection (a), a person served under Subsection  
11 (b)(1)(B), (C), or (D) may file a document, in recordable form, that  
12 waives the person's rights to contest or obtain relief in  
13 connection with the relocation or subordinates the person's  
14 interests to the relocation. On filing of the document, the court  
15 may order that the person is not required to answer or participate  
16 further in the action.

17           Sec. 5.256. REQUIRED FINDINGS; ORDER. (a) The court may  
18 not approve relocation of an easement under this subchapter unless  
19 the servient estate owner:

20           (1) establishes that the easement is eligible for  
21 relocation under Section 5.253; and

22           (2) satisfies the conditions for relocation under  
23 Section 5.254.

24           (b) An order under this subchapter approving relocation of  
25 an easement must:

26           (1) state that the order is issued in accordance with  
27 this subchapter;



1           (2) recite the recording data of the instrument  
2 creating the easement, if any, and any amendments;

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

5           (4) describe in a legally sufficient manner the new  
6 location of the easement;

7           (5) describe mitigation required of the servient  
8 estate owner during relocation;

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

12           (7) specify conditions to be satisfied by the servient  
13 estate owner to relocate the easement and construct improvements  
14 necessary for the easement holder to enter, use, and enjoy the  
15 easement in the new location;

16           (8) include a provision for payment by the servient  
17 estate owner of expenses under Section 5.257;

18           (9) include a provision for compliance by the parties  
19 with the obligation of good faith under Section 5.258; and

20           (10) instruct the servient estate owner to record an  
21 affidavit, if required under Section 5.259(a), when the servient  
22 estate owner substantially completes relocation.

23           (c) An order under Subsection (b) may include any other  
24 provision consistent with this subchapter for the fair and  
25 equitable relocation of the easement.

26           (d) Before a servient estate owner proceeds with relocation  
27 of an easement under this subchapter, the owner must record, in the

1 real property records of each county where the servient estate is  
2 located, a certified copy of the order under Subsection (b).

3 Sec. 5.257. EXPENSES OF RELOCATION. A servient estate  
4 owner is responsible for reasonable expenses of relocation of an  
5 easement under this subchapter, including the expense of:

6 (1) constructing improvements on the servient estate  
7 or dominant estate in accordance with an order under Section 5.256;

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

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

13 (4) preparing and recording the certified copy  
14 required by Section 5.256(d) and any other document required to be  
15 recorded;

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

19 (6) applicable premiums for title insurance related to  
20 the relocation;

21 (7) any expert necessary to review plans and  
22 specifications for an improvement to be constructed in the  
23 relocated easement or on the dominant estate and to confirm  
24 compliance with the plans and specifications referred to in the  
25 order under Section 5.256(b)(6);

26 (8) payment of any maintenance cost associated with  
27 the relocated easement that is greater than the maintenance cost

1 associated with the easement before relocation; and

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

4 Sec. 5.258. DUTY TO ACT IN GOOD FAITH. After the court,  
5 under Section 5.256, approves relocation of an easement and the  
6 servient estate owner commences the relocation, the servient estate  
7 owner, the easement holder, and other parties in the civil action  
8 shall act in good faith to facilitate the relocation in compliance  
9 with this subchapter.

10 Sec. 5.259. RELOCATION AFFIDAVIT. (a) If an order under  
11 Section 5.256 requires the construction of an improvement as a  
12 condition for relocation of an easement, relocation is  
13 substantially complete, and the easement holder is able to enter,  
14 use, and enjoy the easement in the new location, the servient estate  
15 owner shall:

16 (1) record, in the real property records of each  
17 county where the servient estate is located, an affidavit  
18 certifying that the easement has been relocated; and

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

21 (b) Until an affidavit under Subsection (a) is recorded and  
22 sent, the easement holder may enter, use, and enjoy the easement in  
23 the current location, subject to the court's order under Section  
24 5.256 approving relocation.

25 (c) If an order under Section 5.256 does not require an  
26 improvement to be constructed as a condition of the relocation,  
27 recording the order under Section 5.256(d) constitutes relocation.

1       Sec. 5.260. LIMITED EFFECT OF RELOCATION. (a) Relocation  
2 of an easement under this subchapter:

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

5           (2) is not a breach or default of, and does not  
6 trigger, a due-on-sale clause or other transfer-restriction clause  
7 under a security instrument, except as otherwise determined by a  
8 court under law other than this subchapter;

9           (3) is not a breach or default of a lease, except as  
10 otherwise determined by a court under law other than this  
11 subchapter;

12           (4) is not a breach or default by the servient estate  
13 owner of a recorded document affected by the relocation, except as  
14 otherwise determined by a court under law other than this  
15 subchapter;

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

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

22       (b) This subchapter does not affect any other method of  
23 relocating an easement permitted under law of this state other than  
24 this subchapter.

25       Sec. 5.261. NON-WAIVER. The right of a servient estate  
26 owner to relocate an easement under this subchapter may not be  
27 waived, excluded, or restricted by agreement even if:

1           (1) the instrument creating the easement prohibits  
2 relocation or contains a waiver, exclusion, or restriction of this  
3 subchapter;

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

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

10           SECTION 2. Subchapter H, Chapter 5, Property Code, as added  
11 by this Act, applies to an easement created before, on, or after the  
12 effective date of this Act.

13           SECTION 3. This Act takes effect September 1, 2025.