

**PRESCRIPTIVE EASEMENTS ACT**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gregory H. Hughes**

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**LONG TITLE**

**General Description:**

This bill modifies the Real Estate title to address prescriptive easements.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires a person seeking to create a prescriptive easement to file notice with the county recorder;
- ▶ codifies the period of time necessary to establish a prescriptive easement; and
- ▶ requires an owner of real property establishing a prescriptive easement to compensate the owner of the affected property under certain circumstances.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**57-13b-101**, Utah Code Annotated 1953

**57-13b-102**, Utah Code Annotated 1953

**57-13b-201**, Utah Code Annotated 1953

**57-13b-202**, Utah Code Annotated 1953

**57-13b-203**, Utah Code Annotated 1953



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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **57-13b-101** is enacted to read:

**CHAPTER 13b. PRESCRIPTIVE EASEMENTS ACT**

**Part 1. General Provisions**

**57-13b-101. Title.**

This chapter is known as the "Prescriptive Easements Act."

Section 2. Section **57-13b-102** is enacted to read:

**57-13b-102. Definitions.**

As used in this chapter:

(1) "Dominant estate" means real property that benefits from the existence of a prescriptive easement.

(2) "Prescriptive easement" means a right to use another's real property that is acquired through a continuous period of open and notorious adverse use, as determined in a judicial proceeding.

(3) "Prescriptive period" means the length of time of continuous use, as defined in Section 57-13b-202, necessary to establish a prescriptive easement.

(4) "Servient estate" means real property subject to a prescriptive easement.

Section 3. Section **57-13b-201** is enacted to read:

**Part 2. Establishing a Prescriptive Easement**

**57-13b-201. Notice of prescriptive easement claim.**

(1) To establish a prescriptive easement, a person seeking to establish a prescriptive easement must file notice of that person's intent to establish a prescriptive easement at least one year before the day on which the prescriptive period described in Section 57-13b-202 ends.

(2) The notice required by Subsection (1) shall:

(a) be filed in the office of the county recorder for the county in which the servient estate lies;

(b) specifically identify the servient estate;

(c) specifically identify the dominant estate; and

(d) include a legal description of the prospective prescriptive easement.

(3) In addition to the notice required by Subsection (1), a person seeking to establish a

59 prescriptive easement must send a copy of the notice by certified mail at least one year before  
60 the day on which the prescriptive period described in Section 57-13b-202 ends to any person  
61 who appears as an owner of the servient estate in the county recorder's records.

62 Section 4. Section **57-13b-202** is enacted to read:

63 **57-13b-202. Prescriptive period.**

64 (1) Except as provided in Subsection (2), the prescriptive period for establishing a  
65 prescriptive easement is 20 years.

66 (2) If a person fails to file the notice required by Section 57-13b-201, the prescriptive  
67 period is extended until one year after the day on which the notice required by Section  
68 57-13b-201 is filed.

69 Section 5. Section **57-13b-203** is enacted to read:

70 **57-13b-203. Compensation for a prescriptive easement.**

71 (1) The owner of a dominant estate shall compensate the owner of a servient estate for  
72 any decrease in value of the servient estate caused by the existence of a prescriptive easement if  
73 the existence of the prescriptive easement is not necessary for the owner or user of the  
74 dominant estate to accomplish the purposes for which the prescriptive easement is used.

75 (2) Compensation is not due under Subsection (1) until a prescriptive easement is  
76 established in a judicial proceeding in which:

77 (a) the owner of the dominant estate is a party; and

78 (b) the owner of the servient estate is a party.

79 (3) The amount of compensation due under Subsection (1) shall be the difference  
80 between the value of the servient estate in the absence of the prescriptive easement and the  
81 value of the servient estate encumbered by the prescriptive easement.

**Legislative Review Note**  
**as of 1-17-05 4:37 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0207**

**Prescriptive Easements Act**

*25-Jan-05*

*7:47 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

This codifies prescriptive easements and requires a one year notice.

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**Office of the Legislative Fiscal Analyst**