

UNIFORM EASEMENT RELOCATION ACT

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Uniform Easement Relocation Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses the applicability of the Uniform Easement Relocation Act (Act) to certain easements;
- ▶ excludes certain easements from relocation under the Act;
- ▶ establishes the right of a property owner to relocate an easement in certain circumstances;
- ▶ allows a property owner to commence a civil action to relocate an easement;
- ▶ provides the requirements for commencing a civil action to relocate an easement;
- ▶ addresses a court order for relocation of an easement;
- ▶ requires the parties to a civil action for easement relocation to act in good faith in facilitating relocation;
- ▶ addresses when a proposed easement relocation is considered to be final and complete;
- ▶ addresses the effect of an easement relocation under the Act;
- ▶ provides that the right of a property to relocate an easement under the Act cannot be waived, excluded, or restricted by agreement;



- 28 ▶ provides that the law should be applied and construed to promote uniformity with
- 29 other states that enact the Act;
- 30 ▶ contains a provision on the Act's relation to the Electronic Signatures in Global
- 31 National Commerce Act;
- 32 ▶ provides that the Act applies to an easement created before, on, or after the effective
- 33 date of this bill; and
- 34 ▶ provides a severability clause.

35 Money Appropriated in this Bill:

36 None

37 Other Special Clauses:

38 None

39 Utah Code Sections Affected:

40 ENACTS:

- 41 **57-13c-101**, Utah Code Annotated 1953
- 42 **57-13c-102**, Utah Code Annotated 1953
- 43 **57-13c-103**, Utah Code Annotated 1953
- 44 **57-13c-104**, Utah Code Annotated 1953
- 45 **57-13c-105**, Utah Code Annotated 1953
- 46 **57-13c-106**, Utah Code Annotated 1953
- 47 **57-13c-107**, Utah Code Annotated 1953
- 48 **57-13c-108**, Utah Code Annotated 1953
- 49 **57-13c-109**, Utah Code Annotated 1953
- 50 **57-13c-110**, Utah Code Annotated 1953
- 51 **57-13c-111**, Utah Code Annotated 1953
- 52 **57-13c-112**, Utah Code Annotated 1953
- 53 **57-13c-113**, Utah Code Annotated 1953
- 54 **57-13c-114**, Utah Code Annotated 1953
- 55 **57-13c-115**, Utah Code Annotated 1953

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

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

59 CHAPTER 13c. UNIFORM EASEMENT RELOCATION ACT

60 57-13c-101. Title.

61 This chapter is known as the Uniform Easement Relocation Act.

62 Section 2. Section 57-13c-102 is enacted to read:

63 57-13c-102. Definitions.

64 As used in this chapter:

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

67 (2) "Common-interest community" means:

68 (a) an association of unit owners, as defined in Section 57-8-3;

69 (b) an association, as defined in Section 57-8a-102; or

70 (c) a cooperative, as defined in Section 57-23-2.

71 (3) "Conservation easement" means a nonpossessory property interest created for one
72 or more of the following conservation purposes:

73 (a) retaining or protecting the natural, scenic, wildlife, wildlife-habitat, biological,
74 ecological, or open-space values of real property;

75 (b) ensuring the availability of real property for agricultural, forest,
76 outdoor-recreational, or open-space uses;

77 (c) protecting natural resources, including wetlands, grasslands, and riparian areas;

78 (d) maintaining or enhancing air or water quality;

79 (e) preserving the historical, architectural, archeological, paleontological, or cultural
80 aspects of real property; or

81 (f) any other purpose under Chapter 18, Land Conservation Easement Act.

82 (4) "Dominant estate" means an estate or interest in real property benefitted by an
83 appurtenant easement.

84 (5) "Easement" means a nonpossessory property interest that:

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

87 (b) imposes on the owner or possessor a duty not to interfere with the entry, use, or
88 enjoyment permitted by the instrument creating the easement or, in the case of an easement not
89 established by express grant or reservation, the entry, use, or enjoyment authorized by law.

90 (6) "Easement holder" means:

91 (a) in the case of an appurtenant easement, the dominant estate owner; or

92 (b) in the case of an easement in gross, a public-utility easement, a conservation
93 easement, or a negative easement, the grantee of the easement or a successor.

94 (7) "Easement in gross" means an easement not tied to, or dependent on, ownership or
95 occupancy of a unit or a parcel of real property.

96 (8) "Lessee of record" means a person holding a lessee's interest under a recorded lease
97 or memorandum of lease.

98 (9) "Negative easement" means a nonpossessory property interest whose primary
99 purpose is to impose on a servient estate owner a duty not to engage in a specified use of the
100 estate.

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

104 (11) (a) "Public-utility easement" means a nonpossessory property interest in which the
105 easement holder is a publicly regulated or publicly owned utility under federal law or a law of
106 this state or a municipality.

107 (b) "Public-utility easement" includes an easement benefitting an intrastate utility, an
108 interstate utility, or a utility cooperative.

109 (12) (a) "Real property" means an estate or interest in, over, or under land, including
110 structures, fixtures, and other things that by custom, usage, or law pass with a conveyance of
111 land whether or not described or mentioned in the contract of sale or instrument of conveyance.

112 (b) "Real property" includes:

113 (i) the interest of a lessor and lessee; and

114 (ii) an interest in a common-interest community, unless the interest is personal property
115 under Chapter 23, Real Estate Cooperative Marketing Act.

116 (13) "Record", used as a noun, means information that is inscribed on a tangible
117 medium or that is stored in an electronic or other medium and is retrievable in perceivable
118 form.

119 (14) (a) "Security instrument" means a mortgage, a deed of trust, a security deed, a
120 contract for deed, a lease, or other record that creates or provides for an interest in real property

121 to secure payment or performance of an obligation, whether by acquisition or retention of a
122 lien, a lessor's interest under a lease, or title to the real property.

123 (b) "Security instrument" includes:

124 (i) a security instrument that also creates or provides for a security interest in personal
125 property;

126 (ii) a modification or amendment of a security instrument; and

127 (iii) a record creating a lien on real property to secure an obligation under a covenant
128 running with the real property or owed by a unit owner in a common-interest community.

129 (15) "Security-interest holder of record" means a person holding an interest in real
130 property created by a recorded security instrument.

131 (16) "Servient estate" means an estate or interest in real property that is burdened by an
132 easement.

133 (17) "Title evidence" means a title insurance policy, a preliminary title report or binder,
134 a title insurance commitment, an abstract of title, an attorney's opinion of title based on
135 examination of public records or an abstract of title, or any other means of reporting the state of
136 title to real property that is customary in the locality.

137 (18) "Unit" means a physical portion of a common-interest community designated for
138 separate ownership or occupancy with boundaries described in a declaration establishing the
139 common-interest community.

140 (19) (a) "Utility cooperative" means a non-profit entity whose purpose is to deliver a
141 utility service, such as electricity, oil, natural gas, water, sanitary sewer, storm water, or
142 telecommunications, to the non-profit entity's customers or members.

143 (b) "Utility cooperative" includes an electric cooperative, a rural electric cooperative, a
144 rural water district, and a rural water association.

145 Section 3. Section **57-13c-103** is enacted to read:

146 **57-13c-103. Scope -- Exclusions.**

147 (1) Except as otherwise provided in Subsection (2), this chapter applies to an easement
148 established:

149 (a) by express grant or reservation; or

150 (b) by prescription, implication, necessity, estoppel, or other method.

151 (2) This chapter may not be used to relocate:

152 (a) a public-utility easement, a conservation easement, or a negative easement; or

153 (b) an easement if the proposed location would:

154 (i) encroach on an area of an estate burdened by a conservation easement; or

155 (ii) interfere with the use or enjoyment of a public-utility easement or an easement

156 appurtenant to a conservation easement.

157 (3) This chapter does not apply to relocation of an easement by consent.

158 Section 4. Section **57-13c-104** is enacted to read:

159 **57-13c-104. Right of servient estate owner to relocate easement.**

160 A servient estate owner may relocate an easement under this chapter only if the
161 relocation does not materially:

162 (1) lessen the utility of the easement;

163 (2) after the relocation, increase the burden on the easement holder in the easement
164 holder's reasonable use and enjoyment of the easement;

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

167 (4) during or after the relocation, impair the safety of the easement holder or another
168 person entitled to use and enjoy the easement;

169 (5) during the relocation, disrupt the use and enjoyment of the easement by the
170 easement holder or another person entitled to use and enjoy the easement, unless the servient
171 estate owner substantially mitigates the duration and nature of the disruption;

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

174 (7) impair the value of the collateral of a security-interest holder of record in the
175 servient estate or dominant estate;

176 (8) impair a real-property interest of a lessee of record in the dominant estate; or

177 (9) impair a recorded real-property interest of any other person in the servient estate or
178 dominant estate.

179 Section 5. Section **57-13c-105** is enacted to read:

180 **57-13c-105. Commencement of civil action.**

181 (1) To obtain an order to relocate an easement under this chapter, a servient estate
182 owner shall commence a civil action.

183 (2) A servient estate owner that commences a civil action under Subsection (1):
184 (a) shall serve a summons and complaint on:
185 (i) the easement holder whose easement is the subject of the relocation;
186 (ii) a security-interest holder of record of an interest in the servient estate or dominant
187 estate;
188 (iii) a lessee of record of an interest in the dominant estate; and
189 (iv) except as otherwise provided in Subsection (2)(b), any other owner of a recorded
190 real-property interest if the relocation would encroach on an area of the servient estate or
191 dominant estate burdened by the interest; and
192 (b) is not required to serve a summons and complaint on the owner of a recorded
193 real-property interest in oil, gas, or minerals unless the interest includes an easement to
194 facilitate oil, gas, or mineral development.
195 (3) A complaint under this section shall state:
196 (a) the intent of the servient estate owner to seek the relocation;
197 (b) the nature, extent, and anticipated dates of commencement and completion of the
198 proposed relocation;
199 (c) the current and proposed locations of the easement;
200 (d) the reason the easement is eligible for relocation under Section [57-13c-103](#);
201 (e) the reason the proposed relocation satisfies the conditions for relocation under
202 Section [57-13c-104](#); and
203 (f) that the servient estate owner has made a reasonable attempt to notify the holders of
204 any public-utility easement, conservation easement, or negative easement on the servient estate
205 or dominant estate of the proposed relocation.
206 (4) (a) At any time before the court renders a final order in an action under Subsection
207 (1), a person served under Subsection (2)(a)(ii), (iii), or (iv) may file a document, in recordable
208 form, that waives the person's rights to contest or obtain relief in connection with the relocation
209 or subordinates the person's interests to the relocation.
210 (b) On filing of the document, the court may order that the person is not required to
211 answer or participate further in the action.
212 Section 6. Section **57-13c-106** is enacted to read:
213 **57-13c-106. Required findings -- Order.**

214 (1) The court may not approve relocation of an easement under this chapter unless the
215 servient estate owner:

216 (a) establishes that the easement is eligible for relocation under Section [57-13c-103](#);

217 and

218 (b) satisfies the conditions for relocation under Section [57-13c-104](#).

219 (2) An order under this chapter approving relocation of an easement shall:

220 (a) state that the order is issued in accordance with this chapter;

221 (b) recite the recording data of the instrument creating the easement, if any, and any
222 amendments and any notice under Chapter 9, Marketable Record Title;

223 (c) identify the immediately preceding location of the easement;

224 (d) describe in a legally sufficient manner the new location of the easement;

225 (e) describe mitigation required of the servient estate owner during relocation;

226 (f) refer in detail to the plans and specifications of improvements necessary for the
227 easement holder to enter, use, and enjoy the easement in the new location;

228 (g) specify conditions to be satisfied by the servient estate owner to relocate the
229 easement and construct improvements necessary for the easement holder to enter, use, and
230 enjoy the easement in the new location;

231 (h) include a provision for payment by the servient estate owner of expenses under
232 Section [57-13c-107](#);

233 (i) include a provision for compliance by the parties with the obligation of good faith
234 under Section [57-13c-108](#); and

235 (j) instruct the servient estate owner to record an affidavit, if required under Subsection
236 [57-13c-109](#)(1), when the servient estate owner substantially completes relocation.

237 (3) An order under Subsection (2) may include any other provision consistent with this
238 chapter for the fair and equitable relocation of the easement.

239 (4) Before a servient estate owner proceeds with relocation of an easement under this
240 chapter, the owner shall record, in the land records of each jurisdiction where the servient
241 estate is located, a certified copy of the order under Subsection (2).

242 Section 7. Section **57-13c-107** is enacted to read:

243 **57-13c-107. Expenses of relocation.**

244 A servient estate owner is responsible for reasonable expenses of relocation of an

245 easement under this chapter, including the expense of:

246 (1) constructing improvements on the servient estate or dominant estate in accordance
 247 with an order under Section 57-13c-106;

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

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

252 (4) preparing and recording the certified copy required by Subsection 57-13c-106(4)
 253 and any other document required to be recorded;

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

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

257 (7) any expert necessary to review plans and specifications for an improvement to be
 258 constructed in the relocated easement or on the dominant estate and to confirm compliance
 259 with the plans and specifications referred to in the order under Subsection 57-13c-106(2)(f);

260 (8) payment of any maintenance cost associated with the relocated easement that is
 261 greater than the maintenance cost associated with the easement before relocation; and

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

263 Section 8. Section **57-13c-108** is enacted to read:

264 **57-13c-108. Duty to act in good faith.**

265 After the court, under Section 57-13c-106, approves relocation of an easement and the
 266 servient estate owner commences the relocation, the servient estate owner, the easement holder,
 267 and other parties in the civil action shall act in good faith to facilitate the relocation in
 268 compliance with this chapter.

269 Section 9. Section **57-13c-109** is enacted to read:

270 **57-13c-109. Relocation affidavit.**

271 (1) If an order under Section 57-13c-106 requires the construction of an improvement
 272 as a condition for relocation of an easement, relocation is substantially complete, and the
 273 easement holder is able to enter, use, and enjoy the easement in the new location, the servient
 274 estate owner shall:

275 (a) record, in the land records of each jurisdiction where the servient estate is located,

276 an affidavit certifying that the easement has been relocated; and

277 (b) send, by certified mail, a copy of the recorded affidavit to the easement holder and
278 parties to the civil action.

279 (2) Until an affidavit under Subsection (1) is recorded and sent, the easement holder
280 may enter, use, and enjoy the easement in the current location, subject to the court's order under
281 Section 57-13c-106 approving relocation.

282 (3) If an order under Section 57-13c-106 does not require an improvement to be
283 constructed as a condition of the relocation, recording the order under Subsection
284 57-13c-106(4) constitutes relocation.

285 Section 10. Section 57-13c-110 is enacted to read:

286 **57-13c-110. Limited effect on relocation.**

287 (1) Relocation of an easement under this chapter:

288 (a) is not a new transfer or a new grant of an interest in the servient estate or the
289 dominant estate;

290 (b) is not a breach or default of, and does not trigger, a due-on-sale clause or other
291 transfer-restriction clause under a security instrument, except as otherwise determined by a
292 court under a law other than this chapter;

293 (c) is not a breach or default of a lease, except as otherwise determined by a court
294 under a law other than this chapter;

295 (d) is not a breach or default by the servient estate owner of a recorded document
296 affected by the relocation, except as otherwise determined by a court under a law other than
297 this chapter;

298 (e) does not affect the priority of the easement with respect to other recorded
299 real-property interests burdening the area of the servient estate where the easement was located
300 before the relocation; and

301 (f) is not a fraudulent conveyance or voidable transaction under law.

302 (2) This chapter does not affect any other method of relocating an easement permitted
303 under a law of this state other than this chapter.

304 Section 11. Section 57-13c-111 is enacted to read:

305 **57-13c-111. Nonwaiver.**

306 The right of a servient estate owner to relocate an easement under this chapter may not

307 be waived, excluded, or restricted by agreement even if:

308 (1) the instrument creating the easement prohibits relocation or contains a waiver,
309 exclusion, or restriction of this chapter;

310 (2) the instrument creating the easement requires consent of the easement holder to
311 amend the terms of the easement; or

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

314 Section 12. Section **57-13c-112** is enacted to read:

315 **57-13c-112. Uniformity of application and construction.**

316 In applying and construing this uniform act, consideration shall be given to the need to
317 promote uniformity of the uniform law with respect to the uniform law's subject matter among
318 the states that enact the uniform law.

319 Section 13. Section **57-13c-113** is enacted to read:

320 **57-13c-113. Relation to Electronic Signatures in Global and National Commerce**
321 **Act.**

322 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
323 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede
324 Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the
325 notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

326 Section 14. Section **57-13c-114** is enacted to read:

327 **57-13c-114. Transitional provision.**

328 This chapter applies to an easement created before, on, or after May 5, 2021.

329 Section 15. Section **57-13c-115** is enacted to read:

330 **57-13c-115. Severability.**

331 If any provision of this chapter or the application of the chapter to any person or
332 circumstance is held invalid, the invalidity does not affect other provisions or applications of
333 this chapter that can be given effect without the invalid provision or application, and to this end
334 the provisions of this chapter are severable.