

Representative V. Lowry Snow proposes the following substitute bill:

UNIFORM EASEMENT RELOCATION ACT

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Michael K. McKell

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;



- 26 ▶ provides that the right of a property to relocate an easement under the Act cannot be
- 27 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

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

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

58 **CHAPTER 13c. UNIFORM EASEMENT RELOCATION ACT**

59 **57-13c-101. Definitions.**

60 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

86 (6) "Easement holder" means:

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

88 (b) in the case of an easement in gross, a public-entity easement, a public-utility
89 easement, a conservation easement, or a negative easement, the grantee of the easement or a
90 successor.

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

93 (8) "Highway" means the same as that term is defined in Section [72-1-102](#).

94 (9) "Lessee of record" means a person holding a lessee's interest under a recorded lease
95 or memorandum of lease.

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

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

102 (12) "Public entity" means:

103 (a) the United States;

104 (b) an agency of the United States;

105 (c) the state;

106 (d) a political subdivision of the state; or

107 (e) an agency of the state or a political subdivision of the state.

108 (13) "Public-entity easement" means a nonpossessory property interest in which the
109 easement holder is a public entity.

110 (14) "Public utility" means the same as that term is defined in Section [54-2-1](#).

111 (15) (a) "Public-utility easement" means a nonpossessory property interest, including
112 an easement, a right of way, a grant, a permit, a license, or a similar right, that has been granted
113 to:

114 (i) a public utility;

115 (ii) a publicly regulated utility or a publicly owned utility under federal law or the laws
116 of this state or a municipality;

117 (iii) an interstate utility regulated by the Federal Energy Regulatory Commission; or

118 (iv) a utility cooperative.

- 119 **(b) "Public-utility easement" includes:**
120 **(i) an easement benefitting an intrastate utility, an interstate utility, or a utility**
121 **cooperative;**
122 **(ii) a protected utility easement as defined in Section 54-3-27; and**
123 **(iii) a public utility easement as defined in Section 54-3-27.**
124 **(16) "Public transit facility" means the same as that term is defined in Section**
125 **72-1-102.**
126 **(17) (a) "Real property" means an estate or interest in, over, or under land, including**
127 **structures, fixtures, and other things that by custom, usage, or law pass with a conveyance of**
128 **land whether or not described or mentioned in the contract of sale or instrument of conveyance.**
129 **(b) "Real property" includes:**
130 **(i) the interest of a lessor and lessee; and**
131 **(ii) an interest in a common-interest community, unless the interest is personal property**
132 **under Chapter 23, Real Estate Cooperative Marketing Act.**
133 **(18) "Record," used as a noun, means information that is inscribed on a tangible**
134 **medium or that is stored in an electronic or other medium and is retrievable in perceivable**
135 **form.**
136 **(19) (a) "Security instrument" means a mortgage, a deed of trust, a security deed, a**
137 **contract for deed, a lease, or other record that creates or provides for an interest in real property**
138 **to secure payment or performance of an obligation, whether by acquisition or retention of a**
139 **lien, a lessor's interest under a lease, or title to the real property.**
140 **(b) "Security instrument" includes:**
141 **(i) a security instrument that also creates or provides for a security interest in personal**
142 **property;**
143 **(ii) a modification or amendment of a security instrument; and**
144 **(iii) a record creating a lien on real property to secure an obligation under a covenant**
145 **running with the real property or owed by a unit owner in a common-interest community.**
146 **(20) "Security-interest holder of record" means a person holding an interest in real**
147 **property created by a recorded security instrument.**
148 **(21) "Servient estate" means an estate or interest in real property that is burdened by an**
149 **easement.**

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

154 (23) "Unit" means a physical portion of a common-interest community designated for
155 separate ownership or occupancy with boundaries described in a declaration establishing the
156 common-interest community.

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

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

162 (25) "Water-conveyance easement" means a ditch, canal, flume, pipeline, or other
163 watercourse used to convey water used for irrigation or storm water drainage, culinary or
164 industrial water, or a federal water project facility.

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

166 **57-13c-102. Scope -- Exclusions.**

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

169 (a) by express grant or reservation; or

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

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

172 (a) a conservation easement, a negative easement, a public-entity easement, a public-
173 utility easement, or a water-conveyance easement;

174 (b) an easement held by a mine operator and used in connection with a vested mining
175 use that is recorded in accordance with Section [17-41-501](#);

176 (c) any easement associated in any way with a highway or a public transit facility; or

177 (d) an easement if the proposed location would:

178 (i) encroach on an area of an estate burdened by a conservation easement, a

179 public-entity easement, a public-utility easement, a water-conveyance easement, a highway, or

180 a public transit facility; or

181 (ii) interfere with the use or enjoyment of:

182 (A) a public-entity easement, a public-utility easement, or a water-conveyance

183 easement; or

184 (B) an easement appurtenant to a conservation easement, a highway, or a public transit

185 facility.

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

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

188 **57-13c-103. Right of servient estate owner to relocate easement.**

189 A servient estate owner may relocate an easement under this chapter only if the

190 relocation does not materially:

191 (1) lessen the utility of the easement;

192 (2) after the relocation, increase the burden on the easement holder in the easement

193 holder's reasonable use and enjoyment of the easement;

194 (3) impair an affirmative, easement-related purpose for which the easement was

195 created;

196 (4) during or after the relocation, impair the safety of the easement holder or another

197 person entitled to use and enjoy the easement;

198 (5) during the relocation, disrupt the use and enjoyment of the easement by the

199 easement holder or another person entitled to use and enjoy the easement, unless the servient

200 estate owner substantially mitigates the duration and nature of the disruption;

201 (6) impair the physical condition, use, or value of the dominant estate or improvements

202 on the dominant estate;

203 (7) impair the value of the collateral of a security-interest holder of record in the

204 servient estate or dominant estate;

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

206 (9) impair a recorded real-property interest of any other person in the servient estate or

207 dominant estate.

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

209 **57-13c-104. Commencement of civil action.**

210 (1) To obtain an order to relocate an easement under this chapter, a servient estate

211 owner shall commence a civil action.

212 (2) (a) Except as provided in Subsection (2)(b), a servient estate owner that
213 commences a civil action under Subsection (1) shall serve a summons and complaint on:

- 214 (i) the easement holder whose easement is the subject of the relocation;
- 215 (ii) a security-interest holder of record of an interest in the servient estate or dominant
216 estate;
- 217 (iii) a lessee of record of an interest in the dominant estate; and
- 218 (iv) any other owner of a recorded real-property interest if the relocation would
219 encroach on an area of the servient estate or dominant estate burdened by the interest.

220 (b) A servient estate owner is not required to serve a summons and complaint under
221 Subsection (2)(a) on the owner of a recorded real-property interest in oil, gas, or minerals in the
222 dominant estate unless:

- 223 (i) the real-property interest includes an easement to facilitate oil, gas, or mineral
224 development; or
- 225 (ii) the owner is a lessee of record of a real-property interest in oil, gas, or minerals in
226 the dominant estate.

227 (3) A complaint under this section shall state:

- 228 (a) the intent of the servient estate owner to seek the relocation;
- 229 (b) the nature, extent, and anticipated dates of commencement and completion of the
230 proposed relocation;
- 231 (c) the current and proposed locations of the easement;
- 232 (d) the reason the easement is eligible for relocation under Section [57-13c-102](#);
- 233 (e) the reason the proposed relocation satisfies the conditions for relocation under
234 Section [57-13c-103](#); and
- 235 (f) that the servient estate owner has made a reasonable attempt to notify the holders of
236 any public-utility easement, conservation easement, or negative easement on the servient estate
237 or dominant estate of the proposed relocation.

238 (4) (a) At any time before the court renders a final order in an action under Subsection
239 (1), a person served under Subsection (2)(a)(ii), (iii), or (iv) may file a document, in recordable
240 form, that waives the person's rights to contest or obtain relief in connection with the relocation
241 or subordinates the person's interests to the relocation.

242 (b) On filing of the document, the court may order that the person is not required to

243 answer or participate further in the action.

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

245 **57-13c-105. Required findings -- Order -- Recording of relocated easement.**

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

248 (a) establishes that the easement is eligible for relocation under Section [57-13c-102](#);

249 and

250 (b) satisfies the conditions for relocation under Section [57-13c-103](#).

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

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

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

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

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

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

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

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

263 (h) include a provision for payment by the servient estate owner of expenses under
264 Section [57-13c-106](#);

265 (i) include a provision for compliance by the parties with the obligation of good faith
266 under Section [57-13c-107](#); and

267 (j) instruct the servient estate owner to record an affidavit, if required under Subsection
268 [57-13c-108](#)(1), when the servient estate owner substantially completes relocation.

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

271 (4) (a) Before a servient estate owner proceeds with relocation of an easement under
272 this chapter, the servient estate owner shall:

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

274 certified copy of the order under Subsection (2); or

275 (ii) if the easement was established by the recording of a subdivision plat or a
276 condominium plat, record an amended plat in the land records for the jurisdiction where the
277 servient estate is located.

278 (b) If a servient estate owner is required to record an amended plat under Subsection
279 (4)(a)(ii):

280 (i) the servient estate owner is not required to obtain the signatures on the amended plat
281 of the other property owners within the platted area or provide notice of the amended plat; and

282 (ii) the applicable land use authority is not required to hold a public hearing or consider
283 the amended plat in a public meeting if the easement relocation is the only amendment to the
284 plat.

285 (c) If a public entity is required to sign an amended plat, the public entity shall sign the
286 amended plat for compliance with the order under Subsection (2).

287 Section 6. Section **57-13c-106** is enacted to read:

288 **57-13c-106. Expenses of relocation.**

289 A servient estate owner is responsible for reasonable expenses of relocation of an
290 easement under this chapter, including the expense of:

291 (1) constructing improvements on the servient estate or dominant estate in accordance
292 with an order under Section [57-13c-105](#);

293 (2) removing and demolishing any existing improvements on the dominant estate in
294 accordance with an order under Section [57-13-105](#);

295 (3) any liability or damages incurred by the easement holder arising out of the
296 relocation of the easement, including environmental investigation, remediation, restoration, or
297 reclamation expenses and any reasonable attorney fees associated with the liability or damages
298 incurred by the easement holder;

299 (4) any cleanup, removal, repair, remediation, detoxification, or restoration required by
300 a public entity;

301 (5) during the relocation, mitigating disruption in the use and enjoyment of the
302 easement by the easement holder or another person entitled to use and enjoy the easement;

303 (6) obtaining a governmental approval or permit to relocate the easement and construct
304 necessary improvements;

305 (7) preparing and recording the certified copy required by Subsection 57-13c-105(4)
306 and any other document required to be recorded;

307 (8) any title, survey, or site investigation work required to complete the relocation or
308 required by a party to the civil action as a result of the relocation;

309 (9) applicable premiums for title insurance related to the relocation;

310 (10) any expert necessary to review plans and specifications for an improvement to be
311 constructed in the relocated easement or on the dominant estate and to confirm compliance
312 with the plans and specifications referred to in the order under Subsection 57-13c-105(2)(f);

313 (11) payment of any maintenance cost associated with the relocated easement that is
314 greater than the maintenance cost associated with the easement before relocation; and

315 (12) obtaining any third-party consent required to relocate the easement.

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

317 **57-13c-107. Duty to act in good faith.**

318 After the court, under Section 57-13c-105, approves relocation of an easement and the
319 servient estate owner commences the relocation, the servient estate owner, the easement holder,
320 and other parties in the civil action shall act in good faith to facilitate the relocation in
321 compliance with this chapter.

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

323 **57-13c-108. Relocation affidavit.**

324 (1) If an order under Section 57-13c-105 requires the construction of an improvement
325 as a condition for relocation of an easement, relocation is substantially complete, and the
326 easement holder is able to enter, use, and enjoy the easement in the new location, the servient
327 estate owner shall:

328 (a) record, in the land records of each jurisdiction where the servient estate is located,
329 an affidavit certifying that the easement has been relocated; and

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

332 (2) Until an affidavit under Subsection (1) is recorded and sent, the easement holder
333 may enter, use, and enjoy the easement in the current location, subject to the court's order under
334 Section 57-13c-105 approving relocation.

335 (3) If an order under Section 57-13c-105 does not require an improvement to be

336 constructed as a condition of the relocation, recording the order under Subsection
337 57-13c-105(4) constitutes relocation.

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

339 **57-13c-109. Limited effect on relocation.**

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

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

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

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

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

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

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

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

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

358 **57-13c-110. Nonwaiver.**

359 The right of a servient estate owner to relocate an easement under this chapter may not
360 be waived, excluded, or restricted by agreement even if:

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

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

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

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

368 **57-13c-111. Uniformity of application and construction.**

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

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

373 **57-13c-112. Relation to Electronic Signatures in Global and National Commerce**
374 **Act.**

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

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

380 **57-13c-113. Transitional provision.**

381 This chapter applies to an easement created before, on, or after May 4, 2022.

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

383 **57-13c-114. Severability.**

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