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~~deleted text~~ shows text that was in HB0132 but was deleted in HB0132S01.

inserted text shows text that was not in HB0132 but was inserted into HB0132S01.

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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: _____

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;

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

57-13c-101, Utah Code Annotated 1953

57-13c-102, Utah Code Annotated 1953

57-13c-103, Utah Code Annotated 1953

57-13c-104, Utah Code Annotated 1953

57-13c-105, Utah Code Annotated 1953

57-13c-106, Utah Code Annotated 1953

57-13c-107, Utah Code Annotated 1953

57-13c-108, Utah Code Annotated 1953

57-13c-109, Utah Code Annotated 1953

57-13c-110, Utah Code Annotated 1953

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57-13c-111, Utah Code Annotated 1953

57-13c-112, Utah Code Annotated 1953

57-13c-113, Utah Code Annotated 1953

57-13c-114, Utah Code Annotated 1953

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

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

CHAPTER 13c. UNIFORM EASEMENT RELOCATION ACT

57-13c-101. Definitions.

As used in this chapter:

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

(2) "Common-interest community" means:

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

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

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

(3) "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;

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

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

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

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

(a) provides a right to enter, use, or enjoy real property owned by or in the possession

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of another; and

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

(6) "Easement holder" means:

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

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

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

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

(~~8~~9) "Lessee of record" means a person holding a lessee's interest under a recorded lease or memorandum of lease.

(~~9~~10) "Negative easement" means a nonpossessory property interest whose primary purpose is to impose on a servient estate owner a duty not to engage in a specified use of the estate.

(~~10~~11) "Person" means an individual, an estate, a business or a nonprofit entity, a public corporation, a government or governmental subdivision, an agency, or an instrumentality, or other legal entity.

(~~11~~(a) "Public-utility"12) "Public entity" means:

(a) the United States;

(b) an agency of the United States;

(c) the state;

(d) a political subdivision of the state; or

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

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

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

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

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to:

(i) a public utility;

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

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

(iv) a utility cooperative.

(b) "Public-utility easement" includes:

(i) an easement benefitting an intrastate utility, an interstate utility, or a utility cooperative;

(ii) a protected utility easement as defined in Section 54-3-27; and

(iii) a public utility easement as defined in Section 54-3-27.

(16) "Public transit facility" means the same as that term is defined in Section 72-1-102.

(~~12~~17) (a) "Real property" means an estate or interest in, over, or under land, including structures, fixtures, and other things that by custom, usage, or law pass with a conveyance of land whether or not described or mentioned in the contract of sale or instrument of conveyance.

(b) "Real property" includes:

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

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

(~~13~~18) "Record," ~~is~~ used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(~~14~~19) (a) "Security instrument" means a mortgage, a deed of trust, a security deed, a contract for deed, a lease, or other record that creates or provides for an interest in real property to secure payment or performance of an obligation, whether by acquisition or retention of a lien, a lessor's interest under a lease, or title to the real property.

(b) "Security instrument" includes:

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

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

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

~~(15)~~20 "Security-interest holder of record" means a person holding an interest in real property created by a recorded security instrument.

~~(16)~~21 "Servient estate" means an estate or interest in real property that is burdened by an easement.

~~(17)~~22 "Title evidence" means a title insurance policy, a preliminary title report or binder, a title insurance commitment, an abstract of title, an attorney's opinion of title based on examination of public records or an abstract of title, or any other means of reporting the state of title to real property that is customary in the locality.

~~(18)~~23 "Unit" means a physical portion of a common-interest community designated for separate ownership or occupancy with boundaries described in a declaration establishing the common-interest community.

~~(19)~~24 (a) "Utility cooperative" means a non-profit entity whose purpose is to deliver a utility service, such as electricity, oil, natural gas, water, sanitary sewer, storm water, or telecommunications, to the non-profit entity's customers or members.

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

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

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

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

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

(a) by express grant or reservation; or

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

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

(a) a ~~public-utility easement, a~~ conservation easement, ~~for~~ a negative easement, a public-entity easement, a public-utility easement, or a water-conveyance easement;

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

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

(~~b~~d) an easement if the proposed location would:

(i) encroach on an area of an estate burdened by a conservation easement, a public-entity easement, a public-utility easement, a water-conveyance easement, a highway, or a public transit facility; or

(ii) interfere with the use or enjoyment of:

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

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

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

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

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

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

(1) lessen the utility of the easement;

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

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

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

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

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

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

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

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

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

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

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

(2) ~~§A~~(a) Except as provided in Subsection (2)(b), a servient estate owner that commences a civil action under Subsection (1)~~;~~

~~(a)~~ shall serve a summons and complaint on:

(i) the easement holder whose easement is the subject of the relocation;

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

(iii) a lessee of record of an interest in the dominant estate; and

(iv) ~~except as otherwise provided in Subsection (2)(b),~~ any other owner of a recorded real-property interest if the relocation would encroach on an area of the servient estate or dominant estate burdened by the interest~~;~~ and~~;~~

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

(i) the real-property interest includes an easement to facilitate oil, gas, or mineral development; or

(ii) the owner is a lessee of record of a real-property interest in oil, gas, or minerals in the dominant estate.

(3) A complaint under this section shall state:

(a) the intent of the servient estate owner to seek the relocation;

(b) the nature, extent, and anticipated dates of commencement and completion of the proposed relocation;

(c) the current and proposed locations of the easement;

(d) the reason the easement is eligible for relocation under Section 57-13c-102;

(e) the reason the proposed relocation satisfies the conditions for relocation under

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Section 57-13c-103; and

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

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

(b) On filing of the document, the court may order that the person is not required to answer or participate further in the action.

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

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

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

(a) establishes that the easement is eligible for relocation under Section 57-13c-102;
and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) record, in the land records of each jurisdiction where the servient estate is located, a certified copy of the order under Subsection (2); or

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

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

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

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

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

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

57-13c-106. Expenses of relocation.

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

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

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

(3) any liability or damages incurred by the easement holder arising out of the

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relocation of the easement, including environmental investigation, remediation, restoration, or reclamation expenses and any reasonable attorney fees associated with the liability or damages incurred by the easement holder;

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

(~~2~~5) during the relocation, mitigating disruption in the use and enjoyment of the easement by the easement holder or another person entitled to use and enjoy the easement;

(~~3~~6) obtaining a governmental approval or permit to relocate the easement and construct necessary improvements;

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

(~~5~~8) any title, survey, or site investigation work required to complete the relocation or required by a party to the civil action as a result of the relocation;

(~~6~~9) applicable premiums for title insurance related to the relocation;

(~~7~~10) any expert necessary to review plans and specifications for an improvement to be constructed in the relocated easement or on the dominant estate and to confirm compliance with the plans and specifications referred to in the order under Subsection 57-13c-105(2)(f);

(~~8~~11) payment of any maintenance cost associated with the relocated easement that is greater than the maintenance cost associated with the easement before relocation; and

(~~9~~12) obtaining any third-party consent required to relocate the easement.

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

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

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

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

57-13c-108. Relocation affidavit.

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

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estate owner shall:

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

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

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

(3) If an order under Section 57-13c-105 does not require an improvement to be constructed as a condition of the relocation, recording the order under Subsection 57-13c-105(4) constitutes relocation.

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

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

(1) Relocation of an easement under this chapter:

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

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

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

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

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

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

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

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

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57-13c-110. Nonwaiver.

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

- (1) the instrument creating the easement prohibits relocation or contains a waiver, exclusion, or restriction of this chapter;
- (2) the instrument creating the easement requires consent of the easement holder to amend the terms of the easement; or
- (3) the location of the easement is fixed by the instrument creating the easement, another agreement, previous conduct, acquiescence, estoppel, or implication.

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

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

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

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

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

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

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

57-13c-113. Transitional provision.

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

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

57-13c-114. Severability.

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