

SENATE BILL NO. 106—SENATOR D. HARRIS

FEBRUARY 9, 2021

Referred to Committee on Judiciary

SUMMARY—Enacts the Uniform Easement Relocation Act. (BDR 10-833)

FISCAL NOTE: Effect on Local Government: No. Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to property; enacting the Uniform Easement Relocation Act; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

This bill establishes the Uniform Easement Relocation Act. **Section 2** of this bill provides that **sections 2-30** of this bill may be cited as the Uniform Easement Relocation Act. **Section 19** of this bill provides that the Act: (1) is applicable regardless of the method of creation of the easement established under certain circumstances; (2) may not be used to relocate any public-utility easement, conservation easement or negative easement and in certain other situations related to public-utility easements and conservation easements; and (3) does not prohibit parties from consenting to the relocation of any easement.

**Section 21** of this bill requires the owner of a servient estate who seeks to relocate an easement to obtain an order to relocate the easement by commencing a civil action if the proposed relocation meets certain minimum qualifications provided in **section 20** of this bill. **Section 21** sets forth certain procedural requirements concerning the action for the relocation of the easement.

**Section 22** of this bill requires: (1) a court to make certain findings before authorizing the relocation of the easement; (2) an order authorizing the relocation of the easement to contain certain information; and (3) the owner of the servient estate to record, in the proper jurisdiction, a certified copy of the order authorizing the relocation of the easement.

**Section 23** of this bill: (1) provides that the owner of the servient estate is responsible for the expenses of relocating the easement; and (2) enumerates such expenses.

**Section 24** of this bill requires that, after the court approves the relocation of an easement and the owner of the servient estate commences the relocation, the owner of the servient estate, the easement holder and any other party to the civil action for the relocation of the easement act in good faith in facilitating such relocation.

**Section 25** of this bill provides the circumstances under which the relocation of the easement is considered final and complete as a legal fact. **Section 26** of this bill



28 limits the effect of the relocation of the easement. **Section 27** of this bill provides  
29 that the rights of the owner of the servient estate provided by the provisions of the  
30 Uniform Easement Relocation Act may not be waived, excluded or restricted by  
31 agreement.

32 **Section 28** of this bill provides that the provisions of the Uniform Easement  
33 Relocation Act must be construed to promote uniformity among the states which  
34 adopt the Act. **Section 29** of this bill sets forth the applicability of the provisions of  
35 the Uniform Easement Relocation Act in relation to provisions of the Electronic  
36 Signatures in Global and National Commerce Act. **Section 30** of this bill  
37 establishes a severability clause.

38 **Sections 3-18** of this bill establish various definitions relating to the Uniform  
39 Easement Relocation Act.

40 **Section 31** of this bill provides that the provisions of the Uniform Easement  
41 Relocation Act apply to an easement created before, on or after October 1, 2021.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 111 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 30, inclusive, of this  
3 act.

4 **Sec. 2.** *Sections 2 to 30, inclusive, of this act may be cited as*  
5 *the Uniform Easement Relocation Act.*

6 **Sec. 3.** *As used in sections 2 to 30, inclusive, of this act,*  
7 *unless the context otherwise requires, the words and terms defined*  
8 *in sections 4 to 18, inclusive, of this act have the meanings*  
9 *ascribed to them in those sections.*

10 **Sec. 4.** *“Appurtenant easement” means an easement tied to*  
11 *or dependent on ownership or occupancy of a unit or parcel of*  
12 *real property.*

13 **Sec. 5.** *“Conservation easement” means a nonpossessory*  
14 *property interest created for one or more of the following*  
15 *purposes:*

16 1. *Retaining or protecting the natural, scenic, wildlife,*  
17 *wildlife-habitat, biological, ecological or open-space values of real*  
18 *property;*

19 2. *Ensuring the availability of real property for agricultural,*  
20 *forest, outdoor-recreational or open-space uses;*

21 3. *Protecting natural resources, including, without limitation,*  
22 *wetlands, grasslands and riparian areas;*

23 4. *Maintaining or enhancing air or water quality; or*

24 5. *Preserving the historical, architectural, archeological,*  
25 *paleontological or cultural aspects of real property.*

26 **Sec. 6.** *“Dominant estate” means an estate or interest in real*  
27 *property benefited by an appurtenant easement.*

28 **Sec. 7.** *“Easement” means a nonpossessory property interest*  
29 *that:*



1 *1. Provides a right to enter, use or enjoy real property owned*  
2 *by or in the possession of another; and*

3 *2. Imposes on the owner or possessor a duty not to interfere*  
4 *with the entry, use or enjoyment permitted by the instrument*  
5 *creating the easement or, in the case of an easement not*  
6 *established by express grant or reservation, the entry, use or*  
7 *enjoyment authorized by law.*

8 **Sec. 8. 1. “Easement holder” means:**

9 *(a) In the case of an appurtenant easement, the owner of the*  
10 *dominant estate.*

11 *(b) In the case of an easement in gross, a public-utility*  
12 *easement, a conservation easement or a negative easement, the*  
13 *grantee of the easement or a successor.*

14 *2. As used in this section, “easement in gross” means an*  
15 *easement not tied to or dependent on ownership or occupancy of a*  
16 *unit or parcel of real property.*

17 **Sec. 9. “Lessee of record” means a person holding the**  
18 *interest of a lessee under a recorded lease or memorandum of*  
19 *lease.*

20 **Sec. 10. “Negative easement” means a nonpossessory**  
21 *property interest whose primary purpose is to impose on the owner*  
22 *of a servient estate a duty not to engage in a specified use of the*  
23 *estate.*

24 **Sec. 11. “Person” means an individual, estate, business or**  
25 *nonprofit entity, public corporation, government or governmental*  
26 *subdivision, agency or instrumentality or other legal entity.*

27 **Sec. 12. 1. “Public-utility easement” means a**  
28 *nonpossessory property interest in which the easement holder is a*  
29 *publicly regulated or publicly owned utility pursuant to federal law*  
30 *or the laws of this State or a political subdivision thereof. The term*  
31 *includes, without limitation, an easement benefiting an intrastate*  
32 *utility, an interstate utility or a utility cooperative.*

33 *2. As used in this section:*

34 *(a) “Utility cooperative” means a nonprofit entity whose*  
35 *purpose is to deliver a utility service to its customers or members.*  
36 *The term includes an electric cooperative, rural electric*  
37 *cooperative, rural water district and rural water association.*

38 *(b) “Utility service” includes, without limitation, a service for*  
39 *electricity, oil, natural gas, water, sanitary sewer, storm water or*  
40 *telecommunications.*

41 **Sec. 13. “Real property” means an estate or interest in, over**  
42 *or under land, including, without limitation, structures, fixtures*  
43 *and other things that by custom, usage or law pass with a*  
44 *conveyance of land whether or not described or mentioned in the*



1 *contract of sale or instrument of conveyance. The term includes,*  
2 *without limitation:*

3 *1. The interest of a lessor and lessee; and*

4 *2. Unless the interest is personal property pursuant to any*  
5 *other applicable law, an interest in a common-interest community.*

6 **Sec. 14.** *“Record” means information that is inscribed on a*  
7 *tangible medium or that is stored in an electronic or other medium*  
8 *and is retrievable in perceivable form.*

9 **Sec. 15.** *“Security instrument” means a mortgage, deed of*  
10 *trust, security deed, contract for deed, lease or other record that*  
11 *creates or provides for an interest in real property to secure*  
12 *payment or performance of an obligation, whether by acquisition*  
13 *or retention of a lien, the interest of a lessor under a lease or a title*  
14 *to the real property. The term includes, without limitation:*

15 *1. A security instrument that also creates or provides for a*  
16 *security interest in personal property;*

17 *2. A modification or amendment of a security instrument; or*

18 *3. A record creating a lien on real property to secure an*  
19 *obligation under a covenant running with the real property or*  
20 *owed by the owner of a unit to a common-interest community*  
21 *association.*

22 **Sec. 16.** *“Security-interest holder of record” means a person*  
23 *holding an interest in real property created by a recorded security*  
24 *instrument.*

25 **Sec. 17.** *“Servient estate” means an estate or interest in real*  
26 *property that is burdened by an easement.*

27 **Sec. 18.** *“Unit” means a physical portion of a common-*  
28 *interest community designated for separate ownership or*  
29 *occupancy with boundaries described in a declaration establishing*  
30 *the common-interest community.*

31 **Sec. 19.** *1. Except as otherwise provided in subsection 2,*  
32 *the provisions of sections 2 to 30, inclusive, of this act apply to an*  
33 *easement established by express grant or reservation or by*  
34 *prescription, implication, necessity, estoppel or any other method.*

35 *2. The provisions of sections 2 to 30, inclusive, of this act:*

36 *(a) May not be used to relocate:*

37 *(1) A public-utility easement, conservation easement or*  
38 *negative easement; or*

39 *(2) An easement, if the proposed location would:*

40 *(I) Encroach on an area of an estate burdened by a*  
41 *conservation easement; or*

42 *(II) Interfere with the use or enjoyment of a public-*  
43 *utility easement or an easement appurtenant to a conservation*  
44 *easement.*

45 *(b) Do not apply to the relocation of an easement by consent.*



1       **Sec. 20.** *The owner of a servient estate may relocate an*  
2 *easement pursuant to sections 2 to 30, inclusive, of this act if the*  
3 *relocation does not materially:*

4       1. *Lessen the utility of the easement;*

5       2. *After the relocation, increase the burden on the easement*  
6 *holder in its reasonable use and enjoyment of the easement;*

7       3. *Impair an affirmative, easement-related purpose for which*  
8 *the easement was created;*

9       4. *During or after the relocation, impair the safety of the*  
10 *easement holder or another entitled to use and enjoy the*  
11 *easement;*

12       5. *During the relocation, disrupt the use and enjoyment of the*  
13 *easement by the easement holder or another entitled to use and*  
14 *enjoy the easement, unless the owner of the servient estate*  
15 *substantially mitigates the duration and nature of the disruption;*

16       6. *Impair the physical condition, use or value of the dominant*  
17 *estate or any improvement on the dominant estate; or*

18       7. *Impair the value of the collateral of a security-interest*  
19 *holder of record in the servient estate or dominant estate, impair*  
20 *the interest in real property of a lessee of record in the dominant*  
21 *estate or impair the recorded interest in real property of any other*  
22 *person in the servient estate or dominant estate.*

23       **Sec. 21.** 1. *To obtain an order to relocate an easement*  
24 *pursuant to sections 2 to 30, inclusive, of this act, the owner of the*  
25 *servient estate must commence a civil action.*

26       2. *The owner of the servient estate that commences the civil*  
27 *action pursuant to subsection 1:*

28       (a) *Shall serve the summons and complaint on:*

29       (1) *The easement holder whose easement is the subject of*  
30 *the relocation;*

31       (2) *A security-interest holder of record of an interest in the*  
32 *servient estate or dominant estate;*

33       (3) *A lessee of record of an interest in the dominant estate;*  
34 *and*

35       (4) *Except as otherwise provided in paragraph (b), any*  
36 *other owner of a recorded interest in real property, if the*  
37 *relocation would encroach on an area of the servient estate or*  
38 *dominant estate burdened by the interest; and*

39       (b) *Is not required to serve the summons and complaint on the*  
40 *owner of a recorded interest in real property in oil, gas or minerals*  
41 *unless the interest includes an easement to facilitate oil, gas or*  
42 *mineral development.*

43       3. *A complaint pursuant to this section must state:*

44       (a) *The intent of the owner of the servient estate to seek the*  
45 *relocation;*



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

3 (c) *The current and proposed locations of the easement;*

4 (d) *The reason the easement is eligible for relocation pursuant*  
5 *to section 19 of this act;*

6 (e) *The reason the proposed relocation satisfies the conditions*  
7 *for relocation described in section 20 of this act; and*

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

12 4. *At any time before the court renders a final order in a civil*  
13 *action commenced pursuant to subsection 1, a person served*  
14 *pursuant to subparagraph (2), (3) or (4) of paragraph (a) of*  
15 *subsection 2 may file a document, in recordable form, that waives*  
16 *his or her rights to contest or obtain relief in connection with the*  
17 *relocation or subordinates his or her interests to the relocation.*  
18 *Upon the filing of the document, the court may order that the*  
19 *person is not required to answer or participate further in the*  
20 *action.*

21 **Sec. 22. 1.** *A court shall not approve the relocation of an*  
22 *easement pursuant to sections 2 to 30, inclusive, of this act unless*  
23 *the owner of the servient estate:*

24 (a) *Establishes that the easement is eligible for relocation*  
25 *pursuant to section 19 of this act; and*

26 (b) *Satisfies the conditions for relocation pursuant to section*  
27 *20 of this act.*

28 2. *An order pursuant to sections 2 to 30, inclusive, of this act*  
29 *approving relocation of an easement must:*

30 (a) *State that the order is issued in accordance with sections 2*  
31 *to 30, inclusive, of this act;*

32 (b) *Recite the recording data of the instrument creating the*  
33 *easement, if any, and any amendments thereto, if applicable;*

34 (c) *Identify the immediately preceding location of the*  
35 *easement;*

36 (d) *Describe in a legally sufficient manner the new location of*  
37 *the easement;*

38 (e) *Describe any mitigation required of the owner of the*  
39 *servient estate during relocation;*

40 (f) *Refer in detail to the plans and specifications of any*  
41 *improvement necessary for the easement holder to enter, use and*  
42 *enjoy the easement in the new location;*

43 (g) *Specify the conditions to be satisfied by the owner of the*  
44 *servient estate to relocate the easement and construct any*



1 *improvement necessary for the easement holder to enter, use and*  
2 *enjoy the easement in the new location;*

3 *(h) Include a provision for payment by the owner of the*  
4 *servient estate of expenses pursuant to section 23 of this act;*

5 *(i) Include a provision for compliance by the parties with the*  
6 *obligation of good faith pursuant to section 24 of this act; and*

7 *(j) Instruct the owner of the servient estate to record an*  
8 *affidavit, if required pursuant to subsection 1 of section 25 of this*  
9 *act, when the owner of the servient estate substantially completes*  
10 *relocation.*

11 *3. An order pursuant to subsection 2 may include any other*  
12 *provision consistent with sections 2 to 30, inclusive, of this act for*  
13 *the fair and equitable relocation of the easement.*

14 *4. Before the owner of a servient estate proceeds with the*  
15 *relocation of an easement pursuant to sections 2 to 30, inclusive,*  
16 *of this act, the owner must record, in the land records of each*  
17 *jurisdiction where the servient estate is located, a certified copy of*  
18 *the order pursuant to subsection 2.*

19 **Sec. 23.** *An owner of a servient estate is responsible for*  
20 *reasonable expenses of relocation of an easement pursuant to*  
21 *sections 2 to 30, inclusive, of this act, including, without*  
22 *limitation, the expense of:*

23 *1. Constructing improvements on the servient estate or*  
24 *dominant estate in accordance with an order pursuant to section*  
25 *22 of this act;*

26 *2. During the relocation, mitigating disruption in the use and*  
27 *enjoyment of the easement by the easement holder or another*  
28 *person entitled to use and enjoy the easement;*

29 *3. Obtaining a governmental approval or permit to relocate*  
30 *the easement and construct necessary improvements;*

31 *4. Preparing and recording the certified copy required by*  
32 *subsection 4 of section 22 of this act and any other document*  
33 *required to be recorded;*

34 *5. Any title work required to complete the relocation or*  
35 *required by a party to the civil action as a result of the relocation;*

36 *6. Applicable premiums for title insurance related to the*  
37 *relocation;*

38 *7. Any expert necessary to review plans and specifications for*  
39 *an improvement to be constructed in the relocated easement or on*  
40 *the dominant estate and to confirm compliance with the plans and*  
41 *specifications referred to in the order pursuant to paragraph (f) of*  
42 *subsection 2 of section 22 of this act;*

43 *8. Payment of any maintenance cost associated with the*  
44 *relocated easement which is greater than the maintenance cost*  
45 *associated with the easement before relocation; and*



1 **9. Obtaining any third-party consent required to relocate the**  
2 **easement.**

3 **Sec. 24. After the court pursuant to section 22 of this act**  
4 **approves the relocation of an easement and the owner of the**  
5 **servient estate commences the relocation, the owner of the servient**  
6 **estate, the easement holder and other parties in the civil action**  
7 **shall act in good faith to facilitate the relocation in compliance**  
8 **with sections 2 to 30, inclusive, of this act.**

9 **Sec. 25. 1. If an order pursuant to section 22 of this act**  
10 **requires the construction of an improvement as a condition for**  
11 **relocation of an easement, the relocation is substantially complete**  
12 **and the easement holder is able to enter, use and enjoy the**  
13 **easement in the new location when the servient estate owner:**

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

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

19 **2. Until an affidavit pursuant to subsection 1 is recorded and**  
20 **sent, the easement holder may enter, use and enjoy the easement**  
21 **in the current location, subject to the order of the court pursuant**  
22 **to section 22 of this act approving relocation.**

23 **3. If an order pursuant to section 22 of this act does not**  
24 **require an improvement to be constructed as a condition of the**  
25 **relocation, recording the order pursuant to subsection 4 of section**  
26 **22 of this act constitutes relocation.**

27 **Sec. 26. 1. Relocation of an easement pursuant to sections**  
28 **2 to 30, inclusive, of this act:**

29 (a) **Is not a new transfer or a new grant of an interest in the**  
30 **servient estate or the dominant estate;**

31 (b) **Is not a breach or default of, and does not trigger, a due-**  
32 **on-sale clause or other transfer-restriction clause under a security**  
33 **instrument, except as otherwise determined by a court pursuant to**  
34 **any other applicable law;**

35 (c) **Is not a breach or default of a lease, except as otherwise**  
36 **determined by a court pursuant to any other applicable law;**

37 (d) **Is not a breach or default by the owner of the servient**  
38 **estate of a recorded document affected by the relocation, except as**  
39 **otherwise determined by a court pursuant to any other applicable**  
40 **law;**

41 (e) **Does not affect the priority of the easement with respect to**  
42 **any other recorded interest in real property burdening the area of**  
43 **the servient estate where the easement was located before the**  
44 **relocation; and**



1 *(f) Is not a fraudulent conveyance or voidable transaction*  
2 *under law.*

3 *2. The provisions of sections 2 to 30, inclusive, of this act do*  
4 *not affect any other method of relocating an easement permitted*  
5 *pursuant to any other applicable laws of this State.*

6 **Sec. 27.** *The right of the owner of a servient estate to relocate*  
7 *an easement pursuant to sections 2 to 30, inclusive, of this act may*  
8 *not be waived, excluded or restricted by agreement even if:*

9 *1. The instrument creating the easement prohibits relocation*  
10 *or contains a waiver, exclusion or restriction of sections 2 to 30,*  
11 *inclusive, of this act;*

12 *2. The instrument creating the easement requires consent of*  
13 *the easement holder to amend the terms of the easement; or*

14 *3. The location of the easement is fixed by the instrument*  
15 *creating the easement, another agreement, previous conduct,*  
16 *acquiescence, estoppel or implication.*

17 **Sec. 28.** *In applying and construing the Uniform Easement*  
18 *Relocation Act, consideration must be given to the need to*  
19 *promote uniformity of the law with respect to its subject matter*  
20 *among the states where it is enacted.*

21 **Sec. 29.** *The provisions of sections 2 to 30, inclusive, of this*  
22 *act modify, limit or supersede the Electronic Signatures in Global*  
23 *and National Commerce Act, 15 U.S.C. §§ 7001 et seq., but do not*  
24 *modify, limit or supersede Section 101(c) of that act, 15 U.S.C. §*  
25 *7001(c), or authorize electronic delivery of any of the notices*  
26 *described in Section 103(b) of that act, 15 U.S.C. § 7003(b).*

27 **Sec. 30.** *If any provision of sections 2 to 30, inclusive, of this*  
28 *act or its application to any person or circumstance is held invalid,*  
29 *the invalidity does not affect any other provisions or applications*  
30 *of sections 2 to 30, inclusive, of this act which can be given effect*  
31 *without the invalid provision or application, and to this end the*  
32 *provisions of sections 2 to 30, inclusive, of this act are severable.*

33 **Sec. 31.** *The provisions of sections 2 to 30, inclusive, of this*  
34 *act apply to an easement created before, on or after October 1, 2021.*

