

One Hundred Seventh Legislature - First Session - 2021

Introducer's Statement of Intent

LB501

Chairperson: Senator Steve Lathrop

Committee: Judiciary

Date of Hearing: February 04, 2021

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 501 would codify Nebraska law permitting the owner of property burdened by an easement to relocate an easement without the consent of the holder of the easement running across the property. At the common law, an easement could be moved only with the consent of both parties. This inhibited economic growth because easement holders could extort concessions from a property owner, or prohibit development entirely, even in situations where there was no harm to easement holder. Clarifying the rules will facilitate economic development by helping to prevent these kinds of disputes and by providing clear procedures and guidelines for the courts.

If the parties cannot agree to an easement relocation, LB 501 allows the burdened property owner to get permission from a court to relocate the easement. The property owner must provide advance notice of the relocation plan to anyone with an interest in the property served by the easement and any of them may object to the relocation in court.

Before the court allows easement relocation, the burdened property owner must show that the relocation would not materially:

- reduce the usefulness of the easement,
- impose a burden on the easement holder,
- impair a purpose for which the easement was created,
- impair the safety of anyone using the easement, or
- reduce the value or condition of the easement holder's property.

In addition, the property owner must pay all the expenses of relocation and ensure that the

easement holder's access is not disrupted during relocation. Certain exceptions apply: LB 501 does not allow relocation of easements held by public utilities, or easements that restrict development, such as conservation easements and negative easements.

LB 501 is based on the recent Uniform Easement Relocation Act promulgated by the Uniform Law Commission in 2020. That Act, in turn, is based largely on Section 4.8(3) of the Restatement (Third) of Property: Servitudes, first published in 2000. The Restatement offered a new approach to the subject of easement relocation which permitted an easement to be relocated unilaterally if the easement holder would not suffer any harm. The new uniform act adopts the restatement rule and fleshes out the details of the procedure.

In a 2006 decision, the Court of Appeals of Nebraska adopted the restatement rule. *R & S Investments v. Auto Auctions, Ltd.*, 725 N.W.2d 871, 879-81 (Neb. 2006.) Therefore, LB 501 would not significantly change the existing law of Nebraska. It would, however, codify the Nebraska court's decision and in the process provide detailed statutory guidance for landowners and their attorneys who seek to relocate an easement unilaterally.

Principal Introducer: _____

Senator Michael Flood