

- SUBJECT:** Limitations on certain non-express easements
- COMMITTEE:** Business and Industry — committee substitute recommended
- VOTE:** 8 ayes — Deshotel, Elkins, Christian, England, Giddings, Miller, Orr, Quintanilla
- 0 nays
- 3 absent — Gattis, Keffer, S. Turner
- WITNESSES:** For — Eric Meyertons, the Real Lighthouse L.P. (*Registered, but did not testify*: Steve Scurlock, Independent Bankers Association of Texas)
- Against — None
- On — (*Registered, but did not testify*: Randy Lee, Stewart Title Guaranty Co)
- BACKGROUND:** Current law does not specifically address property relations concerning non-express shared easements, which are easements that have not been formally codified or otherwise established. The subdivision of large parcels of land in remote areas has increased the instances in which a non-express access easement serving a rear-oriented landowner has bisected the property of a front-oriented property owner — generally taking the form of an unpaved road.
- Current law provides little direction to courts on the legal standing of rear-oriented landowners who wish to expand roads running through the property of a front-oriented landowner.
- DIGEST:** CSHB 4618 would restrict a court from extending beyond the traveled surface of a road an easement allowing the use of a road by a rear-oriented landowner through the property of a front-oriented landowner. An easement imposed by a court would have to be limited so as to prevent a future increase in the easement's impact on the front-oriented landowner, to include:

- an increase in traffic on a road directly or indirectly caused by the use of the road for the benefit of the rear-oriented landowner;
- a change in the nature or boundaries of a road used for the benefit of the rear-oriented landowner; and
- any other increase in the frequency or time of use of an easement for the benefit of the rear-oriented landowner.

CSHB 4618 would prohibit an easement imposed by a court from limiting the right of the front-oriented landowner from placing and operating manual or electronic gates or fences along the border of the area subject to the easement. A rear-oriented landowner using a court-imposed easement would have to keep a gate or fence placed along the border of the area open or closed as instructed by the front-oriented landowner.

A rear-oriented landowner could use a separate electronic gate that a front-oriented landowner installed only with permission. The owner or resident of the rear-oriented property would make a payment for the use of the gate from the owner of the front-oriented property.

The bill would not apply to a right of way established by an express agreement between the front and rear-oriented landowners.

The bill would take effect September 1, 2009.