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HOUSE BILL 2794

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State of Washington                      54th Legislature                      1996 Regular Session

By Representatives Fuhrman, McMorris and Thompson

Read first time 01/19/96. Referred to Committee on Natural Resources.

1            AN ACT Relating to the establishment of lost and uncertain  
2 boundaries; adding new sections to chapter 58.04 RCW; and repealing RCW  
3 58.04.010, 58.04.020, 58.04.030, and 58.04.040.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The purpose of this chapter is to provide  
6 three alternative procedures for fixing boundary corners, points, or  
7 lines when they cannot be determined from the existing public record  
8 and landmarks or are otherwise in dispute. This chapter shall not  
9 impair, modify, or supplant any other remedy available at law or  
10 equity.

11           NEW SECTION.    **Sec. 2.** As used in this chapter:

12           (1) "Department" means the department of natural resources;

13           (2) "Surveyor" means every person authorized to practice the  
14 profession of land surveying under the provisions of chapter 18.43 RCW.

15           NEW SECTION.    **Sec. 3.** Whenever a corner, point, or line  
16 determining the boundary between two or more parcels of real property  
17 cannot be identified from the existing public record, monuments, and

1 landmarks, or is in dispute, the landowners affected by the  
2 determination of the point or line may resolve any dispute and fix the  
3 boundary corner, point, or line by one of the following procedures:

4 (1) If all of the affected landowners agree to a description and  
5 marking of a corner, point, or line determining a boundary, they shall  
6 document the agreement in a written instrument, using appropriate legal  
7 descriptions and including a survey map, which instrument shall be  
8 signed and acknowledged by each party in the manner required for a  
9 conveyance of real property. The agreement is binding upon the  
10 parties, their successors, assigns, heirs and devisees and runs with  
11 the land. The agreement shall be recorded with the real estate records  
12 in the county or counties in which the affected parcels of real estate  
13 or any portion of them is located;

14 (2) If all of the affected landowners cannot agree to a corner,  
15 point, or line determining the boundary between two or more parcels of  
16 real estate, they may agree to refer the dispute to the department for  
17 resolution as provided in section 4 of this act; or

18 (3) If all of the affected landowners cannot agree to a corner,  
19 point, or line determining the boundary between two or more parcels of  
20 real estate, and cannot agree to refer the dispute to the department as  
21 provided in subsection (2) of this section, any one of them may bring  
22 suit for determination as provided in section 5 of this act.

23 NEW SECTION. **Sec. 4.** (1) Upon receipt of a request under section  
24 3(2) of this act, the department may proceed to fix the location of the  
25 disputed corner, point, or line if: (a) The request is agreed to by  
26 all of the affected landowners; (b) the requesting parties agree to be  
27 bound by the determination of the department and waive any right of  
28 appeal or collateral legal challenge; and (c) the requesting parties  
29 agree to bear the full cost of any necessary surveys, recordings, and  
30 administrative costs equally or otherwise as may be agreed upon.

31 (2) To fix the location of disputed corners, points, or lines  
32 pursuant to this section the department shall appoint, subject to the  
33 approval of the requesting parties, one or more disinterested surveyors  
34 to review the public record, monuments, landmarks, and other  
35 documentary and physical references and shall prepare a survey fixing  
36 the disputed corners, points, or lines. The appointed surveyor or  
37 surveyors shall submit to the department a written report including  
38 their findings, recommendations and survey maps. The department shall

1 issue a final determination based upon the report and recommendations.  
2 The final determination shall be in writing and shall include  
3 appropriate legal descriptions and survey maps. The final  
4 determination shall be filed with the real property records in each  
5 county in which the affected parcels of real estate or any portion of  
6 them is located and any survey maps shall be filed in accordance with  
7 chapter 58.09 RCW.

8 (3) The department shall adopt rules as necessary to implement this  
9 section.

10 NEW SECTION. **Sec. 5.** (1) A landowner may commence a civil action  
11 in superior court to fix the location of a disputed corner, point, or  
12 line which determines the boundary between two or more parcels of real  
13 estate. The action shall be filed in the superior court for the county  
14 in which the disputed corner, point, or major portion of the line are  
15 located and the plaintiff must join as defendants the landowners of all  
16 parcels of real estate with boundaries which may be affected by the  
17 action. The complaint shall recite that it is seeking a determination  
18 under the authority and procedures provided in this chapter. Service  
19 of process shall be made in accordance with the statutes and rules  
20 governing civil actions affecting ownership of real property.

21 (2) Within ninety days of the filing of an action under this  
22 section, the court shall conduct a preliminary hearing for the purpose  
23 of determining that all necessary parties have been joined in the  
24 action and, if appropriate, appointing a panel of three referees who  
25 are each disinterested surveyors. When selecting surveyors as members  
26 of the panel of referees, the court may request the recommendations  
27 from the board of registration for engineers and land surveyors. When  
28 appointing the panel of referees, the court shall enter an order making  
29 the appointments, defining the scope of responsibilities, establishing  
30 time limits, and fixing the terms of referees' compensation and payment  
31 of expenses. Expenses may include the employment of assisting staff  
32 persons.

33 (3) The panel of referees, subject to any limits and requirements  
34 established by the court, shall review the public record, monuments,  
35 landmarks, and other documentary and physical references and shall  
36 prepare a survey fixing the disputed corners, points, and lines. The  
37 panel shall submit a report including findings, recommendations, and  
38 survey maps, to the court.

1 (4) Upon receipt of the report of the panel of referees, the court  
2 shall conduct a hearing at which the referees may be examined by any of  
3 the parties regarding the basis of their report, recommendations, and  
4 survey. The court may adjourn the hearing from time to time and  
5 request the members of the panel of referees to make further  
6 investigation or conduct additional surveys. Upon conclusion of the  
7 hearing, the court shall enter a judgment fixing the location of the  
8 disputed corners, points and lines and approving final survey maps.  
9 The judgment shall be filed with the real property records in each  
10 county in which any of the affected parcels of real estate or any  
11 portion of them is located and the final survey maps shall be filed in  
12 accordance with chapter 58.09 RCW.

13 (5) The court shall assess all costs, fees, and expenses authorized  
14 to be paid to or on behalf of the panel of referees against the parties  
15 to the action in amounts and proportions that the court deems just.  
16 The costs, fees, and expenses so apportioned shall be a lien upon each  
17 affected parcel of real property, severally, as against any transfer or  
18 incumbrance made, or attaching to the parcel, from the time of the  
19 filing of the complaint or the filing of a notice of lis pendens,  
20 whichever is later.

21 (6) In the event that any one or more of the appointed referees  
22 should refuse appointment or after accepting appointment resign, or  
23 cease to be fit or qualified to continue, the court shall terminate the  
24 appointment and appoint a replacement referee unless the work of the  
25 panel is near conclusion and, at least, two of the members remain, in  
26 which event, the court may elect not to replace the third member.

27 NEW SECTION. **Sec. 6.** Any surveyor or any assistant, staff, or  
28 agent of any surveyor acting under an appointment by the department of  
29 natural resources or superior court under this chapter may, in any  
30 reasonable manner and at any reasonable time, go upon or across any  
31 lands necessary to complete any investigation and survey.

32 NEW SECTION. **Sec. 7.** The following acts or parts of acts are each  
33 repealed:

- 34 (1) RCW 58.04.010 and 1895 c 77 s 9;  
35 (2) RCW 58.04.020 and 1886 p 104 s 1;  
36 (3) RCW 58.04.030 and 1886 p 105 s 2; and  
37 (4) RCW 58.04.040 and 1886 p 105 s 3.

1        NEW SECTION.    **Sec. 8.**    Sections 1 through 6 of this act are each  
2    added to chapter 58.04 RCW.

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