
SENATE BILL 6266

State of Washington **54th Legislature** **1996 Regular Session**

By Senators Morton, Haugen, McCaslin, Rasmussen, Hargrove and Schow

Read first time 01/10/96. Referred to Committee on Law & Justice.

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

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

6 NEW SECTION. **Sec. 1.** Unless the context clearly requires
7 otherwise, the definitions in this section apply throughout this
8 chapter.

9 (1) "Surveyor" means a professional land surveyor as defined in
10 chapter 18.43 RCW.

11 (2) "Auditor" means the county recording official in the county in
12 which the disputed boundary is situated.

13 NEW SECTION. **Sec. 2.** Any line or disputed corner or boundary may
14 be determined and permanently established by written agreement of all
15 affected parties. The agreement must be signed and acknowledged by
16 each as required for conveyances of real estate, clearly designating
17 the same, and accompanied by a survey map which shall be recorded as an
18 instrument affecting real estate. The agreement is binding upon the

1 heirs, successors, and assigns of the parties to the agreement. The
2 use of this section shall not conflict with the requirements of chapter
3 58.17 RCW or any ordinance adopted by a legislative body of a city,
4 town, or county.

5 NEW SECTION. **Sec. 3.** (1) When a dispute exists between two or
6 more surveyors or landowners concerning the location, establishment,
7 reestablishment, or acceptance of a land corner or corners, the
8 surveyors or landowners may request the dispute be resolved by the
9 department of natural resources. The department of natural resources
10 may grant the request only if the surveyors or landowners agree that
11 the decision of the department is binding on them, and that they will
12 correct and refile any of their surveys of record to reflect the
13 decision of the department. Each surveyor or landowner bears an equal
14 portion of the costs incurred by the department in resolving the
15 dispute.

16 (2) The department of natural resources shall adopt rules to
17 implement this section.

18 (3) In a proceeding under this section, the department shall select
19 one or more disinterested surveyors, agreed upon by the parties, to
20 determine the true and correct location of the corner or corners in
21 dispute.

22 (4) Upon final determination of the location of the disputed corner
23 or corners, the department shall file or have filed the determination
24 in the office of the county auditor. A record of survey is required as
25 part of the determination and shall be filed under chapter 58.09 RCW.
26 The record of survey shall contain the recording data of the filed
27 determination.

28 **Sec. 4.** RCW 58.04.020 and 1886 p 104 s 1 are each amended to read
29 as follows:

30 (1) Whenever the boundaries of lands between two or more adjoining
31 (~~((proprietors shall))~~) landowners have been lost, (~~((or by time, accident~~
32 ~~or any other cause, shall have become obscure, or uncertain))~~)
33 destroyed, or are in dispute, and the adjoining (~~((proprietors))~~)
34 landowners cannot agree to establish the same, one or more (~~((of said~~
35 ~~adjoining proprietors))~~) landowners may (~~((bring his))~~) commence a civil
36 action in equity, in the superior court, for the county in which such
37 lands, or part of them are situated(~~((, and such))~~). The action will be

1 against the owners of the other lands, as shown by the records of the
2 county assessor, who will be affected by the determination or
3 establishment of the boundary. The superior court, as a court of
4 equity, may upon such complaint, order such lost or uncertain
5 boundaries to be erected and established and properly marked.

6 (2) In an action commenced under subsection (1) of this section,
7 the court shall refer the question of the location of the boundary to
8 a commission of three disinterested surveyors for resolution under the
9 procedures set forth in section 8 of this act. The court shall fix the
10 compensation of the commissioners and any assistants, if needed by the
11 commissioners.

12 (3) The court shall accept the survey commission's decision unless
13 the court concludes that it is arbitrary, capricious, contrary to law,
14 or unconstitutional. If the commission cannot reach a decision, the
15 court shall excuse the commission and request another three
16 disinterested surveyors under the procedures set forth in section 8 of
17 this act. All information collected by the excused commission shall be
18 provided to the new commission.

19 (4) Any corner and boundary established by the survey commission
20 and accepted by the court shall be fixed forever as the true and
21 correct location and shall be surveyed and marked on the ground.

22 (5) Nothing in this chapter abrogates the rights of landowners
23 under the doctrines of adverse possession, parol agreement of adjoining
24 landowners, estoppel in pais, location by a common grantor, or mutual
25 recognition and acquiescence in a definite line by interested parties
26 for ten years or more.

27 NEW SECTION. Sec. 5. Upon final determination of an action
28 commenced under section 4 of this act, the court shall record the
29 judgment in the office of the county auditor and provide one copy to
30 the department of natural resources. The survey commission shall
31 provide a record of survey to the court and the court shall file or
32 have filed the record of survey under chapter 58.09 RCW. The record of
33 survey shall contain the recording data of the filed judgment.

34 Sec. 6. RCW 58.04.040 and 1886 p 105 s 3 are each amended to read
35 as follows:

36 The proceedings under this chapter shall be conducted as other
37 civil actions, and the court, on final decree, shall apportion the

1 costs of the proceedings equitably(~~(, and)~~). Those costs may include
2 the costs of the court proceedings, survey commission proceedings, and
3 survey recording fees. The costs so apportioned, shall be a lien upon
4 the (~~said~~) lands, severally, as against any transfer or incumbrance
5 made of, or attaching to (~~said~~) the lands, from the time of the
6 filing of the complaint(~~(:—PROVIDED,)~~). However, a notice of lis
7 pendens(~~(, is)~~) must be filed in the auditor's office of the proper
8 county, in accordance with law.

9 NEW SECTION. Sec. 7. Notice of an action commenced under this
10 chapter shall be given as in other cases and if the defendants or any
11 of them are nonresidents of the state, or unknown, they may be served
12 by publication as provided by chapter 4.28 RCW.

13 NEW SECTION. Sec. 8. (1) When requested by the court, the board
14 of registration for engineers and land surveyors as established by
15 chapter 18.43 RCW shall provide to the court the names of three
16 disinterested surveyors licensed to practice in the state of Washington
17 and competent in the extent of the dispute. Upon acceptance of the
18 court, the three surveyors submitted by the board shall become the
19 survey commission. If for any reason the court rejects any surveyor or
20 a surveyor declines to serve, then the court shall request from the
21 board of registration additional names of disinterested surveyors until
22 the survey commission is accepted and formed.

23 (2) Before entering upon their duties the commissioners shall take
24 and subscribe an oath that they and each of them will fairly and
25 impartially and to the best of their judgment ascertain the true
26 location of the boundary in dispute. The commissioners may enter upon
27 any lands for the purpose of ascertaining and deciding the location of
28 the boundary and they have the power to examine witnesses under oath
29 and to inquire fully into the questions in dispute. The commissioners
30 may acquire the use of assistants or consultants to perform their
31 duties.

32 (3) The survey commission shall determine the location of
33 boundaries and corners referred to it by the superior court under RCW
34 58.04.020. In a proceeding under this section, the members of the
35 survey commission shall act as referees under RCW 2.24.060. The survey
36 commission shall file with the referring court its final written
37 decision and a record of survey under chapter 58.09 RCW.

1 NEW SECTION. **Sec. 9.** (1) Any authorized assistants, employees,
2 agents, appointees, or representatives of the department of natural
3 resources may, without liability for trespass, enter upon any land or
4 waters and remain there while performing their duties. Any surveyor
5 and their employees may, without liability for trespass, enter upon any
6 land or waters and remain there while performing the practice of land
7 surveying as defined in RCW 18.43.020. The persons named in this
8 section may, without liability for trespass, construct or place a
9 monument or reference monuments for the position of any land boundary
10 mark, general land office corner, or subdivisional corner. When
11 practical, the persons named in this section shall announce and
12 identify themselves and their intention before entering upon private
13 property in the performance of their duties.

14 (2) A landowner or other person in lawful possession and control of
15 any lands or waters is not liable for unintentional injuries to a
16 surveyor who enters upon those lands or waters in accordance with this
17 section.

18 NEW SECTION. **Sec. 10.** A person who intentionally disturbs survey
19 marks or markers placed by a surveyor in the performance of the
20 surveyor's duties is guilty of a gross misdemeanor and is liable for
21 the cost of the reestablishment.

22 NEW SECTION. **Sec. 11.** The following acts or parts of acts are
23 each repealed:

- 24 (1) RCW 58.04.010 and 1895 c 77 s 9; and
25 (2) RCW 58.04.030 and 1886 p 105 s 2.

26 NEW SECTION. **Sec. 12.** Sections 1 through 3, 5, and 7 through 10
27 of this act are each added to chapter 58.04 RCW.

28 NEW SECTION. **Sec. 13.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

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