
Judiciary Committee

HB 1349

Title: An act relating to private road maintenance agreements.

Brief Description: Concerning private road maintenance agreements.

Sponsors: Representative Morris.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Requires persons with the right to use a private right-of-way to pay for the costs of maintenance by agreement or in proportion to their use.

Hearing Date: 2/10/11

Staff: Kelly Pfundheller (786-7289).

Background:

An easement is the right to use the real property of another person for a specific purpose. An easement is a real property interest, but legal title to the land is retained by the original owner for all other purposes. Easements can be created for many purposes, including for access to cross an individual's property, utility and sewer lines, water access, and cattle driving. Easements are established by a deed, by continuous and open use against the rights of the property owner for a number of years, or by necessity where it is required in order to access one's own property.

If an easement is a private right-of-way, like a private road, the persons that use the right-of-way may create agreements for maintaining it. A private road maintenance agreement is often entered by private parties because the road is not maintained by a public body. Agreements may be recorded with the county auditor, which would allow enforcement of the agreement against future property owners.

Private roads may also be held as a common element in a condominium association or homeowners' association. Owners in an association possess an indivisible interest in the road

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and, therefore, the owners are responsible for sharing the cost of repairs and maintenance according to the terms of the association (whether through covenants, bylaws, and other rules).

Summary of Bill:

An easement is a non-possessory interest in the land of another that entitles parties to a private right-of-way, embodying the right to pass across another's land.

The cost of maintaining an easement is shared by the land owner and the persons with the legal right to use the easement. The parties can determine the terms of the maintenance in an agreement recorded with the county auditor. In the alternative, if the parties do not have an agreement regarding maintenance, the cost of maintaining the easement must be shared by the parties in proportion to their use of the easement. Each party is required to repair any damage that they cause due to negligence or abnormal use. In resolving conflicts between the parties, the frequency of each party's use of the easement and the size and weight of their vehicles should be considered unless the agreement determines otherwise.

A civil cause of action for money damages, specific performance, or contribution may be brought if a party fails to maintain the easement according to an agreement or fails to pay their portion of the cost for maintenance in the absence of an agreement. The court may order the parties to submit to arbitration.

The bill applies to all easements existing on or created after January 1, 2012. The bill does not apply to any easement held by a public entity.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on January 1, 2012.