

# HOUSE BILL REPORT

## HB 1349

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to private road maintenance agreements.

**Brief Description:** Concerning private road maintenance agreements.

**Sponsors:** Representative Morris.

**Brief History:**

**Committee Activity:**

Judiciary: 2/10/11, 2/17/11 [DPS].

**Brief Summary of Substitute Bill**

- 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.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Eddy, Frockt, Kirby, Orwall and Roberts.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Shea, Assistant Ranking Minority Member; Chandler, Klippert, Nealey and Rivers.

**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

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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 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).

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### **Summary of Substitute 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 court (or arbitrator) may order any equitable relief that may be just under the circumstances, and must award the prevailing party all court costs, arbitration fees, and reasonable attorneys' fees.

The bill applies to all easements existing on or created after January 1, 2012. The bill does not apply to any easement held by any public entity, railroad company or affiliate, and entity regulated under the forest practices law.

### **Substitute Bill Compared to Original Bill:**

The court must order "reasonable" attorneys' fees (rather than attorneys' fees) to the prevailing parties.

Changes are made regarding the list of entities that are exempt from the maintenance requirements. Railroad companies and affiliates and any entity regulated under the forest practices law are added to the list, and the term "public service corporation" is changed to "public service company."

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect on January 1, 2012.

**Staff Summary of Public Testimony:**

(In support) This legislation is the result of concerns raised by constituents regarding private road maintenance agreements. Many other states have similar laws, and the bill is modeled on a current Oregon statute that requires parties to share the cost of maintaining a private road. It is common practice for parties to possess formal agreements regarding maintenance. In fact, some banks require a maintenance agreement as a condition of home loans. Some people have found that the banks will charge a higher interest rate for a loan in the absence of established terms regarding maintenance. This type of law will hopefully help people obtain a home loan despite being unable to enter into an agreement with their neighbors.

(Opposed) None.

**Persons Testifying:** Representative Morris, prime sponsor.

**Persons Signed In To Testify But Not Testifying:** None.