

SENATE BILL REPORT

SHB 1349

As of February 15, 2012

Title: An act relating to private road maintenance agreements.

Brief Description: Concerning private road maintenance agreements.

Sponsors: House Committee on Judiciary (originally sponsored by Representative Morris).

Brief History: Passed House: 1/23/12, 53-42.

Committee Activity: Judiciary: 2/15/12.

SENATE COMMITTEE ON JUDICIARY

Staff: Aldo Melchiori (786-7439)

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 access to utility and sewer lines, water, and cattle driving, as well as permission to cross an individual's property. 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 into by private parties because the road is not maintained by a public body. Agreements may be recorded with the county auditor that 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, or other rules.

Summary of Bill: An easement is defined as 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This is a housing refinance issue. Some lenders are insisting on easement agreements before they are willing to refinance property. The bill is modeled after Oregon law. It is rare that these provisions would need to be used between the parties.

Persons Testifying: PRO: Representative Morris, prime sponsor.