

SENATE BILL REPORT

SHB 1349

As Reported by Senate Committee On:
Judiciary, February 23, 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, 2/22/12, 2/23/12 [DPA, w/oRec].

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended.

Signed by Senators Kline, Chair; Harper, Vice Chair; Pflug, Ranking Minority Member; Carrell, Hargrove, Kohl-Welles, Padden and Roach.

Minority Report: That it be referred without recommendation.

Signed by Senator Regala.

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.

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.

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 (Recommended Amendments): A legislative workgroup on easements is established. Members include representatives from the Senate, the office of the attorney general, a statewide organization representing real estate agents and brokers, and the administrative office of the courts. The workgroup reviews all aspects of how easements function in the state of Washington, the potential fiscal impacts of changes to easement law, the legal and constitutional framework in which easements operate, and how other states treat the subject of easements. The workgroup reports its findings and recommendations by December 1, 2012.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Amendments): The substantive provisions regarding easement agreements and maintenance are eliminated. A legislative workgroup on easements is established.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: Yes.

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

Staff Summary of Public Testimony as Heard in Committee: 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.