
SUBSTITUTE HOUSE BILL 1349

State of Washington 62nd Legislature 2011 Regular Session

By House Judiciary (originally sponsored by Representative Morris)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to private road maintenance agreements; adding a
2 new chapter to Title 64 RCW; and providing an effective date.

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

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Easement" means a nonpossessory interest in the land of
7 another that entitles the holders of an interest in the easement to a
8 private right-of-way, embodying the right to pass across another's
9 land.

10 (2) "Holders of an interest in an easement" or "holder" means those
11 with a legal right to use the easement, including the owner of the land
12 across which the easement passes if the owner of the land has the legal
13 right to use the easement.

14 NEW SECTION. **Sec. 2.** (1) The holders of an interest in any
15 easement shall maintain the easement.

16 (2)(a) The cost of maintaining the easement must be shared by each
17 holder of an interest in the easement as provided in the terms of any

1 agreement entered into by the parties for that purpose or any recorded
2 instrument creating the easement.

3 (b) An agreement under (a) of this subsection must be recorded in
4 the real property records with the county auditor in the county or
5 counties in which the easement is located. A failure to record the
6 agreement does not affect the enforceability of the agreement among the
7 parties to the agreement and any other person with actual notice of the
8 agreement.

9 (3)(a) Except as provided in (b) of this subsection, in the absence
10 of an agreement under subsection (2) of this section and in the absence
11 of maintenance provisions in a recorded instrument creating the
12 easement, the cost of maintaining the easement must be shared by each
13 holder of an interest in the easement in proportion to the use made of
14 the easement by each holder.

15 (b) Each holder of an interest in an easement is solely responsible
16 for damage caused to the easement because of the holder's negligence or
17 abnormal use. The holder shall repair the damage at his or her own
18 expense.

19 (4)(a) Unless inconsistent with an agreement between the holders of
20 an interest in an easement or a recorded instrument creating the
21 easement, in determining proportionate use and settling conflicts the
22 following factors must be considered: (i) The frequency of use by the
23 holders; and (ii) the size and weight of vehicles used by the holders.

24 (b) Unless inappropriate, based on the factors contained in (a) of
25 this subsection or other relevant factors, the costs for normal and
26 usual maintenance of the easement and the costs of repair of the
27 easement damaged by natural disasters or other events for which all
28 holders of an interest in the easement are blameless may be shared on
29 the basis of percentages resulting from dividing the distance of total
30 normal usage of all holders into the normal usage distance of each
31 holder.

32 NEW SECTION. **Sec. 3.** (1)(a) A civil action for money damages,
33 specific performance, or contribution may be brought in a court of
34 competent jurisdiction against a holder if:

35 (i) The holder fails to maintain the easement according to an
36 agreement;

1 (ii) The holder fails to maintain the easement according to the
2 maintenance provisions of a recorded instrument creating the easement;
3 or

4 (iii) After receiving a demand in writing, the holder fails to pay
5 the holder's proportion of the cost for maintaining the easement as
6 indicated under section 2 of this act.

7 (b) An action under this section may be brought against a holder of
8 an interest in the easement by one or more of the other holders either
9 jointly or severally.

10 (2)(a) In an action brought under this section, the court may order
11 any equitable relief that may be just under the circumstances; and

12 (b) The court shall award the prevailing party all court costs,
13 arbitration fees, and reasonable attorneys' fees.

14 (3) Unless the parties are subject to mandatory arbitration under
15 chapter 7.06 RCW, any holder of an interest in an easement may apply to
16 the court of competent jurisdiction where the easement is located and
17 that has jurisdiction over the amount in controversy for the
18 appointment of an impartial arbitrator to apportion the cost, and the
19 matter may be arbitrated as provided in chapter 7.04A RCW. The
20 application may be made before, during, or after performance of the
21 maintenance work.

22 (4) Nothing in this chapter imposes a maintenance obligation on the
23 holder of an interest in an easement based on the maintenance
24 provisions in an instrument creating the easement if the holder is not
25 a party to the instrument, whether the instrument is recorded or not,
26 after the holder ceases to use the easement.

27 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (2) of
28 this section, this chapter applies to all easements existing on or
29 created after January 1, 2012.

30 (2) This chapter does not apply to any entity regulated under
31 chapter 76.09 RCW or railroad company or affiliate, or any easement or
32 right-of-way held by any agency or department of the state, any
33 political subdivision of the state, any public service company, or any
34 public or private utility provider.

35 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act constitute

1 a new chapter in Title 64 RCW.

2 NEW SECTION. **Sec. 6.** This act takes effect January 1, 2012.

--- END ---