
Judiciary Committee

HB 1029

Title: An act relating to private road maintenance agreements.

Brief Description: Concerning private road maintenance agreements.

Sponsors: Representative Morris.

Brief Summary of Bill

- Allocates responsibility for maintaining a private right-of-way easement.
- Provides for a civil cause of action for damages, specific performance, or contribution in the event a holder of a private right-of-way easement fails to maintain the easement according to the terms of an applicable agreement, instrument, or statutory provisions.

Hearing Date: 1/17/13

Staff: Cece Clynych (786-7195).

Background:

An easement is a property right that provides the easement holder with a right to use the property owner's land in some way or another. Common easements include the right to use property for driveways, private roads, and utility lines. An easement can be created by a written instrument. An easement can also be created by implication, such as an easement implied from prior use, an easement implied from necessity, and an easement implied from a plat. Washington also recognizes easements by prescription, a doctrine essentially equivalent to adverse possession.

Summary of Bill:

Maintenance of Easements for a Private Right-of-Way.

A new chapter is created in Title 64 of the Revised Code of Washington. For purposes of this new chapter, the following definitions apply:

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- "Easement" means a non-possessory interest in the land of another that entitles holders of an easement to a private right-of-way, embodying the right to pass across another's land.
- "Holders of an interest in an easement" or "holder" means those with a legal right to use the easement, including the owner of the land across which the easement passes if the owner of the land has the legal right to use the easement.

The holders of an interest in the easement are required to maintain the easement. The cost of maintaining an easement must be shared by each holder, as provided in the terms of any agreement entered into for that purpose or any recorded instrument creating the easement. An agreement must be recorded with the county auditor in the county or counties in which the easement is located, however, a failure to record does not affect enforceability of the agreement among the parties to the agreement and any other person with actual notice of the agreement.

In the absence of either an agreement regarding maintenance or the inclusion of maintenance provisions in a recorded instrument creating the easement, the cost of maintaining the easement must be shared by each holder in proportion to the use made of the easement by each holder. Each holder is solely responsible for repair of any damage caused by his or her own negligence or abnormal use. Unless inconsistent with an agreement between holders or with the recorded instrument creating an easement, in determining proportionate use and resolving conflicts, the frequency of each holder's use of the easement and the size and weight of vehicles must be considered. The costs for normal and usual maintenance, as well as repair of an easement damaged by natural disasters or other events for which the holders are blameless, may be shared on the basis of percentages resulting from dividing the distance of total normal usage of all holders into the normal usage distance of each holder.

Civil Cause of Action.

A civil cause of action for money damages, specific performance, or contribution may be brought by a holder or holders, either jointly or severally, against another holder who:

- fails to maintain the easement according to an agreement;
- fails to maintain the easement according to the maintenance provisions of a recorded instrument; or
- after receiving a demand in writing, fails to pay his or her portion of the cost for maintenance determined in accordance with the new statutory provisions regarding proportionate use and individual responsibility for damage caused by negligence or abnormal use.

Unless the matter is subject to mandatory arbitration under Chapter 7.06 RCW, any holder may apply to the court to arbitrate apportionment of the maintenance costs pursuant to the Uniform Arbitration Act. An application to arbitrate may be made before, during, or after performance of the maintenance work.

Nothing imposes a maintenance obligation on a holder based on the maintenance provisions in an instrument creating the easement if the holder is not a party to the instrument, whether the instrument is recorded or not, after the holder ceases to use the easement.

The court may order any equitable relief that may be just under the circumstances. The prevailing party is entitled to recover all court costs, arbitration fees, and reasonable attorneys' fees.

Application.

All easements existing on or created after January 1, 2014 are subject to these new statutory provisions, except that they are inapplicable to any entity regulated under the Forest Practices Act, or any railroad company or affiliate, or any easement or right-of-way held by any agency or department of the state, any political subdivision of the state, any public service company, or any public or private utility provider.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect on January 1, 2014.