

HOUSE BILL REPORT

HB 1494

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: 1/26/17, 2/2/17 [DP], 1/18/18 [DPS].

Brief Summary of Substitute Bill

- Requires easement holders to share the reasonable and necessary costs of maintaining an easement to a private road for ingress and egress in proportion to each holder's use of the easement, if the holders have not entered into a maintenance agreement.
- Provides a civil cause of action in the event that an easement holder breaches a maintenance agreement or fails to pay his or her proportion of the maintenance costs.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Goodman, Hansen, Kirby, Orwall and Valdez.

Minority Report: Do not pass. Signed by 6 members: Representatives Rodne, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Haler, Klippert, Muri and Shea.

Staff: Cece Clynch (786-7195).

Background:

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.

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 may be created by a written instrument. An easement may 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 Substitute Bill:

A new chapter is created in Title 64 of the Revised Code of Washington.

Definitions.

For the purposes of this chapter, the following definitions apply:

- "Easement" means a nonpossessory interest in the land of another that entitles the holders of an interest in the easement to a private road for ingress and egress, 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.

Maintenance of Easements.

The holders of an interest in an easement must maintain the easement. Nothing prohibits holders from making agreements as to the allocation of maintenance and costs, including agreements that allocate the obligations to fewer than all holders.

How costs are shared if there is an agreement. If an agreement as to the allocation of maintenance and costs exists, the cost of maintaining an easement must be shared as provided in the terms of the agreement. A maintenance agreement may be recorded with the county auditor in the county or counties in which the easement is located. A failure to record does not affect enforceability of the agreement among the parties to the agreement and any other person with notice of the agreement.

How costs are shared in the absence of an agreement. In the absence of a maintenance agreement, each holder must share the reasonable and necessary cost of maintaining the easement in proportion to each holder's use of the easement. Each holder is solely responsible for repair of any damage to the easement caused by his or her own negligence or abnormal or excessive use.

Determining proportionate use and cost. Unless inconsistent with an agreement between the holders, the following factors may be considered to determine proportionate use and resolve conflicts: the frequency of use by each holder; the scope of use by each holder; and the size and weight of the vehicles of each holder. The scope of use by each holder may be determined by dividing the distance of total usage of all holders into the distance of total usage of each holder. Unless inappropriate, the costs for normal and usual maintenance, as well as the costs for repair of an easement damaged by natural disasters or other events for

which all the holders are blameless, may be shared on the basis of percentages resulting from dividing the distance of total usage of all holders into the 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; or
- fails to pay the holder's proportion of the cost for maintaining the easement, determined in accordance with the statutory provisions regarding proportionate use and individual responsibility for damage caused by negligence or abnormal or excessive use, within 60 days after receiving a written demand sent via certified mail.

Unless the matter is subject to mandatory arbitration under the mandatory arbitration laws, any holder may apply to the court with jurisdiction over the matter for appointment of an impartial arbitrator to apportion the maintenance costs pursuant to the Uniform Arbitration Act. The application for arbitration may be made before, during, or after performance of the maintenance work.

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 attorney fees.

Nothing in the chapter 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 or not the instrument is recorded, after the holder ceases to use the easement.

Application.

All easements existing on or created after January 1, 2019, are subject to the statutory provisions in this chapter, except that:

- the statutory provisions in this chapter 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 state department, state political subdivision, public service company, or any public or private utility provider; and
- nothing authorizes the impairment of a maintenance agreement existing on or before January 1, 2019.

A severability clause is included.

Substitute Bill Compared to Original Bill:

The effective date is changed from January 1, 2018, to January 1, 2019, and consistent changes to the date are made in other parts of the bill.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect on January 1, 2019.

Staff Summary of Public Testimony:

See House Bill Report in the 2017 Legislative Session.

Persons Testifying:

See House Bill Report in the 2017 Legislative Session.

Persons Signed In To Testify But Not Testifying:

See House Bill Report in the 2017 Legislative Session.