

# HOUSE BILL REPORT

## HB 1029

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**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: 1/17/13, 2/12/13 [DPS].

**Brief Summary of Substitute Bill**

- Allocates responsibility, in the absence of a maintenance agreement, for maintaining an easement to a private road for ingress and egress.
- Provides for a civil cause of action in the event a holder of such an easement fails to maintain the easement.

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### HOUSE COMMITTEE ON JUDICIARY

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

**Minority Report:** Do not pass. Signed by 6 members: Representatives Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Hope, Klippert, Nealey and Shea.

**Staff:** Cece Clynch (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 may be created by a

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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.

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### **Summary of Substitute Bill:**

#### Maintenance of Easements.

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

- "Easement" means a nonpossessory interest in the land of another that entitles holders 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.

The holders of an interest in the 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. 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, however, 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.

In the absence of an agreement regarding maintenance, the reasonable and necessary 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 or excessive use. In determining proportionate use and resolving conflicts, the frequency of each holder's use of the easement, the scope of use, and the size and weight of vehicles may be considered. Unless inappropriate, the costs for normal and usual maintenance, as well as repair of an easement damaged by natural disasters or other events for which all of 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
- 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 or excessive 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.

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.

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

#### 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; and
- nothing authorizes the impairment of a maintenance agreement existing on or before January 1, 2014.

A severability clause is included.

#### **Substitute Bill Compared to Original Bill:**

The definition of "easement" is changed to mean a nonpossessory interest in the land of another entitling holders to a "private road for ingress and egress" rather than a "private right of way."

It is specifically acknowledged that nothing prevents agreements that allow maintenance obligations and costs to be allocated to fewer than all holders of an easement. Maintenance agreements may be recorded but it is not required that they be recorded. A failure to record does not affect enforceability among the parties to the agreement and any other person with notice (rather than actual notice) of the agreement.

The costs that must be shared in the absence of an agreement are clarified to be those which are reasonable and necessary costs of maintaining the easement.

"Public service company" is defined by reference to existing statutes that define the term for purposes of public utilities and transportation.

A severability clause is added. It is further provided that nothing in the act authorizes the impairment of a maintenance agreement existing on or before the effective date of January 1, 2014.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect on January 1, 2014.

**Staff Summary of Public Testimony:**

(In support) This is the second or third time that this bill has been introduced. This bill is the same as the version that made it the furthest through the process last year. The issue arose in San Juan County. Banks were tightening requirements for home loans. In the county, there are many old easements. When there was no agreement in place to maintain an easement, potential buyers were being denied bank loans. Washington is one of the few states that has no default provision with respect to maintenance of easements absent an agreement. Some attorneys have said that this could be a constitutional impairment, and that is why the Washington State Bar Association seeks to limit the reach to only ways of necessity and to put this in place only with respect to prospective easements. A possible solution that has been suggested is that every person could assert that he or she has the right to pay 100 percent of the costs of maintenance. It is unknown whether this would satisfy the lenders.

(In support with concerns) While maintenance and allocation of such costs are important, this must be balanced against the rights of owners and holders. This raises a myriad of potential issues. The term "right of way" is broad and could encompass easements for roads, parking, maintenance on a building, horses, bicycles, or foot traffic. Questions have arisen as to whether this would require the sharing of costs for landscaping or private security. There should be a reasonableness standard included. A very minor change should be made to section 4 in order to define "public service companies."

(Opposed) None.

**Persons Testifying:** (In support) Representative Morris, prime sponsor.

(In support with concerns) Jeremy Stillwell, Washington State Community Associations Institute Legislative Action Committee; and Ann Rendahl, Washington Utilities and Transportation Commission.

**Persons Signed In To Testify But Not Testifying:** None.