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HOUSE BILL 2165

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State of Washington

66th Legislature

2019 Regular Session

By Representative Morris

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  
6 otherwise.

7 (1) "Easement" means a nonpossessory interest in the land of  
8 another that entitles the holders of an interest in the easement to a  
9 private road for ingress and egress, embodying the right to pass  
10 across another's land.

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

15 NEW SECTION. **Sec. 2.** (1) The holders of an interest in any  
16 easement shall maintain the easement. However, nothing in this  
17 section prohibits agreements that allow maintenance obligations,  
18 including costs, to be allocated to fewer than all holders of an  
19 interest in an easement.

1 (2) (a) The cost of maintaining the easement must be shared by  
2 each holder of an interest in the easement as provided in the terms  
3 of any agreement entered into by the parties for that purpose.

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

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

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

19 (4) (a) Unless inconsistent with an agreement between the holders  
20 of an interest in an easement, in determining proportionate use and  
21 settling conflicts the following factors may be considered: (i) The  
22 frequency of use by the holders; (ii) the scope of use by the  
23 holders, which may be determined by dividing the distance of total  
24 usage of all holders into the distance of total usage of each holder;  
25 and (iii) the size and weight of vehicles used by the holders.

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

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

37 (i) The holder fails to maintain the easement according to an  
38 agreement; or

1 (ii) After receiving a demand in writing sent certified mail,  
2 return receipt requested, the holder fails to pay, within sixty days  
3 of the date of the written demand, the holder's proportion of the  
4 cost for maintaining the easement as indicated under section 2 of  
5 this act.

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

9 (2)(a) In an action brought under this section, the court may  
10 order any equitable relief that may be just under the circumstances;  
11 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  
16 to the court of competent jurisdiction where the easement is located  
17 and 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  
23 the holder of an interest in an easement based on the maintenance  
24 provisions in an instrument creating the easement if the holder is  
25 not a party to the instrument, whether the instrument is recorded or  
26 not, after the holder ceases to use the easement.

27 NEW SECTION. **Sec. 4.** (1) Except as provided in subsections (2)  
28 and (3) of this section, this chapter applies to all easements  
29 existing on or created after January 1, 2020.

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  
32 or right-of-way held by any agency or department of the state, any  
33 political subdivision of the state, any public service company as  
34 defined in either RCW 80.04.010 or 81.04.010, or any public or  
35 private utility provider.

36 (3) Nothing in this chapter authorizes the impairment of a  
37 maintenance agreement existing on or before January 1, 2020.

1        NEW SECTION.    **Sec. 5.**    Sections 1 through 4 of this act  
2    constitute a new chapter in Title 64 RCW.

3        NEW SECTION.    **Sec. 6.**    If any provision of this act or its  
4    application to any person or circumstance is held invalid, the  
5    remainder of the act or the application of the provision to other  
6    persons or circumstances is not affected.

7        NEW SECTION.    **Sec. 7.**    This act takes effect January 1, 2020.

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