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**SUBSTITUTE HOUSE BILL 1029**

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**State of Washington**                      **63rd Legislature**                      **2013 Regular Session**

**By** House Judiciary (originally sponsored by Representative Morris)

READ FIRST TIME 02/15/13.

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 road for ingress and egress, embodying the right to pass across  
9 another's 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. However, nothing in this section  
16 prohibits agreements that allow maintenance obligations, including  
17 costs, to be allocated to fewer than all holders of an interest in an  
18 easement.

1 (2)(a) The cost of maintaining the easement must be shared by each  
2 holder of an interest in the easement as provided in the terms of any  
3 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 the  
8 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 absence  
11 of an agreement under subsection (2) of this section, the reasonable  
12 and necessary 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 or excessive use. The holder shall repair the damage at his  
18 or her own expense.

19 (4)(a) Unless inconsistent with an agreement between the holders of  
20 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 holders,  
23 which may be determined by dividing the distance of total usage of all  
24 holders into the distance of total usage of each holder; and (iii) the  
25 size and weight of vehicles used by the holders.

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

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

36 (i) The holder fails to maintain the easement according to an  
37 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 of  
3 the date of the written demand, the holder's proportion of the cost for  
4 maintaining the easement as indicated under section 2 of this act.

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

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

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

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

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

25 NEW SECTION. **Sec. 4.** (1) Except as provided in subsections (2)  
26 and (3) of this section, this chapter applies to all easements existing  
27 on or created after January 1, 2014.

28 (2) This chapter does not apply to any entity regulated under  
29 chapter 76.09 RCW or railroad company or affiliate, or any easement or  
30 right-of-way held by any agency or department of the state, any  
31 political subdivision of the state, any public service company as  
32 defined in either RCW 80.04.010 or 81.04.010, or any public or private  
33 utility provider.

34 (3) Nothing in this chapter authorizes the impairment of a  
35 maintenance agreement existing on or before January 1, 2014.

1        NEW SECTION.   **Sec. 5.**   Sections 1 through 4 of this act constitute  
2   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, 2014.

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