

ASSEMBLY BILL

No. 1927

Introduced by Assembly Member Jones

February 22, 2012

An act to amend Section 845 of the Civil Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 1927, as introduced, Jones. Easements: maintenance: arbitration.

Existing law requires the owner of any easement in the nature of a private right-of-way, or of any land to which such an easement is attached, to maintain the easement in repair, and provides for the sharing of the costs of repair if an easement has more than one owner, as specified. Existing law authorizes any owner of the easement, or land to which the easement is attached, to apply to a court where the right-of-way is located, and that has jurisdiction over the amount in controversy, for the appointment of an impartial arbitrator to apportion the cost.

This bill, instead, would authorize an owner of the easement or land to which the easement is attached, to apply to a court where the right-of-way is located, and that has jurisdiction over the amount in controversy, for a judgment determining the proportionate liability of each owner. If the amount in controversy is more than the jurisdictional limit of the small claims court, the bill would provide that the application shall be for the appointment of an impartial arbitrator to apportion the cost.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 845 of the Civil Code is amended to read:

2 845. (a) The owner of any easement in the nature of a private
3 right-of-way, or of any land to which any such easement is
4 attached, shall maintain it in repair.

5 (b) If the easement is owned by more than one person, or is
6 attached to parcels of land under different ownership, the cost of
7 maintaining it in repair shall be shared by each owner of the
8 easement or the owners of the parcels of land, as the case may be,
9 pursuant to the terms of any agreement entered into by the parties
10 for that purpose. If any owner who is a party to the agreement
11 refuses to perform, or fails after demand in writing to pay the
12 owner’s proportion of the cost, an action for specific performance
13 or contribution may be brought against that owner in a court of
14 competent jurisdiction by the other owners, either jointly or
15 severally.

16 (c) (1) In the absence of an agreement, the cost shall be shared
17 proportionately to the use made of the easement by each owner.

18 ~~Any~~

19 (2) *An owner of the easement, or any owner of land to which*
20 *the easement is attached, may apply to any court where the*
21 *right-of-way is located, and that has jurisdiction over the amount*
22 *in controversy, for the appointment of an impartial arbitrator to*
23 ~~*apportion the cost*~~ *a judgment determining the proportionate*
24 *liability of each owner.* The application may be made before,
25 during, or after performance of the maintenance work. *If the*
26 *amount in controversy is more than the jurisdictional limit of the*
27 *small claims court, then the application shall be for the*
28 *appointment of an impartial arbitrator to apportion the cost.* If
29 the arbitration award is not accepted by all of the owners, the court
30 may enter a judgment determining the proportionate liability of
31 each owner. The judgment may be enforced as a money judgment
32 by any party against any other party to the action.

33 (d) In the event that snow removal is not required under
34 subdivision (a), or under any independent contractual or statutory
35 duty, an agreement entered into pursuant to subdivision (b) to
36 maintain the easement in repair shall be construed to include snow
37 removal within the maintenance obligations of the agreement if
38 all of the following exist:

1 (1) Snow removal is not expressly precluded by the terms of
2 the agreement.

3 (2) Snow removal is necessary to provide access to the properties
4 served by the easement.

5 (3) Snow removal is approved in advance by the property owners
6 or their elected representatives in the same manner as provided by
7 the agreement for repairs to the easement.

8 (e) ~~The provisions of this section do~~ *This section does* not apply
9 to rights-of-way held or used by railroad common carriers subject
10 to the jurisdiction of the Public Utilities Commission.