

AMENDED IN SENATE JUNE 25, 2012

AMENDED IN ASSEMBLY APRIL 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

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 amended, 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~~ *requires that if the easement is owned by more than one person, the costs of repair if an easement has more than one owner, as specified. Existing* *are shared by each owner pursuant to the terms of an agreement entered into by the parties for that purpose. Existing law provides that if any owner who is a party to an agreement refuses to perform or fails after demand in writing to pay the owner's proportion of the cost, an action for specific performance or contribution may be brought against that owner, as specified. Absent an agreement, existing law apportions the costs proportionately to the use made of the easement by each owner. Absent an agreement, existing law also 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, court, as specified, 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 application is not made in small claims court, the bill would provide that the application may be for the appointment of an impartial arbitrator to apportion the cost *bring an action against any other owner who refuses or fails after demand in writing to pay that owner’s share of the cost of maintenance, or for specific performance or contribution. The bill would authorize actions to be brought before, during, or after performance of the maintenance work. The bill would require all actions to be filed in superior court, unless the action may be brought in small claims court. The bill would, notwithstanding specified provisions of law, require all actions filed in superior court to be subject to judicial arbitration, as specified. The bill would provide that neither a small claims judgment nor a superior court judgment shall affect apportionment of any future costs that are not requested in the action, unless provided in the judgment. The bill would require that, in the absence of an agreement addressing the maintenance of the easement, any action described above be brought in the county in which the easement is located.*

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~~ *In the absence of an agreement, the cost shall*
- 11 *be shared proportionately to the use made of the easement by each*
- 12 *owner.*
- 13 (c) ~~If any owner who is a party to the agreement~~ refuses to
- 14 perform, or fails after demand in writing to pay the owner’s

1 proportion of the cost, an action *to recover that owner's share of*
2 *the cost, or for specific performance or ~~contribution~~ contribution,*
3 *may be brought ~~against that owner in a court of competent~~*
4 *jurisdiction by the other owners, either jointly or severally. The*
5 *action may be brought before, during, or after performance of the*
6 *maintenance work, as follows:*

7 (1) *The action may be brought in small claims court if the*
8 *amount claimed to be due as the owner's proportion of the cost*
9 *does not exceed the jurisdictional limit of the small claims court.*
10 *A small claims judgment shall not affect apportionment of any*
11 *future costs that are not requested in the small claims action.*

12 (2) *Except as provided in paragraph (1), the action shall be*
13 *filed in superior court and, notwithstanding Section 1141.13 of*
14 *the Code of Civil Procedure, the action shall be subject to judicial*
15 *arbitration pursuant to Chapter 2.5 of Title 3 of Part 3*
16 *(commencing with Section 1141.10) of the Code of Civil Procedure.*
17 *A superior court judgment shall not affect apportionment of any*
18 *future costs that are not requested in the action, unless otherwise*
19 *provided in the judgment.*

20 (3) *In the absence of an agreement addressing the maintenance*
21 *of the easement, any action for specific performance or*
22 *contribution shall be brought in a court in the county in which the*
23 *easement is located.*

24 (4) *Nothing in this section precludes the use of any available*
25 *alternative dispute resolution program to resolve actions regarding*
26 *the maintenance of easements in the small claims court or the*
27 *superior court.*

28 ~~(e) (1) In the absence of an agreement, the cost shall be shared~~
29 ~~proportionately to the use made of the easement by each owner.~~

30 ~~(2) An owner of the easement, or any owner of land to which~~
31 ~~the easement is attached, may apply to any court where the~~
32 ~~right-of-way is located, and that has jurisdiction over the amount~~
33 ~~in controversy, for a judgment determining the proportionate~~
34 ~~liability of each owner. The application may be made before,~~
35 ~~during, or after performance of the maintenance work. If the~~
36 ~~application is not made in small claims court, then the application~~
37 ~~may be for the appointment of an impartial arbitrator to apportion~~
38 ~~the cost. If the arbitration award is not accepted by all of the~~
39 ~~owners, the court may enter a judgment determining the~~
40 ~~proportionate liability of each owner. The judgment may be~~

1 ~~enforced as a money judgment by any party against any other party~~
2 ~~to the action.~~

3 (d) In the event that snow removal is not required under
4 subdivision (a), or under any independent contractual or statutory
5 duty, an agreement entered into pursuant to subdivision (b) to
6 maintain the easement in repair shall be construed to include snow
7 removal within the maintenance obligations of the agreement if
8 all of the following exist:

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

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

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

16 (e) This section does not apply to rights-of-way held or used by
17 railroad common carriers subject to the jurisdiction of the Public
18 Utilities Commission.