

HOUSE BILL NO. HB0134

Private roads.

Sponsored by: Representative(s) Brown and Senator(s)
Nicholas, P.

A BILL

for

1 AN ACT relating to highways; modifying procedures for
2 establishing private roads; conforming provisions;
3 repealing specified provisions; specifying legislative
4 intent; and providing for an effective date.

5

6 *Be It Enacted by the Legislature of the State of Wyoming:*

7

8 **Section 1.** W.S. 24-9-105 is created to read:

9

10 **24-9-105. Rules of procedure; legislative findings**
11 **and intent.**

12

13 (a) The supreme court may adopt rules governing
14 proceedings commenced under W.S. 24-9-101, including
15 limited application of the rules relating to procedure,
16 discovery and evidence and such other rules as the court
17 determines appropriate to provide for expedited and

1 efficient proceedings, including appellate proceedings,
2 which minimize the delay and cost in actions to establish a
3 private road.

4
5 (b) It is the intent of the legislature to provide
6 for a more expeditious and affordable means to establish a
7 private road under this article. The legislature further
8 intends that the precedents established with respect to the
9 creation of private roads prior to the July 1, 2013
10 amendments to this article should continue to be followed
11 to the extent they are not inconsistent with the provisions
12 of this article.

13
14 **Section 2.** W.S. 24-9-101(a)(intro), (i), (iii)
15 through (vi), (b) through (f), (h) and (j), 24-9-103(a)
16 through (d) and (f) and 24-9-104 are amended to read:

17
18 **24-9-101. Answer and complaint; initial hearing;**
19 **appointment of viewers and appraisers.**

20
21 (a) Any person whose land has no outlet to, nor
22 connection with a public road, may ~~file an application in~~
23 ~~writing with the board of county commissioners in the~~
24 ~~county where his~~ commence an action in district court in

1 any county in which any part of the land is located for a
2 private road leading from his land to some convenient
3 public road. The ~~application shall contain the following~~
4 ~~information~~ plaintiff shall join as defendants the owners
5 of record, owners of recorded easements and rights of way
6 and any lessee, mortgagee or occupant of the land over
7 which any proposed road would cross and may include the
8 state of Wyoming. The complaint shall contain a short and
9 plain statement of:

10

11 (i) The legal description of the land owned by
12 the ~~applicant~~ plaintiff to which access is sought and a
13 statement that all or some of the land is located within
14 the county;

15

16 (iii) A description of the ~~applicant's~~
17 plaintiff's efforts to purchase a legally enforceable
18 access to a public road;

19

20 (iv) A description sufficient to identify the
21 general location of any access routes proposed by the
22 ~~applicant~~ plaintiff;

23

1 (v) The legal description ~~and the names and~~
2 ~~addresses of the affected parties~~ of all land over which
3 any proposed access routes would cross; ~~Affected parties~~
4 ~~includes the owners of record, owners of recorded easements~~
5 ~~and rights of way and any lessee, mortgagee or occupant of~~
6 ~~the land over which any proposed road would cross and may~~
7 ~~include the state of Wyoming,~~ and

8
9 (vi) A statement as to whether any actions of
10 the ~~applicant~~ plaintiff or any person with the consent and
11 knowledge of the ~~applicant~~ plaintiff, caused the
12 ~~applicant's~~ plaintiff's land to lose or to not have any
13 legally enforceable access.

14
15 (b) ~~Within ten (10) days after filing an application~~
16 ~~with the board, the applicant shall give notice in writing~~
17 ~~by certified mail, with return receipt, to the affected~~
18 ~~parties of all lands over which any private road is applied~~
19 ~~for, of his pending application for a private road. The~~
20 ~~notice shall include a complete copy of the original~~
21 ~~application and any amendments thereto. Each affected~~
22 ~~party receiving notice under this subsection shall, within~~
23 ~~forty-five (45) days of receiving notice, provide written~~
24 ~~notice by certified mail with return receipt requested, to~~

1 ~~the board and the applicant of~~ The defendant's answer shall
2 set forth the location and description, in the manner
3 described in paragraphs (a)(iv) and (v) of this section, of
4 any alternate routes proposed by the ~~affected party~~
5 defendant and the owners of record, owners of recorded
6 easements and rights of way and any lessee, mortgagee or
7 occupant of the land over which any proposed alternate
8 routes would cross.

9
10 (c) The ~~board~~ court shall ~~review the application~~
11 ~~within eighty five (85) days of its receipt and if the~~
12 ~~board finds the application contains the information~~
13 ~~required by subsection (a) of this section and notice has~~
14 ~~been provided in accordance with subsection (b) of this~~
15 ~~section, it shall schedule a hearing to determine whether~~
16 ~~the applicant has no legally enforceable access to his~~
17 ~~land. The hearing shall be scheduled not sooner than one~~
18 ~~hundred forty five (145) days after the filing of the~~
19 ~~application with the board~~ give an action for a private
20 road precedence over other civil cases pending in court,
21 other than election contests, and the action shall in every
22 way be expedited.

23

1 (d) If the ~~applicant~~plaintiff has had access to his
2 land and that access is being denied or restricted, the
3 ~~board of county commissioners~~court may grant temporary
4 access to the ~~applicant~~plaintiff over a route identified
5 by the ~~board until the application has been processed and~~
6 ~~finalized~~court pending the outcome of the proceedings.

7
8 (e) ~~After the board has scheduled a hearing date~~
9 ~~under subsection (c) of this section, the applicant shall~~
10 ~~give written notice of the date, time and place of the~~
11 ~~hearing on the application, by certified mail with return~~
12 ~~receipt, to all affected parties named in the original~~
13 ~~application, all landowners affected by~~The plaintiff shall
14 join as defendants persons identified under subsection (b)
15 of this section or otherwise identified by a defendant as
16 the owners of record, owners of recorded easements and
17 rights of way and any lessee, mortgagee or occupant of the
18 land over which any proposed alternative routes ~~proposed as~~
19 ~~provided in subsection (b) of this section and any other~~
20 ~~landowners the board believes may be affected by the~~
21 ~~application or by any alternative route which may be~~
22 ~~considered by the board. The written notice shall include a~~
23 ~~copy of the original application and any amendments thereto~~
24 ~~and shall be provided at least forty five (45) days prior~~

1 ~~to the pending hearing. If any affected party, including~~
2 ~~any landowner affected by any alternative route proposed~~
3 ~~as provided in subsection (b) of this section, is a~~
4 ~~nonresident, and there is no resident agent upon which~~
5 ~~personal service can be had, then the notice may be~~
6 ~~published once a week for three (3) weeks in a newspaper~~
7 ~~published in the county. The first publication shall be at~~
8 ~~least forty five (45) days prior to the hearing~~ would
9 cross.

10
11 (f) The ~~board~~ court may ~~assess to the applicant costs~~
12 ~~for acting on the application under this section and W.S.~~
13 ~~24-9-103 and~~ require the ~~applicant~~ plaintiff to file a bond
14 to pay for ~~those~~ costs allowed under W.S. 24-9-103.

15
16 (h) ~~If at the completion of the hearing the board~~
17 ~~finds that the applicant~~ The court shall hold an initial
18 hearing to determine whether the plaintiff has satisfied
19 the requirements of this section and access is necessary
20 because the ~~applicant~~ plaintiff has no legally enforceable
21 access., ~~the board shall within thirty (30) days of the~~
22 ~~completion of the hearing enter its order so finding and~~
23 ~~certify the application directly to the district court~~
24 ~~unless the board elects to retain jurisdiction. If the~~

1 ~~application is certified the court shall proceed as~~
2 ~~provided in subsection (m) of this section. If the board~~
3 ~~elects to retain jurisdiction it shall proceed with the~~
4 ~~application as provided in this subsection, subsections (j)~~
5 ~~through (k) of this section and W.S. 24-9-103. The board~~ If
6 the court finds the requirements of this section have been
7 met and access is necessary, the court shall appoint three
8 (3) disinterested ~~freeholders and electors of the county,~~
9 persons as viewers and appraisers. Before entering upon
10 their duties the viewers shall take and subscribe to an
11 oath that they will faithfully and impartially perform
12 their duties under their appointment as viewers and
13 appraisers. The ~~board~~ court shall ~~cause an order to be~~
14 ~~issued directing~~ direct them to meet on a day named in the
15 order on the proposed road, and view and appraise any
16 damages, ~~and make a recommendation to the board. Prior to~~
17 ~~meeting on site to view the proposed road, the viewers~~
18 ~~shall give notice in writing to the applicant and affected~~
19 ~~parties of the lands through which the proposed road or any~~
20 ~~alternative road may pass, of the time and place where the~~
21 ~~viewers will meet, at least ten (10) days before viewing~~
22 ~~the road,~~ at which time and place all persons interested
23 may appear and be heard by the viewers. The viewers and
24 appraisers shall then proceed to locate and mark out a

1 private road and alternative routes as they deem
2 appropriate, provided the location of the road shall not be
3 marked out to cross the lands of any ~~affected party who was~~
4 ~~not given notice under subsection (c) of this section~~
5 person not joined in the action. The viewers and appraisers
6 shall recommend to the court the most reasonable and
7 convenient route, provided that access shall be along
8 section and boundary lines whenever practical. The viewers
9 and appraisers may recommend specific conditions that the
10 ~~board~~ court place on the road, ~~as the board deems~~
11 ~~necessary,~~ including provisions for maintenance and
12 limitations on the amount and type of use. The proposed
13 road shall not exceed thirty (30) feet in width from a
14 certain point on the land of the ~~applicant~~ plaintiff to
15 some certain point on the public road, and shall be located
16 so as to do the least possible damage to the lands through
17 which the private road is located. The viewers and
18 appraisers shall also appraise any damages sustained by the
19 owner over which the road is to be established and make
20 full and true returns, with a plat of the road to the ~~board~~
21 ~~of county commissioners~~ court. The viewers and appraisers
22 shall also determine whether or not any gates or
23 cattleguards ~~shall~~ should be placed at proper points on the

1 road, and appraise any damages in accordance with that
2 determination.

3

4 (j) In determining any damages to be suffered by ~~the~~
5 ~~owner or owners of the lands through which the access shall~~
6 ~~be provided~~ a defendant, the viewers and appraisers shall
7 appraise the value of the property affected by the road
8 before and after the road is in place. Damages also may
9 include reasonable compensation for any improvements on the
10 lands over which any private road is to be granted which
11 were not paid for and will be used by the ~~applicant~~
12 plaintiff.

13

14 **24-9-103. Report of viewers and appraisers; trial to**
15 **the court; costs.**

16

17 (a) The viewers and appraisers so appointed, or a
18 majority of them, shall make a report of their
19 recommendations to the ~~board of county commissioners at the~~
20 ~~next regular session~~ court, and also the amount of damages,
21 if any, appraised by them, and the ~~person or persons~~
22 defendant entitled to such damages. Upon receiving the
23 report of the viewers and appraisers, the ~~board shall hold~~
24 ~~a hearing after twenty (20) days prior written notice to~~

1 ~~all affected parties having an interest in the lands~~
2 ~~through which the proposed road or any alternative road may~~
3 ~~pass, at which time the affected parties may address the~~
4 ~~report. The board~~ matter shall be tried to the court
5 without a jury. The court may ~~either~~ accept, reject or
6 modify the report and recommendations. The ~~board~~ court
7 shall select the most reasonable and convenient route for
8 the access, provided that access shall be along section and
9 boundary lines whenever practical. ~~In compliance with the~~
10 ~~Wyoming Administrative Procedure Act, the board~~ The court
11 shall issue ~~an~~ a final order specifying the route, ~~selected~~
12 ~~by the board,~~ any conditions imposed by the ~~board and~~ court
13 and any damages and costs to be paid by the ~~applicant~~
14 plaintiff.

15

16 (b) ~~The applicant and any other person aggrieved by~~
17 ~~the action of the board including the amount of any damages~~
18 ~~awarded, A party~~ may appeal ~~to the district court at any~~
19 ~~time within thirty (30) days from the date of the order~~ any
20 final judgment of the district court under this section to
21 the supreme court.

22

23 (c) After the ~~board of county commissioners~~ court has
24 received a survey of the route and proof of payment ~~by the~~

1 ~~applicant~~ of any damages and costs ordered to be paid, the
2 ~~board shall cause a certified copy of the order to be filed~~
3 ~~with the county clerk~~ court shall enter an order
4 incorporating a legal description of the road, a legal
5 description of the land benefitted by the road, declaring
6 the road to be a private road, and citing in the order any
7 conditions imposed by the ~~board~~ court. A certified copy of
8 the court's order shall be filed in the office of the
9 county clerk.

10
11 (d) In addition to paying any damages to be suffered
12 by the ~~affected parties having an interest in the land~~
13 ~~through which the access shall be provided, the applicant~~
14 ~~shall be responsible for obtaining and paying for any~~
15 defendants, the court shall order the plaintiff to pay
16 appropriate costs, which shall include any survey, plat,
17 engineering and construction costs incurred concerning the
18 location and construction of the road.

19
20 (f) In addition to paying other damages and costs
21 required by this section and by W.S. 24-9-101, the
22 ~~applicant~~ plaintiff shall be responsible for paying the
23 reasonable costs of an appraisal obtained by ~~an affected~~
24 ~~party~~ a defendant if that appraisal was adopted in

1 substantial part as a basis for damages and varied more
2 than fifteen percent (15%) from the valuation determined by
3 the viewers and appraisers appointed under W.S.
4 24-9-101(h).

5
6 **24-9-104. Water and timber ways.**

7
8 Upon the presentation of a petition signed by at least five
9 (5) freeholders of any neighborhood, praying for passage to
10 any watercourse for the purpose of watering livestock, or
11 for the convenient access to timber, the ~~board of county~~
12 ~~commissioners may, in their discretion,~~ district court may
13 establish such water or timber way as provided in W.S.
14 24-9-101 through ~~24-9-103~~ 24-9-105 relating to the opening
15 of private roads.

16
17 **Section 2.** W.S. 24-9-101(g), (k) and (m) and
18 24-9-103(e) are repealed.

19
20 **Section 3.** This act is effective July 1, 2013.

21
22 (END)