

HOUSE BILL NO. HB0184

Private roads.

Sponsored by: Representative(s) Flitner, Barlow, Clausen,
 Hunt and MacGuire and Senator(s) Boner and
 Driskill

A BILL

for

1 AN ACT relating to private roads; amending private road
 2 provisions to create private road easements; revising private
 3 road establishment processes and standards; requiring
 4 imposition of a bond; specifying applicability; and providing
 5 for an effective date.

6

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

8

9 **Section 1.** W.S. 24-9-101(a)(intro), (iii), (v), by
 10 creating new paragraphs (vii) and (viii), (d), (f), (h) and
 11 (j), 24-9-103(a), (c), (d) and (f) and 24-9-105(b) are amended
 12 to read:

13

14

CHAPTER 9

15

ESTABLISHMENT OF PRIVATE ROAD EASEMENTS

1

2 **24-9-101. Answer and complaint; initial hearing;**
3 **appointment of viewers and appraisers.**

4

5 (a) Any person whose land has no outlet to, nor
6 connection with a public road, and who has no other right or
7 claim under the law which provides or could provide reasonable
8 access to a public road, may commence an action in district
9 court in any county in which any part of the land is located
10 for a private road easement leading from his land to some
11 convenient public road. The plaintiff shall join as
12 defendants the owners of record, owners of recorded easements
13 and rights of way and any lessee, mortgagee or occupant of
14 the land over which any proposed road easement would cross.
15 The complaint shall contain a short and plain statement of:

16

17 (iii) A description of the plaintiff's good faith
18 efforts to purchase a legally enforceable access to a public
19 road;

20

21 (v) The legal description of all land over which
22 any proposed access routes would cross; ~~and~~

23

1 (vii) A statement of any traditional or historical
2 access from a public road to the plaintiff's land; and

3
4 (viii) That the plaintiff has no other right or
5 claim under the law which provides or could provide reasonable
6 access to a public road.

7
8 (d) If the plaintiff has had access to his land and
9 that access is being denied or restricted, the court may grant
10 temporary access to the plaintiff over a route identified by
11 the court pending the outcome of the proceedings. Any
12 temporary access provided pursuant to this subsection shall
13 not exceed any traditional or historical use of that access.

14
15 (f) The court ~~may~~shall require the plaintiff to file
16 a bond to pay for costs allowed under W.S. 24-9-103.

17
18 (h) The court shall hold an initial hearing to
19 determine whether the plaintiff has satisfied the
20 requirements of this section and access is necessary because
21 the plaintiff has no legally enforceable access. If the court
22 finds the requirements of this section have been met and
23 access is necessary, the court shall appoint three (3)

1 disinterested persons as viewers and appraisers. Before
2 entering upon their duties the viewers shall take and
3 subscribe to an oath that they will faithfully and impartially
4 perform their duties under their appointment as viewers and
5 appraisers. The court shall direct them to meet on a day named
6 in the order on the proposed road, and view and appraise any
7 damages, at which time and place all persons interested may
8 appear and be heard by the viewers. The viewers and appraisers
9 shall then proceed to locate and mark out a private road
10 easement and alternative easement routes as they deem
11 appropriate, provided the location of the road easements
12 shall not be marked out to cross the lands of any person not
13 joined in the action. If there exists an established pathway
14 that provides access to the plaintiff and the plaintiff and
15 the defendants agree that use of that established pathway
16 should be used as a private road easement, the viewers and
17 appraisers shall recommend to the court that the private road
18 easement be established in the location of the pathway. If
19 the plaintiff and defendants do not agree on the use of an
20 established pathway, the viewers and appraisers shall
21 recommend to the court ~~the most a~~ reasonable ~~and convenient~~
22 ~~route~~ easement route that will minimize impacts on use and
23 development of the lands over which the easement will run and

1 that will do the least damage to those lands, provided that
2 ~~access—the easement~~ shall be located along section and
3 boundary lines whenever practical. The viewers and appraisers
4 ~~may recommend—~~shall consider recommending specific conditions
5 ~~that—for~~ the court to place on the road easement, including
6 provisions that adhere to historical use and need and other
7 conditions which provide for maintenance and limitations on
8 the amount and type of use. The proposed private road
9 easement shall not exceed thirty (30) feet in width from a
10 certain point on the land of the plaintiff to some certain
11 point on the public road., ~~and shall be located so as to do~~
12 ~~the least possible damage to the lands through which the~~
13 ~~private road is located.~~ The viewers and appraisers shall
14 also appraise any damages sustained by the owner over which
15 the road easement is to be established and make full and true
16 returns, with a plat of the road easement to the court. The
17 viewers and appraisers shall also determine whether or not
18 any gates or cattleguards should be placed at proper points
19 on the road, and appraise any damages in accordance with that
20 determination.

21

22 (j) In determining any damages to be suffered by a
23 defendant, the viewers and appraisers shall appraise the

1 value of the property affected by the private road easement
2 before and after the ~~road-easement~~ is in place. Damages also
3 ~~may~~ shall include reasonable compensation for any
4 improvements on the lands over which any private road easement
5 is to be granted which were not paid for and will be used by
6 the plaintiff and any loss of income to a defendant caused by
7 the establishment of the private road easement.

8

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

11

12 (a) The viewers and appraisers so appointed, or a
13 majority of them, shall make a report of their recommendations
14 to the court, and also the amount of damages, if any,
15 appraised by them, and the defendant entitled to such damages.
16 Upon receiving the report of the viewers and appraisers, the
17 matter shall be tried to the court without a jury. The court
18 may accept, reject or modify the report and recommendations.
19 The court shall select ~~the most a~~ reasonable ~~and convenient~~
20 easement route ~~for the access that will minimize impacts on~~
21 the use and development of the land over which the easement
22 will run and that will do the least amount of damage to those
23 lands, provided that ~~access the easement~~ shall be located

1 along section and boundary lines whenever practical. The
2 court shall issue a final order specifying the easement route,
3 any conditions imposed by the court and any damages and costs
4 to be paid by the plaintiff. The order shall establish a
5 reasonable payment to be paid by the easement holder to the
6 landowner over whose land the private road easement will cross
7 for the continued use of the easement.

8
9 (c) After the court has received a survey of the
10 easement route and proof of payment of any damages and costs
11 ordered to be paid, the court shall enter an order
12 incorporating a legal description of the ~~road~~-easement, a
13 legal description of the land benefitted by the ~~road~~-easement,
14 declaring the ~~road~~-easement to be a private road easement
15 that runs with the land, and citing in the order any
16 conditions imposed by the court. A certified copy of the
17 court's order shall be filed in the office of the county
18 clerk.

19
20 (d) In addition to paying any damages to be suffered by
21 the defendants, the court shall order the plaintiff to pay
22 appropriate costs, which shall include any survey, plat,
23 engineering and construction costs incurred concerning the

1 location and construction of ~~the any~~ road built upon the
2 private road easement.

3

4 (f) In addition to paying other damages and costs
5 required by this section and by W.S. 24-9-101, the plaintiff
6 shall be responsible for paying the reasonable costs of an
7 appraisal obtained by a defendant if that appraisal was
8 adopted in substantial part as a basis for damages and varied
9 more than fifteen percent (15%) from the valuation determined
10 by the viewers and appraisers appointed under W.S.
11 24-9-101(h). The plaintiff also shall pay reasonable attorney
12 fees and costs to a prevailing defendant where the court finds
13 that the plaintiff's action under W.S. 24-9-101 was not
14 substantially justified and the plaintiff already had access
15 to the property for which access was sought.

16

17 **24-9-105. Rules of procedure; legislative findings and**
18 **intent.**

19

20 (b) ~~It is the intent of the legislature to provide for~~
21 ~~a more expeditious and affordable means to establish a private~~
22 ~~road under this article.~~—The legislature ~~further~~ intends
23 that the precedents established with respect to the creation

1 of private roads prior to the July 1, 2013 and July 1, 2019
2 amendments to this article should continue to be followed to
3 the extent they are not inconsistent with the provisions of
4 this article.

5

6 **Section 2.** This act shall apply to actions filed
7 pursuant to W.S. 24-9-101 on and after July 1, 2019.

8

9 **Section 3.** This act is effective July 1, 2019.

10

11

(END)