

ENROLLED ACT NO. 83, HOUSE OF REPRESENTATIVES

SIXTY-SECOND LEGISLATURE OF THE STATE OF WYOMING  
2013 GENERAL SESSION

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

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

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

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

(a) The supreme court may adopt rules governing proceedings commenced under W.S. 24-9-101, including limited application of the rules relating to procedure, discovery and evidence and such other rules as the court determines appropriate to provide for expedited and efficient proceedings, including appellate proceedings, which minimize the delay and cost in actions to establish a private road.

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

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

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

(a) Any person whose land has no outlet to, nor connection with a public road, may ~~file an application in writing with the board of county commissioners in the county where his~~ commence an action in district court in any county in which any part of the land is located for a private road leading from his land to some convenient public road. The ~~application shall contain the following information~~ plaintiff shall join as defendants the owners of record, owners of recorded easements and rights of way and any lessee, mortgagee or occupant of the land over which any proposed road would cross. The complaint shall contain a short and plain statement of:

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

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

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

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

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

(b) ~~Within ten (10) days after filing an application with the board, the applicant shall give notice in writing by certified mail, with return receipt, to the affected parties of all lands over which any private road is applied for, of his pending application for a private road. The notice shall include a complete copy of the original application and any amendments thereto. Each affected party receiving notice under this subsection shall, within forty five (45) days of receiving notice, provide written notice by certified mail with return receipt requested, to the board and the applicant of~~ The defendant's answer shall set forth the location and description, in the manner described in paragraphs (a)(iv) and (v) of this section, of any alternate routes proposed by the ~~affected party~~ defendant and the owners of record, owners of recorded easements and rights of way and any lessee, mortgagee or occupant of the land over which any proposed alternate routes would cross.

(c) The ~~board~~ court shall ~~review the application within eighty five (85) days of its receipt and if the board finds the application contains the information required by subsection (a) of this section and notice has been provided in accordance with subsection (b) of this section, it shall schedule a hearing to determine whether the applicant has no legally enforceable access to his land. The hearing shall be scheduled not sooner than one hundred forty five (145) days after the filing of the application with the board~~ give an action for a private

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road precedence over other civil cases pending in court, other than election contests, and the action shall in every way be expedited.

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

(e) ~~After the board has scheduled a hearing date under subsection (c) of this section, the applicant shall give written notice of the date, time and place of the hearing on the application, by certified mail with return receipt, to all affected parties named in the original application, all landowners affected by~~ The plaintiff shall join as defendants persons identified under subsection (b) of this section or otherwise identified by a defendant as the owners of record, owners of recorded easements and rights of way and any lessee, mortgagee or occupant of the land over which any proposed ~~alternative routes proposed as provided in subsection (b) of this section and any other landowners the board believes may be affected by the application or by any alternative route which may be considered by the board. The written notice shall include a copy of the original application and any amendments thereto and shall be provided at least forty five (45) days prior to the pending hearing. If any affected party, including any landowner affected by any alternative route proposed as provided in subsection (b) of this section, is a nonresident, and there is no resident agent upon which personal service can be had, then the notice may be published once a week for three (3) weeks in a newspaper published in the county. The first publication shall be at~~

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~~least forty five (45) days prior to the hearing~~ would cross.

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

(h) ~~If at the completion of the hearing the board finds that the applicant~~ The court shall hold an initial hearing to determine whether the plaintiff has satisfied the requirements of this section and access is necessary because the ~~applicant~~ plaintiff has no legally enforceable access., ~~the board shall within thirty (30) days of the completion of the hearing enter its order so finding and certify the application directly to the district court unless the board elects to retain jurisdiction. If the application is certified the court shall proceed as provided in subsection (m) of this section. If the board elects to retain jurisdiction it shall proceed with the application as provided in this subsection, subsections (j) through (k) of this section and W.S. 24-9-103. The board~~ If the court finds the requirements of this section have been met and access is necessary, the court shall appoint three (3) ~~disinterested freeholders and electors of the county,~~ persons as viewers and appraisers. Before entering upon their duties the viewers shall take and subscribe to an oath that they will faithfully and impartially perform their duties under their appointment as viewers and appraisers. The ~~board~~ court shall ~~cause an order to be issued directing~~ direct them to meet on a day named in the order on the proposed road, and view and appraise any damages, ~~and make a recommendation to the board. Prior to meeting on-site to view the proposed road, the viewers shall give notice in writing to the applicant and affected parties of the lands through which the proposed road or any~~

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~~alternative road may pass, of the time and place where the viewers will meet, at least ten (10) days before viewing the road,~~ at which time and place all persons interested may appear and be heard by the viewers. The viewers and appraisers shall then proceed to locate and mark out a private road and alternative routes as they deem appropriate, provided the location of the road shall not be marked out to cross the lands of any ~~affected party who was not given notice under subsection (e) of this section~~ person not joined in the action. The viewers and appraisers shall recommend to the court the most reasonable and convenient route, provided that access shall be along section and boundary lines whenever practical. The viewers and appraisers may recommend specific conditions that the ~~board~~ court place on the road, ~~as the board deems necessary,~~ including provisions for maintenance and limitations on the amount and type of use. The proposed road shall not exceed thirty (30) feet in width from a certain point on the land of the ~~applicant~~ plaintiff to some certain point on the public road, and shall be located so as to do the least possible damage to the lands through which the private road is located. The viewers and appraisers shall also appraise any damages sustained by the owner over which the road is to be established and make full and true returns, with a plat of the road to the ~~board of county commissioners~~ court. The viewers and appraisers shall also determine whether or not any gates or cattleguards ~~shall~~ should be placed at proper points on the road, and appraise any damages in accordance with that determination.

(j) In determining any damages to be suffered by ~~the owner or owners of the lands through which the access shall be provided~~ a defendant, the viewers and appraisers shall appraise the value of the property affected by the road before and after the road is in place. Damages also may

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include reasonable compensation for any improvements on the lands over which any private road is to be granted which were not paid for and will be used by the applicant plaintiff.

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

(a) The viewers and appraisers so appointed, or a majority of them, shall make a report of their recommendations to the board of county commissioners at the next regular session court, and also the amount of damages, if any, appraised by them, and the person or persons defendant entitled to such damages. Upon receiving the report of the viewers and appraisers, the board shall hold a hearing after twenty (20) days prior written notice to all affected parties having an interest in the lands through which the proposed road or any alternative road may pass, at which time the affected parties may address the report. The board matter shall be tried to the court without a jury. The court may either accept, reject or modify the report and recommendations. The board court shall select the most reasonable and convenient route for the access, provided that access shall be along section and boundary lines whenever practical. In compliance with the Wyoming Administrative Procedure Act, the board The court shall issue an a final order specifying the route, selected by the board, any conditions imposed by the board and court and any damages and costs to be paid by the applicant plaintiff.

(b) The applicant and any other person aggrieved by the action of the board including the amount of any damages awarded, A party may appeal to the district court at any time within thirty (30) days from the date of the order any

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final judgment of the district court under this section to the supreme court.

(c) After the ~~board of county commissioners court~~ has received a survey of the route and proof of payment ~~by the applicant~~ of any damages and costs ordered to be paid, the ~~board shall cause a certified copy of the order to be filed with the county clerk~~ court shall enter an order incorporating a legal description of the road, a legal description of the land benefitted by the road, declaring the road to be a private road, and citing in the order any conditions imposed by the ~~board court~~. A certified copy of the court's order shall be filed in the office of the county clerk.

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

(f) In addition to paying other damages and costs required by this section and by W.S. 24-9-101, the ~~applicant~~ plaintiff shall be responsible for paying the reasonable costs of an appraisal obtained by ~~an affected party~~ a defendant if that appraisal was adopted in substantial part as a basis for damages and varied more than fifteen percent (15%) from the valuation determined by the viewers and appraisers appointed under W.S. 24-9-101(h).

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



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

**Section 3.** W.S. 24-9-101(g), (k) and (m) and 24-9-103(e) are repealed.

**Section 4.** This act is effective July 1, 2013.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk