

House BILL NO. 290

INTRODUCED BY

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A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A METHOD OF PROVIDING ACCESS TO ISOLATED LAND; PROVIDING FOR A PETITION TO AND A HEARING BY THE BOARD OF COUNTY COMMISSIONERS; REQUIRING FINDINGS AND COMPENSATION FOR ACCESS; REQUIRING THE OWNER OF THE ISOLATED LAND TO PAY ALL COSTS FOR PROVIDING ACCESS; AND PROVIDING FOR REVIEW OF AWARDS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Isolated land access -- petition -- hearing. (1) A person owning

isolated land may present to the board of county commissioners an affidavit:

(a) establishing to the board's satisfaction that the person is the owner of the real estate described in the affidavit and located within the county;

(b) establishing to the board's satisfaction that the real estate is shut off from all public access, other than a waterway, because it is surrounded on all sides by real estate belonging to other persons or by the real estate and by water;

(c) establishing to the board's satisfaction that the person is unable to purchase right-of-way over or through the surrounding property to a public road or that right-of-way cannot be purchased, except at an exorbitant price, and stating the lowest price for which the right-of-way can be purchased by the person; and

(d) asking that a public access be provided in accordance with [section 4].

(2) The application for access may be included in a separate petition instead of in an affidavit. The petition or affidavit must be accompanied by a sufficient surety bond or other form of surety established by the board of county commissioners in an amount that will cover the costs of the county under [sections 1 through 8].

(3) The board of county commissioners shall set a time and place for hearing the matter, which hearing may not be more than 30 days after the receipt of the affidavit or petition.



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1 **NEW SECTION. Section 2. Access by private road only.** Whenever all of the other conditions
2 prescribed by [section 1] are present and, instead of being entirely shut off from all public roads, the only
3 access by any owner of real estate to any public road is by an established private road less than 20 feet
4 in width, the board of county commissioners shall, upon the filing of an affidavit or an affidavit and petition,
5 substantially in the manner set forth in [section 1], appoint a time and place and hold a hearing as provided
6 for in [section 1].

7
8 **NEW SECTION. Section 3. Hearing -- notice.** (1) When a hearing is to be held as provided in
9 [section 1 or 2], the board of county commissioners shall publish notice of the time and place of the hearing
10 at least 10 days before the time fixed for the hearing in the newspaper that publishes the county legal
11 notices.

12 (2) At least 15 days' written notice of the time and place of the hearing must be given to all of the
13 owners and occupants of the lands through which the access may pass. The notice must be served
14 personally or by leaving a copy at the residence of each occupant of the lands and, whenever possible, by
15 certified mail to the owners of the land.

16
17 **NEW SECTION. Section 4. Access road -- damages.** (1) The board of county commissioners
18 shall, after a hearing, proceed to provide public access if it finds that the amount of use and the number
19 of persons served warrants access and that:

20 (a) the conditions set forth in [section 1 or 2] exist;

21 (b) the isolated land was not isolated at the time that it was purchased by the owner;

22 (c) the isolation of the land was not caused by the owner or by any other person with the
23 knowledge and consent of the owner; and

24 (d) access is necessary for existing use of the isolated land.

25 (2) If the findings in subsection (1) are made, the board of county commissioners may lay out a
26 public road to the isolated land. The road may not be more than 60 feet or less than 20 feet in width.

27 (3) The board of county commissioners shall appraise the damages to be sustained by the owner
28 or owners of the real estate over or through which the access is provided. The damages must be paid by
29 the person petitioning for the access to be provided. The person petitioning for access shall also reimburse
30 the county for all engineering and construction costs incurred in providing access. In those cases in which

1 public access is granted pursuant to [sections 1 through 8], the county is not responsible for future
2 maintenance unless a public road is established.

3
4 **NEW SECTION. Section 5. Location of road.** Whenever possible, access provided pursuant to
5 [sections 1 through 8] must be along section lines. When the most practicable route for the public access
6 is adjacent to a watercourse, the land to be taken for access must be measured from the edge of the
7 watercourse.

8
9 **NEW SECTION. Section 6. Order of board -- payment of damages.** Upon the payment to the
10 county treasurer of the amount assessed as damages to the owner or owners of the real estate, the board
11 of county commissioners shall issue an order describing the public access, as provided for in [section 4],
12 and file the order with the county clerk, together with its award of damages. The order must be recorded
13 by the clerk.

14
15 **NEW SECTION. Section 7. Award -- appeal.** (1) Any party to an award, as provided by [section
16 4], may, within 60 days after the filing of an order pursuant to [section 6], appeal the order to the district
17 court of the county in which the lands are located. The appeal must be taken by serving upon the adverse
18 party a notice of appeal and by filing notice and proof of service with the clerk of the court within the 60
19 days. The appeal must be set for hearing by the court. The appeal must be heard and determined in the
20 same manner as appeals from awards in condemnations, as provided in Title 70, chapter 30, part 3.

21 (2) The appeal may not affect the right or authority of the petitioner to the use of the roadway
22 under the award of the appraisers. The applicant shall, in the case of an appeal, file any additional security
23 required by the board of county commissioners for costs and damages that may accrue by reason of the
24 appeal. If on appeal the appellant does not obtain a more favorable judgment and award than was given
25 by the appraisers, the appellant shall pay all of the costs of the appeal.

26 (3) Either party to the suit may appeal from the decision of the district court to the supreme court,
27 and the sum deposited as provided in subsection (2) must remain in the hands of the county treasurer until
28 a final decision is issued.

29
30 **NEW SECTION. Section 8. Release of funds -- accounting.** Upon a final decision concerning

1 access and damages, the county treasurer shall pay the damages to the party or parties through whose
2 property the access was provided. The board of county commissioners shall return any excess portion of
3 the security required under [section 1 or 7] to the person filing the affidavit or petition under [section 1],
4 along with an accounting of the costs incurred by the county in the proceeding.

5

6 NEW SECTION. **Section 9. Codification instruction.** [Sections 1 through 8] are intended to be
7 codified as an integral part of Title 70, chapter 30, and the provisions of Title 70, chapter 30, apply to
8 [sections 1 through 8].

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