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SB BILL NO. 143

INTRODUCED BY Jaewz Ellis

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A CONDEMNATION OF A WAY OF NECESSITY FOR ACCESS TO LAND TO WHICH THERE IS NO OTHER LEGAL ACCESS."

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

NEW SECTION. Section 1. Private way of necessity. (1) A person whose land does not have an outlet to or connection with a public road may apply in writing to the board of county commissioners of the county in which the land is located for a private road leading from the person's land to some convenient public road. At least 60 days prior to applying to the board, the applicant shall give notice in writing of the intent to apply for a private road to the owner, resident agent, or occupant of all lands over which the private road is applied for. If the owner of the land 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 3 weeks in a newspaper published in the county. The last publication must be at least 30 days before the hearing on the application.

(2) At the hearing on the application, all interested parties may appear and be heard by the board as to the necessity of the road and all matters pertaining to the road. Upon the hearing on the application, whether the owner or other persons interested appear or not, if the board finds that the applicant has complied with the law and that the private road is necessary, the board shall appoint three disinterested property owners and electors of the county as viewers and appraisers. The board shall issue an order directing the viewers and appraisers to meet on a day named in the order on the proposed road, to view and locate a private road according to the application, and to assess damages to be sustained by the creation of the private road. If for any reason the viewers and appraisers are unable to meet at the time set by the board to view the proposed road, they may fix some other date but shall give notice in writing, at least 10 days before viewing the road, to the owner, resident agent, or occupant of the lands over which the road is proposed to be located of the time and place at which the viewers will meet. All persons interested may appear and be heard by the viewers and appraisers at the time and place specified. Before entering upon their duties, the viewers and appraisers shall take and subscribe to an oath that they will

1 faithfully and impartially perform their duties under their appointment as viewers and appraisers.

2 (3) The viewers and appraisers shall locate and mark out a private road in accordance with the
3 application or in another manner and location that they consider appropriate. However, the location of the
4 road may not be marked out to cross the lands of any person whose lands were not described in the
5 application and who was not given notice of the application. The proposed road may not exceed 30 feet
6 in width from a certain point on the premises of the applicant to some certain point on the public road and
7 must be located so as to do the least possible damage to the lands through which the private road is
8 located. The viewers and appraisers shall determine whether or not gates must be placed at the proper
9 points on the private road.

10 (4) The viewers and appraisers shall also at the same time assess the damages sustained by the owner
11 of lands over which the road is to be established, including damages relating to the placement of gates, and
12 shall make full and true returns and provide a plat of the road for the board.

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14 **NEW SECTION. Section 2. Report of viewers and appraisers -- confirmation by commissioners --**
15 **appeal.** (1) A majority of the viewers and appraisers appointed pursuant to [section 1] shall make a report
16 to the board of county commissioners at the next regular meeting following the viewers and appraisers
17 determination of:

- 18 (a) the location of the private road;
19 (b) the amount of damages, if any, assessed; and
20 (c) the person or persons entitled to the damages.

21 (2) If the board is satisfied that the report is just and after payment by the applicant of all costs of
22 locating the road and the damages assessed by the viewers and appraisers, the board shall order the report
23 to be confirmed and declare the road to be a private road. The applicant shall record the private road with
24 the county clerk and recorder.

25 (3) A person aggrieved by the action of the board or with the amount of damages awarded may appeal
26 to the district court at any time within 30 days after the private road is finally established by the board.

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28 **NEW SECTION. Section 3. Codification instruction.** [Sections 1 and 2] are intended to be codified
29 as an integral part of Title 70, chapter 30, and the provisions of Title 70, chapter 30, apply to [sections 1
30 and 2].

-END-

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