

House Bill 609

By: Representatives Sinkfield of the 60th, Teilhet of the 40th, Wix of the 33rd, Shipp of the 58th, and Brooks of the 63rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 9 of Title 44 of the Official Code of Georgia Annotated,
2 relating to private ways, so as to provide that the superior court may grant a private way of
3 up to 30 feet under certain conditions; to provide for an effective date; to provide for
4 retroactive application; to provide for related matters; to repeal conflicting laws; and for
5 other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 3 of Chapter 9 of Title 44 of the Official Code of Georgia Annotated, relating to
9 private ways, is amended by revising Code Section 44-9-40, relating to the authority of the
10 superior court to grant private ways, as follows:

11 "44-9-40.

12 (a) The superior court shall have jurisdiction to grant private ways to individuals to go
13 from and return to their property and places of business. Private ways shall not exceed 20
14 feet in width and may be as much less as the applicant may choose or as the court may find
15 to be reasonably necessary. They shall be kept open and in repair by the person on whose
16 application they are established or his or her successor in title.

17 (b) When any person or corporation of this state owns real estate or any interest therein to
18 which the person or corporation has no means of access, ingress, and egress and when a
19 means of ingress, egress, and access may be had over and across the lands of any private
20 person or corporation, such person or corporation may file ~~his or its~~ a petition in the
21 superior court of the county having jurisdiction; said petition shall allege such facts and
22 shall pray for a judgment condemning an easement of access, ingress, and egress not to
23 exceed ~~20~~ 30 feet in width over and across the property of the private person or
24 corporation. The filing of the petition shall be deemed to be the declaration of necessity;
25 however, where it appears that the condemnor owns a right of access, ingress, and egress
26 to his or her property over another route or owns an easement to a right of private way over

27 another route, which right or easement is not less than ~~20~~ 30 feet in width and which
28 alternate route affords such person or corporation a reasonable means of access, ingress,
29 and egress, or where the judge shall find that the exercise of such right of condemnation
30 by the condemnor is otherwise unreasonable, the judge of the superior court is authorized
31 under such circumstances to find that the condemnation and the declaration of necessity
32 constitute an abuse of discretion and to enjoin the proceeding. When providing for an
33 easement pursuant to this subsection where an existing curb cut or driveway already exists
34 on the property providing the easement, such easement shall be established by the
35 dimensions of the existing curb cut or driveway, provided that such curb cut or driveway
36 has a minimum width of 30 feet.

37 **SECTION 2.**

38 This Act shall become effective July 1, 2009, and shall be applicable to all easements granted
39 pursuant to Code Section 44-9-40 during the 18 months prior to the effective date of this Act.

40 **SECTION 3.**

41 All laws and parts of laws in conflict with this Act are repealed.