

IN THE SENATE

SENATE BILL NO. 1217

BY TRANSPORTATION COMMITTEE

AN ACT

1 RELATING TO ABANDONMENT AND VACATION OF COUNTY HIGHWAYS OR PUBLIC RIGHTS-OF-
2 WAY; AMENDING SECTION 40-203, IDAHO CODE, TO PROVIDE THAT COMMISSION-
3 ERS SHALL ACCEPT CERTAIN EVIDENCE, TO ESTABLISH A PROVISION REGARDING
4 REPLACEMENT RIGHTS-OF-WAY TO PROVIDE ACCESS TO PUBLIC LANDS OR WATERS,
5 AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PRO-
6 VIDING AN EFFECTIVE DATE.
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Section 40-203, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 40-203. ABANDONMENT AND VACATION OF COUNTY AND HIGHWAY DISTRICT SYS-
12 TEM HIGHWAYS OR PUBLIC RIGHTS-OF-WAY. (1) A board of county or highway
13 district commissioners, whichever shall have jurisdiction of the highway
14 system, shall use the following procedure to abandon and vacate any highway
15 or public right-of-way in the county or highway district system, including
16 those ~~which~~ that furnish public access to state and federal public lands and
17 waters:

18 (a) The commissioners may by resolution declare their intention to
19 abandon and vacate any highway or public right-of-way or to reclassify a
20 public highway as a public right-of-way, where doing so is in the public
21 interest.

22 (b) Any resident, or property holder, within a county or highway dis-
23 trict system, including the state of Idaho, any of its subdivisions, or
24 any agency of the federal government, may petition the respective com-
25 missioners for abandonment and vacation of any highway or public right-
26 of-way within their highway system. The petitioner shall pay a reason-
27 able fee as determined by the commissioners to cover the cost of the pro-
28 ceedings.

29 (c) The commissioners shall establish a hearing date or dates on the
30 proposed abandonment and vacation.

31 (d) The commissioners shall prepare a public notice stating their in-
32 tention to hold a public hearing to consider the proposed abandonment
33 and vacation of a highway or public right-of-way, which shall be made
34 available to the public not later than thirty (30) days prior to any
35 hearing and mailed to any person requesting a copy not more than three
36 (3) working days after any such request.

37 (e) At least thirty (30) days prior to any hearing scheduled by the com-
38 missioners to consider abandonment and vacation of any highway or pub-
39 lic right-of-way, the commissioners shall mail notice by United States
40 mail to known owners and operators of an underground facility, as de-
41 fined in section 55-2202, Idaho Code, that lies within the highway or
42 public right-of-way.

1 (f) At least thirty (30) days prior to any hearing scheduled by the
2 commissioners to consider abandonment and vacation of any highway
3 or public right-of-way, the commissioners shall mail notice to own-
4 ers of record of land abutting the portion of the highway or public
5 right-of-way proposed to be abandoned and vacated at their addresses
6 as shown on the county assessor's tax rolls and shall publish notice of
7 the hearing at least two (2) times if in a weekly newspaper or three (3)
8 times if in a daily newspaper, the last notice to be published at least
9 five (5) days and not more than twenty-one (21) days before the hearing.

10 (g) At the hearing, the commissioners shall accept all information re-
11 lating to the proceedings. Commissioners shall accept the presentation
12 of evidence that the highway or public right-of-way being considered
13 for vacation furnishes public access to state or federal public lands
14 or waters. Any person, including the state of Idaho ~~or~~, any of its sub-
15 divisions, or any agency of the federal government, may appear and give
16 testimony for or against abandonment.

17 (h) After completion of the proceedings and consideration of all re-
18 lated information, the commissioners shall decide whether the abandon-
19 ment and vacation of the highway or public right-of-way is in the public
20 interest of the highway jurisdiction affected by the abandonment or va-
21 cation. The decision whether or not to abandon and vacate the highway or
22 public right-of-way shall be written and shall be supported by findings
23 of fact and conclusions of law.

24 (i) If the commissioners determine that a highway or public right-of-
25 way parcel to be abandoned and vacated in accordance with the provisions
26 of this section has a fair market value of two thousand five hundred
27 dollars (\$2,500) or more, a charge may be imposed upon the acquiring
28 entity, not in excess of the fair market value of the parcel, as a condi-
29 tion of the abandonment and vacation; provided, however, no such charge
30 shall be imposed on the landowner who originally dedicated such parcel
31 to the public for use as a highway or public right-of-way; and provided
32 further, that if the highway or public right-of-way was originally a
33 federal land right-of-way, said highway or public right-of-way shall
34 revert to a federal land right-of-way.

35 (j) The commissioners shall cause any order or resolution to be
36 recorded in the county records and the official map of the highway sys-
37 tem to be amended as affected by the abandonment and vacation.

38 (k) From any such decision, a resident or property holder within the
39 county or highway district system, including the state of Idaho ~~or~~, any
40 of its subdivisions, or any agency of the federal government, may ap-
41 peal to the district court of the county in which the highway or public
42 right-of-way is located pursuant to section 40-208, Idaho Code.

43 (2) No highway or public right-of-way or parts thereof shall be aban-
44 doned and vacated so as to leave any real property adjoining the highway
45 or public right-of-way without access to an established highway or public
46 right-of-way. The burden of proof shall be on the impacted property owner to
47 establish this fact.

48 (3) No highway or public right-of-way or parts thereof that furnishes
49 public access to state or federal public lands or waters shall be vacated
50 unless an equivalent or better highway or public right-of-way is furnished

1 as a replacement. Such replacement shall be of the same kind as the vacated
 2 access and shall be substantially the same length, width, and quality. Such
 3 replacement right-of-way may be privately maintained but shall contain a
 4 perpetual, unfettered public right-of-way to maintain public access to the
 5 state or federal public lands or waters.

6 ~~(3)~~ (4) In the event of abandonment and vacation, rights-of-way or
 7 easements shall be reserved for the continued use of existing sewer, gas,
 8 water, or similar pipelines and appurtenances, or other underground facil-
 9 ities as defined in section 55-2202, Idaho Code, for ditches or canals and
 10 appurtenances, and for electric, telephone and similar lines and appurte-
 11 nances.

12 ~~(4)~~ (5) (a) When a county or highway district is to consider the
 13 abandonment or vacation of any highway, public street or public
 14 right-of-way that was accepted as part of a recorded platted subdivi-
 15 sion, such abandonment shall be accomplished pursuant to the provisions
 16 of this section.

17 (b) When a county or highway district is to consider the abandonment or
 18 vacation of any highway, public street, or public right-of-way that was
 19 accepted as part of a platted subdivision that has never been improved
 20 or developed, such vacation or abandonment may be approved through
 21 the dedication of a new highway, public street, or public right-of-way
 22 without compensation as set forth in subsection (1) (i) of this section.

23 (c) When a county is to consider the abandonment or vacation of any pri-
 24 vate right-of-way that was accepted as part of a recorded platted subdivi-
 25 sion, said abandonment or vacation shall be accomplished pursuant to
 26 the provisions of chapter 13, title 50, Idaho Code.

27 ~~(5)~~ (6) In any proceeding under this section or section 40-203A, Idaho
 28 Code, or in any judicial proceeding determining the public status or width of
 29 a highway or public right-of-way, a highway or public right-of-way shall be
 30 deemed abandoned if the evidence shows:

31 (a) That said highway or public right-of-way was created solely by a
 32 particular type of common law dedication, such as a dedication based
 33 upon a plat or other document that was not recorded in the official
 34 records of an Idaho county;

35 (b) That said highway or public right-of-way is not located on land
 36 owned by the United States or the state of Idaho nor on land entirely
 37 surrounded by land owned by the United States or the state of Idaho nor
 38 does it provide the only means of access to such public lands; and

39 (c) (i) That said highway or public right-of-way has not been used
 40 by the public and has not been maintained at the expense of the pub-
 41 lic in at least three (3) years during the previous fifteen (15)
 42 years; or

43 (ii) Said highway or right-of-way was never constructed and at
 44 least twenty (20) years have elapsed since the common law dedica-
 45 tion.

46 ~~(6)~~ (7) All other highways or public rights-of-way may be abandoned and
 47 vacated only upon a formal determination by the commissioners pursuant to
 48 this section that retaining the highway or public right-of-way for use by
 49 the public is not in the public interest, and such other highways or public
 50 rights-of-way may be validated or judicially determined at any time notwith-

1 standing any other provision of law. ~~Provided that any~~ Any abandonment under
2 this section shall be subject to and limited by the provisions of subsections
3 (2) and ~~(3)~~ (4) of this section.

4 SECTION 2. An emergency existing therefor, which emergency is hereby
5 declared to exist, this act shall be in full force and effect on and after
6 July 1, 2024.