

IN THE SENATE

SENATE BILL NO. 1320

BY TRANSPORTATION COMMITTEE

AN ACT

1 RELATING TO DESIGNATION OF HIGHWAYS AND PUBLIC RIGHTS-OF-WAY; AMENDING SEC-  
2 TION 40-202, IDAHO CODE, TO PROVIDE THAT CERTAIN MAINTENANCE OF A PUB-  
3 LIC RIGHT-OF-WAY SHALL NOT CONSTITUTE UPKEEP OR MAINTENANCE AS A HIGH-  
4 WAY AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND  
5 PROVIDING AN EFFECTIVE DATE.  
6

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

8 SECTION 1. That Section 40-202, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 40-202. DESIGNATION OF HIGHWAYS AND PUBLIC RIGHTS-OF-WAY. (1) The  
11 initial selection of the county highway system and highway district system  
12 may be accomplished in the following manner:

13 (a) The board of county or highway district commissioners shall cause a  
14 map to be prepared showing the general location of each highway and pub-  
15 lic right-of-way in its jurisdiction, and the commissioners shall cause  
16 notice to be given of intention to adopt the map as the official map of  
17 that system, and shall specify the time and place at which all inter-  
18 ested persons may be heard.

19 (b) After the hearing, the commissioners shall adopt the map, with any  
20 changes or revisions considered by them to be advisable in the public  
21 interest, as the official map of the respective highway system.

22 (2) If a county or highway district acquires an interest in real  
23 property for highway or public right-of-way purposes, the respective com-  
24 missioners shall:

25 (a) Cause any order or resolution enacted, and deed or other document  
26 establishing an interest in the property for their highway system pur-  
27 poses to be recorded in the county records; or

28 (b) Cause the official map of the county or highway district system to  
29 be amended as affected by the acceptance of the highway or public right-  
30 of-way.

31 Provided, however, a county with highway jurisdiction or highway district  
32 may hold title to an interest in real property for public right-of-way pur-  
33 poses without incurring an obligation to construct or maintain a highway  
34 within the right-of-way until the county or highway district determines  
35 that the necessities of public travel justify opening a highway within the  
36 right-of-way. The lack of an opening shall not constitute an abandonment,  
37 and mere use by the public shall not constitute an opening of the public  
38 right-of-way.

39 (3) Highways laid out, recorded and opened as described in subsection  
40 (2) of this section, by order of a board of commissioners, and all highways  
41 used for a period of five (5) years, provided they shall have been worked and  
42 kept up at the expense of the public, or located and recorded by order of a

1 board of commissioners, are highways. If a highway created in accordance  
2 with the provisions of this subsection is not opened as described in subsec-  
3 tion (2) of this section, there shall be no duty to maintain that highway,  
4 nor shall there be any liability for any injury or damage for failure to main-  
5 tain it or any highway signs, until the highway is designated as a part of the  
6 county or highway district system and opened to public travel as a highway.  
7 Provided, however, should a public highway agency expend funds for mainte-  
8 nance of a public right-of-way no more than every twenty-four (24) months,  
9 such expenditure shall not constitute work attributable to the five (5) year  
10 period provided for in this subsection. Provided further, any maintenance  
11 done to assist first responders shall not be attributed to the five (5) year  
12 period provided for in this subsection.

13 (4) When a public right-of-way is created in accordance with the provi-  
14 sions of subsection (2) of this section, or section 40-203 or 40-203A, Idaho  
15 Code, there shall be no duty to maintain ~~that~~ such public right-of-way, nor  
16 shall there be any liability for any injury or damage for failure to maintain  
17 it or any highway signs.

18 (5) Nothing in this section shall limit the power of any board of com-  
19 missioners to subsequently include or exclude any highway or public right-  
20 of-way from the county or highway district system.

21 (6) By July 1, 2005, and at least every five (5) years thereafter, the  
22 board of county or highway district commissioners shall publish in map form  
23 and make readily available a map showing the general location of all high-  
24 ways and public rights-of-way under its jurisdiction. Any board of county or  
25 highway district commissioners may be granted an extension of time with ap-  
26 proval of the legislature by adoption of a concurrent resolution.

27 (7) Prior to designating a new highway or public right-of-way on the  
28 official map, the board of county or highway district commissioners shall  
29 confirm that no legal abandonment has occurred on the new highway or right-  
30 of-way to be added to the official map. In addition, the board of county or  
31 highway district commissioners shall have some basis indicating dedication,  
32 purchase, prescriptive use or other means for the creation of a highway and  
33 public right-of-way with evidentiary support.

34 (8) The board of county or highway district commissioners shall give  
35 advance notice of hearing, by ~~U.S.~~ United States mail, to any landowner upon  
36 or within whose land the highway or public right-of-way is located whenever a  
37 highway or public right-of-way is proposed for inclusion on such map and the  
38 public status of such highway or public right-of-way is not already a matter  
39 of public record. The purpose of this official map is to put the public on no-  
40 tice of those highways and public rights-of-way that the board of county or  
41 highway district commissioners considers to be public. The inclusion or ex-  
42 clusion of a highway or public right-of-way from such a map does not, in it-  
43 self, constitute a legal determination of the public status of such highway  
44 or public right-of-way. Any person may challenge, at any time, the inclusion  
45 or exclusion of a highway or public right-of-way from such map by initiating  
46 proceedings as described in section 40-208 (7), Idaho Code.

47 (9) Nothing in this section or in any designation of the general loca-  
48 tion of a highway or public right-of-way shall authorize the public highway  
49 agency to assert or claim rights superior to or in conflict with any rights-  
50 of-way that resulted from the creation of a facility for the transmission of

1 water ~~which~~ that existed before the designation of the location of a highway  
2 or public right-of-way.

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