

IN THE SENATE

SENATE BILL NO. 1287

BY TRANSPORTATION COMMITTEE

AN ACT

RELATING TO HIGHWAYS; AMENDING SECTION 40-202, IDAHO CODE, TO REVISE PROVISIONS REGARDING DESIGNATION OF HIGHWAYS AND PUBLIC RIGHTS-OF-WAY; AMENDING SECTION 40-203, IDAHO CODE, TO REVISE PROVISIONS REGARDING ABANDONMENT AND VACATION OF COUNTY AND HIGHWAY DISTRICT SYSTEM HIGHWAYS OR PUBLIC RIGHTS-OF-WAY; AMENDING SECTION 40-203A, IDAHO CODE, TO REVISE PROVISIONS REGARDING VALIDATION OF COUNTY OR HIGHWAY DISTRICT SYSTEM HIGHWAY OR PUBLIC RIGHT-OF-WAY; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

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

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

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

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

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

(a) ~~Cause~~ Convene a public hearing and ~~cause~~ any order or resolution enacted, and deed or other document establishing an interest in the property for their highway system purposes, to be recorded in the county records; ~~or~~

(b) ~~Cause~~ the official map of the county or highway district system to be amended as affected by the acceptance of the highway or public right-of-way- and record a survey including a legal description for each segment acquired from privately owned lands; and

(c) Demonstrate payment was made when the land acquired was from a privately owned parcel.

Provided, however, a county with highway jurisdiction or highway district may hold title to an interest in real property for public right-of-way purposes without incurring an obligation to construct or maintain a highway within the right-of-way until the county or highway district determines that the necessities of public travel justify opening a highway within the

1 right-of-way. The lack of an opening shall not constitute an abandonment,  
2 and mere use by the public shall not constitute an opening of the public  
3 right-of-way.

4 (3) Highways laid out, recorded and opened as described in subsection  
5 (2) of this section, by order of a board of commissioners, and all highways  
6 used for a period of five (5) years, provided they shall have been worked and  
7 kept up at the expense of the public, or located and recorded by order of a  
8 board of commissioners, are highways. If a highway created in accordance  
9 with the provisions of this subsection is not opened as described in subsec-  
10 tion (2) of this section, there shall be no duty to maintain that highway,  
11 nor shall there be any liability for any injury or damage for failure to main-  
12 tain it or any highway signs, until the highway is designated as a part of the  
13 county or highway district system and opened to public travel as a highway.

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

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

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

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

36 (8) The board of county or highway district commissioners shall give  
37 advance notice of hearing, by U.S. mail, to any landowner upon or within  
38 whose land the highway or public right-of-way is located whenever a highway  
39 or public right-of-way is proposed for inclusion on such map and the pub-  
40 lic status of such highway or public right-of-way is not already a matter  
41 of public record. The purpose of this official map is to put the public on  
42 notice of those highways and public rights-of-way that the board of county  
43 or highway district commissioners considers to be public. The inclusion or  
44 exclusion of a highway or public right-of-way from such a map does not, in it-  
45 self, constitute a legal determination of the public status of such highway  
46 or public right-of-way. Any person may challenge, at any time, the inclusion  
47 or exclusion of a highway or public right-of-way from such map by initiating  
48 proceedings as described in section 40-208 (7), Idaho Code.

49 (9) Nothing in this section or in any designation of the general loca-  
50 tion of a highway or public right-of-way shall authorize the public highway

1 agency to assert or claim rights superior to or in conflict with any rights-  
2 of-way that resulted from the creation of a facility for the transmission of  
3 water which existed before the designation of the location of a highway or  
4 public right-of-way.

5 SECTION 2. That Section 40-203, Idaho Code, be, and the same is hereby  
6 amended to read as follows:

7 40-203. ABANDONMENT AND VACATION OF COUNTY AND HIGHWAY DISTRICT SYS-  
8 TEM HIGHWAYS OR PUBLIC RIGHTS-OF-WAY. (1) A board of county or highway dis-  
9 trict commissioners, whichever shall have jurisdiction of the highway sys-  
10 tem, shall use the following procedure to abandon and vacate any highway or  
11 public right-of-way in the county or highway district system including those  
12 which furnish public access to state and federal public lands and waters:

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

17 (b) Any resident, or property holder, within a the county or highway  
18 district system, including the state of Idaho, any of its subdivisions,  
19 or any agency of the federal government, may petition the respective  
20 commissioners for abandonment and vacation of any highway or public  
21 right-of-way within their highway system. The petitioner shall pay a  
22 reasonable fee as determined by the commissioners to cover the cost of  
23 the proceedings.

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

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

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

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

47 (g) At the hearing, the commissioners shall verify that the road was  
48 legally designated as set forth in section 40-202, Idaho Code, and ac-  
49 cept all information relating to the proceedings. Any person, includ-

1 ing the state of Idaho or any of its subdivisions, or any agency of the  
2 federal government, may appear and give testimony for or against abandon-  
3 ment.

4 (h) After completion of the proceedings and consideration of all re-  
5 lated information, the commissioners shall decide whether the abandon-  
6 ment and vacation of the highway or public right-of-way is in the public  
7 interest of the highway jurisdiction affected by the abandonment or va-  
8 cation. The decision whether or not to abandon and vacate the highway or  
9 public right-of-way shall be written and shall be supported by findings  
10 of fact and conclusions of law.

11 (i) If the commissioners determine that a highway or public right-of-  
12 way parcel to be abandoned and vacated in accordance with the provisions  
13 of this section has a fair market value of two thousand five hundred  
14 dollars (\$2,500) or more, a charge may be imposed upon the acquiring  
15 entity, not in excess of the fair market value of the parcel, as a condi-  
16 tion of the abandonment and vacation; provided, however, no such charge  
17 shall be imposed on the landowner who originally dedicated such parcel  
18 to the public for use as a highway or public right-of-way; and provided  
19 further, that if the highway or public right-of-way was originally a  
20 federal land right-of-way, said highway or public right-of-way shall  
21 revert to a federal land right-of-way.

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

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

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

35 (3) In the event of abandonment and vacation, rights-of-way or ease-  
36 ments shall be reserved for the continued use of existing sewer, gas, water,  
37 or similar pipelines and appurtenances, or other underground facilities as  
38 defined in section 55-2202, Idaho Code, for ditches or canals and appurte-  
39 nances, and for electric, telephone and similar lines and appurtenances.

40 (4) (a) When a county or highway district is to consider the abandonment  
41 or vacation of any highway, public street or public right-of-way that  
42 was accepted as part of a recorded platted subdivision, such abandon-  
43 ment shall be accomplished pursuant to the provisions of this section.

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

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

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

9 (a) That said highway or public right-of-way was created solely by  
 10 a particular type of common law dedication, such as a dedication  
 11 based upon a plat, survey, or other ~~document that was~~ documents not  
 12 sufficiently recorded in the official records of an Idaho county;

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

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

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

24 (6) All other highways or public rights-of-way may be abandoned and va-  
 25 cated only upon a formal determination by the commissioners pursuant to this  
 26 section that retaining the highway or public right-of-way for use by the pub-  
 27 lic is not in the public interest, and such other highways or public rights-  
 28 of-way may be validated or judicially determined at any time notwithstanding  
 29 any other provision of law. Provided that any abandonment under this section  
 30 shall be subject to and limited by the provisions of subsections (2) and (3)  
 31 of this section.

32 SECTION 3. That Section 40-203A, Idaho Code, be, and the same is hereby  
 33 amended to read as follows:

34 40-203A. VALIDATION OF COUNTY OR HIGHWAY DISTRICT SYSTEM HIGHWAY OR  
 35 PUBLIC RIGHT-OF-WAY. (1) Any resident or property holder within a the county  
 36 or highway district system, including the state of Idaho or any of its subdivi-  
 37 sions, or any agency of the federal government, may petition the board of  
 38 county or highway district commissioners, whichever shall have jurisdiction  
 39 of the highway system, to initiate public proceedings to validate a highway  
 40 or public right-of-way, including those which furnish public access to state  
 41 and federal public lands and waters, provided that the petitioner shall pay  
 42 a reasonable fee as determined by the commissioners to cover the cost of the  
 43 proceedings, or the commissioners may initiate validation proceedings on  
 44 their own resolution, if any of the following conditions exist:

45 (a) If, through omission or defect, doubt exists as to the legal estab-  
 46 lishment or evidence of establishment of a highway or public right-of-  
 47 way;

48 (b) If the location of the highway or public right-of-way cannot be ac-  
 49 curately determined due to numerous alterations of the highway or pub-

1       lic right-of-way, a defective survey of the highway, public right-of-  
2       way or adjacent property, or loss or destruction of the original survey  
3       of the highways or public rights-of-way; or

4       (c) If the highway or public right-of-way as traveled and used does not  
5       generally conform to the location of a highway or public right-of-way  
6       described on the official highway system map or in the public records.

7       (2) If proceedings for validation of a highway or public right-of-way  
8       are initiated, the commissioners shall follow the procedure set forth in  
9       section 40-203, Idaho Code, and shall:

10      (a) If the commissioners determine it is necessary, cause the highway  
11      or public right-of-way to be surveyed;

12      (b) Cause a report to be prepared, including verification that the  
13      highway or public right-of-way was legally designated as set forth in  
14      section 40-202, Idaho Code, and consideration of any survey and any  
15      other information required by the commissioners;

16      (c) Establish a hearing date on the proceedings for validation;

17      (d) Cause notice of the proceedings to be provided in the same manner as  
18      for abandonment and vacation proceedings; and

19      (e) At the hearing, the commissioners shall consider all information  
20      relating to the proceedings and shall accept testimony from persons  
21      having an interest in the proposed validation.

22      (3) Upon completion of the proceedings, the commissioners shall deter-  
23      mine with a reasonably detailed analysis supported by findings of fact and  
24      conclusion of law whether validation of the highway or public right-of-way  
25      is in the public interest and shall enter an order validating the highway or  
26      public right-of-way as public or declaring it not to be public.

27      (4) From any such decision, any resident or property holder within a the  
28      county or highway district system, including the state of Idaho ~~or~~, any of  
29      its subdivisions, or any agency of the federal government, may appeal to the  
30      district court of the county in which the highway or public right-of-way is  
31      located pursuant to section 40-208, Idaho Code.

32      (5) When a board of commissioners validates a highway or public right-  
33      of-way, it shall cause the order validating the highway or public right-of-  
34      way, and if surveyed, cause the survey to be recorded in the county records  
35      and shall amend the official highway system map of the respective county or  
36      highway district.

37      (6) The commissioners shall proceed to determine and provide just com-  
38      pensation for the removal of any structure that, prior to creation of the  
39      highway or public right-of-way, encroached upon a highway or public right-  
40      of-way that is the subject of a validation proceeding, or if such is not prac-  
41      tical, the commissioners may acquire property to alter the highway or public  
42      right-of-way being validated.

43      (7) This section does not apply to the validation of any highway, public  
44      street or public right-of-way which is to be accepted as part of a platted  
45      subdivision pursuant to chapter 13, title 50, Idaho Code.

46      (8) There shall be no duty to maintain or construct any highway or  
47      right-of-way on the part of a county or highway district for those highways  
48      or rights-of-way within the county or public right-of-way system. Absent  
49      evidence to the contrary, there shall be a presumption that the highway or  
50      right-of-way is valid.

1           SECTION 4. An emergency existing therefor, which emergency is hereby  
2 declared to exist, this act shall be in full force and effect on and after  
3 July 1, 2026.