

IN THE SENATE

SENATE BILL NO. 1258

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 REVISE PROVISIONS REGARD-
3 ING ABANDONMENT OF CERTAIN RIGHTS-OF-WAY AND TO MAKE TECHNICAL CORREC-
4 TIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
5

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

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

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

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

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

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

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

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

41 (f) At least thirty (30) days prior to any hearing scheduled by the
42 commissioners to consider abandonment and vacation of any highway

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

8 (g) At the hearing, the commissioners shall accept all information re-
9 lating to the proceedings. Commissioners shall accept the presentation
10 of evidence that the highway or public right-of-way being considered
11 for vacation furnishes public access to state or federal public lands or
12 waters. If the existence of such access has not been previously legally
13 adjudicated, the commissioners shall follow the validation procedures
14 pursuant to section 40-203A, Idaho Code, before adjudicating that pub-
15 lic access exists in any particular location. Any person, including the
16 state of Idaho ~~or~~, any of its subdivisions, or any agency of the federal
17 government, may appear and give testimony for or against abandonment.

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

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

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

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

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

49 (3) No highway or public right-of-way or any part of a highway or public
50 right-of-way that has been legally determined by the commissioners through a

1 judicial determination, validation pursuant to section 40-203A, Idaho Code,
2 or other legal process to furnish public access to state or federal public
3 lands or to the natural or ordinary high water mark of public waters as de-
4 defined pursuant to Idaho law shall be vacated unless a substantially similar
5 highway or public right-of-way is furnished as a replacement. Such replace-
6 ment shall provide for the same scope of use as the vacated right-of-way.
7 Such replacement right-of-way may be privately maintained but shall contain
8 a perpetual public access to the state or federal public lands or waters.
9 A replacement right-of-way shall not be secured through eminent domain or
10 condemnation. The provisions of this section shall not apply to any action
11 for abandonment or vacation identified and first initiated prior to July 1,
12 2024, notwithstanding any judicial action or pending appeal before any judi-
13 cial tribunal in the state of Idaho or to any subsequent petition ordered or
14 otherwise required by such judicial action. The provisions of this section
15 shall not be interpreted as creating public access where none otherwise ex-
16 ists on private property.

17 ~~(3)~~ (4) In the event of abandonment and vacation, rights-of-way or
18 easements shall be reserved for the continued use of existing sewer, gas,
19 water, or similar pipelines and appurtenances, or other underground facil-
20 ities as defined in section 55-2202, Idaho Code, for ditches or canals and
21 appurtenances, and for electric, telephone and similar lines and appurte-
22 nances.

23 ~~(4)~~ (5) (a) When a county or highway district is to consider the abandon-
24 ment or vacation of any highway, public street or public right-of-way
25 that was accepted as part of a recorded platted subdivision, such abandon-
26 ment shall be accomplished pursuant to the provisions of this sec-
27 tion.

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

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

38 ~~(5)~~ (6) In any proceeding under this section or section 40-203A, Idaho
39 Code, or in any judicial proceeding determining the public status or width of
40 a highway or public right-of-way, a highway or public right-of-way shall be
41 deemed abandoned if the evidence shows:

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

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

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

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

8 ~~(6)~~ (7) All other highways or public rights-of-way may be abandoned and
9 vacated only upon a formal determination by the commissioners pursuant to
10 this section that retaining the highway or public right-of-way for use by
11 the public is not in the public interest, and such other highways or public
12 rights-of-way may be validated or judicially determined at any time notwith-
13 standing any other provision of law. ~~Provided that any~~ Any abandonment under
14 this section shall be subject to and limited by the provisions of subsections
15 (2) and ~~(3)~~ (4) of this section.

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