

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 104

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

RELATING TO HIGHWAYS AND BRIDGES; AMENDING SECTION 40-204A, IDAHO CODE, TO
REVISE PROVISIONS REGARDING FEDERAL LAND RIGHTS-OF-WAY.

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

SECTION 1. That Section 40-204A, Idaho Code, be, and the same is hereby
amended to read as follows:

40-204A. FEDERAL LAND RIGHTS-OF-WAY. (1) The state recognizes that
the act of construction and first use constitute the acceptance of the grant
given to the public for federal land rights-of-way, and that once acceptance
of the grant has been established, the grant shall be for the perpetual term
granted by the congress of the United States.

(2) ~~The only method for the abandonment of these rights-of-way shall
be that of eminent domain proceedings in which the taking of the public's
right to access shall be justly compensated~~ The state and its political sub-
divisions accept a dominant estate position on federal land rights-of-way
and recognize the federal land managers' position as a servient estate. The
state, as the dominant estate, does not recognize or consent to, and has not
consented to, the exchange, waiver, or abandonment of these rights-of-way.
Neither the mere passage of time nor the frequency of use shall be considered
a justification for considering these rights-of-way to have been abandoned.

(3) (a) No final rule or regulation of any agency of the federal gov-
ernment pertaining to the recognition, management, or validity of a
right-of-way pursuant to revised statute 2477 shall take effect unless
expressly authorized by an act of congress.

(b) All federal land, resource, and travel management plans and
projects for units of the national forest system within Idaho shall co-
ordinate their development, revisions, and amendments at the earliest
stages, including scoping, with the state and its political subdivi-
sions' comprehensive and resource management plans. Acute caution
should be given when considering the closure or otherwise obliteration
of rights-of-way that could be necessary for fire management, fire
suppression, search and rescue, and valid existing rights, including
mineral extraction.

(c) Prior to the approval of a proposed land or resource management
plan, amendment or revision to a management framework plan, or resource
management plan, the federal agency's state director shall submit to
the governor the proposed plan or amendment and shall identify any known
inconsistencies with state and local plans, policies, or programs. If
the written recommendation of the governor recommends changes in the
proposed plan or amendment that were not raised during the public par-
ticipation process on that plan or amendment, the state director shall

1 provide the public with an opportunity to comment on the governor's rec-
 2 ommendation.

3 (34) All of the said rights-of-way ~~shall~~ may be shown by some form of
 4 documentation or other evidence to have existed prior to the withdrawal of
 5 the federal grant in 1976 or to predate the removal of land through which they
 6 transit from the public domain for other public purposes. Documentation may
 7 take the form of a map, an affidavit, surveys, books or other historic infor-
 8 mation. The omission of a right-of-way from any plat, description, or map
 9 of public roads does not in itself waive or constitute a failure to acquire a
 10 right-of-way.

11 (45) These rights-of-way shall not require maintenance for the passage
 12 of vehicular traffic, nor shall the state or any of its political subdivi-
 13 sions incur any liability ~~be incurred~~ for injury or damage through a failure
 14 to maintain the access or to maintain any highway sign. These rights-of-way
 15 shall be traveled at the risk of the user and may be maintained ~~by:~~

16 (a) By the public through usage by the public; or

17 (b) By and at the option of the state or any of its political subdivi-
 18 sions.

19 (6) Maintenance by the state or a political subdivision may include:

20 (a) Widening a right-of-way as necessary to accommodate increased pub-
 21 lic travel and traffic associated with all accepted uses of the right-
 22 of-way; and

23 (b) Other changes or modifications necessary for public safety and con-
 24 formity to contemporary design standards.

25 The federal agency managing the servient estate of the property shall be
 26 notified of any major maintenance actions.

27 (57) Any member of the public, the state of Idaho, ~~and~~ any of its polit-
 28 ical subdivisions, and any agency of the federal government may choose to
 29 seek validation of its rights under law to use granted rights-of-way ~~either~~
 30 through a process set forth by the United States congress and the state of
 31 Idaho, through processes set forth by any federal agency, if no congres-
 32 sional process exists, or by proclamation of user rights granted under the
 33 provisions of the original act, Rrevised Sstatute 2477.

34 (8) (a) Persons seeking to have a federal land right-of-way, including
 35 those ~~which~~ that furnish public access to state and federal public lands
 36 and waters, validated as a highway or public right-of-way as part of a
 37 county or highway an official highway system, shall follow the proce-
 38 cedure outlined in section 40-203A, Idaho Code, and the current congres-
 39 sional or federal and state processes.

40 (b) Private land owners within federal lands that include a federal
 41 right-of-way may abandon the right-of-way by following the procedure
 42 outlined in section 40-203, Idaho Code, and the current congressional
 43 or federal and state processes.

44 (9) Nothing in this section shall be construed as prohibiting the
 45 egress or ingress of private land owners residing within the boundaries of
 46 national forests or from crossing the same to and from their homes. Such
 47 right-of-way and other improvements may be constructed thereon as may be
 48 necessary to reach their homes and utilize their property.

49 (10) Neither the granting of the original right-of-way nor any provi-
 50 sion in this or any other state act shall be construed as a relinquishment of

1 either federal ownership or management of the surface estate of the property
2 over which the right-of-way passes.

3 ~~(6) Persons seeking acknowledgement of federal land rights-of-way~~
4 ~~shall file with the county recorder the request for acknowledgement and for~~
5 ~~any supporting documentation. The county recorder shall record acknowl-~~
6 ~~edgements, including supporting documentation, and maintain an appropriate~~
7 ~~index of same.~~