

IN THE SENATE

SENATE BILL NO. 1101

BY TRANSPORTATION COMMITTEE

AN ACT

RELATING TO HIGHWAYS AND BRIDGES; AMENDING SECTION 40-203, IDAHO CODE, TO
PROVIDE FOR VACATION OF CERTAIN RIGHTS-OF-WAY WITHOUT COMPENSATION AND
TO MAKE TECHNICAL CORRECTIONS.

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

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

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

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

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

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

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

(e) At least thirty (30) days prior to any hearing scheduled by the commissioners to consider abandonment and vacation of any highway or public right-of-way, the commissioners shall mail notice by United States mail to known owners and operators of an underground facility, as defined in section 55-2202, Idaho Code, that lies within the highway or public right-of-way.

(f) At least thirty (30) days prior to any hearing scheduled by the commissioners to consider abandonment and vacation of any highway or public right-of-way, the commissioners shall mail notice to owners of record of land abutting the portion of the highway or public

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

6 (g) At the hearing, the commissioners shall accept all information re-
7 lating to the proceedings. Any person, including the state of Idaho or
8 any of its subdivisions, or any agency of the federal government, may
9 appear and give testimony for or against abandonment.

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

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

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

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

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

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

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

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

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

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

15 (a) That said highway or public right-of-way was created solely by a
16 particular type of common law dedication, ~~to wit,~~ such as a dedication
17 based upon a plat or other document that was not recorded in the official
18 records of an Idaho county;

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

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

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

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