

IN THE SENATE

SENATE BILL NO. 1283, As Amended

BY TRANSPORTATION COMMITTEE

AN ACT

1 RELATING TO RIGHTS-OF-WAY; AMENDING SECTION 40-203, IDAHO CODE, TO PROVIDE
2 FOR THE ABANDONMENT OR VACATION OF ANY HIGHWAY, PUBLIC STREET OR PUB-
3 LIC RIGHT-OF-WAY THAT WAS ACCEPTED AS PART OF A RECORDED PLATTED SUB-
4 DIVISION AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 50-1306A,
5 IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND AMENDING SECTION
6 50-1317, IDAHO CODE, TO REMOVE REFERENCE TO PUBLIC RIGHTS-OF-WAY, TO
7 PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION.
8

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (b) ~~When a county or highway district desires~~ is to consider the aban-
 6 donment or vacation of any highway, public street or public private
 7 right-of-way which that was accepted as part of a recorded platted sub-
 8 division said abandonment or vacation shall be accomplished pursuant to
 9 the provisions of chapter 13, title 50, Idaho Code.

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

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

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

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

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

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

37 SECTION 2. That Section 50-1306A, Idaho Code, be, and the same is hereby
 38 amended to read as follows:

39 50-1306A. VACATION OF PLATS -- PROCEDURE. (1) Any person, persons,
 40 firm, association, corporation or other legally recognized form of business
 41 desiring to vacate a plat or any part thereof which is inside or within one
 42 (1) mile of the boundaries of any city must petition the city council to
 43 vacate. Such petition shall set forth particular circumstances of the re-
 44 quests to vacate; contain a legal description of the platted area or property
 45 to be vacated; the names of the persons affected thereby, and said petition
 46 shall be filed with the city clerk.

47 (2) Written notice of public hearing on said petition shall be given, by
 48 certified mail with return receipt, at least ten (10) days prior to the date
 49 of public hearing to all property owners within three hundred (300) feet of

1 the boundaries of the area described in the petition. Such notice of public
 2 hearing shall also be published once a week for two (2) successive weeks in
 3 the official newspaper of the city, the last of which shall be not less than
 4 seven (7) days prior to the date of said hearing; provided, however, that in
 5 a proceeding as to the vacation of all or a portion of a cemetery plat where
 6 there has been no interment, or in the case of a cemetery being within three
 7 hundred (300) feet of another plat for which a vacation is sought, publi-
 8 cation of the notice of hearing shall be the only required notice as to the
 9 property owners in the cemetery.

10 (3) When the procedures set forth herein have been fulfilled, the city
 11 council may grant the request to vacate with such restrictions as they deem
 12 necessary in the public interest.

13 (4) When the platted area lies more than one (1) mile beyond the city
 14 limits, the procedures set forth herein shall be followed with the county
 15 commissioners of the county wherein the property lies. The county commis-
 16 sioners shall have authority, comparable to the city council, to grant the
 17 vacation, provided, however, when the platted area lies beyond one (1) mile
 18 of the city limits, but adjacent to a platted area within one (1) mile of the
 19 city, consent of the city council of the affected city shall be necessary in
 20 granting any vacation by the county commissioners.

21 (5) In the case of easements granted for gas, sewer, water, telephone,
 22 cable television, power, drainage, and slope purposes, public notice of in-
 23 tent to vacate is not required. Vacation of these easements shall occur upon
 24 the recording of the new or amended plat, provided that all affected easement
 25 holders have been notified by certified mail, return receipt requested, of
 26 the proposed vacation and have agreed to the same in writing.

27 (6) When public streets or public rights-of-way are located within the
 28 boundary of a highway district, the highway district commissioners shall as-
 29 sume the authority to vacate said public streets and public rights-of-way as
 30 provided in ~~subsection (4) of this section~~ 40-203, Idaho Code.

31 (7) All publication costs shall be at the expense of the petitioner.

32 (8) Public highway agencies acquiring real property within a platted
 33 subdivision for highway right-of-way purposes shall be exempt from the pro-
 34 visions of this section.

35 (9) Land exclusive of public right-of-way that has been subdivided and
 36 platted in accordance with this chapter need not be vacated in order to be
 37 replatted.

38 SECTION 3. That Section 50-1317, Idaho Code, be, and the same is hereby
 39 amended to read as follows:

40 50-1317. VACATION PROCEDURE IN UNINCORPORATED AREAS AND IN CITIES
 41 NOT EXERCISING THEIR CORPORATE FUNCTIONS -- FILING OF PETITION -- NOTICE
 42 OF HEARING. Whenever any person, persons, firm, association or corporation
 43 interested in any city which ~~if unincorporated, or which, if incorporated,~~
 44 ~~is not exercising its corporate functions, or interested in any platted and~~
 45 ~~subdivided tract or acreage outside the limits of any incorporated city,~~
 46 may desire to vacate any lot, tract, ~~public street, public right-of-way,~~
 47 private road, common, plot or any part thereof in any such city, it shall be
 48 lawful to petition the board of county commissioners of the county where such
 49 property is located, setting forth the particular circumstances of the case,

1 and giving a distinct description of the property to be vacated and the names
2 of the persons to be particularly affected thereby; which petition shall be
3 filed with the appropriate county or highway district clerk and notice of
4 the pendency of said petition shall be given for a period of thirty (30) days
5 by written notice thereof, containing a description of the property to be
6 vacated, posted in three (3) public or conspicuous places in said city, and
7 also within the limits of said platted acreage, or in the event such property
8 is located within a county in which there is published a newspaper, as de-
9 fined by law, such notice shall also be published in such newspaper, once a
10 week for two (2) successive weeks. Provided, however, when a public street
11 or public right-of-way is located within the boundary of a highway district
12 or is under the jurisdiction of a county, the respective commissioners of the
13 highway district or board of county commissioners shall assume the author-
14 ity to vacate said public street or public right-of-way pursuant to section
15 40-203, Idaho Code. Land exclusive of public right-of-way that has been
16 subdivided and platted in accordance with this chapter need not be vacated
17 in order to be replatted.