

HOUSE BILL NO. HB0124

Determination of highway rights-of-way on federal lands.

Sponsored by: Representative(s) Kroeker, Blake, Halverson,
Jaggi, Lindholm, Loucks, Miller, Reeder and
Winters and Senator(s) Bebout, Cooper and
Scott

A BILL

for

1 AN ACT relating to highways; establishing the right of
2 counties to determine highway rights-of-way on specified
3 federal lands; providing definitions; requiring notice;
4 providing for judicial review; and providing for an
5 effective date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9 **Section 1.** W.S. 24-16-101 through 24-16-106 are
10 created to read:

11

12

CHAPTER 16

13

COUNTY ROAD RIGHTS-OF-WAY ON FEDERAL LANDS

14

1 **24-16-101. Definitions.**

2

3 (a) As used in this act:

4

5 (i) "Board" means the board of county
6 commissioners in any county in this state;

7

8 (ii) "R.S. 2477 right-of-way" means a highway
9 right-of-way on federal public lands not reserved for
10 public use which would have been recognized by revised
11 statute 2477, 43 U.S.C. 932, prior to its repeal on October
12 21, 1976;

13

14 (iii) "Public lands not reserved for public
15 uses" means the surface of federal lands open to entry and
16 location and includes the surface of lands that are subject
17 to subsurface coal withdrawals or mining claims;

18

19 (iv) "Recorded dominant estate ownership claim"
20 means an interest in the property over which the right-of-
21 way runs which is dominant to the right-of-way;

22

1 (v) "This act" means W.S. 24-16-101 through
2 24-16-106.

3

4 **24-16-102. R.S. 2477 determination; agreements.**

5

6 (a) Any board may adopt as a valid highway right-of-
7 way an R.S. 2477 right-of-way pursuant to the procedures
8 outlined in this act. Any valid highway right-of-way
9 adopted as an R.S. 2477 right-of-way pursuant to this act
10 shall not exceed thirty (30) feet in width.

11

12 (b) Any highway right-of-way determined by a board
13 under subsection (a) of this section may be determined
14 without the participation of any other political entity or
15 subdivision of the state.

16

17 (c) The state of Wyoming need not be a party to any
18 agreement for a highway right-of-way determined pursuant to
19 subsection (a) of this section.

20

21 (d) This act shall not be used, individually or in
22 conjunction with any other statute, to recognize any right-

1 of-way over land that does not meet the definition provided
2 in W.S. 24-16-101(a)(iii).

3

4 **24-16-103. Notice.**

5

6 (a) If a board determines a highway right-of-way
7 pursuant to this act, the board shall issue a statement
8 which shall include:

9

10 (i) A summary of the reasons for entering into
11 the highway right-of-way;

12

13 (ii) A description of the right-of-way including
14 the county in which it is located and notice of where a
15 center line location description, derived from global
16 positioning system data if available, may be viewed or
17 obtained;

18

19 (iii) Notice that any owner of a servient estate
20 over which the right-of-way runs and any person with a
21 dominant estate ownership claim may file a petition with a
22 district court to determine the propriety of the right-of-
23 way;

1

2 (iv) Notice that any petition challenging the
3 right-of-way shall be filed within sixty (60) days after
4 the statement required by this section is issued.

5

6 (b) The statement required by subsection (a) of this
7 section shall be published in a newspaper of general
8 circulation in the county one (1) time per week for three
9 (3) consecutive weeks, and if there is no newspaper of
10 general circulation, the statement shall be posted in at
11 least three (3) places along the line of the right-of-way.

12

13 (c) The statement required by subsection (a) of this
14 section shall be served by certified mail upon:

15

16 (i) The owner of the servient estate over which
17 the right-of-way subject to the statement runs; and

18

19 (ii) All persons having a recorded dominant
20 estate ownership claim.

21

22 **24-16-104. Petition challenging right-of-way;**
23 **standing; burden of proof; rules.**

1

2 (a) If any complaint is filed in a court of this
3 state to challenge a right-of-way under this act, the
4 person filing shall deliver a copy of the complaint to the
5 attorney general immediately upon filing.

6

7 (b) Only the owner of a servient estate over which
8 the right-of-way crosses and the owner of a competing
9 dominant estate shall have standing to challenge a board's
10 action to determine a right-of-way under this act.

11

12 (c) Any complaint challenging the determination of a
13 right-of-way under this act shall be filed no later than
14 sixty (60) days after a board provides the notices required
15 by W.S. 24-16-103.

16

17 (d) Where a highway existed on public lands not
18 reserved for public uses on or before October 21, 1976 and
19 where the highway currently exists in a condition suitable
20 for public use, the party challenging a right-of-way
21 designation under this act shall have the burden of proof.
22 In all other instances, the board shall have the burden of
23 proof.

1

2 (e) Any action brought to challenge a right-of-way
3 designation under this act shall be governed by the Wyoming
4 Rules of Civil Procedure.

5

6 **24-16-105. Recording; requirements.**

7

8 (a) If no petition challenging a right-of-way is
9 timely filed pursuant to W.S. 24-16-104, or upon the final
10 determination of a court to uphold the right-of-way, the
11 board shall record a notice of the right-of-way together
12 with any supporting evidence, including affidavits, maps or
13 other documents, in the office of the county clerk in the
14 county in which the right-of-way is located.

15

16 (b) The board shall file a certificate, authorized by
17 the board and signed by its chairman, setting forth the
18 legal description of the right-of-way in the office of the
19 county clerk to be indexed in like manner and with like
20 effect as if it were a conveyance of the right-of-way to
21 the county.

22

1 **24-16-106. Duty to construct or maintain; rights on**
2 **right-of-way.**

3

4 (a) A right-of-way determined pursuant to this act
5 shall not obligate the state, a county, a local government
6 or any other political subdivision to construct or maintain
7 any road.

8

9 (b) A right-of-way determined under this act may be
10 used in all manners consistent with Wyoming law.

11

12 **Section 2.** W.S. 24-1-101(a) is amended to read:

13

14 **24-1-101. Public highways defined and established;**
15 **creation by adverse possession.**

16

17 (a) On and after January 1, 1924, all roads within
18 this state shall be highways, which have been or may be
19 declared by law to be state or county highways. It shall be
20 the duty of the several boards of county commissioners,
21 within their respective counties, prior to said date, to
22 determine what, if any, such roads now or heretofore
23 traveled but not heretofore officially established and

1 recorded, are necessary or important for the public use as
2 permanent roads, and to cause such roads to be recorded, or
3 if need be laid out, established and recorded, and all
4 roads recorded as aforesaid, shall be highways. No other
5 roads, except roads located on federal public lands prior
6 to October, 1976 which either provide access for a private
7 residence or agricultural operation ~~shall be highways upon~~
8 ~~acceptance by the board of county commissioners of the~~
9 ~~county where the road is located,~~ or are determined as
10 rights-of-way by the board of county commissioners pursuant
11 to W.S. 24-16-101 through 24-16-106 shall be highways
12 unless and until lawfully established as such by official
13 authority. Except, nothing contained herein shall be
14 construed as preventing the creation or establishment of a
15 public highway right-of-way with reference to state and
16 county highways under the common-law doctrines of adverse
17 possession or prescription either prior to or subsequent to
18 the enactment hereof. If any such board shall resolve the
19 creation or establishment of a public highway right-of-way
20 based upon the common-law doctrines of adverse possession
21 or prescription, it shall, following the filing of a plat
22 and accurate survey required in accordance with the terms
23 and provisions of W.S. 24-3-109, proceed with the

1 publication of the proposed road for three (3) successive
2 weeks in three (3) successive issues of some official
3 newspaper published in the county, if any such there be,
4 and if no newspaper be published therein, such notice shall
5 be posted in at least three (3) public places along the
6 line of the proposed road, which notice shall be exclusive
7 of all other notices and may be in the following form:

8

9 To all whom it may concern: The board of county
10 commissioners of county has resolved the creation and
11 establishment of a public highway right-of-way under the
12 common-law doctrine of prescription in that the road was
13 constructed or substantially maintained by the (either the
14 state or county) for general public use for a period of
15 (ten years or longer) said road commencing at in
16 county, Wyoming, running thence (here describe in general
17 terms the points and courses thereof), and terminating at
18

19

20 All objections thereto must be filed in writing with the
21 county clerk of said county before noon on the day of
22 A.D.,, or such road will be established without
23 reference to such objections.

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3

County Clerk

4

Dated A.D.

5

6

Section 3. This act is effective July 1, 2015.

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(END)