

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 637

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO FEDERAL LAND RIGHTS-OF-WAY; AMENDING SECTION 40-204A, IDAHO  
2 CODE, TO REVISE AND CLARIFY PROVISIONS REGARDING FEDERAL LAND  
3 RIGHTS-OF-WAY.  
4

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

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

8 40-204A. FEDERAL LAND RIGHTS-OF-WAY. (1) The state recognizes that  
9 the act of construction and first use constitute the acceptance of the grant  
10 given to the public for federal land rights-of-way, and that once acceptance  
11 of the grant has been established, the grant shall be for the perpetual term  
12 granted by the congress of the United States.

13 (2) The only method for the abandonment of these rights-of-way shall  
14 be that of eminent domain proceedings in which the taking of the public's  
15 right to access shall be justly compensated. Neither the mere passage of  
16 time nor the frequency of use shall be considered a justification for consid-  
17 ering these rights-of-way to have been abandoned. The state does not recog-  
18 nize or consent and has not consented to the exchange, waiver or abandonment  
19 of these rights-of-way. No federal travel, resource or land management plan  
20 may vacate, close or otherwise obliterate a right-of-way except pursuant to  
21 eminent domain proceedings as provided in this subsection.

22 (3) All of the said rights-of-way ~~shall~~ may be shown by some form of doc-  
23 umentation or other evidence to have existed prior to the withdrawal of the  
24 federal grant in 1976 or to predate the removal of land through which they  
25 transit from the public domain for other public purposes. Documentation may  
26 take the form of a map, an affidavit, surveys, books or other historic in-  
27 formation. The omission of a right-of-way from any plat, description or map  
28 of public roads does not in itself waive or constitute a failure to acquire a  
29 right-of-way.

30 (4) These rights-of-way shall not require maintenance for the passage  
31 of vehicular traffic, nor shall the state or any of its political subdivi-  
32 sions incur any liability ~~be incurred~~ for injury or damage through a failure  
33 to maintain the access or to maintain any highway sign. These rights-of-way  
34 shall be traveled at the risk of the user and may be maintained:

35 (a) ~~By~~ By the public through usage by the public; or

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

38 (5) Maintenance by the state or a political subdivision may include:

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

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

3        The federal agency managing the surface estate of the property will be  
4        notified of any major maintenance actions.

5        (6) Any member of the public, the state of Idaho and any of its polit-  
6        ical subdivisions, and any agency of the federal government may choose to  
7        seek validation of its rights under law to use granted rights-of-way either  
8        through a process set forth by the state of Idaho, through processes set  
9        forth by any federal agency or by proclamation of user rights granted under  
10       the provisions of the original act, Revised Statute 2477.

11       (7) Persons seeking to have a federal land right-of-way, including  
12       those ~~which that~~ furnish public access to state and federal public lands and  
13       waters, validated as a highway or public right-of-way as part of a ~~county or~~  
14       ~~highway~~ an official highway system, shall follow the procedure outlined in  
15       section 40-203A, Idaho Code.

16       (8) If privately owned land is completely surrounded by or adjacent to  
17       public lands, the landowner has the right to use a right-of-way across public  
18       lands to access that land.

19       (9) Neither the granting of the original right-of-way nor any provision  
20       in this or any other state act shall be construed as a relinquishment of ei-  
21       ther federal ownership or management of the surface estate of the property  
22       over which the right-of-way passes.

23       ~~(10)~~ Persons seeking ~~acknowledgement~~ acknowledgment of federal  
24       land rights-of-way shall file with the county recorder the request for  
25       ~~acknowledgement~~ acknowledgment and for any supporting documentation. The  
26       county recorder shall record ~~acknowledgements~~ acknowledgments, including  
27       supporting documentation, and maintain an appropriate index of same.

28       (11) This section shall not apply to any roads on private land.