

HOUSE BILL NO. HB0182

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

Sponsored by: Representative(s) Kroeker, Eklund, Hunt,
Jaggi, Miller and Winters and Senator(s)
Barnard, Cooper and Hicks

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 24-16-107 are
10 created to read:

11

12

CHAPTER 16

13

COUNTY ROAD RIGHTS-OF-WAY ON FEDERAL LANDS

14

15 **24-16-101.** R.S. 2477 Rights-of-way act.

16

1 The legislature finds that many existing highways have been
2 previously established over federal public lands without an
3 official grant of an easement or right-of-way, yet these
4 highways are often the only access to private and state
5 public lands. The legislature recognizes that highways
6 provide tangible benefits to private and state public lands
7 by providing access, allowing development and facilitating
8 production of income. The legislature intends to establish
9 a means for ensuring continued access to the private and
10 public lands of the state for the good of the people.

11

12 **24-16-102. Definitions.**

13

14 (a) As used in this act:

15

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

18

19 (ii) "R.S. 2477 right-of-way" means a highway
20 right-of-way on federal public lands not reserved for
21 public use which would have been recognized by revised
22 statute 2477, 43 U.S.C. 932, prior to its repeal on October
23 21, 1976;

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

5

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

9

10 (v) "This act" means W.S. 24-16-101 through
11 24-16-107.

12

13 **24-16-103. R.S. 2477 determination; agreements.**

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15 (a) Any board may adopt as a valid highway right-of-
16 way an R.S. 2477 right-of-way pursuant to the procedures
17 outlined in this act.

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19 (b) Any highway right-of-way determined by a board
20 under subsection (a) of this section may be determined
21 without the participation of any other political entity or
22 subdivision of the state.

23

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

4

5 **24-16-104. Notice.**

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

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

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

19

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

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2

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

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6

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

13

14

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

16

17

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

19

20

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

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23

24-16-105. Petition challenging right-of-way;

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standing; burden of proof; rules.

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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 plaintiff 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. 24-16-104.

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.

24

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

4
5 **24-16-106. Recording; requirements.**

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7 (a) If no petition challenging a right-of-way is
8 timely filed pursuant to W.S. 24-16-105, or upon the final
9 determination of a court to uphold the right-of-way, the
10 board shall record a notice of the right-of-way together
11 with any supporting evidence, including affidavits, maps or
12 other documents, in the office of the county clerk in the
13 county in which the right-of-way is located.

14
15 (b) The board shall file a certificate, authorized by
16 the board and signed by its chairman, setting forth the
17 legal description of the right-of-way in the office of the
18 county clerk to be indexed in like manner and with like
19 effect as if it were a conveyance of the right-of-way to
20 the county.

21
22 **24-16-107. Duty to construct or maintain; rights on**
23 **right-of-way.**

24

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

5

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

8

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

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11 **24-1-101. Public highways defined and established;**
12 **creation by adverse possession.**

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14 (a) On and after January 1, 1924, all roads within
15 this state shall be highways, which have been or may be
16 declared by law to be state or county highways. It shall be
17 the duty of the several boards of county commissioners,
18 within their respective counties, prior to said date, to
19 determine what, if any, such roads now or heretofore
20 traveled but not heretofore officially established and
21 recorded, are necessary or important for the public use as
22 permanent roads, and to cause such roads to be recorded, or
23 if need be laid out, established and recorded, and all
24 roads recorded as aforesaid, shall be highways. No other

1 roads, except roads located on federal public lands prior
2 to October, 1976 which either provide access for a private
3 residence or agricultural operation ~~shall be highways upon~~
4 ~~acceptance by the board of county commissioners of the~~
5 ~~county where the road is located,~~ or are determined as
6 rights-of-way by the board of county commissioners pursuant
7 to W.S. 24-16-101 through 24-16-107 shall be highways
8 unless and until lawfully established as such by official
9 authority. Except, nothing contained herein shall be
10 construed as preventing the creation or establishment of a
11 public highway right-of-way with reference to state and
12 county highways under the common-law doctrines of adverse
13 possession or prescription either prior to or subsequent to
14 the enactment hereof. If any such board shall resolve the
15 creation or establishment of a public highway right-of-way
16 based upon the common-law doctrines of adverse possession
17 or prescription, it shall, following the filing of a plat
18 and accurate survey required in accordance with the terms
19 and provisions of W.S. 24-3-109, proceed with the
20 publication of the proposed road for three (3) successive
21 weeks in three (3) successive issues of some official
22 newspaper published in the county, if any such there be,
23 and if no newspaper be published therein, such notice shall
24 be posted in at least three (3) public places along the

1 line of the proposed road, which notice shall be exclusive
2 of all other notices and may be in the following form:

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

14

15 All objections thereto must be filed in writing with
16 the county clerk of said county before noon on the day
17 of A.D.,, or such road will be established
18 without reference to such objections.

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21

22

County Clerk

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24

Dated A.D.

