

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 24-16-107 are
10 created to read:

11

12

CHAPTER 16

13

COUNTY ROAD RIGHTS-OF-WAY ON FEDERAL LANDS

14

1 **24-16-101. R.S. 2477 Rights-of-way Act.**

2

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

13

14 **24-16-102. Definitions.**

15

16 (a) As used in this act:

17

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

20

21 (ii) "R.S. 2477 right-of-way" means a highway
22 right-of-way on federal public lands not reserved for
23 public use which would have been recognized by revised

1 statute 2477, 43 U.S.C. 932, prior to its repeal on October
2 21, 1976;

3

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

8

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

12

13 (v) "This act" means W.S. 24-16-101 through
14 24-16-107.

15

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

17

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

21

22 (b) Any highway right-of-way determined by a board
23 under subsection (a) of this section may be determined

1 without the participation of any other political entity or
2 subdivision of the state.

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

7
8 (d) This act shall not be used, individually or in
9 conjunction with any other statute, to recognize any right-
10 of-way over land that does not meet the definition provided
11 in W.S. 24-16-102(a)(iii).

12
13 **24-16-104. Notice.**

14
15 (a) If a board determines a highway right-of-way
16 pursuant to this act, the board shall issue a statement
17 which shall include:

18
19 (i) A summary of the reasons for entering into
20 the highway right-of-way;

21
22 (ii) A description of the right-of-way including
23 the county in which it is located and notice of where a

1 center line location description, derived from global
2 positioning system data if available, may be viewed or
3 obtained;

4
5 (iii) Notice that any owner of a servient estate
6 over which the right-of-way runs and any person with a
7 dominant estate ownership claim may file a petition with a
8 district court to determine the propriety of the right-of-
9 way;

10
11 (iv) Notice that any petition challenging the
12 right-of-way shall be filed within sixty (60) days after
13 the statement required by this section is issued.

14
15 (b) The statement required by subsection (a) of this
16 section shall be published in a newspaper of general
17 circulation in the county one (1) time per week for three
18 (3) consecutive weeks, and if there is no newspaper of
19 general circulation, the statement shall be posted in at
20 least three (3) places along the line of the right-of-way.

21
22 (c) The statement required by subsection (a) of this
23 section shall be served by certified mail upon:

1

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

4

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

7

8 **24-16-105. Petition challenging right-of-way;**
9 **standing; burden of proof; rules.**

10

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

15

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

20

21 (c) Any complaint challenging the determination of a
22 right-of-way under this act shall be filed no later than

1 sixty (60) days after a board provides the notices required
2 by W.S. 24-16-104.

3

4 (d) Where a highway existed on public lands not
5 reserved for public uses on or before October 21, 1976 and
6 where the highway currently exists in a condition suitable
7 for public use, the party challenging a right-of-way
8 designation under this act shall have the burden of proof.
9 In all other instances, the board shall have the burden of
10 proof.

11

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

15

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

17

18 (a) If no petition challenging a right-of-way is
19 timely filed pursuant to W.S. 24-16-105, or upon the final
20 determination of a court to uphold the right-of-way, the
21 board shall record a notice of the right-of-way together
22 with any supporting evidence, including affidavits, maps or

1 other documents, in the office of the county clerk in the
2 county in which the right-of-way is located.

3
4 (b) The board shall file a certificate, authorized by
5 the board and signed by its chairman, setting forth the
6 legal description of the right-of-way in the office of the
7 county clerk to be indexed in like manner and with like
8 effect as if it were a conveyance of the right-of-way to
9 the county.

10
11 **24-16-107. Duty to construct or maintain; rights on**
12 **right-of-way.**

13
14 (a) A right-of-way determined pursuant to this act
15 shall not obligate the state, a county, a local government
16 or any other political subdivision to construct or maintain
17 any road.

18
19 (b) A right-of-way determined under this act may be
20 used in all manners consistent with Wyoming law.

21
22 **Section 2.** W.S. 24-1-101(a) is amended to read:
23

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

3
4 (a) On and after January 1, 1924, all roads within
5 this state shall be highways, which have been or may be
6 declared by law to be state or county highways. It shall be
7 the duty of the several boards of county commissioners,
8 within their respective counties, prior to said date, to
9 determine what, if any, such roads now or heretofore
10 traveled but not heretofore officially established and
11 recorded, are necessary or important for the public use as
12 permanent roads, and to cause such roads to be recorded, or
13 if need be laid out, established and recorded, and all
14 roads recorded as aforesaid, shall be highways. No other
15 roads, except roads located on federal public lands prior
16 to October, 1976 which either provide access for a private
17 residence or agricultural operation ~~shall be highways upon~~
18 ~~acceptance by the board of county commissioners of the~~
19 ~~county where the road is located,~~ or are determined as
20 rights-of-way by the board of county commissioners pursuant
21 to W.S. 24-16-101 through 24-16-107 shall be highways
22 unless and until lawfully established as such by official
23 authority. Except, nothing contained herein shall be

1 construed as preventing the creation or establishment of a
2 public highway right-of-way with reference to state and
3 county highways under the common-law doctrines of adverse
4 possession or prescription either prior to or subsequent to
5 the enactment hereof. If any such board shall resolve the
6 creation or establishment of a public highway right-of-way
7 based upon the common-law doctrines of adverse possession
8 or prescription, it shall, following the filing of a plat
9 and accurate survey required in accordance with the terms
10 and provisions of W.S. 24-3-109, proceed with the
11 publication of the proposed road for three (3) successive
12 weeks in three (3) successive issues of some official
13 newspaper published in the county, if any such there be,
14 and if no newspaper be published therein, such notice shall
15 be posted in at least three (3) public places along the
16 line of the proposed road, which notice shall be exclusive
17 of all other notices and may be in the following form:

18

19 To all whom it may concern: The board of county
20 commissioners of county has resolved the creation and
21 establishment of a public highway right-of-way under the
22 common-law doctrine of prescription in that the road was
23 constructed or substantially maintained by the (either the

1 state or county) for general public use for a period of
2 (ten years or longer) said road commencing at in
3 county, Wyoming, running thence (here describe in general
4 terms the points and courses thereof), and terminating at
5

6
7 All objections thereto must be filed in writing with the
8 county clerk of said county before noon on the day of
9 A.D.,, or such road will be established without
10 reference to such objections.

11
12
13 County Clerk
14 Dated A.D.

15
16 **Section 3.** This act is effective July 1, 2015.

17
18 (END)