

SENATE BILL NO. 49—COMMITTEE ON TRANSPORTATION

(ON BEHALF OF NYE COUNTY)

PREFILED DECEMBER 15, 2010

Referred to Committee on Transportation

SUMMARY—Revises provisions governing the authority of a board of county highway commissioners regarding the establishment of certain rights-of-way. (BDR 35-341)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public roads; providing that filing by a board of county highway commissioners of a map that includes a county road located on a certain right-of-way constitutes the establishment of the existence and location of a right-of-way that is open for public use; providing that acceptance by the Department of Transportation of that map constitutes acknowledgment by the Department of the establishment of the existence and location of a right-of-way that is open for public use; authorizing the board of county highway commissioners in certain counties to locate and determine the width of certain rights-of-way and to open those rights-of-way for public use; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Currently in Nevada, many roads are popularly referred to as "R.S. 2477
2 roads." R.S. 2477 roads are roads that exist on public rights-of-way granted
3 pursuant to 43 U.S.C. § 932, a federal law passed in 1866 and stating, "[t]he right
4 of way for the construction of highways over public lands, not reserved for public
5 uses, is hereby granted." In 1976, the United States Congress repealed the
6 provisions of 43 U.S.C. § 932 by enacting the Federal Land Policy and
7 Management Act of 1976 (43 U.S.C. §§ 1701 et seq.). However, **section 701** of that
8 Act also included a savings provision concerning R.S. 2477 roads that provided that
9 "[n]othing in this Act, or in any amendment made by this Act, shall be construed as



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terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on [October 21, 1976].” (43 U.S.C. § 1701 note (Savings Provisions)) Therefore, valid R.S. 2477 rights-of-way continue to exist, and under existing state law, any board of county commissioners may locate and determine the width of those rights-of-way and may locate and open R.S. 2477 roads on those rights-of-way. (NRS 405.191)

Existing law also creates, in counties whose population is less than 100,000 (currently counties other than Clark and Washoe Counties), a board of county highway commissioners, composed of the regularly elected and qualified county commissioners. (NRS 403.005, 403.010, 403.020) A board of county highway commissioners has the authority to lay out and designate main, general and minor county roads and are required, upon so laying out and designating such roads, to create a county map showing the roads and their designations and to file copies of the map with the clerk of the board of county highway commissioners, the county clerk, the county recorder and the Department of Transportation. (NRS 403.170, 403.190) **Section 1** of this bill provides that the filing of the copies of the map constitutes the establishment of the existence and location of an R.S. 2477 right-of-way that is open for public use. **Section 1** also provides that acceptance of the map by the Department constitutes acknowledgment by the Department of the establishment of the existence and location of an R.S. 2477 right-of-way that is open for public use. **Section 2** of this bill confers authority upon a board of county highway commissioners to locate and determine the width of an R.S. 2477 right-of-way and to open that right-of-way for public use for the purpose of designating county roads within the county and taking certain other authorized actions concerning the R.S. 2477 right-of-way.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 403.190 is hereby amended to read as follows:

403.190 1. Except as otherwise provided in subsection ~~13.1~~ **4**, upon laying out and designating the county roads as required in NRS 403.170, the board of county highway commissioners shall cause a map of the county to be made, showing the county roads and their designations. The board shall file one copy of the map with the clerk of the board of county highway commissioners, one copy with the Department of Transportation, one copy with the county clerk and one copy with the county recorder.

2. *If the map required pursuant to subsection 1 includes a county road located on a right-of-way that the board of county highway commissioners has located, determined the width of and opened for public use pursuant to subsection 2 of NRS 405.191:*

(a) The filing of copies of the map pursuant to subsection 1 constitutes the establishment of the existence and location of a right-of-way that is open for public use; and

(b) Acceptance of the map by the Department of Transportation constitutes acknowledgment by the Department of the establishment of the existence and location of a right-of-way that is open for public use.



3. When any road has been designated by the board of county highway commissioners as a standard county road, as provided in NRS 403.180, that designation must be made on the copies of the map on file with the clerk of the board of county highway commissioners, the county clerk, the Department of Transportation and the county recorder.

~~13.1~~ 4. The board of county highway commissioners need not include a minor county road upon the map required by subsection 1. Any person who uses a minor county road may file with the county recorder a map showing the location of the road, appropriately emphasized in black ink upon the map by the person filing it. The map must:

(a) Be a topographical map prepared by the United States Geological Survey, unless the board of county highway commissioners determines that other specific maps are acceptable.

(b) Have written on its face, in black ink, the townships, ranges and sections through which the road traverses.

➤ The map so filed is evidence of the existence and location of the road. Each person filing such a map shall pay to the county recorder a fee of \$17 for the first sheet of the map plus \$10 for each additional sheet.

Sec. 2. NRS 405.191 is hereby amended to read as follows:

405.191 As used in NRS 405.193 and 405.195, "public road" includes:

1. A United States highway, a state highway or a main, general or minor county road and any other way laid out or maintained by any governmental agency.

2. Any way which exists upon a right-of-way granted by Congress over public lands of the United States not reserved for public uses in chapter 262, section 8, 14 Statutes 253 (former 43 U.S.C. § 932, commonly referred to as R.S. 2477), and accepted by general public use and enjoyment before, on or after July 1, 1979.

~~Each~~ ***Except as otherwise provided in this subsection, each*** board of county commissioners may locate and determine the width of such rights-of-way and locate, open for public use and establish thereon county roads or highways, but public use alone has been and is sufficient to evidence an acceptance of the grant of a public user right-of-way pursuant to former 43 U.S.C. § 932. ***In a county in which a board of county highway commissioners has exclusive control of all matters relating to the construction, repairing and maintaining of public highways, roads and bridges within the county pursuant to NRS 403.090, the board of county highway commissioners may locate and determine the width of those rights-of-way and open those rights-of-way for public use for the purpose of designating county roads pursuant to NRS 403.170 or taking***



1 *any other action concerning those rights-of-way pursuant to*
2 *chapter 403 of NRS.*

3 3. Any way which is shown upon any plat, subdivision,
4 addition, parcel map or record of survey of any county, city, town or
5 portion thereof duly recorded or filed in the office of the county
6 recorder, and which is not specifically therein designated as a
7 private road or a nonpublic road, and any way which is described in
8 a duly recorded conveyance as a public road or is reserved thereby
9 for public road purposes or which is described by words of similar
10 import.

11 **Sec. 3.** This act becomes effective on July 1, 2011.

