

TITLE 40
HIGHWAYS AND BRIDGES

CHAPTER 23
MISCELLANEOUS PROVISIONS

40-2301. RIGHT OF ENTRY TO MAKE SURVEYS. Agents and employees of the board, county commissioners and highway district commissioners shall have the right to enter upon any land to make surveys for any of the purposes of this title in the manner provided by law. Agents and employees of the board, county commissioners and highway district commissioners who are licensed as, or under the direction of, professional land surveyors shall have the right to enter upon any land to set right-of-way monuments for the purposes of this title in the manner provided by law.

[40-2301, added 1985, ch. 253, sec. 2, p. 693; am. 1994, ch. 364, sec. 3, p. 1141.]

40-2302. PUBLIC ACQUIRES FEE SIMPLE TITLE -- RECORD AND DEDICATION OF HIGHWAYS. (1) By taking or accepting land for a highway, the public acquires the fee simple title to the property. The person or persons having jurisdiction of the highway may take or accept lesser estate as they may deem requisite for their purposes.

(2) In all cases where consent to use the right-of-way for a highway is voluntarily given, purchased, or condemned and paid for, either an instrument in writing conveying the right-of-way and incidents to it, signed and acknowledged by the party making it, or a certified copy of the decree of the court condemning it, must be made, filed and recorded in the office of the recorder of the county in which the land conveyed or condemned shall be particularly described.

(3) No highway dedicated by the owner to the public shall be deemed a public highway, or be under the use or control of a county or highway district unless the dedication shall be accepted and confirmed by the commissioners of the county or highway district.

[40-2302, added 1985, ch. 253, sec. 2, p. 694.]

40-2303. PUBLIC USE OF PRIVATE DAM OR BRIDGE. No right shall be deemed to have vested in the public for highway or other purposes, where free use may be granted to the public to a right-of-way for the purposes of travel, over and upon any dam or bridge constructed over and across any of the streams of this state, and owned by any person.

[40-2303, added 1985, ch. 253, sec. 2, p. 694.]

40-2304. CONSTRUCTION OF SIDEWALKS. Any owner or occupant of land may construct a sidewalk on the highway along the line of his land subject to authority conferred by law on the respective highway or county commissioners and the director of highways. Any person using the sidewalk with a horse or team without permission of the owner, is liable to the owner or occupant in the sum of twenty-five dollars (\$25.00) for each trespass, and for all damages suffered.

[40-2304, added 1985, ch. 253, sec. 2, p. 694.]

40-2305. PERSONAL DELIVERY DEVICES. (1) Notwithstanding any provision of law to the contrary, a personal delivery device as defined in section [49-117](#), Idaho Code, is authorized to operate on sidewalks, crosswalks, and the sides or berms of highways; provided, however, that this section does not restrict a county, municipality, or highway district from otherwise adopting regulations for the safe operation of personal delivery devices consistent with this section.

(2) All personal delivery devices shall obey all traffic and pedestrian control devices and signs.

(3) A personal delivery device operating on sidewalks and crosswalks has all the rights and duties applicable to a pedestrian under the same circumstances, except that the personal delivery device shall not unreasonably interfere with pedestrians or traffic and shall yield the right-of-way to pedestrians on sidewalks and crosswalks.

(4) All personal delivery devices shall include a plate or marker that identifies the name and contact information of the operator of the personal delivery device and a unique identifying device number.

(5) All personal delivery devices shall be equipped with a braking system that, when active or engaged, enables the personal delivery device to come to a controlled stop.

(6) No personal delivery device shall transport hazardous materials or hazardous wastes that are regulated pursuant to the hazardous materials transportation act, 49 U.S.C. 5101-5128, and require placarding pursuant to subpart F of 49 CFR 172.

(7) No personal delivery device shall be operated on a public highway in the state, except on the side or berm of the road or to the extent necessary to cross a crosswalk.

(8) No personal delivery device shall operate on a sidewalk or crosswalk unless the personal delivery device operator is controlling or monitoring the navigation and operation of the personal delivery device.

[40-2305, added 2017, ch. 147, sec. 4, p. 364; am. 2022, ch. 98, sec. 1, p. 340.]

40-2306. FELLING TREE INTO HIGHWAY -- PENALTY. Whoever cuts down a tree so that it falls upon a highway shall remove the tree, and is liable to a penalty of ten dollars (\$10.00) for every day the tree remains on the highway.

[40-2306, added 1985, ch. 253, sec. 2, p. 694.]

40-2307. REMOVAL OF FALLEN TREES. Any person may notify the occupant or owner of any land from which a tree or other obstruction has fallen upon any highway to remove the tree or obstruction. If it is not removed, the owner or occupant is liable to a penalty of ten dollars (\$10.00) for every day until it is removed, in addition to the cost of removal.

[40-2307, added 1985, ch. 253, sec. 2, p. 695.]

40-2308. CORPORATIONS MAY LAY TRACKS AND WATER MAINS. Every gas, water, or railroad corporation has the power to lay conductors and tracks through the public ways and squares in any city with the consent of the city authorities, and under reasonable regulations and for just compensation, as the city authorities and the law prescribe.

[40-2308, added 1985, ch. 253, sec. 2, p. 695.]

40-2309. RAILROAD CROSSINGS. Whenever highways are laid out to cross railroads on public lands, the owners or corporations using the same highway shall, at their own expense, so prepare the highway that it may cross without danger or delay, and when the right-of-way for a public highway is obtained through the judgment of any court, over any railroad, no damage shall be awarded for the simple right to cross.

[40-2309, added 1985, ch. 253, sec. 2, p. 695.]

40-2310. CATTLE GUARDS ACROSS ROADS -- LANDOWNER'S RIGHT TO CONSTRUCT -- GATES. (1) The owner, or lessee of any land crossed by any highway, except highways maintained by the department, who encloses the land with a lawful fence, shall, with the consent of the commissioners, highway district commissioners, or other governing body having jurisdiction over the highway, have the right to enclose the land, by erecting or constructing cattle guards across the highway. Cattle guards shall be constructed in accordance with plans and specifications as the respective commissioners or other governing body having jurisdiction of the highway shall prescribe.

(2) Any owner or lessee of land constructing a cattle guard across a highway under the provisions of subsection (1) above, shall cause a gate not less than twelve (12) feet long to be constructed and maintained in the fence connected to the cattle guard. The gate shall not be more than thirty-three (33) feet from the highway. The surface of the guard adjoining the highway and gate shall be so leveled and maintained that a vehicle can pass from the highway through the gate on either side of the fence, and the gate shall be unlocked at all times.

[40-2310, added 1985, ch. 253, sec. 2, p. 695.]

40-2311. PENALTY FOR DEFACING OR DESTROYING SIGNS, SIGNPOSTS OR FACILITIES. It shall be unlawful for any person to deface or destroy any signs, signposts, guideposts, or any inscription on them, or facilities erected by or under the direction of the board, a director of highways, county, or highway district commissioners. Any person found guilty shall be deemed guilty of a misdemeanor. The defacing or destroying of each sign, signpost, guidepost, or inscription, or facility shall constitute a separate offense.

[40-2311, added 1985, ch. 253, sec. 2, p. 695.]

40-2312. WIDTH OF HIGHWAYS. (1) Where the width of a highway is stated in the plat, dedication, deed, easement, agreement, official road book, determination or other document or by an oral agreement supported by clear and convincing evidence that effectively conveys, creates, recognizes or modifies the highway or establishes the width, that width shall control.

(2) Where no width is established as provided for in subsection (1) of this section and where subsection (3) of this section is not applicable, such highways, except bridges and those located within cities, shall be not less than fifty (50) feet wide.

(3) Highways that at the time of a validation or judicial proceeding are not located on land owned by the United States or the state of Idaho or on land entirely surrounded by land owned by the United States or the state of Idaho, and that have not received maintenance at the expense of the public

in at least three (3) years during the previous fifteen (15) years, shall be declared to be of such width, and none greater, as is sufficient to accommodate:

- (a) The existing physical road surface;
- (b) Existing uses of the highway;
- (c) Existing features included within the definition of highways in section [40-109](#)(5), Idaho Code;
- (d) Such space for existing utilities as has historically been required for ongoing maintenance, replacement and upgrade of such utilities; and
- (e) Space reasonably required for maintenance, motorist and pedestrian safety, necessary to maintain existing uses of the highway.

(4) Nothing in this section shall diminish or otherwise limit the authority and rights of irrigation districts, canal companies or other such entities as provided in chapters 11 and 12, [title 42](#), Idaho Code.

(5) Nothing in this section shall diminish or otherwise limit any right of eminent domain as set forth in [chapter 7, title 7](#), Idaho Code.

[40-2312, added 1985, ch. 253, sec. 2, p. 695; am. 2013, ch. 239, sec. 6, p. 565.]

40-2313. TRAILS FOR LIVESTOCK -- LAYING OUT -- RULES CONCERNING USE -- PENALTY. (1) County or highway commissioners are authorized to lay out highways or designate existing highways, within their respective jurisdictions, to be used as trails for livestock. These highways may be of a width as determined by the respective commissioners, and they may lay out, alter, establish and secure lands for those highways in the same manner and under the same provisions as the laying out, or establishing, or securing rights-of-way for regular highways. A regular highway not established or designated as a livestock trail under the provisions of this section may be used for trailing livestock in a number and at a time as may be indicated in rules and regulations made for that purpose by the respective commissioners.

(2) Rules and regulations shall be entered on the minutes of the respective commissioners. When highways are provided by counties or districts and are available for use as livestock trails, the respective commissioners may by rule or regulation prohibit the use of any regular highway, or portion of it, in their respective jurisdictions, for trails over which to drive livestock.

(3) Any person driving livestock over a regular public highway in violation of rules or regulations prohibiting the use of the highway, or portion of it shall, in addition to any other penalties provided by law, be deemed guilty of a misdemeanor.

[40-2313, added 1985, ch. 253, sec. 2, p. 696.]

40-2314. PASSAGEWAYS FOR STOCK. Passageways for stock passing beneath any highway must be bridged with suitable plank not less than eighteen (18) feet in length, and it shall be lawful for the fences of either side to converge to the bridge over the passageway. The passageway must be kept securely bridged and in good repair by the person who owns the adjoining lands. The bridge shall not be placed more than one (1) foot above the level of the passageway. Approaches to the bridge over the passageway shall be kept in good repair by the owner.

[40-2314, added 1985, ch. 253, sec. 2, p. 696.]

40-2315. DAMAGE TO HIGHWAYS OR DITCHES BY LIVESTOCK. (1) Any person owning livestock or an employee or agent of the owner of livestock, who shall drive, range or graze the livestock along or across the public highways or ditches, or who shall permit them to range or graze along or across public highways or ditches, and thereby obstruct or partially obstruct the highway, by rolling rocks, brush or other debris on it, or destroy or injure any grades, ditches, bridges or approaches to bridges, shall immediately repair the damage done to the highway or ditch at their own expense. Any person owning livestock who shall refuse or neglect to repair any and all damage done to highways or ditches, within twenty-four (24) hours, shall be deemed guilty of a misdemeanor.

(2) All commissioners, directors of highways, highway district commissioners, and the board and their deputies, are directed to supervise the enforcement of this section.

[40-2315, added 1985, ch. 253, sec. 2, p. 696.]

40-2316. PRIVATE HIGHWAYS -- ESTABLISHMENT. Private highways may be opened for the convenience of one or more residents of any county highway system or highway district in the same manner as public highways are opened, whenever the appropriate commissioners may order the highway to be opened. The person for whose benefit the highway is required shall pay any damages awarded to landowners, and keep the private highway in repair.

[40-2316, added 1985, ch. 253, sec. 2, p. 697.]

40-2317. REMOVAL OF FENCES. When the alteration of an old or the opening of a new highway makes it necessary to remove fences on land given, purchased or condemned by order of a court for highway purposes, notice to remove the fences shall be given by the director of highways to the owner, his occupant, or agent, or by posting the notice on the fence. If removal is not accomplished within ten (10) days, or commenced and prosecuted as speedily as possible, the director of highways may cause it to be carefully removed at the expense of the owner, and recover from him the cost of removal. The fence material may be sold to satisfy the judgment.

[40-2317, added 1985, ch. 253, sec. 2, p. 697.]

40-2318. TURNING HIGHWAYS ACROSS PRIVATE LANDS. If any person, through whose land any public highway is established, is desirous of turning the highway through any other part of his land, that person may, by petition, apply to the appropriate commissioners to permit him to turn the highway through another part of his land without materially increasing the distance of travel to the public. Upon receipt of a petition, accompanied by a sufficient bond to pay the cost and expense to be incurred, the appropriate commissioners may appoint three (3) disinterested viewers and a surveyor, if they deem it necessary, who shall view the ground over which the highway is proposed to be turned, and ascertain the distance the highway will be increased by the proposed alteration, and report in writing stating the several distances found, together with their opinion as to the usefulness of making the alterations. If the viewers report to the respective commissioners that the prayer of the petitioner is reasonable, the respective commissioners upon receiving satisfactory evidence that the proposed new highway has been opened a legal width, and in all respects made equal to the

old highway for the convenience of travelers, may declare the new highway a public highway, make record of it, and at the same time vacate so much of the old highway as is embraced in the new. The person petitioning for the alteration shall pay all costs and expense of the view and survey, if ordered. When any person wishes to change the line or location of any public highway, he shall cause notice of his intention to apply to the appropriate commissioners having jurisdiction of the highway at its next session for permission to change the highway at his own expense, the notice to be in accordance with the provisions of section 40-206, Idaho Code, and shall also cause a copy of the notice to be posted at the post office, and at three (3) other public places in the county or district, at least twenty (20) days before the meeting of the respective commissioners. The notice must clearly show the proposed change or changes, and when, where, and by whom the petition will be presented, and at the time and place designated in the notice he must present his petition, which must conform to the notice. Any person objecting to the change may, within ten (10) days, file a protest in writing against it. Any person aggrieved by the action of the respective commissioners may appeal to the district court of the county in the same manner and with like effect as in other cases of appeal from the action of the respective commissioners.

[40-2318, added 1985, ch. 253, sec. 2, p. 697.]

40-2319. ENCROACHMENTS -- REMOVAL -- NOTICE -- PENALTY FOR FAILURE TO REMOVE -- REMOVAL BY COUNTY OR HIGHWAY DISTRICT -- ABATEMENT. (1) If any highway or public right-of-way under the jurisdiction of a county or highway district is encroached upon by gates, fences, buildings, or otherwise, the appropriate county or highway district may require the encroachment to be removed.

(2) If the county or highway district has actual notice of an encroachment that is of a nature as to effectually obstruct and prevent the use of an open highway for vehicles or is unsafe for pedestrian or motorist use of an open highway, the county or highway district shall immediately cause the encroachment to be removed without notice.

(3) If the county or highway district elects to remove an encroachment as provided for in subsection (1) of this section, notice shall be given to the occupant or owner of the land, or person causing or owning the encroachment, or left at his place of residence if he resides in the highway jurisdiction. If not, it shall be posted on the encroachment, specifying the place and extent of the encroachment, and requiring him to remove the encroachment within ten (10) days.

(a) If the encroachment is not removed, or commenced to be removed, prior to the expiration of ten (10) days from the service or posting the notice, the person who caused, owns or controls the encroachment shall forfeit up to one hundred fifty dollars (\$150) for each day the encroachment continues unremoved;

(b) If the owner, occupant, or person controlling the encroachment, refuses either to remove it or to permit its removal, the county or highway district shall commence in the proper court an action to abate the encroachment. If the county or highway district recovers judgment, it may, in addition to having the encroachment abated, recover up to one hundred fifty dollars (\$150) for every day the encroachment remained after notice, as well as costs of the legal action and removal; or

(c) If the owner, occupant or person controlling the encroachment fails to respond to the notice within five (5) days after the notice is complete, the county or highway district may remove it at the expense of the owner, occupant, or person controlling the encroachment, and the county or highway district may recover costs and expenses, as well as the sum of up to one hundred fifty dollars (\$150) for each day the encroachment remained after notice was complete.

(4) The duties referenced in the provisions of this section, whether statutory or common law, require reasonable care only and shall not be construed to impose strict liability or to otherwise enlarge the liability of the county or highway district. The county or highway district, while responsible for their own acts or omissions, shall not be liable for any injury or damage caused by or arising from the encroachment or the failure to remove or abate the encroachment as provided for in subsection (1) of this section. The provision of this section shall not be construed to impair any defense that the county or highway district may assert in a civil action.

(5) Nothing in this chapter shall be construed to limit, abrogate or supersede the provisions of this title governing the power, authority or jurisdiction of a county or highway district, including the authority to regulate the use of highways or public rights-of-way for pedestrian and motorist safety.

[40-2319, added 1985, ch. 253, sec. 2, p. 698; am. 2000, ch. 252, sec. 2, p. 717; am. 2011, ch. 282, sec. 1, p. 765; am. 2013, ch. 264, sec. 1, p. 649.]

40-2321. BRIDGES AND CULVERTS. Any person intending to run water across any public highway must first, under the direction and with the approval of the directors of highways of the county or district, or if the highway be the boundary of two (2) counties or districts, then, under the direction and with the approval of the director of highways of both counties or districts, construct a ditch of sufficient size to carry all the water, and must build a substantial bridge, with easy grades on and off the bridge over the ditch not less than sixteen (16) feet wide. When the quantity of water of any ditch is such that a pipe or culvert will carry the water, the water may be conducted across the highway by means of a pipe or culvert, which must be adapted to the surface of the highway, and the highest point of which shall be at least two (2) feet beneath the surface of the highway, be built of a length not less than sixteen (16) feet, and in a substantial manner permitting uninterrupted travel. All such bridges or culverts shall be of concrete, and all pipes of concrete, steel or other mineral substance. No wooden bridges, pipes or culverts shall be constructed, unless it appears to the satisfaction of the respective commissioners that the cost of the bridge, pipe or culvert would be unreasonably increased by being made of concrete, steel or other mineral substance, and that there is not sufficient travel over the highway to make it necessary for the protection and convenience of public travel that the bridge, pipe or culvert be constructed of those materials. The respective commissioners may in their discretion and by resolution, permit the bridge, pipe or culvert to be constructed of wood or other material, but no bridge, pipe or culvert shall be constructed of wood or any materials other than those specified in this section except upon a resolution of the appropriate commissioners setting forth the reasons and particularly specifying the place of the construction. When a bridge, pipe or culvert shall have been constructed as required, and accepted and approved by the direc-

tor of highways, it shall become county property and be maintained as other county bridges.

[40-2321, added 1985, ch. 253, sec. 2, p. 699.]

40-2322. CONSTRUCTION OR REPAIR OF BRIDGES AND CULVERTS BY DIRECTOR OF HIGHWAYS. If any person owning or having ditches across any public highway, fails or neglects to build bridges or culverts over them as required, or to keep them, or the public highway in good repair, it is the duty of the director of highways of the county or district to build or repair them at the expense of that person, and the cost of them is a lien upon the land and premises of the ditch owner, and may be sued for and collected, by and in the name of the director of highways, in any court of competent jurisdiction.

[40-2322, added 1985, ch. 253, sec. 2, p. 699.]

40-2323. ABATEMENT OF FLOODING OF HIGHWAYS -- RIGHT OF ENTRY -- COURT ACTION FOR ABATEMENT. (1) If the owner or occupant of land lying adjacent to or near any highway laid out or constructed, or any other person, shall maintain or cause to be maintained, or allow any dam, dike, or levee across any swale, hollow, or natural water drain or channel, either inside or outside any fence or other enclosure which may enclose the land, and shall thereby cause water to back upon, overflow or accumulate upon the highway, the director of highways of the county or district, or other official having direct supervision of the maintenance of the highway, or any other agent appointed by the respective commissioners, may go upon the premises and at the expense of the county or district install culverts and drains as may be necessary, and in a manner as to cause water to drain from the highway to be carried down its natural channel to some point where it may be disposed of without damage to the highway and adjoining landowners.

(2) Whenever it is necessary or convenient to do so, in carrying out the provisions of subsection (1) above, the respective commissioners who have by law the general supervision and control of the highway, are empowered to go upon and work upon the lands and premises where the dams, dikes and levees are situated.

(3) If it is denied that the dam, dike or levee causes water to back up, overflow or accumulate on the highway, or if the owner or occupant of the land, or person causing the dam, dike or levee to be maintained, refuses either to install suitable culverts or drains or does not allow the director of highways or other official having immediate supervision of the maintenance of the highway to do so, then the officer shall report the facts to the appropriate commissioners and they shall commence an action in the proper court to procure culverts or drains to be installed or the dam, dike, or levee abated as a nuisance. If the respective commissioners recover judgment, they may, in addition to having culverts installed or the dam, dike or levee abated as a nuisance, recover fifty dollars (\$50.00) for every day the culverts remained uninstalled after the date of rendition of judgment in the action, and may also recover the costs of the action, and in an appropriate action, may also recover the cost and expenses of the installation of culverts or drains and the costs of suit.

[40-2323, added 1985, ch. 253, sec. 2, p. 699.]

40-2324. AUTHORIZATION AND COMPENSATION FOR MAINTENANCE OF PUBLIC HIGHWAYS. Whenever any nongovernmental entity desires to maintain all or part of a public highway or public right-of-way and desires to receive compensation for such maintenance may petition the appropriate public highway agency for approval. The highway agency shall consider said petition and after reviewing the pertinent facts regarding the request, may approve or disapprove the request. If the highway agency approves the request of the nongovernmental entity, the highway agency shall pass a resolution which should outline the details and conditions for said authorization. Provided however, the granting of the compensation to that nongovernmental entity shall not exceed the dollar amount of the highway and bridge ad valorem tax levy that was assessed against the property of that nongovernmental entity under the provisions of section [40-801](#), Idaho Code, for the previous fiscal year. Authorization and compensation granted under this section shall not accumulate from year to year, but must be applied for each calendar year.

[40-2324, added 1994, ch. 319, sec. 1, p. 1021.]