



HOUSE OF REPRESENTATIVES

HB 2031

federal patent easements; counties; abandonment

Sponsor: Representative Dial

DP Committee on Government
DP Caucus and COW
X As Transmitted to the Governor

OVERVIEW

HB 2031 allows a county to abandon federal patent easements at the request of a property owner after notifying and obtaining the consent of all affected utilities and determining that the easement is no longer necessary or being used by the public and prescribes a procedure for the abandonment.

HISTORY

The Small Tract Act (STA) of 1938 authorized the sale or lease of five-acre parcels of public land for recreational use or use as a home, cabin etc., if the patent applicant made necessary improvements to the land by constructing a dwelling within three years. The STA was further amended in 1959 to state that the patent is subject to a right-of-way (easement) not exceeding 33 feet in width, for roadway and public utilities purposes. The STA was repealed by the Federal Land Policy and Management Act of 1976.

United States Code 43 § 932 provides that *the right or way for the construction of highways across public lands not otherwise reserved for public purposes is hereby granted*. This federal law was enacted by the United State Congress in 1866 to encourage the settlement of the Western United States by the development of a system of highways. It was repealed in 1976 under the Federal Land Policy and Management Act; however, existing rights-of-way already established were exempted from this repeal.

Laws 2005, Chapter 221 enacted statute that allows a municipality, by its own motion or at the request of a property owner, to abandon a federal patent easement established by the STA in the same manner as other easements are abandoned. The city or town must determine, after notifying and obtaining the consent of all affected utilities, that the easement is not being used by the public and is no longer necessary (Arizona Revised Statutes § 9-500.24).

PROVISIONS

- Allows a county to abandon a federal patent easement, at the request of the property owner, if the county has determined that the easement is not being used by the public or is no longer necessary and after notifying and obtaining the consent of all affected utilities.
- Requires a county board of supervisors (board) to provide notice via certified mail to the owners of land abutting the easement to be abandoned at least 60 days before the consideration of an abandonment resolution.
- Specifies that this notice must be sent to the address shown in the records of the county assessor, provide the date and time of consideration of the proposed resolution and inform

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the recipient of the opportunity and deadline to object to the proposed resolution in writing or in person.

- Prohibits a board from abandoning an easement unless a majority of the owners of the land abutting the easement approve the action.
- Specifies that an owner who does not object in writing or in person to the proposed abandonment before the date of the board's consideration is deemed to have consented to the proposal.
- Requires a board to post a copy of the notice at or within the immediate vicinity of the proposed abandonment.
- Exempts the abandonment of a roadway granted under United State Code 43 § 932 enacted by the United State Congress in 1866 from the provisions of this Act.