

State of Arizona  
House of Representatives  
Fifty-second Legislature  
First Regular Session  
2015

# HOUSE BILL 2175

AN ACT

AMENDING TITLE 37, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2;  
RELATING TO PUBLIC RIGHTS-OF-WAY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 37, chapter 5, Arizona Revised Statutes, is amended  
3 by adding article 2, to read:

4 ARTICLE 2. RIGHTS-OF-WAY ACROSS PUBLIC LANDS

5 37-931. Claims of right-of-way under revised statute 2477

6 A. THIS STATE, ON BEHALF OF ITSELF AND ITS POLITICAL SUBDIVISIONS,  
7 ASSERTS AND CLAIMS RIGHTS-OF-WAY ACROSS PUBLIC LANDS UNDER SECTION 8 OF THE  
8 MINING ACT OF 1866, REENACTED AND RECODIFIED AS REVISED STATUTE 2477;  
9 43 UNITED STATES CODE SECTION 932, ACQUIRED FROM AND AFTER ITS EFFECTIVE DATE  
10 THROUGH OCTOBER 21, 1976, THE DATE OF ITS REPEAL, BY AUTHORITY OF THE  
11 DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, 1997,  
12 SECTION 108, ENACTED BY THE OMNIBUS CONSOLIDATED APPROPRIATIONS ACT, 1997  
13 (P.L. 104-208; 110 STAT. 3009). THESE RIGHTS-OF-WAY ACROSS PUBLIC LANDS MAY  
14 HAVE BEEN ACQUIRED IN ANY MANNER AUTHORIZED BY THE LAW OF THE UNITED STATES,  
15 THE TERRITORY OF ARIZONA OR THIS STATE, INCLUDING:

16 1. THE USE BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE WITH  
17 THE INTENTION OF ESTABLISHING A PUBLIC HIGHWAY OVER PUBLIC LANDS.

18 2. THE CONSTRUCTION OR MAINTENANCE OF A PUBLIC HIGHWAY OVER PUBLIC  
19 LANDS.

20 3. THE INCLUSION OF A LEGALLY DESCRIBED RIGHT-OF-WAY ACROSS PUBLIC  
21 LANDS IN A STATE, COUNTY OR MUNICIPAL PLAT OR MAP OF PUBLIC ROADS.

22 4. THE EXPENDITURE OF PUBLIC MONIES ON THE HIGHWAY.

23 5. THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING OR OTHER AGREEMENT  
24 WITH ANY AGENCY OF THE UNITED STATES GOVERNMENT THAT RECOGNIZES THE RIGHT OR  
25 OBLIGATION OF THIS STATE OR A COUNTY, CITY OR TOWN OF THIS STATE TO WIDEN OR  
26 MAINTAIN A HIGHWAY OR A PORTION OF A HIGHWAY.

27 6. ANY OTHER AFFIRMATIVE ACT BY THIS STATE OR A COUNTY, CITY OR TOWN  
28 OF THIS STATE, CONSISTENT WITH FEDERAL, TERRITORIAL OR STATE LAW, INDICATING  
29 ACCEPTANCE OF A RIGHT-OF-WAY ACROSS PUBLIC LANDS.

30 7. THE USE BY THE PUBLIC FOR A PERIOD REQUIRED BY LAW.

31 B. THIS STATE DOES NOT RECOGNIZE OR CONSENT, AND HAS NOT CONSENTED, TO  
32 THE EXCHANGE, WAIVER OR ABANDONMENT OF ANY REVISED STATUTE 2477 RIGHT-OF-WAY  
33 ACROSS PUBLIC LANDS UNLESS BY FORMAL, WRITTEN OFFICIAL ACTION THAT WAS TAKEN  
34 BY THE STATE, COUNTY OR MUNICIPAL AGENCY OR INSTRUMENTALITY THAT HELD THE  
35 RIGHT-OF-WAY ACROSS PUBLIC LANDS AND THAT WAS RECORDED IN THE OFFICE OF THE  
36 COUNTY RECORDER OF THE COUNTY IN WHICH THE PUBLIC LANDS ARE LOCATED. NO  
37 OFFICER, EMPLOYEE OR AGENT OF THIS STATE OR A COUNTY, CITY OR TOWN OF THIS  
38 STATE HAS OR HAD AUTHORITY TO EXCHANGE, WAIVE OR ABANDON A REVISED STATUTE  
39 2477 RIGHT-OF-WAY ACROSS PUBLIC LANDS IN VIOLATION OF THIS SUBSECTION, AND  
40 ANY SUCH PURPORTED ACTION WAS VOID WHEN TAKEN UNLESS LATER RATIFIED BY  
41 OFFICIAL ACTION IN COMPLIANCE WITH THIS SUBSECTION.

42 C. THE FAILURE TO CONDUCT MECHANICAL MAINTENANCE OF A REVISED STATUTE  
43 2477 RIGHT-OF-WAY ACROSS PUBLIC LANDS DOES NOT AFFECT THE STATUS OF THE  
44 RIGHT-OF-WAY ACROSS PUBLIC LANDS AS A HIGHWAY FOR ANY PURPOSE OF REVISED  
45 STATUTE 2477.

1 D. THE OMISSION OF A REVISED STATUTE 2477 RIGHT-OF-WAY ACROSS PUBLIC  
2 LANDS FROM ANY PLAT, DESCRIPTION OR MAP OF PUBLIC ROADS DOES NOT WAIVE OR  
3 CONSTITUTE A FAILURE TO ACQUIRE A RIGHT-OF-WAY ACROSS PUBLIC LANDS UNDER  
4 REVISED STATUTE 2477.

5 E. FOR THE PURPOSES OF THIS SECTION:

6 1. THE EXTENT OF A REVISED STATUTE 2477 RIGHT-OF-WAY ACROSS PUBLIC  
7 LANDS IS THE DIMENSION THAT IS REASONABLE UNDER THE CIRCUMSTANCE.

8 2. A REVISED STATUTE 2477 RIGHT-OF-WAY ACROSS PUBLIC LANDS INCLUDES  
9 THE RIGHT TO:

10 (a) WIDEN THE HIGHWAY AS NECESSARY TO ACCOMMODATE INCREASED PUBLIC  
11 TRAVEL AND TRAFFIC ASSOCIATED WITH ALL ACCEPTED USES.

12 (b) CHANGE OR MODIFY THE HORIZONTAL ALIGNMENT OR VERTICAL PROFILES AS  
13 REQUIRED FOR PUBLIC SAFETY AND CONTEMPORARY DESIGN STANDARDS.

14 3. THE PUBLIC HAS THE RIGHT TO USE A REVISED STATUTE 2477 RIGHT-OF-WAY  
15 ACROSS PUBLIC LANDS TO ACCESS PUBLIC LANDS.

16 4. IF PRIVATELY OWNED LAND IS COMPLETELY SURROUNDED BY OR ADJACENT TO  
17 PUBLIC LANDS, THE LANDOWNER HAS THE RIGHT TO USE A REVISED STATUTE 2477  
18 RIGHT-OF-WAY ACROSS PUBLIC LANDS TO ACCESS THAT LAND.

19 5. A REVISED STATUTE 2477 RIGHT-OF-WAY ACROSS PUBLIC LANDS SHALL BE  
20 CLOSED ONLY BY ORDER OF A COURT OF COMPETENT JURISDICTION OR THE PROPER  
21 COMPLETION OF AN ADMINISTRATIVE PROCESS ESTABLISHED FOR THE ABANDONMENT,  
22 MAINTENANCE, CONSTRUCTION OR VACATION OF A PUBLIC RIGHT-OF-WAY OTHERWISE  
23 ALLOWED BY LAW.

24 F. THIS SECTION DOES NOT AFFECT THE INCLUSION OR EXCLUSION OF, OR THE  
25 OBLIGATION OF MAINTAINING, ANY HIGHWAY, ROAD, STREET OR ROUTE IN ANY SYSTEM  
26 OF STATE, COUNTY OR MUNICIPAL STREETS, ROADS OR HIGHWAYS. THE INCLUSION OF  
27 ANY HIGHWAY, ROAD, STREET OR ROUTE IN THE STATE, COUNTY OR MUNICIPAL SYSTEM  
28 SHALL BE SOLELY IN ACCORDANCE WITH OTHER LAW.

29 G. THIS SECTION DOES NOT:

30 1. APPLY TO ANY REVISED STATUTE 2477 RIGHT-OF-WAY ACROSS PRIVATE  
31 PROPERTY.

32 2. IMPAIR, MODIFY OR OTHERWISE AFFECT ANY PRIVATE PROPERTY RIGHTS IN  
33 EFFECT ON THE EFFECTIVE DATE OF THIS SECTION. ANY CLAIM, DETERMINATION OR  
34 IDENTIFICATION OF A RIGHT-OF-WAY ACROSS PUBLIC LANDS PURSUANT TO THIS SECTION  
35 DOES NOT ESTABLISH PRIOR RIGHTS FOR DETERMINING FINANCIAL OR LEGAL  
36 RESPONSIBILITY FOR TAKING ANY PRIVATE PROPERTY RIGHTS, IN WHOLE OR IN PART.  
37 ALL PRESUMPTIONS AND INTERPRETATIONS OF FACT AND LAW RELATING TO A CLAIM,  
38 DETERMINATION OR IDENTIFICATION OF A RIGHT-OF-WAY ACROSS PUBLIC LANDS  
39 PURSUANT TO THIS SECTION SHALL BE IN FAVOR OF PRESERVING PRIVATE PROPERTY  
40 RIGHTS.

41 (EMERGENCY NOT ENACTED)

42 Sec. 2. Emergency

43 This act is an emergency measure that is necessary to preserve the  
44 public peace, health or safety and is operative immediately as provided by  
45 law.