

PUBLIC HIGHWAY AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Rights-Of-Way Act by amending provisions relating to public uses constituting an abandonment and dedication of a highway to the public.

Highlighted Provisions:

This bill:

- provides that the provision that a highway, street, or road is abandoned and dedicated to the use of the public if the highway was continuously used as a public thoroughfare for a period of 10 years only applies to a highway that was designated as a class A state highway, class B road, class C road, or class D road as of a certain date; and

- provides that the owner of private property over which certain roads or highways pass may challenge the existence of the road or highway as a public thoroughfare if the road or highway is alleged to have been dedicated and abandoned to the public.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-5-104, as last amended by Laws of Utah 2014, Chapter 107



28

29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **72-5-104** is amended to read:

31 **72-5-104. Public use constituting dedication -- Scope.**

32 (1) As used in this section, "highway," "street," or "road" does not include an area
33 principally used as a parking lot.

34 (2) (a) A highway is dedicated and abandoned to the use of the public when it has been
35 continuously used as a public thoroughfare for a period of 10 years .

36 (b) Dedication to the use of the public under this Subsection (2) does not require an act
37 of dedication or implied dedication by the property owner.

38 (c) The provisions of this Subsection (2) only apply to a public thoroughfare that was,
39 as of December 31, 2014:

40 (i) designated as a class A state highway under Section [72-2-102](#);

41 (ii) designated by a county on its then current official map as a class B road under
42 Section [72-3-103](#) or otherwise officially designated as a class B road;

43 (iii) designated by a municipality on its then current official map as a class C road
44 under Section [72-3-104](#) or otherwise officially designated as a class C road; or

45 (iv) shown on the then current map of class D roads prepared by a county as required
46 under Subsection [72-3-105](#)(5) or otherwise officially designated by a county as a class D road.

47 (d) The owner of private property over which a road or highway passes, which is
48 identified in Subsection (2)(c), may challenge the existence of the road or highway as a public
49 thoroughfare if the road or highway is alleged to have been dedicated and abandoned under the
50 provisions of this section.

51 (3) The requirement of continuous use under Subsection (2) is satisfied if the use is as
52 frequent as the public finds convenient or necessary and may be seasonal or follow some other
53 pattern.

54 (4) Continuous use as a public thoroughfare under Subsection (2) is interrupted only
55 when:

56 (a) the regularly established pattern and frequency of public use for the given road has
57 actually been interrupted for a period of no less than 24 hours to a degree that reasonably puts
58 the traveling public on notice; or

59 (b) for interruptions by use of a barricade on or after May 10, 2011:

60 (i) if the person or entity interrupting the continuous use gives not less than 72 hours
61 advance written notice of the interruption to the highway authority having jurisdiction of the
62 highway, street, or road; and

63 (ii) the barricade is in place for at least 24 consecutive hours, then an interruption will
64 be deemed to have occurred.

65 (5) Installation of gates and posting of no trespassing signs are relevant forms of
66 evidence but are not solely determinative of whether an interruption has occurred.

67 (6) If the highway authority having jurisdiction of the highway, street, or road demands
68 that an interruption cease or that a barrier or barricade blocking public access be removed and
69 the property owner accedes to the demand, the attempted interruption does not constitute an
70 interruption under Subsection (4).

71 (7) (a) The burden of proving dedication under Subsection (2) is on the party asserting
72 the dedication.

73 (b) The burden of proving interruption under Subsection (4) is on the party asserting
74 the interruption.

75 (8) The dedication and abandonment creates a right-of-way held by the state in
76 accordance with Sections [72-3-102](#), [72-3-104](#), [72-3-105](#), and [72-5-103](#).

77 (9) The scope of the right-of-way is that which is reasonable and necessary to ensure
78 safe travel according to the facts and circumstances.

79 (10) (a) The provisions of this section apply to any claim under this section for which a
80 court of competent jurisdiction has not issued a final unappealable judgment or order.

81 (b) The Legislature finds that the application of this section:

82 (i) does not enlarge, eliminate, or destroy vested rights; and

83 (ii) clarifies legislative intent in light of Utah Supreme Court rulings in Wasatch
84 County v. Okelberry, 179 P.3d 768 (Utah 2008), Town of Leeds v. Prsbrey, 179 P.3d 757
85 (Utah 2008), and Utah County v. Butler, 179 P.3d 775 (Utah 2008).

Legislative Review Note
as of 2-25-15 3:40 PM

Office of Legislative Research and General Counsel