

Part 1 Public Highways

72-5-101 Title.

This chapter is known as the "Rights-of-way Act."

Enacted by Chapter 270, 1998 General Session

72-5-102 Definitions.

As used in this part, "state transportation purposes" includes:

- (1) highway and public transportation rights-of-way, including those necessary within cities and towns;
- (2) the construction, reconstruction, relocation, improvement, maintenance, and mitigation from the effects of these activities on state highways and other transportation facilities under the control of the department;
- (3) limited access facilities, including rights of access, air, light, and view and frontage and service roads to highways;
- (4) adequate drainage in connection with any highway, cut, fill, or channel change and the maintenance of any highway, cut, fill, or channel change;
- (5) weighing stations, shops, offices, storage buildings and yards, and road maintenance or construction sites;
- (6) road material sites, sites for the manufacture of road materials, and access roads to the sites;
- (7) the maintenance of an unobstructed view of any portion of a highway to promote the safety of the traveling public;
- (8) the placement of traffic signals, directional signs, and other signs, fences, curbs, barriers, and obstructions for the convenience of the traveling public;
- (9) the construction and maintenance of storm sewers, sidewalks, and highway illumination;
- (10) the construction and maintenance of livestock highways;
- (11) the construction and maintenance of roadside rest areas adjacent to or near any highway; and
- (12) the mitigation of impacts from public transportation projects.

Amended by Chapter 79, 2001 General Session

72-5-103 Acquisition of rights-of-way and other real property -- Title to property acquired.

- (1) The department may acquire any real property or interests in real property necessary for temporary, present, or reasonable future state transportation purposes by gift, agreement, exchange, purchase, condemnation, or otherwise.
- (2)
 - (a)
 - (i) Title to real property acquired by the department or the counties, cities, and towns by gift, agreement, exchange, purchase, condemnation, or otherwise for highway rights-of-way or other transportation purposes may be in fee simple or any lesser estate or interest.
 - (ii) Title to real property acquired by the department for a public transit project shall be transferred to the public transit district responsible for the project.
 - (iii) A public transit district shall cover all costs associated with any condemnation on its behalf.
 - (b) If the highway is a county road, city street under joint title as provided in Subsection 72-3-104(3), or right-of-way described in Title 72, Chapter 5, Part 3, Rights-Of-Way Across

Federal Lands Act, title to all interests in real property less than fee simple held under this section is held jointly by the state and the county, city, or town holding the interest.

- (3) A transfer of land bounded by a highway on a right-of-way for which the public has only an easement passes the title of the person whose estate is transferred to the middle of the highway.

Amended by Chapter 79, 2001 General Session

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

- (1) As used in this section, "highway," "street," or "road" does not include an area principally used as a parking lot.
- (2)
 - (a) A highway is dedicated and abandoned to the use of the public when it has been continuously used as a public thoroughfare for a period of 10 years.
 - (b) Dedication to the use of the public under Subsection (2) does not require an act of dedication or implied dedication by the property owner.
- (3) The requirement of continuous use under Subsection (2) is satisfied if the use is as frequent as the public finds convenient or necessary and may be seasonal or follow some other pattern.
- (4) Continuous use as a public thoroughfare under Subsection (2) is interrupted only when:
 - (a) the regularly established pattern and frequency of public use for the given road has actually been interrupted for a period of no less than 24 hours to a degree that reasonably puts the traveling public on notice; or
 - (b) for interruptions by use of a barricade on or after May 10, 2011:
 - (i) if the person or entity interrupting the continuous use gives not less than 72 hours advance written notice of the interruption to the highway authority having jurisdiction of the highway, street, or road; and
 - (ii) the barricade is in place for at least 24 consecutive hours, then an interruption will be deemed to have occurred.
- (5) Installation of gates and posting of no trespassing signs are relevant forms of evidence but are not solely determinative of whether an interruption has occurred.
- (6) If the highway authority having jurisdiction of the highway, street, or road demands that an interruption cease or that a barrier or barricade blocking public access be removed and the property owner accedes to the demand, the attempted interruption does not constitute an interruption under Subsection (4).
- (7)
 - (a) The burden of proving dedication under Subsection (2) is on the party asserting the dedication.
 - (b) The burden of proving interruption under Subsection (4) is on the party asserting the interruption.
- (8) The dedication and abandonment creates a right-of-way held by the state in accordance with Sections 72-3-102, 72-3-104, 72-3-105, and 72-5-103.
- (9) The scope of the right-of-way is that which is reasonable and necessary to ensure safe travel according to the facts and circumstances.
- (10)
 - (a) The provisions of this section apply to any claim under this section for which a court of competent jurisdiction has not issued a final unappealable judgment or order.
 - (b) The Legislature finds that the application of this section:
 - (i) does not enlarge, eliminate, or destroy vested rights; and

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

Amended by Chapter 107, 2014 General Session

**72-5-105 Highways, streets, or roads once established continue until abandoned --
Temporary closure.**

- (1) All public highways, streets, or roads once established shall continue to be highways, streets, or roads until formally abandoned or vacated by written order, resolution, or ordinance resolution of a highway authority having jurisdiction or by court decree, and the written order, resolution, ordinance, or court decree has been duly recorded in the office of the recorder of the county or counties where the highway, street, or road is located.
- (2)
 - (a) For purposes of assessment, upon the recordation of an order executed by the proper authority with the county recorder's office, title to the vacated or abandoned highway, street, or road shall vest to the adjoining record owners, with one-half of the width of the highway, street, or road assessed to each of the adjoining owners.
 - (b) Provided, however, that should a description of an owner of record extend into the vacated or abandoned highway, street, or road that portion of the vacated or abandoned highway, street, or road shall vest in the record owner, with the remainder of the highway, street, or road vested as otherwise provided in this Subsection (2).
- (3)
 - (a) In accordance with this section, a state or local highway authority may temporarily close a class B or D road, an R.S. 2477 right-of-way, or a portion of a class B or D road or R.S. 2477 right-of-way.
 - (b)
 - (i) A temporary closure authorized under this section is not an abandonment.
 - (ii) The erection of a barrier or sign on a highway, street, or road once established is not an abandonment.
 - (iii) An interruption of the public's continuous use of a highway, street, or road once established is not an abandonment even if the interruption is allowed to continue unabated.
 - (c) A temporary closure under Subsection (3)(a) may be authorized only under the following circumstances:
 - (i) when a federal authority, or other person, provides an alternate route to an R.S. 2477 right-of-way or portion of an R.S. 2477 right-of-way that is:
 - (A) accepted by the highway authority; and
 - (B) formalized by:
 - (I) a federal permit; or
 - (II) a written agreement between the federal authority or other person and the highway authority; or
 - (ii) when a state or local highway authority determines that correction or mitigation of injury to private or public land resources is necessary on or near a class B or D road or portion of a class B or D road.
 - (d) A highway authority shall reopen an R.S. 2477 right-of-way or portion of an R.S. 2477 right-of-way temporarily closed under this section if the alternate route is closed for any reason.
 - (e) A temporary closure authorized under Subsection (3)(c)(ii) shall:
 - (i) be authorized annually; and

- (ii) not exceed two years or the time it takes to complete the correction or mitigation, whichever is less.
- (4) Before authorizing a temporary closure under Subsection (3), a highway authority shall:
 - (a) hold a hearing on the proposed temporary closure;
 - (b) provide notice of the hearing by:
 - (i) mailing a notice to the Department of Transportation and all owners of property abutting the highway; and
 - (ii)
 - (A) publishing the notice:
 - (I) in a newspaper of general circulation in the county at least once a week for four consecutive weeks before the hearing; and
 - (II) on the Utah Public Notice Website created in Section 63F-1-701, for four weeks before the hearing; or
 - (B) posting the notice in three public places for at least four consecutive weeks prior to the hearing; and
 - (c) pass an ordinance authorizing the temporary closure.
- (5) The right-of-way and easements, if any, of a property owner and the franchise rights of any public utility may not be impaired by a temporary closure authorized under this section.

Amended by Chapter 341, 2011 General Session

72-5-106 Expiration of franchise of toll bridge or road.

If the franchise of any toll bridge or road expires by limitation, forfeiture, or nonuser it is a free public highway, and no claim shall be valid against the public for right-of-way or for land or material comprising the bridge or road.

Renumbered and Amended by Chapter 270, 1998 General Session

72-5-107 United States patents -- Patentee and county to assert claims to roads crossing land.

- (1)
 - (a) If any person acquires title from the United States to any land in this state over which any public highway extends that has not been duly platted, and that has not been continuously used as a public highway for a period of 10 years, the person shall within three months after receipt of the person's patent assert the person's claim for damages in writing to the county executive of the county in which the land is situated.
 - (b) The county legislative body shall have an additional period of three months in which to begin proceedings to condemn the land according to law.
- (2)
 - (a) The highway shall continue open as a public highway during the periods described under Subsection (1).
 - (b) If no action is begun by the county executive within the period described under Subsection (1) (b), the highway shall be considered to be abandoned by the public.
- (3) In case of a failure by the person so acquiring title to public lands to assert his claim for damage during the three months from the time the person received a patent to the lands, the person shall thereafter be barred from asserting or recovering any damages by reason of the public highway, and the public highway shall remain open.

Renumbered and Amended by Chapter 270, 1998 General Session

72-5-108 Width of rights-of-way for public highways.

The width of rights-of-way for public highways shall be set as the highway authorities of the state, counties, or municipalities may determine for the highways under their respective jurisdiction.

Renumbered and Amended by Chapter 270, 1998 General Session

72-5-109 Contributions of property by counties and municipalities.

Counties and municipalities may contribute real or personal property to the department for state transportation purposes.

Amended by Chapter 79, 2001 General Session

72-5-110 Acquisition of personal property -- Disposal of certain personal property.

- (1) The department may:
 - (a) acquire by gift, agreement, exchange, purchase, or otherwise machinery, tools, equipment, materials, supplies, or other personal property necessary for the administration, construction, maintenance, and operation of the state highways; and
 - (b) sell, exchange, or otherwise dispose of the machinery, tools, equipment, materials, supplies, and other personal property described in Subsection (1)(a) when no longer suitable or required for state transportation purposes.
- (2) In accordance with Section 63A-2-409, the department is exempt from using the state surplus property program when disposing of surplus personal property that was acquired as part of a transaction or legal action by the department acquiring real property for a state transportation purpose.
- (3) Proceeds from the sale, exchange, or other disposition of property described in Subsection (2) shall be deposited with the state treasurer and credited to the Transportation Fund.

Amended by Chapter 15, 2013 General Session

72-5-111 Disposal of real property.

- (1)
 - (a) If the department determines that any real property or interest in real property, acquired for a highway purpose, is no longer necessary for the purpose, the department may lease, sell, exchange, or otherwise dispose of the real property or interest in the real property.
 - (b)
 - (i) Real property may be sold at private or public sale.
 - (ii) Except as provided in Subsection (1)(c) related to exchanges and Subsection (1)(d) related to the proceeds of any sale of real property from a maintenance facility, proceeds of any sale shall be deposited with the state treasurer and credited to the Transportation Fund.
 - (c) If approved by the commission, real property or an interest in real property may be exchanged by the department for other real property or interest in real property, including improvements, for highway purposes.
 - (d) Proceeds from the sale of real property or an interest in real property from a maintenance facility may be used by the department for the purchase or improvement of another maintenance facility, including real property.
- (2)

- (a) In the disposition of real property at any private sale, first consideration shall be given to the original grantor.
 - (b) Notwithstanding the provisions of Section 78B-6-521, if no portion of a parcel of real property acquired by the department is used for transportation purposes, then the original grantor shall be given the opportunity to repurchase the parcel of real property at the department's original purchase price from the grantor.
 - (c) In accordance with Section 72-5-404, this Subsection (2) does not apply to property rights acquired in proposed transportation corridors using funds from the Marda Dillree Corridor Preservation Fund created in Section 72-2-117.
 - (d) Nothing in this Subsection (2) or Section 78B-6-521 creates an assignable right.
- (3)
- (a) Any sale, exchange, or disposal of real property or interest in real property made by the department under this section, is exempt from the mineral reservation provisions of Title 65A, Chapter 6, Mineral Leases.
 - (b) Any deed made and delivered by the department under this section without specific reservations in the deed is a conveyance of all the state's right, title, and interest in the real property or interest in the real property.

Amended by Chapter 192, 2015 General Session

72-5-112 Acquisition of real property from county, city, or other political subdivision -- Exchange.

The department may purchase or otherwise acquire from any county, city, or other political subdivision of the state real property or interests in real property which may be exchanged for or used in the purchase of other real property or interests in real property to be used in connection with the construction, maintenance, or operation of state highways.

Renumbered and Amended by Chapter 270, 1998 General Session

72-5-113 Acquisition of entire lot, block, or tract -- Sale or exchange of remainder.

If a part of an entire lot, block, tract of land, or interest or improvement in real property is to be acquired by the department and the remainder is to be left in a shape or condition of little value to its owner or to give rise to claims or litigation concerning damages, the department may acquire the whole of the property and may sell the remainder or may exchange it for other property needed for highway purposes.

Renumbered and Amended by Chapter 270, 1998 General Session

72-5-114 Property acquired in advance of construction -- Lease or rental.

- (1)
 - (a) The department may acquire real property or interests or improvements in real property in advance of the actual construction, reconstruction, or improvement of highways in order to save on acquisition costs or avoid the payment of excessive damages.
 - (b) The real property or interests or improvements in real property may be leased or rented by the department in a manner, for a period of time, and for a sum determined by the department to be in the best interest of the state.
- (2)

- (a) The department may employ private agencies to manage rental properties when it is more economical and in the best interests of the state.
- (b) All money received for leases and rentals, after deducting any portion to which the federal government may be entitled, shall be deposited with the state treasurer and credited to the Transportation Fund.

Renumbered and Amended by Chapter 270, 1998 General Session

72-5-115 Acquisition of property devoted to or held for other public use.

- (1) If property devoted to or held for some other public use for which the power of eminent domain might be exercised is to be taken for state transportation purposes, the department may, with the consent of the person or agency in charge of the other public use, condemn real property to be exchanged with the person or agency for the real property to be taken for state transportation purposes.
- (2) This section does not limit the department's authorization to acquire, other than by condemnation, property for exchange purposes.

Amended by Chapter 79, 2001 General Session

72-5-116 Exemption from state licensure.

In accordance with Section 61-2f-202, an employee or authorized agent working under the oversight of the department when engaging in an act on behalf of the department related to one or more of the following is exempt from licensure under Title 61, Chapter 2f, Real Estate Licensing and Practices Act:

- (1) acquiring real estate pursuant to Section 72-5-103;
- (2) disposing of real estate pursuant to Section 72-5-111;
- (3) providing services that constitute property management, as defined in Section 61-2f-102; or
- (4) leasing of real estate.

Amended by Chapter 379, 2010 General Session

72-5-117 Rulemaking for sale of real property -- Licensed or certified appraisers -- Exceptions.

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the department buys, sells, or exchanges real property, the department shall make rules to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale, or exchange.
- (2) The rules:
 - (a) shall establish procedures for determining the value of the real property;
 - (b) may provide that an appraisal, as defined under Section 61-2g-102, demonstrates the real property's value; and
 - (c) may require that the appraisal be completed by a state-certified general appraiser, as defined under Section 61-2g-102.
- (3) Subsection (1) does not apply to the purchase, sale, or exchange of real property, or to an interest in real property:
 - (a) that is under a contract or other written agreement before May 5, 2008; or
 - (b) with a value of less than \$100,000, as estimated by the state agency.

Amended by Chapter 289, 2011 General Session