

1 **ACCEPTANCE OF R.S. 2477**
2 **RIGHTS-OF-WAY AMENDMENTS**
3 2006 GENERAL SESSION
4 STATE OF UTAH

5 **Chief Sponsor: Michael E. Noel**
6 Senate Sponsor: Thomas V. Hatch

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Rights-of-Way Across Federal Lands Act by amending notice of
11 acknowledgment provisions for acceptance of R.S. 2477 rights-of-way.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ provides that a notice of acknowledgment for an R.S. 2477 right-of-way acceptance
15 shall include:

16 • a notice of where a center-line description rather than a full legal description
17 may be viewed or obtained; and

18 • a statement that any person with a competing dominant ownership claim may
19 file a petition with the district court for a decision regarding the correctness or
20 incorrectness of the acknowledgment;

20a ~~H~~→ ▶ **provides that a notice of acknowledgment filed in a county recorder's office is**
20b **not required to have a paper copy of the center-line description but that an electronic copy**
20c **shall be available at the county recorder's office and the Automated Geographic Reference**
20d **Center;**

20e ▶ **provides that a paper copy of the center-line description together with a notice of**
20f **acknowledgment shall placed in the state archives and made available upon request;** ←~~H~~

21 ▶ provides that the governor or the governor's designee:

22 • may provide a notice of acknowledgment by hand delivery; and



- 23 • shall provide a copy of a notice of acknowledgment to the last known owner of
24 the servient estate over which the right-of-way or rights-of way subject to the
25 notice runs and any person known to have a competing dominant ownership
26 claim; and
27 ▶ makes technical changes.

28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides an immediate effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **72-5-309**, as enacted by Chapter 293, Laws of Utah 2003

35 **72-5-310**, as enacted by Chapter 293, Laws of Utah 2003



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

38 Section 1. Section **72-5-309** is amended to read:

39 **72-5-309. Acceptance of rights-of-way -- Notice of acknowledgment required.**

40 (1) The governor or the governor's designee may assess whether the grant of the R.S.
41 2477 has been accepted with regard to any right-of-way so as to vest title of the right-of-way in
42 the state and the applicable political subdivision as provided for in Section 72-5-103.

43 (2) If the governor or governor's designee concludes that the grant has been accepted as
44 to any right-of-way, the governor or a designee shall issue a notice of acknowledgment of the
45 acceptance of the R.S. 2477 grant as to that right-of-way.

46 (3) A notice of acknowledgment of the R.S. 2477 grant shall include:

47 (a) a statement of reasons for the acknowledgment;

48 (b) a general description of the right-of-way or rights-of-way subject to the notice of
49 acknowledgment, including the county in which it is located, and notice of where a ~~[full legal]~~
50 center-line description derived from Global Positioning System data may be viewed or
51 obtained;

52 (c) a statement that the owner of the servient estate in the land over which the
53 right-of-way or rights-of-way subject to the notice runs or any person with a competing
54 dominant estate ownership claim may file ~~[an action in]~~ a petition with the district court for a
55 decision regarding the correctness or incorrectness of the acknowledgment; and

56 (d) a statement of the time limit provided in Section 72-5-310 for filing ~~[an appeal]~~ a
57 petition.

58 (4) (a) ~~H→~~ **(i)** ~~←H~~ A notice of acknowledgment may be recorded in the office of the county



59 recorder in the county where the right-of-way or rights-of-way exist.

59a ~~H→~~ **(ii)(A) A notice of acknowledgment recorded in the county recorder's office is not**
 59b **required to be accompanied by a paper copy of the center-line description.**

59c **(B) A paper copy of each center-line description together with the notice of**
 59d **acknowledgment shall be placed in the state archives created in Section 63-2-901 and made**
 59e **available to the public upon request in accordance with Title 63, Chapter 2, Government**
 59f **Records Access and Management Act.**

59g **(C) An electronic copy of the center-line description identified in a notice of**
 59h **acknowledgment shall be available upon request at:**

59i **(I) the county recorder's office; or**

59j **(II) the Automated Geographic Reference Center created in Section 63F-1-506.** ←H

60 (b) A notice of acknowledgment recorded in the county recorder's office is conclusive
 61 evidence of acceptance of the R.S. 2477 grant upon:

62 (i) expiration of the 60-day period for filing [~~an action~~] a petition under Section
 63 72-5-310 without the filing of [~~an action~~] a petition; or

64 (ii) a final court decision that the notice of acknowledgment was not incorrect.

65 Section 2. Section **72-5-310** is amended to read:

66 **72-5-310. Notice of acknowledgment -- Court determination -- Presumption of**
 67 **acceptance.**

68 (1) The governor or [his] the governor's designee shall provide a copy of the notice of
 69 acknowledgement by certified mail and return receipt requested to:

70 (a) the last known owner of the servient estate in land over which [~~a notice of~~
 71 ~~acknowledgment runs~~] the right-of-way or rights-of-way subject to the notice runs; and

72 (b) any person known to have a competing dominant ~~H→~~ **estate** ←H ownership claim.

73 (2) (a) A person with a servient estate or competing dominant estate ownership claim
 74 to the right-of-way may petition for a decision of the district court as to the correctness of the
 75 acknowledgment of acceptance of the R.S. 2477 grant issued under Section 72-5-309.

76 (b) Venue for the court action shall be the district court for Salt Lake County.

77 (c) The petition shall be filed no later than 60 days after the date on which the
 78 petitioner received a copy of the notice of acknowledgment.

79 (d) The state, through the governor or the governor's designee, shall be named as a
 80 respondent and served with a copy of the petition in accordance with the Utah Rules of Civil
 81 Procedure.

82 (e) No one other than a person with a servient estate ownership claim in land over

83 which the right-of-way or rights-of-way subject to the notice runs or a competing dominant
84 estate claim [to the right-of-way] may challenge the correctness of a notice of acknowledgment.
85 (3) The petition for a court decision of the correctness of the notice of acknowledgment
86 shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain:
87 (a) the petitioner's name and mailing address;
88 (b) a copy of the notice of acknowledgment the petitioner asserts is incorrect;
89 (c) a request for relief specifying the type and extent of relief requested; and

90 (d) a statement of the reasons why the petitioner is entitled to relief.

91 (4) Except as provided under this Part 3, all pleadings and proceedings to determine the
92 correctness of a notice of acknowledgment in the district court are governed by the Utah Rules
93 of Civil Procedure.

94 (5) The court shall make its decision without deference to the notice of
95 acknowledgment.

96 (6) (a) In accordance with Section 72-5-302, a rebuttable presumption that the R.S.
97 2477 grant has been accepted is created when:

98 (i) a highway existed on public lands not reserved for public uses as of the cut-off date
99 under Section 72-5-301; and

100 (ii) the highway currently exists in a condition suitable for public use.

101 (b) The proponent of the R.S. 2477 status of the highway bears the burden of proving
102 acceptance of the grant by a preponderance of the evidence for all decisions that are not subject
103 to Subsection (6)(a).

104 Section 3. **Effective date.**

105 If approved by two-thirds of all the members elected to each house, this bill takes effect
106 upon approval by the governor, or the day following the constitutional time limit of Utah
107 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
108 the date of veto override.

Legislative Review Note
as of 1-12-06 9:55 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0264

Acceptance of R.S. 2477 Rights-of-way Amendments

17-Jan-06

9:02 AM

State Impact

Provisions of this bill can be enacted within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst