

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;

21 ▶ provides that a notice of acknowledgment filed in a county recorder's office is not
22 required to have a paper copy of the center-line description but that an electronic
23 copy shall be available at the county recorder's office and the Automated
24 Geographic Reference Center;

25 ▶ provides that a paper copy of the center-line description together with a notice of
26 acknowledgment shall be placed in the state archives and made available upon
27 request;

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

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

30 • shall provide a copy of a notice of acknowledgment to the last known owner of
31 the servient estate over which the right-of-way or rights-of-way subject to the
32 notice runs and any person known to have a competing dominant ownership
33 claim; and

34 ▶ makes technical changes.

35 **Monies Appropriated in this Bill:**

36 None

37 **Other Special Clauses:**

38 This bill provides an immediate effective date.

39 **Utah Code Sections Affected:**

40 AMENDS:

41 **72-5-309**, as enacted by Chapter 293, Laws of Utah 2003

42 **72-5-310**, as enacted by Chapter 293, Laws of Utah 2003



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

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

46 **72-5-309. Acceptance of rights-of-way -- Notice of acknowledgment required.**

47 (1) The governor or the governor's designee may assess whether the grant of the R.S.
48 2477 has been accepted with regard to any right-of-way so as to vest title of the right-of-way in
49 the state and the applicable political subdivision as provided for in Section 72-5-103.

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

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

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

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

58 obtained;

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

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

65 (4) (a) (i) A notice of acknowledgment may be recorded in the office of the county
66 recorder in the county where the right-of-way or rights-of-way exist.

67 (ii) (A) A notice of acknowledgment recorded in the county recorder's office is not
68 required to be accompanied by a paper copy of the center-line description.

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

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

75 (I) the county recorder's office; or

76 (II) the Automated Geographic Reference Center created in Section 63F-1-506.

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

79 (i) expiration of the 60-day period for filing [~~an action~~] a petition under Section
80 72-5-310 without the filing of [~~an action~~] a petition; or

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

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

83 **72-5-310. Notice of acknowledgment -- Court determination -- Presumption of**
84 **acceptance.**

85 (1) The governor or [~~his~~] the governor's designee shall provide a copy of the notice of

86 acknowledgement by certified mail and return receipt requested to:

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

89 (b) any person known to have a competing dominant estate ownership claim.

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

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

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

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

99 (e) No one other than a person with a servient estate ownership claim in land over
100 which the right-of-way or rights-of-way subject to the notice runs or a competing dominant
101 estate claim [~~to the right-of-way~~] may challenge the correctness of a notice of acknowledgment.

102 (3) The petition for a court decision of the correctness of the notice of acknowledgment
103 shall be a complaint governed by the Utah Rules of Civil Procedure and shall contain:

104 (a) the petitioner's name and mailing address;

105 (b) a copy of the notice of acknowledgment the petitioner asserts is incorrect;

106 (c) a request for relief specifying the type and extent of relief requested; and

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

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

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

113 (6) (a) In accordance with Section 72-5-302, a rebuttable presumption that the R.S.

114 2477 grant has been accepted is created when:

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

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

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

121 **Section 3. Effective date.**

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