

**AMENDMENTS TO PERMANENT EASEMENTS
OVER TRUST LAND**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Rights-of-Way Act by amending provisions relating to rights-of-way across state lands.

Highlighted Provisions:

This bill:

- ▶ provides that a temporary public easement or right of entry is granted that terminates at or within or traverses state lands that is used by the public as a public thoroughfare continuously for a period of ten years;
- ▶ provides that a grant of easement or right of entry across trust lands may be made:
 - subject to rules promulgated by the School and Institutional Trust Lands Administration; or
 - by filing a Notice of Acknowledgment, signed by the governor or the governor's designee, in the appropriate county;
- ▶ provides that a copy of the Notice of Acknowledgment shall be served upon the director of the School and Institutional Trust Lands Administration together with a center-line description of the segment or segments of highway that affect trust lands;
- ▶ requires the governor or the governor's designee to consult with the director of the School and Institutional Trust Lands Administration to ensure certain interests are



protected;

▶ authorizes the director of the School and Institutional Trust Lands Administration to petition for a decision of the district court as to whether certain state fiduciary responsibilities have been met; and

▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-5-201, as renumbered and amended by Chapter 270, Laws of Utah 1998

72-5-202, as renumbered and amended by Chapter 270, Laws of Utah 1998

72-5-203, as last amended by Chapter 192, Laws of Utah 2003

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

Section 1. Section **72-5-201** is amended to read:

72-5-201. Purpose statement.

(1) (a) The Legislature recognizes that highways provide tangible benefits to private and public lands of the state by providing access, allowing development, and facilitating production of income.

(b) Many of those highways traverse state lands, including lands held by the state in trust for the school children and public institutions of the state.

(c) Many of the existing highways have been previously established without an official grant of an easement or right of entry from this state, yet these highways often are the only access to private and public lands of the state.

(2) The Legislature intends to establish a means for ensuring continued access to the private and public lands of the state for the good of the people, while fulfilling its fiduciary responsibilities toward the ~~[schoolchildren]~~ land grant beneficiaries by protecting their trust holdings against loss.

Section 2. Section **72-5-202** is amended to read:

72-5-202. Definitions.

As used in this part:

(1) "Responsible authority" means ~~[a private party,]~~ the state ~~[of Utah,]~~ or a political subdivision of the state claiming rights to a highway right-of-way, easement, or right of entry across state lands.

(2) "Sovereign lands" has the same meaning as provided in Section 65A-1-1.

(3) "State lands" means sovereign and trust lands, as well as all other lands held by or on behalf of the departments, divisions, or institutions of the state.

(4) "Trust lands" has the same meaning as "school and institutional trust lands" as defined in Section 53C-1-103.

Section 3. Section **72-5-203** is amended to read:

72-5-203. Public easement or right of entry -- Grant -- Application -- Conditions.

(1) (a) (i) Subject to Section 53C-1-302 and Subsection 53C-1-204(1), a temporary public easement or right of entry is granted for each highway existing prior to January 1, 1992, that terminates at or within or traverses any state lands and that has been constructed and maintained ~~[or used]~~ by a responsible authority or used by the public as a public thoroughfare continuously for a period of ten years.

(ii) The temporary public easement or right of entry granted under Subsection (1)(a)(i) is:

(A) 100 feet wide for each class A and B highway[-]; and

(B) 60 feet wide for each class D highway.

(b) Each easement shall remain in effect ~~[through June 30, 2004, or]~~ until a permanent easement or right of entry has been established under Subsection (2)~~[-, whichever is greater]~~.

(2) (a) The School and Institutional Trust Lands Administration and the Division of Forestry, Fire and State Lands shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establishing an application process for a responsible authority to obtain a permanent easement or right of entry over any temporary public easement granted under Subsection (1), subject to the provisions of Subsections (2)(b), (c), and (d).

(b) A grant of a permanent easement or right of entry across sovereign lands shall be made upon a showing to the Division of Forestry, Fire and State Lands that continued use of the easement will provide a public benefit commensurate with the value of the permanent

90 easement or right of entry.

91 (c) A grant of a permanent easement or right of entry across trust lands ~~[shall]~~ may be
92 made ~~[upon a showing to the School and Institutional Trust Lands Administration that the grant~~
93 ~~is]~~:

94 (i) subject to the rules promulgated under Subsection (2)(a); or

95 (ii) (A) by recording, in the appropriate county, a Notice of Acknowledgment that is
96 signed by the governor or the governor's designee in accordance with the procedures and
97 requirements of Section 72-5-309 regarding a permanent easement or right of entry across trust
98 lands; and

99 (B) by personally serving upon the director of the School and Institutional Trust Lands
100 Administration a copy of the Notice of Acknowledgment under Subsection (2)(c)(ii)(A)
101 together with a center-line description of the segment or segments of highway that affect trust
102 lands within that county.

103 (d) The governor or the governor's designee shall consult with the director of the
104 School and Institutional Trust Lands Administration prior to signing a Notice of
105 Acknowledgment under Subsection (2)(c)(ii) affecting trust lands to ensure that the interests of
106 the land grant beneficiaries are protected consistent with the state's fiduciary responsibilities
107 under Section 53C-1-302 and Subsection 53C-1-204(1).

108 (e) The director of the School and Institutional Trust Lands Administration may
109 petition for a decision of the district court pursuant to the procedures and requirements of
110 Section 72-5-310 as to whether the state's fiduciary responsibilities have been met under
111 Section 53C-1-302 and Subsection 53C-1-204(1).

112 ~~[(d)]~~ (f) A grant of a permanent easement or right of entry across state lands other than
113 sovereign and trust lands shall be made upon a showing to the managing unit of state
114 government that the continued use will provide a public benefit commensurate with the value
115 of the easement and will not unreasonably interfere with the purposes for which the land was
116 obtained or is now held.

117 (3) The grant of the temporary public easement or right of entry under Subsection (1) is
118 consistent with the trust responsibilities of the state and in the best interest of the state.

119 (4) A responsible authority that has been granted a permanent easement or right of
120 entry over state lands may maintain the permanent easement or right of entry for the uses to

121 which the permanent easement or right of entry was put prior to and including January 1, 1992,
122 subject to the right of the managing unit of state government or private party to relocate the
123 permanent easement or right of entry.

124 (5) The grant of a permanent easement or right of entry under this section is effective
125 on the date the highway was originally constructed or established for public use.

Legislative Review Note

as of 1-31-07 10:55 AM

Office of Legislative Research and General Counsel

H.B. 428 - Amendments to Permanent Easements over Trust Land

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will require \$9,000 of additional appropriation per year from the Land Grant Management restricted account to the School and Institutional Trust Lands Administration for part-time help in processing anticipated additional claims.

	<u>FY 2007 Approp.</u>	<u>FY 2008 Approp.</u>	<u>FY 2009 Approp.</u>	<u>FY 2007 Revenue</u>	<u>FY 2008 Revenue</u>	<u>FY 2009 Revenue</u>
Restricted Funds	\$0	\$9,000	\$9,000	\$0	\$0	\$0
Total	\$0	\$9,000	\$9,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
