

Representative Michael E. Noel proposes the following substitute bill:

AMENDMENTS TO PERMANENT EASEMENTS

OVER STATE 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 and is used by the general public 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;

amends requirements that must be shown for a grant of permanent easement or right of entry across state lands other than sovereign and trust lands; 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 general public 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) a width that is reasonable and necessary 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 easement or right of entry.

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

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

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

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

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

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

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

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

121 (4) A responsible authority that has been granted a permanent easement or right of
122 entry over state lands may maintain the permanent easement or right of entry for the uses to
123 which the permanent easement or right of entry was put prior to and including January 1, 1992,
124 subject to the right of the managing unit of state government or private party to relocate the
125 permanent easement or right of entry.

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