

ROAD AND RIGHTS-OF-WAY AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Transportation Code by amending provisions relating to roads and rights of way.

Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ provides that receipt of class B or class C roads account funds for a highway creates a rebuttable presumption of the public's right to use the highway;
- ▶ provides that if a highway is transferred to a local road district, the local road district is entitled to receive class B or class C roads account funds for the highway;
- ▶ provides that certain highways are designated as public access preservation highways;
- ▶ provides that the state:
 - has ownership, jurisdiction, and control of public access preservation highways;
 - is not required to maintain public access preservation highways; and
 - is not liable for injury or damage resulting from a failure to maintain a public access preservation highway;
- ▶ provides that the governor or the governor's designee shall make certain recommendations to the Legislature if the governor or the governor's designee determines that a public access preservation highway or a portion of a public access



28 preservation highway is no longer needed to preserve public access; and

29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **72-1-102**, as last amended by Laws of Utah 2001, Chapter 372

37 **72-2-107**, as last amended by Laws of Utah 2007, Chapter 126

38 **72-2-108**, as last amended by Laws of Utah 2007, Chapter 126

39 **72-2-109**, as renumbered and amended by Laws of Utah 1998, Chapter 270

40 ENACTS:

41 **72-3-401**, Utah Code Annotated 1953



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

44 Section 1. Section **72-1-102** is amended to read:

45 **72-1-102. Definitions.**

46 As used in this title:

47 (1) "Commission" means the Transportation Commission created under Section
48 72-1-301.

49 (2) "Construction" means the construction, reconstruction, replacement, and
50 improvement of the highways, including the acquisition of rights-of-way and material sites.

51 (3) "Department" means the Department of Transportation created in Section 72-1-201.

52 (4) "Executive director" means the executive director of the department appointed
53 under Section 72-1-202.

54 (5) "Farm tractor" has the meaning set forth in Section 41-1a-102.

55 (6) "Federal aid primary highway" means that portion of connected main highways
56 located within this state officially designated by the department and approved by the United
57 States Secretary of Transportation under Title 23, Highways, U.S.C.

58 (7) "Highway" means any public road, street, alley, lane, court, place, viaduct, tunnel,

59 culvert, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the
60 public, or made public in an action for the partition of real property, including the entire area
61 within the right-of-way.

62 (8) "Highway authority" means the department or the legislative, executive, or
63 governing body of a county or municipality.

64 (9) "Implement of husbandry" has the meaning set forth in Section 41-1a-102.

65 (10) "Interstate system" means any highway officially designated by the department
66 and included as part of the national interstate and defense highways, as provided in the Federal
67 Aid Highway Act of 1956 and any supplemental acts or amendments.

68 (11) "Limited-access facility" means a highway especially designated for through
69 traffic, and over, from, or to which neither owners nor occupants of abutting lands nor other
70 persons have any right or easement, or have only a limited right or easement of access, light,
71 air, or view.

72 (12) "Local road district" means a local district created in accordance with Title 17B,
73 Chapter 1, Limited Purpose Local Government Entities - Local Districts, to provide street and
74 road service.

75 [~~(12)~~] (13) "Motor vehicle" has the same meaning [~~set forth~~] as defined in Section
76 41-1a-102.

77 [~~(13)~~] (14) "Municipality" has the same meaning [~~set forth~~] as defined in Section
78 10-1-104.

79 [~~(14)~~] (15) "National highway systems highways" means that portion of connected
80 main highways located within this state officially designated by the department and approved
81 by the United States Secretary of Transportation under Title 23, Highways, U.S.C.

82 [~~(15)~~] (16) (a) "Port-of-entry" means a fixed or temporary facility constructed,
83 operated, and maintained by the department where drivers, vehicles, and vehicle loads are
84 checked or inspected for compliance with state and federal laws as specified in Section
85 72-9-501.

86 (b) "Port-of-entry" includes inspection and checking stations and weigh stations.

87 [~~(16)~~] (17) "Port-of-entry agent" means a person employed at a port-of-entry to perform
88 the duties specified in Section 72-9-501.

89 [~~(17)~~] (18) "Right-of-way" means real property or an interest in real property, usually

90 in a strip, acquired for or devoted to a highway.

91 [~~(18)~~] (19) "Sealed" does not preclude acceptance of electronically sealed and submitted
92 bids or proposals in addition to bids or proposals manually sealed and submitted.

93 [~~(19)~~] (20) "Semitrailer" has the meaning set forth in Section 41-1a-102.

94 [~~(20)~~] (21) "SR" means state route and has the same meaning as state highway as
95 defined in this section.

96 [~~(21)~~] (22) "State highway" means those highways designated as state highways in
97 Title 72, Chapter 4, Designation of State Highways Act.

98 [~~(22)~~] (23) "State highway purposes" has the same meaning [~~set forth~~] as defined in
99 Section 72-5-102.

100 [~~(23)~~] (24) "State transportation systems" means all streets, alleys, roads, highways,
101 and thoroughfares of any kind, including connected structures, airports, spaceports, and all
102 other modes and forms of conveyance used by the public.

103 [~~(24)~~] (25) "Trailer" has the same meaning [~~set forth~~] as defined in Section 41-1a-102.

104 [~~(25)~~] (26) "Truck tractor" has the same meaning [~~set forth~~] as defined in Section
105 41-1a-102.

106 [~~(26)~~] (27) "UDOT" means the Utah Department of Transportation.

107 [~~(27)~~] (28) "Vehicle" has the same meaning [~~set forth~~] as defined in Section 41-1a-102.
108 Section 2. Section **72-2-107** is amended to read:

109 **72-2-107. Appropriation from Transportation Fund -- Deposit in class B and**
110 **class C roads account.**

111 (1) There is appropriated to the department from the Transportation Fund annually an
112 amount equal to 30% of an amount which the director of finance shall compute in the
113 following manner: The total revenue deposited into the Transportation Fund during the fiscal
114 year from state highway-user taxes and fees, minus:

115 (a) those amounts appropriated or transferred from the Transportation Fund during the
116 same fiscal year to:

- 117 (i) the Department of Public Safety;
- 118 (ii) the State Tax Commission;
- 119 (iii) the Division of Finance;
- 120 (iv) the Utah Travel Council; and

121 (v) any other amounts appropriated or transferred for any other state agencies not a part
122 of the department; and

123 (b) the amount of sales and use tax revenue deposited in the Transportation Fund in
124 accordance with Subsection 59-12-103(6).

125 (2) All of this money shall be placed in an account to be known as the class B and class
126 C roads account to be used as provided in this title.

127 (3) Each quarter of every year the director of finance shall make the necessary
128 accounting entries to transfer the money appropriated under this section to the class B and class
129 C roads account.

130 (4) The funds in the class B and class C roads account shall be expended under the
131 direction of the department as the Legislature shall provide.

132 (5) (a) The department shall only expend class B or class C road account funds on
133 public highways.

134 (b) Receipt of class B or class C road account funds for a highway by a political
135 subdivision of the state provides a rebuttable presumption of the public's right to use the
136 highway.

137 Section 3. Section **72-2-108** is amended to read:

138 **72-2-108. Apportionment of funds available for use on class B and class C roads**

139 **-- Bonds.**

140 (1) For purposes of this section:

141 (a) "Graveled road" means a road:

142 (i) that is:

143 (A) graded; and

144 (B) drained by transverse drainage systems to prevent serious impairment of the road
145 by surface water;

146 (ii) that has an improved surface; and

147 (iii) that has a wearing surface made of:

148 (A) gravel;

149 (B) broken stone;

150 (C) slag;

151 (D) iron ore;

- 152 (E) shale; or
- 153 (F) other material that is:
- 154 (I) similar to a material described in Subsection (1)(a)(iii)(A) through (E); and
- 155 (II) coarser than sand.
- 156 (b) "Paved road" includes a graveled road with a chip seal surface.
- 157 (c) "Road mile" means a one-mile length of road, regardless of:
- 158 (i) the width of the road; or
- 159 (ii) the number of lanes into which the road is divided.
- 160 (d) "Weighted mileage" means the sum of the following:
- 161 (i) paved road miles multiplied by five;
- 162 (ii) graveled road miles multiplied by two; and
- 163 (iii) all other road type road miles multiplied by one.
- 164 (2) Subject to the provisions of Subsections (3) through (5), funds in the class B and
- 165 class C roads account shall be apportioned among counties and municipalities in the following
- 166 manner:
- 167 (a) 50% in the ratio that the class B roads weighted mileage within each county and
- 168 class C roads weighted mileage within each municipality bear to the total class B and class C
- 169 roads weighted mileage within the state; and
- 170 (b) 50% in the ratio that the population of a county or municipality bears to the total
- 171 population of the state as of the last official federal census or the United States Bureau of
- 172 Census estimate, whichever is most recent, except that if population estimates are not available
- 173 from the United States Bureau of Census, population figures shall be derived from the estimate
- 174 from the Utah Population Estimates Committee.
- 175 (3) For purposes of Subsection (2)(b), "the population of a county" means:
- 176 (a) the population of a county outside the corporate limits of municipalities in that
- 177 county, if the population of the county outside the corporate limits of municipalities in that
- 178 county is not less than 14% of the total population of that county, including municipalities; and
- 179 (b) if the population of a county outside the corporate limits of municipalities in the
- 180 county is less than 14% of the total population:
- 181 (i) the aggregate percentage of the population apportioned to municipalities in that
- 182 county shall be reduced by an amount equal to the difference between:

183 (A) 14%; and

184 (B) the actual percentage of population outside the corporate limits of municipalities in
185 that county; and

186 (ii) the population apportioned to the county shall be 14% of the total population of
187 that county, including incorporated municipalities.

188 (4) (a) If an apportionment under Subsection (2) to a county or municipality with a
189 population of less than 10,000 is less than 120% of the amount apportioned to the county or
190 municipality from the class B and class C roads account for fiscal year 1996-97, the department
191 shall:

192 (i) reapportion the funds under Subsection (2) to ensure that the county or municipality
193 receives an amount equal to 120% of the amount apportioned to the county or municipality
194 from the class B and class C roads account for fiscal year 1996-97; and

195 (ii) decrease proportionately as provided in Subsection (4)(b) the apportionments to
196 counties and municipalities for which the reapportionment under Subsection (4)(a)(i) does not
197 apply.

198 (b) The aggregate amount of the funds that the department shall decrease
199 proportionately from the apportionments under Subsection (4)(a)(ii) is an amount equal to the
200 aggregate amount reapportioned to counties and municipalities under Subsection (4)(a)(i).

201 (5) (a) (i) In addition to the apportionment adjustments made under Subsection (4), a
202 county or municipality that qualifies for reapportioned monies under Subsection (4)(a)(i) shall
203 receive the percentage change in the class B and class C roads account compounded annually
204 beginning in fiscal year 2006-07.

205 (ii) Any percentage increase calculated under Subsection (5)(a)(i) may not include any
206 increases from increases in fees or tax rates.

207 (b) The adjustment under Subsection (5)(a) shall be made in the same way as provided
208 in Subsection (4)(a)(ii) and (b).

209 (6) The governing body of any municipality or county may issue bonds redeemable up
210 to a period of ten years under Title 11, Chapter 14, Local Government Bonding Act, to pay the
211 costs of constructing, repairing, and maintaining class B or class C roads and may pledge class
212 B or class C road funds received pursuant to this section to pay principal, interest, premiums,
213 and reserves for the bonds.

214 (7) (a) If a public access preservation highway is transferred to a local road district in
215 accordance with Section 72-3-401:

216 (i) the local road district is entitled to apply for class B and class C roads account funds
217 for use on the transferred highway; and

218 (ii) the department shall transfer the funds allocated from the class B and class C roads
219 account for use upon the transferred highway to the local road district.

220 (b) In determining the amount of funds allocated from the class B and class C roads
221 account for use on the transferred highway, the department shall transfer the amount of funds
222 that a municipality would have received for the highway if the highway was under the
223 jurisdiction of the municipality that the highway is located within.

224 Section 4. Section **72-2-109** is amended to read:

225 **72-2-109. Rules for uniform accounting -- Apportionment and use of class B and**
226 **class C roads funds -- Compliance with federal-aid provisions -- Duties of department.**

227 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
228 department shall make rules providing for uniform accounting of funds to be expended upon
229 class B and C roads as required by the federal government under Title 23, United States Code
230 Annotated, relating to federal aid for highway purposes together with all amendatory acts.

231 (2) The department shall cooperate with the county governing bodies [~~and~~], the
232 governing officials of the cities and towns, and local road districts in the apportionment and use
233 of class B and C [~~road~~] roads funds.

234 Section 5. Section **72-3-401** is enacted to read:

235 **Part 4. Public Access Preservation Highway**

236 **72-3-401. Public access preservation highway -- Designation -- Control --**
237 **Assumption of risk -- Immunity -- Public safety.**

238 (1) As used in this section, "public access preservation highway" means a designated
239 highway that preserves public access.

240 (2) (a) The Legislature may designate a highway as a public access preservation
241 highway.

242 (b) SR-210A is designated as a public access preservation highway.

243 (c) "SR-210A" is described as follows: From State Route 210, at the end of the
244 pavement and termini of State Route 210 southeasterly through Patsey Marley Hill, then

245 southerly toward the beginning of the campground loop road at Albion Basin, then along the
246 loop road at Albion Basin southerly, easterly, northerly, and westerly back to the point of the
247 beginning of the loop road at Albion Basin consisting of approximately 3.5 miles.

248 (3) (a) The state has ownership, jurisdiction, and control over all public access
249 preservation highways.

250 (b) When the governor or the governor's designee determines that a public access
251 preservation highway or a portion of a public access preservation highway is no longer needed
252 to preserve public access, the governor or the governor's designee shall submit to the
253 Legislature a recommendation to transfer or otherwise dispose of the public access preservation
254 highway or a portion of the public access preservation highway.

255 (4) The state and its political subdivisions and the department are not required to
256 maintain a highway designated as a public access preservation highway.

257 (5) (a) A public access preservation highway is traveled at the risk of the user.

258 (b) The state and its political subdivisions do not waive immunity under Title 63,
259 Chapter 30d, Governmental Immunity Act of Utah, for injuries or damages occurring in or
260 associated with a public access preservation highway.

261 (c) The state and its political subdivisions assume no liability for injury or damage
262 resulting from a failure to maintain a:

263 (i) public access preservation highway; or

264 (ii) highway sign or signs on a public access preservation highway.

265 (d) If the state or any political subdivision of the state chooses to maintain a public
266 access preservation highway, the basic governmental objective in providing the improvements
267 is the consistent promotion of public safety.

Legislative Review Note

as of 2-15-08 12:20 PM

Office of Legislative Research and General Counsel

H.B. 385 - Road and Rights-of-way Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
