

**DEDICATION AND ABANDONMENT OF A
HIGHWAY**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark B. Madsen

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Transportation Code by amending provisions relating to dedication and abandonment of highway provisions.

Highlighted Provisions:

This bill:

- provides that a highway is dedicated and abandoned to the use of the public when it has been continuously used as a public thoroughfare without permission and without interruption for a period of ten years;

- provides that the dedication and abandonment provision does not apply if the ten-year period of continuous use is followed by a ten-year period in which the public use has been interrupted;

- provides that an interruption of the use is sufficient to defeat a dedication and abandonment claim, regardless of whether the public use is known or unknown by the owner;

- provides that fencing, gating, or other similar interruptions are sufficient to defeat a claim of dedication and abandonment;

- provides that express permission is not required to defeat a claim of dedication and abandonment, implied permission is sufficient;

- provides that there is a rebuttable presumption that a highway is not dedicated and



abandoned to the use of the public and provides that the presumption may be rebutted only upon a showing by clear and convincing evidence that the highway has been continuously used without permission and without interruption for a period of ten years;

- provides that a highway may not be declared abandoned under this section unless the responsible governmental entity provides evidence that the route was constructed or maintained by or with the assistance of the responsible governmental entity; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-5-104, as last amended by Laws of Utah 2000, Chapter 324

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

Section 1. Section **72-5-104** is amended to read:

72-5-104. Public use constituting dedication -- Scope.

(1) [A] (a) Except as provided in Subsection (1)(b), a highway is dedicated and abandoned to the use of the public when it has been continuously used as a public thoroughfare without permission and without interruption for a period of ten years.

(b) The provisions of Subsection (1)(a) do not apply if the ten-year period described in Subsection (1)(a) is followed by any ten-year period in which the public use has been interrupted.

(c) For purposes of this Subsection (1):

(i) interruption of the use by the public is sufficient to defeat a claim under this section, regardless of whether the use is known or unknown by the owner;

(ii) fencing, gating, or other similar interruptions are sufficient to defeat a claim under this section;

(iii) express permission is not required to defeat a claim under this section; and

59 (iv) implied permission or neighborly accommodation is sufficient to defeat a claim
60 under this section.

61 (2) The dedication and abandonment creates a right-of-way held by the state in
62 accordance with Sections 72-3-102, 72-3-104, 72-3-105, and 72-5-103.

63 (3) The scope of the right-of-way is that which is reasonable and necessary to ensure
64 safe travel according to the facts and circumstances.

65 (4) (a) There is a rebuttable presumption that a highway is private and is not dedicated
66 and abandoned to the use of the public under Subsection (1).

67 (b) The presumption that a highway is private and not dedicated and abandoned to the
68 use of the public is rebuttable only upon showing by clear and convincing evidence that the
69 highway has been continuously used without permission and without interruption for a period
70 of ten years.

71 (5) A highway may not be declared a public highway under this section unless the
72 responsible governmental entity provides evidence that the route was constructed or maintained
73 by or with the assistance of the responsible governmental entity.

Legislative Review Note
as of 2-19-09 10:20 AM

Office of Legislative Research and General Counsel

S.B. 221 - Dedication and Abandonment of a Highway

Fiscal Note

2009 General Session

State of Utah

State Impact

Provisions of this bill allows property owners to file suit against the state against prescriptive rights to public roadways. It is unknown at this time the extent of prescriptive rights statewide. Cost to the state to purchase what were previously prescriptive rights would include fair market value of the right of way, court costs and the property owners attorney fees. It is unknown at this time how many suits will be filed and what fair market values would have to be paid but could represent significant cost to the Department of Transportation.

Individual, Business and/or Local Impact

Enactment of this bill likely could result in direct, measurable costs for local governments. Individuals and business could benefit if they owned property where state and local governments claim prescriptive rights to roadways.