

R.S. 2477 HISTORIC ROADS CONCURRENT

RESOLUTION

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael E. Noel

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

This concurrent resolution of the Legislature and the Governor condemns the federal denial of all R.S. 2477 highway rights across federally managed lands and encourages state and local government agencies to seek federal recognition of their land rights and to join in adjudication for those rights.

Highlighted Provisions:

This resolution:

- ▶ condemns the federal denial of all R.S. 2477 highway rights across federally managed lands as well as federal actions restricting and closing historic public highways in Utah;
- ▶ encourages state and local government agencies to seek federal administrative recognition of established R.S. 2477 rights across federally managed lands through a Recordable Disclaimer of Interest process;
- ▶ encourages counties to join with the state in adjudicating public highway rights-of-way, without further delay, as necessary to preserve and protect the public’s right to enjoy the continued use of historic highways throughout the state;
- ▶ recognizes the fiduciary duty of elected and appointed officials to protect highway rights they manage in trust for the public; and
- ▶ encourages state and local officials to reject federal pressure to accept lesser



28 Federal Land Policy Management Act Title V permits or maintenance agreements committing
29 to uncompensated maintenance, repair, and improvements to roads under federal jurisdiction
30 and resist federal efforts to diminish or eradicate property rights granted to Utahns by Congress
31 under R.S. 2477.

32 **Special Clauses:**

33 None



35 *Be it resolved by the Legislature of the state of Utah, the Governor concurring therein:*

36 WHEREAS, in 1866, the United States Congress passed legislation offering an
37 open-ended grant of "the right of way for the construction of highways over public lands, not
38 reserved for public uses";

39 WHEREAS, the grant of rights-of-way, commonly called "R.S. 2477," remained in
40 effect for 110 years, and most of the transportation routes of the West were established under
41 its authority;

42 WHEREAS, Congress protected all existing R.S. 2477 rights-of-way in the Federal
43 Land Policy Management Act (FLPMA) when it repealed R.S. 2477 on October 21, 1976;

44 WHEREAS, unlike any other federal land statute, the establishment of R.S. 2477
45 rights-of-way required no administrative formalities, entry, application, license, patent, or deed
46 on the federal side, and no formal act of public acceptance on the part of the states or localities
47 in whom the right was vested;

48 WHEREAS, Utah and its counties have historically provided safe, efficient, and
49 functional transportation systems throughout the state, including highways across federally
50 managed lands established because of the jurisdiction granted to the state and its counties under
51 R.S. 2477;

52 WHEREAS, R.S. 2477 has become one of the more contentious land use issues in the
53 West because of efforts by federal land managers and environmental advocacy groups to
54 eviscerate states' and counties' historical rights to operate highways providing public travel
55 across federally managed lands;

56 WHEREAS, the current federal policy to not recognize any R.S. 2477 rights-of-way in
57 the state of Utah conflicts with the Tenth Circuit Court of Appeal's recognition that most of the
58 transportation routes of the West were established under the authority of R.S. 2477 and that a

59 status quo of maintenance levels and types of use exists without federal permission;

60 WHEREAS, federal land managers have unjustly attempted to create a new paradigm
61 of transportation system management wherein Utah's congressionally granted rights would be
62 administratively abolished, creating federal highway jurisdiction to close and restrict highways,
63 while the state and its counties continue to fund maintenance activities on federal
64 transportation system roads;

65 WHEREAS, federal land management agencies have duties and obligations to act in
66 accordance with the FLPMA and other lawful requirements and are wrongly attempting to
67 establish unilateral federal control over state and local highways;

68 WHEREAS, the Department of the Interior refuses to recognize R.S. 2477 jurisdiction
69 along Hole-in-the-Rock Road, which traverses Garfield, Kane, and San Juan Counties, even as
70 it is being celebrated as a symbol of pioneer settlement of the West, exemplifying Congress's
71 intent in granting highway rights-of-way;

72 WHEREAS, the Bureau of Land Management (BLM) refuses to recognize Tooele
73 County's R.S. 2477 jurisdiction over the Pony Express Route Road and the Hastings Pass
74 Road, associated with the Donner Party, in spite of the historical significance of the route and
75 the establishment of a highway right-of-way purposefully granted to Utah by Congress;

76 WHEREAS, federal land managers deny R.S. 2477 jurisdiction over historic highways
77 such as the Nine Mile Canyon Road in Carbon and Duchesne Counties, the Hidden Splendor
78 Mine Road in Emery County, the Burr Trail Road and the Notom Road in Garfield County, the
79 Beef Basis Road in San Juan County, and the Paria Canyon Road in Kane County, which was
80 recently closed by the BLM at the request of environmental advocacy groups, while the
81 County's request to first determine if the road was an R.S. 2477 highway went unanswered;

82 WHEREAS, federal land managers continue to obstruct and deny state and county
83 jurisdiction to manage and regulate highways across federally managed lands, even though
84 federal land managers refuse to maintain and repair the same highways currently claimed as
85 federal roads; and

86 WHEREAS, public highways established under R.S. 2477 are important to the
87 continuance of cohesive state and county transportation systems in providing safe, efficient,
88 and functional public access to and across lands of varied ownership and status consistent with
89 local tradition, culture, and economic needs:

90 NOW, THEREFORE, BE IT RESOLVED that the Legislature of the state of Utah, the
91 Governor concurring therein, strongly condemn the federal denial of all R.S. 2477 highway
92 rights across federally managed lands as well as federal actions restricting and closing historic
93 public highways in Utah.

94 BE IT FURTHER RESOLVED that the Legislature and the Governor encourage state
95 and local government agencies to seek federal administrative recognition of established R.S.
96 2477 rights across federally managed lands through a Recordable Disclaimer of Interest
97 process.

98 BE IT FURTHER RESOLVED that the Legislature and the Governor, consistent with
99 federal policy, encourage counties in Utah to join with the state in adjudicating public highway
100 rights-of-way, without further delay, as necessary to preserve and protect the public's right to
101 enjoy the continued use of historic highways throughout the state.

102 BE IT FURTHER RESOLVED that the Legislature and the Governor recognize the
103 fiduciary duty of elected and appointed officials to protect highway rights they manage in trust
104 for the public.

105 BE IT FURTHER RESOLVED that the Legislature and the Governor encourage state
106 and local officials to reject federal pressure to accept lesser FLPMA Title V permits or
107 maintenance agreements committing to uncompensated maintenance, repair, and improvements
108 to roads under federal jurisdiction and resist federal efforts to diminish or eradicate property
109 rights granted to Utahns by Congress under R.S. 2477.

110 BE IT FURTHER RESOLVED that a copy of this resolution be sent to the United
111 States Secretary of the Interior, the Bureau of Land Management, the Garfield County
112 Commission, the Kane County Commission, the San Juan County Commission, the Carbon
113 County Commission, the Duchesne County Commission, the Emery County Commission, the
114 Utah Association of Counties, the Utah League of Cities and Towns, and the Utah Department
115 of Natural Resources.

Legislative Review Note
as of 2-18-10 3:38 PM

Office of Legislative Research and General Counsel

H.C.R. 14 - R.S. 2477 Historic Roads Concurrent Resolution

Fiscal Note

2010 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.
