

1                   **DEDICATION AND ABANDONMENT OF PUBLIC HIGHWAYS**

2                                   2011 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Kay L. McIff**

5                                   Senate Sponsor: Stephen H. Urquhart

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7                   **LONG TITLE**

8                   **General Description:**

9                   This bill modifies the Transportation Code by amending provisions relating to the  
10                  dedication or abandonment of public highways.

11                  **Highlighted Provisions:**

12                  This bill:

13                  ▶ provides that dedication of a highway to the use of the public does not require an act  
14                  of dedication or implied dedication by the property owner;

15                  ▶ provides that the requirement of continuous use of a highway as a public  
16                  thoroughfare is satisfied if the use is as frequent as the public finds convenient or  
17                  necessary and may be seasonal or follow some other pattern;

18                  ▶ specifies requirements for an interruption of continuous use of a highway as a  
19                  public thoroughfare;

20                  ▶ provides that the burden of proving dedication is on the party asserting the  
21                  dedication;

22                  ▶ provides that the burden of proving interruption is on the party asserting the  
23                  interruption;

23a                  **H→ ▶ provides that the dedication and interruption provisions apply to any claim for which**  
23b                  **a court of competent jurisdiction has not issued a final unappealable judgment or order; ←H**

24                  ▶ clarifies that all public highways, streets, or roads once established shall continue to  
25                  be highways, streets, or roads until formally abandoned or vacated and specifies the  
26                  requirements for formal abandonment or vacation;

27                  ▶ provides that the erection of a barrier or sign on a highway, street, or road once



28 established is not an abandonment;

29       ▶ provides that an interruption of the public's continuous use of a highway, street, or  
30 road once established is not an abandonment even if the interruption is allowed to

31 continue unabated; and

32       ▶ makes technical changes.

33 **Money Appropriated in this Bill:**

34       None

35 **Other Special Clauses:**

36       None

37 **Utah Code Sections Affected:**

38 AMENDS:

39       **72-5-104**, as last amended by Laws of Utah 2000, Chapter 324

40       **72-5-105**, as last amended by Laws of Utah 2010, Chapter 90



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

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

44       **72-5-104. Public use constituting dedication -- Scope.**

45       (1) (a) A highway is dedicated and abandoned to the use of the public when it has been  
46 continuously used as a public thoroughfare for a period of 10 years.

47       (b) Dedication to the use of the public under Subsection (1) does not require an act of  
48 dedication or implied dedication by the property owner.

49       (2) The requirement of continuous use under Subsection (1) is satisfied if the use is as  
50 frequent as the public finds convenient or necessary and may be seasonal or follow some other  
51 pattern.

52       (3) Continuous use as a public thoroughfare under Subsection (1) is interrupted only  
53 when:

54       (a) the regularly established pattern and frequency of public use for the given road has  
55 actually been interrupted ~~to a degree that reasonably puts the traveling public on~~  
56a notice ~~;~~ ~~;~~ ~~and~~ ~~or~~ ~~;~~

57       (b) for interruptions ~~;~~ ~~;~~ ~~by use of a manned barricade~~ ~~;~~ ~~;~~ on or after  
58a May 10, 2011 ~~;~~ ~~;~~ ~~;~~

56b       (i) ~~;~~ ~~;~~ the person or entity interrupting the  
57 continuous use gives not less than 72 hours advance written notice of the interruption to the  
58 highway authority having jurisdiction of the highway, street, or road ~~;~~ ~~;~~ ~~and~~

58a       (ii) the manned barricade is maintained for at least 24 consecutive hours ~~;~~ ~~;~~ ~~;~~

59 (4) Installation of gates and posting of no trespassing signs are relevant forms of  
 60 evidence but are not solely determinative of whether an interruption has occurred.

61 (5) If the highway authority having jurisdiction of the highway, street, or road demands  
 62 that an interruption ~~it~~ ~~ceases~~ cease ~~it~~ or that a barrier or barricade blocking public access  
 62a be removed and  
 63 the property owner accedes to the demand, the attempted interruption does not constitute an  
 64 interruption under Subsection (3).

65 (6) (a) The burden of proving dedication under Subsection (1) is on the party asserting  
 66 the dedication.

67 (b) The burden of proving interruption under Subsection (3) is on the party asserting  
 68 the interruption.

69 ~~[(2)]~~ (7) The dedication and abandonment creates a right-of-way held by the state in  
 70 accordance with Sections 72-3-102, 72-3-104, 72-3-105, and 72-5-103.

71 ~~[(3)]~~ (8) The scope of the right-of-way is that which is reasonable and necessary to  
 72 ensure safe travel according to the facts and circumstances.

72a ~~it~~ **(9)(a) The provisions of this section apply to any claim under this section for which a**  
 72b **court of competent jurisdiction has not issued a final unappealable judgment or order.**

72c **(b) The legislature finds that the application of this section:**

72d **(i) does not enlarge, eliminate, or destroy vested rights; and**

72e **(ii) clarifies legislative intent in light of Utah Supreme Court rulings in Wasatch County**  
 72f **v. Okelberry, 179 P.3d 768 (Utah 2008) , Town of Leeds v. [Prisbey] Prisbey , 179 P.3d 757**  
 72f1 **(Utah 2008) ,and Utah County v.**

72g **Butler, 179 P.3d 775 (Utah 2008) .** ~~it~~

73 Section 2. Section 72-5-105 is amended to read:

74 **72-5-105. Highways, streets, or roads once established continue until abandoned**  
 75 **-- Temporary closure.**

76 (1) All public highways, streets, or roads once established shall continue to be  
 77 highways, streets, or roads until formally abandoned or vacated by written order, resolution, or  
 78 ordinance resolution of a highway authority having jurisdiction or by [~~other competent~~  
 79 ~~authority~~] court decree, and the written order, resolution, ordinance, or court decree has been  
 80 duly recorded in the office of the recorder of the county or counties where the highway, street,  
 81 or road is located.

82 (2) (a) For purposes of assessment, upon the recordation of an order executed by the  
 83 proper authority with the county recorder's office, title to the vacated or abandoned highway,  
 84 street, or road shall vest to the adjoining record owners, with [~~1/2~~] one-half of the width of the  
 85 highway, street, or road assessed to each of the adjoining owners.

86 (b) Provided, however, that should a description of an owner of record extend into the  
 87 vacated or abandoned highway, street, or road that portion of the vacated or abandoned  
 88 highway, street, or road shall vest in the record owner, with the remainder of the highway,  
 89 street, or road vested as otherwise provided in this Subsection (2).