

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

6

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~~
55a notice ~~;~~ ~~and~~ or ~~;~~

56 (b) for interruptions ~~by use of a manned barricade~~ ~~on or after~~
56a 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 ~~H→~~ [ceases] cease ←H 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 ~~H→~~ **(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] Prisbrey , 179 P.3d 757**
 72f1 **(Utah 2008) ,and Utah County v.**

72g **Butler, 179 P.3d 775 (Utah 2008) . ←H**

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).

90 (3) (a) In accordance with this section, a state or local highway authority may
91 temporarily close a class B or D road, an R.S. 2477 right-of-way, or a portion of a class B or D
92 road or R.S. 2477 right-of-way.

93 (b) (i) A temporary closure authorized under this section is not an abandonment.

94 (ii) The erection of a barrier or sign on a highway, street, or road once established is
95 not an abandonment.

96 (iii) An interruption of the public's continuous use of a highway, street, or road once
97 established is not an abandonment even if the interruption is allowed to continue unabated.

98 (c) A temporary closure under Subsection (3)(a) may be authorized only under the
99 following circumstances:

100 (i) when a federal authority, or other person, provides an alternate route to an R.S.
101 2477 right-of-way or portion of an R.S. 2477 right-of-way that is:

102 (A) accepted by the highway authority; and

103 (B) formalized by:

104 (I) a federal permit; or

105 (II) a written agreement between the federal authority or other person and the highway
106 authority; or

107 (ii) when a state or local highway authority determines that correction or mitigation of
108 injury to private or public land resources is necessary on or near a class B or D road or portion
109 of a class B or D road.

110 (d) A highway authority shall reopen an R.S. 2477 right-of-way or portion of an R.S.
111 2477 right-of-way temporarily closed under this section if the alternate route is closed for any
112 reason.

113 (e) A temporary closure authorized under Subsection (3)(c)(ii) shall:

114 (i) be authorized annually; and

115 (ii) not exceed two years or the time it takes to complete the correction or mitigation,
116 whichever is less.

117 (4) [~~Prior to~~] Before authorizing a temporary closure under Subsection (3), a highway
118 authority shall:

119 (a) hold a hearing on the proposed temporary closure;

120 (b) provide notice of the hearing by:

- 121 (i) mailing a notice to the Department of Transportation and all owners of property
122 abutting the highway; and
- 123 (ii) (A) publishing the notice:
124 (I) in a newspaper of general circulation in the county at least once a week for four
125 consecutive weeks before the hearing; and
126 (II) on the Utah Public Notice Website created in Section 63F-1-701, for four weeks
127 before the hearing; or
- 128 (B) posting the notice in three public places for at least four consecutive weeks prior to
129 the hearing; and
- 130 (c) pass an ordinance authorizing the temporary closure.
- 131 (5) The right-of-way and easements, if any, of a property owner and the franchise rights
132 of any public utility may not be impaired by a temporary closure authorized under this section.

Legislative Review Note
as of **2-3-11 9:22 AM**

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 173

SHORT TITLE: **Dedication and Abandonment of Public Highways**

SPONSOR: **McCliff, K.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.