

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;

24           ▶ provides that the dedication and interruption provisions apply to any claim for  
25 which a court of competent jurisdiction has not issued a final unappealable  
26 judgment or order;

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

30           ▶ provides that the erection of a barrier or sign on a highway, street, or road once  
31 established is not an abandonment;

32           ▶ provides that an interruption of the public's continuous use of a highway, street, or  
33 road once established is not an abandonment even if the interruption is allowed to  
34 continue unabated; and

35           ▶ makes technical changes.

36 **Money Appropriated in this Bill:**

37           None

38 **Other Special Clauses:**

39           None

40 **Utah Code Sections Affected:**

41 AMENDS:

42           **72-5-104**, as last amended by Laws of Utah 2000, Chapter 324

43           **72-5-105**, as last amended by Laws of Utah 2010, Chapter 90



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

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

47           **72-5-104. Public use constituting dedication -- Scope.**

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

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

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

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

57           (a) the regularly established pattern and frequency of public use for the given road has

58 actually been interrupted to a degree that reasonably puts the traveling public on notice; or

59 (b) for interruptions by use of a manned barricade on or after May 10, 2011:

60 (i) the person or entity interrupting the continuous use gives not less than 72 hours  
 61 advance written notice of the interruption to the highway authority having jurisdiction of the  
 62 highway, street, or road; and

63 (ii) the manned barricade is maintained for at least 24 consecutive hours.

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

66 (5) If the highway authority having jurisdiction of the highway, street, or road demands  
 67 that an interruption cease or that a barrier or barricade blocking public access be removed and  
 68 the property owner accedes to the demand, the attempted interruption does not constitute an  
 69 interruption under Subsection (3).

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

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

74 ~~[(2)]~~ (7) The dedication and abandonment creates a right-of-way held by the state in  
 75 accordance with Sections 72-3-102, 72-3-104, 72-3-105, and 72-5-103.

76 ~~[(3)]~~ (8) The scope of the right-of-way is that which is reasonable and necessary to  
 77 ensure safe travel according to the facts and circumstances.

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

80 (b) The legislature finds that the application of this section:

81 (i) does not enlarge, eliminate, or destroy vested rights; and

82 (ii) clarifies legislative intent in light of Utah Supreme Court rulings in Wasatch  
 83 County v. Okelberry, 179 P.3d 768 (Utah 2008), Town of Leeds v. Prsbrey, 179 P.3d 757  
 84 (Utah 2008), and Utah County v. Butler, 179 P.3d 775 (Utah 2008).

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

86           **72-5-105. Highways, streets, or roads once established continue until abandoned**  
87 **-- Temporary closure.**

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

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

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

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

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

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

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

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

112           (i) when a federal authority, or other person, provides an alternate route to an R.S.  
113 2477 right-of-way or portion of an R.S. 2477 right-of-way that is:

114 (A) accepted by the highway authority; and  
115 (B) formalized by:  
116 (I) a federal permit; or  
117 (II) a written agreement between the federal authority or other person and the highway  
118 authority; or  
119 (ii) when a state or local highway authority determines that correction or mitigation of  
120 injury to private or public land resources is necessary on or near a class B or D road or portion  
121 of a class B or D road.  
122 (d) A highway authority shall reopen an R.S. 2477 right-of-way or portion of an R.S.  
123 2477 right-of-way temporarily closed under this section if the alternate route is closed for any  
124 reason.  
125 (e) A temporary closure authorized under Subsection (3)(c)(ii) shall:  
126 (i) be authorized annually; and  
127 (ii) not exceed two years or the time it takes to complete the correction or mitigation,  
128 whichever is less.  
129 (4) [~~Prior to~~] Before authorizing a temporary closure under Subsection (3), a highway  
130 authority shall:  
131 (a) hold a hearing on the proposed temporary closure;  
132 (b) provide notice of the hearing by:  
133 (i) mailing a notice to the Department of Transportation and all owners of property  
134 abutting the highway; and  
135 (ii) (A) publishing the notice:  
136 (I) in a newspaper of general circulation in the county at least once a week for four  
137 consecutive weeks before the hearing; and  
138 (II) on the Utah Public Notice Website created in Section 63F-1-701, for four weeks  
139 before the hearing; or  
140 (B) posting the notice in three public places for at least four consecutive weeks prior to  
141 the hearing; and

142           (c) pass an ordinance authorizing the temporary closure.  
143           (5) The right-of-way and easements, if any, of a property owner and the franchise rights  
144 of any public utility may not be impaired by a temporary closure authorized under this section.