

DEDICATION OF PUBLIC HIGHWAYS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: Merrill F. Nelson

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ modifies the requirements for an interruption of continuous use of a highway as a public thoroughfare;
- ▶ provides that a property owner's interruption of continuous use of a highway as a public thoroughfare restarts the running of the 10-year period of continuous use required for the dedication of a public highway;
- ▶ provides that a property owner's interruption of a right-of-way created after dedication has no effect on the validity of the state's ~~§~~ **or local highway authority's** ~~§~~ claim to the right-of-way;
- ▶ removes certain limitations regarding the applicability of the dedication and interruption provisions; and
- ▶ removes language providing legislative intent.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **72-5-104**, as last amended by Laws of Utah 2014, Chapter 107

30

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

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

33 **72-5-104. Public use constituting dedication -- Scope.**

34 (1) As used in this section, "highway," "street," or "road" does not include an area
35 principally used as a parking lot.

36 (2) ~~[(a)]~~ A highway is dedicated and abandoned to the use of the public when it has
37 been continuously used as a public thoroughfare for a period of 10 years.

38 ~~[(b) Dedication to the use of the public under Subsection (2) does not require an act of~~
39 ~~dedication or implied dedication by the property owner.]~~

40 (3) The requirement of continuous use under Subsection (2) is satisfied if the use is as
41 frequent as the public finds convenient or necessary and may be seasonal or follow some other
42 pattern.

43 (4) Continuous use as a public thoroughfare under Subsection (2) is interrupted ~~[only]~~
44 when:

45 ~~[(a) the regularly established pattern and frequency of public use for the given road has~~
46 ~~actually been interrupted for a period of no less than 24 hours to a degree that reasonably puts~~
47 ~~the traveling public on notice; or]~~

48 ~~[(b) for interruptions by use of a barricade on or after May 10, 2011:]~~

49 ~~[(i) if the person or entity interrupting the continuous use gives not less than 72 hours~~
50 ~~advance written notice of the interruption to the highway authority having jurisdiction of the~~
51 ~~highway, street, or road; and]~~

52 ~~[(ii) the barricade is in place for at least 24 consecutive hours, then an interruption will~~
53 ~~be deemed to have occurred.]~~

54 (a) the property owner undertakes an overt act which is intended to interrupt the use of
55 the highway, street, or road as a public thoroughfare; and

56 (b) the overt act described in Subsection (4)(a) is reasonably calculated to interrupt the
57 regularly established pattern and frequency of public use for the given highway, street, or road
58 for a period of no less than 24 hours.

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

62 ~~[(6) If the highway authority having jurisdiction of the highway, street, or road
63 demands that an interruption cease or that a barrier or barricade blocking public access be
64 removed and the property owner accedes to the demand, the attempted interruption does not
65 constitute an interruption under Subsection (4).]~~

66 (6) A property owner's interruption under Subsection (4) of a highway, street, or road
67 where the requirement of continuous use under Subsection (2) is not satisfied restarts the
68 running of the 10-year period of continuous use required for dedication under Subsection (2).

69 (7) (a) The burden of proving dedication under Subsection (2) is on the party asserting
70 the dedication.

71 (b) The burden of proving interruption under Subsection (4) is on the party asserting
72 the interruption.

73 (8) (a) The dedication and abandonment creates a right-of-way held by the state $\hat{S} \rightarrow$ or a
73a **local highway authority** $\leftarrow \hat{S}$ in
74 accordance with Sections [72-3-102](#), [72-3-104](#), [72-3-105](#), and [72-5-103](#).

75 (b) A property owner's interruption under Subsection (4) of a right-of-way held by the
76 state $\hat{S} \rightarrow$ or **local highway authority** $\leftarrow \hat{S}$ in accordance with Subsection (8)(a) has no effect on the
76a validity of the state's $\hat{S} \rightarrow$ or **local highway authority's** $\leftarrow \hat{S}$ claim to
77 the right-of-way and does not return the right-of-way to private ownership or use.

78 (9) The scope of ~~[the]~~ a right-of-way described in Subsection (8)(a) is that which is
79 reasonable and necessary to ensure safe travel according to the facts and circumstances.

80 ~~[(10) (a) The provisions of this section apply to any claim under this section for which
81 a court of competent jurisdiction has not issued a final unappealable judgment or order.]~~

82 ~~[(b) The Legislature finds that the application of this section:]~~

83 ~~[(i) does not enlarge, eliminate, or destroy vested rights; and]~~

84 ~~[(ii) clarifies legislative intent in light of Utah Supreme Court rulings in Wasatch
85 County v. Okelberry, 179 P.3d 768 (Utah 2008), Town of Leeds v. Prisbrey, 179 P.3d 757
86 (Utah 2008), and Utah County v. Butler, 179 P.3d 775 (Utah 2008).]~~