

Senator Todd Weiler proposes the following substitute bill:

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



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **72-5-104**, as last amended by Laws of Utah 2014, Chapter 107



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) (a) [if] the person or entity interrupting the continuous use gives not less than 72
50 hours advance written notice of the interruption to the highway authority having jurisdiction of
51 the 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 (b) 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

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

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

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

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

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

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

74 (8) (a) The dedication and abandonment creates a right-of-way held by the state or a
75 local highway authority in accordance with Sections [72-3-102](#), [72-3-103](#), [72-3-104](#), [72-3-105](#),
76 and [72-5-103](#).

77 (b) A property owner's interruption under Subsection (4) of a right-of-way claimed by
78 the state or local highway authority in accordance with Subsection (8)(a) or R.S. 2477 has no
79 effect on the validity of the state's or local highway authority's claim to the right-of-way and
80 does not return the right-of-way to the property owner.

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

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

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

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

87 [~~(ii) clarifies legislative intent in light of Utah Supreme Court rulings in Wasatch~~

88 ~~County v. Okelberry, 179 P.3d 768 (Utah 2008), Town of Leeds v. Prsbrey, 179 P.3d 757~~
89 ~~(Utah 2008), and Utah County v. Butler, 179 P.3d 775 (Utah 2008).]~~