

## SB0224S01 compared with SB0224

~~deleted text~~ shows text that was in SB0224 but was deleted in SB0224S01.

inserted text shows text that was not in SB0224 but was inserted into SB0224S01.

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Senator Todd Weiler proposes the following substitute bill:

### DEDICATION OF PUBLIC HIGHWAYS

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: \_\_\_\_\_

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#### 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

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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:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

~~[(c) if]~~ [(a) if] the person or entity interrupting the continuous use gives not less than 72

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hours advance written notice of the interruption to the highway authority having jurisdiction of the highway, street, or road; ~~and]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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