

SB0067S01 compared with SB0067

~~text~~ shows text that was in SB0067 but was deleted in SB0067S01.

inserted text shows text that was not in SB0067 but was inserted into SB0067S01.

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Senator Scott D. Sandall proposes the following substitute bill:

PUBLIC THOROUGHFARE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: {} Scott D. Sandall

House Sponsor: {} _____

LONG TITLE

General Description:

This bill amends provisions related to the establishment and invalidation of a public thoroughfare.

Highlighted Provisions:

This bill:

- ▶ amends provisions related to public use of a private road to establish the road as a public thoroughfare, including:
 - a requirement of 10 years of continuous use in the most recent 30-year period to establish and maintain a public thoroughfare; and
 - clarification that a road returns to private ownership if continuous use ceases;
- ▶ clarifies that eminent domain powers are not impacted by the changes in this bill; and

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- ▶ makes technical changes.

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 2020, Chapter 293

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]~~ Subject to Subsection (4)(b), 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.

(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) (a) Continuous use as a public thoroughfare under Subsection (2) is interrupted when:

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

~~[(b)]~~ (ii) 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

~~[(c)]~~ (iii) the overt act described in Subsection ~~[(4)(b)]~~ (4)(a)(ii) 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.

(b) If a highway across private land has not been continuously used by the public for 10

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years during the most recent 30-year period, the highway is not a public thoroughfare.

(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) 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 { } Except as provided in Subsection (8)(c), a { }~~ property owner's interruption under Subsection (4)(a) of a right-of-way 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 the property owner.

(c) (i) The lack of public use as described in Subsection (4)(b) invalidates the state's or local highway authority's claim to the right-of-way and returns the right-of-way to the property owner.

(ii) This Subsection (8) and Subsection (4)(b) do not apply to roads or highways claimed by the state or a county under R.S. 2477.

(9) The scope of 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.

(10) 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.

(11) This section does not impact powers of eminent domain.

Section 2. **Effective date.**

This bill takes effect on May 1, 2024.

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