

## SB0067S02 compared with SB0067S01

~~{deleted text}~~ shows text that was in SB0067S01 but was deleted in SB0067S02.

inserted text shows text that was not in SB0067S01 but was inserted into SB0067S02.

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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: ~~{\_\_\_\_\_}~~ Bridger Bolinder

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#### LONG TITLE

##### General Description:

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

##### 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~~ provides that a road on which public use has been discontinued for more than 50 years, ownership is vested in the private property owner.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

~~{72-5-104}~~ 72-5-105, as last amended by Laws of Utah ~~{2020}~~ 2023, Chapter ~~{293}~~ 435

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

Section 1. Section ~~{72-5-104}~~ 72-5-105 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~~ 72-5-105. Highways, streets, or roads once established continue until abandoned -- Temporary closure -- Notice.

(1) (a) Except as provided in Subsections (1)(b), (3), and (7), all public highways, streets, or roads once established shall continue to be highways, streets, or roads until formally abandoned or vacated by written order, resolution, or ordinance resolution of a highway authority having jurisdiction or by court decree, and the written order, resolution, ordinance, or

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court decree has been duly recorded in the office of the recorder of the county or counties where the highway, street, or road is located.

(b) If public use of a highway, street, or road across private land has been discontinued for more than 50 years:

(i) the highway, street, or road is not required to be formally abandoned as described in Subsection (1)(a); and

(ii) ownership of the highway, street, or road

~~\_\_\_\_\_ [(b)] (ii) the property owner undertakes an overt act which is intended to interrupt the use~~ is vested in the adjoining record owner or owners, with one-half of the width of the highway, street, or road vesting to the adjoining owners.

(c) Subsection (1)(b) does not apply to a public highway, street, or road claimed by the state or county under R.S. 2477 or across federal lands.

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

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

(c) Title to 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~~

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~~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 } that 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 } closes to vehicular traffic under Subsection ( ~~(4)~~ (a) of a right-of-way claimed by the } 3) or (7) remains vested in the city.~~

(3) (a) In accordance with this section, a 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 } may temporarily close a class B, C, or D road, an R.S. 2477 right-of-way, or a portion of a class B, C, or D road or R.S. 2477 right-of-way.

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

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

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

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

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

(A) accepted by the highway authority; and

(B) formalized by a federal permit or a written agreement between the federal authority or other person and the highway authority;

(ii) when a state 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 } authority determines that correction or mitigation of injury to private or public land resources is necessary on or near a class B or D road or portion of a class B or D road; or~~

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(iii) when a 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} authority makes a finding that temporary closure of all or part of a class C road is necessary to mitigate unsafe conditions.~~

(d) (i) If a local highway authority temporarily closes all or part of a class C road under Subsection (3)(c)(iii), the local highway authority may convert the closed portion of the road to another public use or purpose related to the mitigation of the unsafe condition.

(ii) If a local highway authority temporarily closes all or part of a class C road under Subsection (3)(c)(iii), and the closed portion of road is the subject of a lease agreement between the local highway authority and another entity, the local highway authority may not reopen the closed portion of the road until the lease agreement terminates.

(e) A highway authority shall reopen an R.S. 2477 right-of-way or portion of an R.S. 2477 right-of-way temporarily closed under this section if the alternate route is closed for any reason.

(f) A temporary closure authorized under Subsection (3)(c)(ii) shall:

(i) be authorized annually; and

(ii) not exceed two years or the time it takes to complete the correction or mitigation,

whichever is less.

(4) To authorize a closure of a road under Subsection (3) or (7), a local highway authority shall pass an ordinance to temporarily or indefinitely close the road.

(5) Before authorizing a temporary or indefinite closure as 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}4), a highway authority shall:~~

(a) hold a hearing on the proposed temporary or indefinite closure;

(b) provide notice of the hearing by mailing a notice to the Department of

Transportation; and

(c) except for a closure under Subsection (3)(c)(iii), provide notice to the owners of the properties abutting the highway, as a class B notice under Section 63G-30-102, for at least four

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weeks before the day of the hearing.

(6) The right-of-way and easements, if any, of a property owner and the franchise rights of any public utility may not be impaired by a temporary or indefinite closure authorized 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.~~

~~†~~

(7) (a) A local highway authority may close to vehicular travel and convert to another public use or purpose a highway, road, or street over which the local highway authority has jurisdiction, for an indefinite period of time, if the local highway authority makes a finding that:

(i) the closed highway, road, or street is not necessary for vehicular travel;

(ii) the closure of the highway, road, or street is necessary to correct or mitigate injury to private or public land resources on or near the highway, road, or street; or

(iii) the closure of the highway, road, or street is necessary to mitigate unsafe conditions.

(b) If a local highway authority indefinitely closes all or part of a highway, road, or street under Subsection (7)(a)(iii), and the closed portion of road is the subject of a lease agreement between the local highway authority and another entity, the local highway authority may not reopen the closed portion of the road until the lease agreement terminates.

(c) An indefinite closure authorized under this Subsection (7) is not an abandonment.

**Section 2. Effective date.**

This bill takes effect on May 1, 2024.