

115TH CONGRESS
1ST SESSION

S. 468

To establish a procedure for resolving claims to certain rights-of-way.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2017

Mr. FLAKE (for himself, Mr. MCCAIN, Mr. HELLER, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To establish a procedure for resolving claims to certain rights-of-way.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Historic Routes Pres-
5 ervation Act”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to achieve judicial and ad-
8 ministrative efficiency for, and to reduce the costs typi-
9 cally associated with, resolving right-of-way claims under
10 R.S. 2477 by—

(1) reducing the burden on Federal courts by establishing administrative procedures and evidentiary standards for the processing of R.S. 2477 right-of-way claims; and

(2) establishing—

(A) a deadline for filing R.S. 2477 right-of-way claims;

(B) mandatory procedures for considering and acting on the R.S. 2477 right-of-way claims; and

(C) uniform legal and evidentiary standards of proof of public acceptance of R.S. 2477 right-of-way claims.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ABANDON OR ABANDONMENT.**—The terms “abandon” and “abandonment” mean normal action by the governing body of a claimant taken at a public meeting pursuant to notice that declares all right, title, and claim to a R.S. 2477 right-of-way is relinquished.

(2) **ACCEPTANCE OR ACCEPTED.**—The terms “acceptance” and “accepted” mean—

(A) a positive or affirmative action by a State or county governmental authority on or before October 21, 1976, including—

(i) a formal resolution or declaration of ownership; or

(ii) the inclusion of a highway in an official road map;

(B) the construction, improvement, or maintenance of a highway by a State or county governmental authority on or before October 21, 1976; or

(C) the continuous use of a highway by the public for a period of not fewer than 5 consecutive years ending on a date that is on or before October 21, 1976.

(3) CLAIM.—The term “claim” means the assertion of public acceptance of a R.S. 2477 right-of-way filed under section 4(a)(1).

(4) CLAIMANT.—The term “claimant” means any State, county, political subdivision or agency of a State, company, or other person asserting the public acceptance of a right-of-way under R.S. 2477.

(5) CONSTRUCTION.—The term “construction” means the physical activity reasonably necessary, advisable, or desirable to allow continuous public use

1 over a highway according to the intended mode of
2 travel or transportation, which may be established
3 by the use of any tools or equipment, or other
4 means, including mere usage.

5 (6) CONTINUOUS PUBLIC USE.—The term “con-
6 tinuous public use” means the uninterrupted use of
7 a highway by the public for passage as often as gen-
8 erally regarded by the public to be convenient or
9 necessary depending on the character of the land
10 and the nature of the use.

11 (7) DISCLAIMER AND RELINQUISHMENT.—The
12 term “disclaimer and relinquishment” means any
13 type of deed or equivalent document in a form suit-
14 able for recordation that is approved and issued by
15 the Secretary disclaiming and relinquishing the in-
16 terest of the Federal Government in a R.S. 2477
17 right-of-way.

18 (8) EVIDENCE.—The term “evidence” means
19 any testimony, object, or document described in sec-
20 tion 5 that would be reliable, authentic, probative,
21 and persuasive in Federal district court under the
22 Federal Rules of Evidence that are in effect on the
23 date of enactment of this Act.

24 (9) HIGHWAY.—The term “highway” means
25 any road, way, or other land surface route of travel

1 that the public has the right of use for passage,
2 whether by carriage, animal, foot, or non-motorized
3 or motorized vehicle.

4 (10) IMPROVEMENT.—The term “improvement”
5 means—

6 (A) the widening of a highway;

7 (B) the horizontal or vertical realignment
8 of a highway;

9 (C) the installation (as distinguished from
10 cleaning, repair, or replacement in kind) of a
11 bridge, culvert, or other drainage structure or
12 conduit; or

13 (D) any significant change in the surface
14 composition of a highway.

15 (11) MAINTENANCE.—The term “maintenance”
16 means the preservation of an existing highway, in-
17 cluding—

18 (A) the physical upkeep of the highway;

19 (B) the repair of wear or damage to the
20 highway from natural or other causes;

21 (C) the restoration of the shape of the
22 highway; and

23 (D) the gradation of the highway or other
24 measures to ensure that the shape of the high-
25 way permits drainage.

1 (12) PUBLIC LAND.—The term “public land”
2 means land—

3 (A) that is owned, controlled by, or subject
4 to the jurisdiction of the Federal Government
5 for the benefit of the public; and

6 (B) that was not reserved on the date on
7 which a R.S. 2477 right-of-way grant was ac-
8 cepted.

9 (13) PUBLIC OR PUBLIC USER.—

10 (A) IN GENERAL.—The terms “public” or
11 “public user” mean all natural persons, includ-
12 ing Federal lessees, permittees, licensees,
13 invitees, and any other natural person that
14 holds an authorization or is otherwise allowed
15 to enter or use public land.

16 (B) EXCEPTIONS.—The terms “public” or
17 “public user” do not include any Federal agent
18 or employee acting within the scope of the em-
19 ployment of the Federal agency or employee.

20 (14) R.S. 2477.—The term “R.S. 2477” means
21 section 2477 of the Revised Statutes (43 U.S.C.
22 932) repealed by section 706 of the Federal Land
23 Policy and Management Act of 1976 (Public Law
24 94–579; 90 Stat. 2793).

1 (15) R.S. 2477 RIGHT-OF-WAY.—The term “R.S.
2 2477 right-of-way” means an open-ended grant or
3 dedication of land by the United States for rights-
4 of-way allowing public use and passage, which could
5 be accepted.

6 (16) RESERVED.—

7 (A) IN GENERAL.—The term “reserved”
8 means action by the Secretary, before the ear-
9 lier of a R.S. 2477 right-of-way acceptance or
10 October 21, 1976—

11 (i) to withdraw land from the public
12 domain;

13 (ii) to make the land unavailable for
14 appropriation under public land laws; and

15 (iii) to dedicate the land by the
16 United States to a specific public purpose,
17 such as a park, military establishment, wil-
18 derness area, tribal land, or Federal en-
19 clave, that does not rely on a R.S. 2477
20 right-of-way for the public purpose.

21 (B) EXCLUSION.—The term “reserved”
22 does not apply to an action of the Secretary
23 with respect to the designation of a wilderness
24 study area, an area of critical environmental
25 concern, or land with wilderness characteristics.

1 (17) SCOPE.—The term “scope” means the es-
 2 tablished width of a R.S. 2477 right-of-way as of the
 3 date of acceptance, including the area needed to
 4 meet the public convenience or safety or the exigen-
 5 cies of increased travel based on the traditional use
 6 of a highway (including permissible improvements,
 7 realignments, or relocation), and is not limited to
 8 the disturbed surface of the highway.

9 (18) SECRETARY.—The term “Secretary”
 10 means the Secretary with management jurisdiction
 11 over land owned or controlled by the United States
 12 on which a R.S. 2477 right-of-way is claimed to be
 13 located.

14 **SEC. 4. FILING OF CLAIM.**

15 (a) FILING.—

16 (1) IN GENERAL.—Except as provided in para-
 17 graph (2), during the 25-year period beginning on
 18 the date of enactment of this Act, a claimant assert-
 19 ing the public acceptance of a right-of-way granted
 20 under R.S. 2477 may file a claim under this section.

21 (2) EXCEPTION.—Notwithstanding paragraph
 22 (1), a claimant may not file a claim under para-
 23 graph (1) if the claimant filed a notice of an intent
 24 to file suit with respect to a claim asserting the pub-
 25 lic acceptance of a right-of-way granted under R.S.

1 2477 under section 2409a(m) of title 28, United
2 States Code, before the date of enactment of this
3 Act.

4 (b) FORM; CONTENTS.—

5 (1) FORM.—Not later than 30 days after the
6 date of enactment of this Act, the Secretary shall es-
7 tablish a form to be used by claimants for filing
8 claims under this section.

9 (2) CONTENTS.—A claim filed under subsection
10 (a)(1) shall include—

11 (A) evidence supporting the claim; and

12 (B) proof of notice or attempted notice by
13 the claimant under subsection (d).

14 (c) PLACE OF FILING.—A claimant shall file a claim
15 in the appropriate State or regional location designated
16 by the Secretary for the filing of claims under this section.

17 (d) NOTICE.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (3), a claimant shall provide notice of the
20 right-of-way claim by—

21 (A) at least once per week during the 2-
22 week period immediately preceding the filing of
23 the claim, publishing in a newspaper authorized
24 to publish public notice under the laws of the
25 State in which the longest lineal part of the

1 claimed R.S. 2477 right-of-way is located, a
2 general summary of the claim, including the lo-
3 cation and general description of the claimed
4 R.S. 2477 right-of-way; and

5 (B) not later than 30 days after the date
6 on which the claim is filed, providing, or rea-
7 sonably attempting to provide, written notice of
8 the claim to all owners of land contiguous to
9 the boundary of the claimed right-of-way.

10 (2) ATTEMPTED NOTICE.—The reasonable at-
11 tempt of a claimant to provide written notice under
12 paragraph (1)(B) shall be considered to be sufficient
13 notice under this subsection if the claimant files with
14 Secretary verification of the reasonable attempt
15 under written oath or affirmation.

16 (3) EXCEPTION.—Notwithstanding paragraph
17 (1), a claimant shall be considered to have given suf-
18 ficient notice under this subsection if the claimant
19 provides notice of an intent to file suit with respect
20 to the claimed R.S. 2477 right-of-way under section
21 2409a(m) of title 28, United States Code, on or
22 after the date of enactment of this Act.

23 (e) EFFECT OF FAILURE TO MEET FILING DEAD-
24 LINE OR REQUIREMENTS.—If a claimant fails to comply
25 with the requirements of—

1 (1) subsection (a)(1), the failure shall be con-
2 sidered to be an automatic irrevocable abandonment
3 of any R.S. 2477 right-of-way claim; or

4 (2) subsection (b), (c), or (d), the claim filed by
5 the claimant shall not be processed until the date on
6 which the failure to comply with those subsections is
7 cured.

8 (f) STATUTE OF LIMITATIONS.—Except as provided in
9 subsection (a)(1), any statute of limitations for asserting
10 the public acceptance of the R.S. 2477 right-of-way is
11 waived.

12 **SEC. 5. EVIDENCE AND FINAL DECISION.**

13 (a) BURDEN OF PROOF.—A claimant shall have the
14 burden to prove by a preponderance of the evidence the
15 acceptance of a right-of-way under R.S. 2477.

16 (b) PRESUMPTIONS.—

17 (1) IN GENERAL.—Except in a case in which
18 the land underlying the claimed R.S. 2477 right-of-
19 way was reserved before the earlier of construction
20 of a highway on the right-of-way, or October 21,
21 1976, acceptance (including continuous public use,
22 location, construction, and scope of the R.S. 2477
23 right-of-way) shall be conclusively verified, proven,
24 and established on filing, under oath or affirmation

1 by a claimant attesting to the authenticity and accu-
2 racy, of—

3 (A) at least 2 types of evidence from
4 among the category of evidence described in
5 subsection (c)(1) relating to the R.S. 2477
6 right-of-way; or

7 (B) all 3 types of evidence described in
8 subparagraph (A) through (C) of subsection
9 (c)(2), in the case of demonstrating scope and
10 acceptance before October 21, 1976.

11 (2) COPIES.—A copy of an original document
12 may be used as evidence in the place of the original
13 document under this section if the copy is accom-
14 panied by a written declaration, under oath by a
15 custodian, owner, or author, that the copy is an ac-
16 curate representation of the material terms of the
17 original document.

18 (3) HEARSAY.—Hearsay contained in a docu-
19 ment or otherwise provided shall be considered reli-
20 able, admissible, and probative for the purposes of
21 this Act.

22 (4) GRANT WITHDRAWAL.—Evidence produced
23 by the United States that establishes that the
24 United States reserved the land underlying the R.S.
25 2477 right-of-way before acceptance conclusively es-

1 tablishes withdrawal of the Federal grant for the
2 R.S. 2477 right-of-way.

3 (c) DESCRIPTION OF CATEGORIES OF EVIDENCE.—

4 For the purposes of actions under this Act, there are 2
5 categories of evidence that shall be considered:

6 (1) CATEGORY 1.—Category 1 evidence consists
7 of each of the following types of evidence:

8 (A) A center line or other survey con-
9 ducted by the Federal Government or duly li-
10 censed land surveyor, applying generally accept-
11 ed survey standards and procedures or the Bu-
12 reau of Land Management Manual of Surveying
13 Instructions applicable to surveys before Octo-
14 ber 21, 1976, clearly showing the public use,
15 control, construction, location, direction, begin-
16 ning and end points, length, width, and type of
17 surface of the R.S. 2477 right-of-way as of date
18 certain.

19 (B) Maps, plats, maintenance records (in-
20 cluding actual or estimated costs of mainte-
21 nance), photographs, GIS or global positioning
22 data, or other computer-generated images show-
23 ing the location of the R.S. 2477 right-of-way
24 prepared, made, edited, kept, or relied on, gen-
25 erally or on a case-by-case basis, by the Federal

1 Government, a State or local government, an
2 institution of higher education, college, or a
3 public or private organization historically, cus-
4 tomarily or regularly engaged in the prepara-
5 tion, retention, analysis, or expert interpreta-
6 tion of contemporary or historic maps.

7 (C) Historical or other records of govern-
8 ment entities or records constructed, obtained,
9 or kept by a government in the ordinary course
10 of business, including Federal, State, local, and
11 territorial records, such as records of the De-
12 partments of the Interior, Agriculture, or De-
13 fense, the Bureau of Land Management, the
14 Forest Service, the Natural Resources Con-
15 servation Service, the Soil Conservation Service,
16 General Land Office, Federal centers or en-
17 claves, the Smithsonian Institution, and the Li-
18 brary of Congress.

19 (2) CATEGORY 2.—Category 2 evidence consists
20 of each of the following types of evidence:

21 (A) In addition to the records described in
22 paragraph (1)(C), other historical records, in-
23 cluding original documents, authenticated cop-
24 ies, facsimiles, and computer-transmitted im-
25 ages reliably showing evidence of construction

(including tools used, if any), location (including aerial photographs, topographical maps, and government road maps), fixtures, and other structures, or maintenance by a State or local government of the R.S. 2477 right-of-way before October 21, 1976.

(B) Written or transcribed oral statements from at least 2 persons, given under oath before a notary public, court recorder, judge or any other government official authorized by law to administer oaths or otherwise authenticated reciting reliable knowledge of the facts that establish the acceptance by public usage of the R.S. 2477 right-of-way before October 21, 1976.

(C) A title opinion prepared by a duly licensed title examiner prepared in accordance with generally accepted title standards, establishing the title, location, and dimensions of the R.S. 2477 right-of-way.

(d) SCOPE.—The scope of a R.S. 2477 right-of-way shall be the scope of the R.S. 2477 right-of-way as of the date of enactment of this Act.

(e) DETERMINATION OF ABANDONMENT.—

(1) IN GENERAL.—Not later than 90 days after the date on which a R.S. 2477 right-of-way is con-

1 clusively established as accepted under subsection
 2 (b)(1), the Secretary shall determine, in writing,
 3 whether the R.S. 2477 right-of-way has been pre-
 4 viously abandoned by the claimant.

5 (2) FAILURE TO MAKE DETERMINATION.—The
 6 failure of the Secretary to make a written deter-
 7 mination within the 90-day period described in para-
 8 graph (1) shall conclusively establish that the right-
 9 of-way has not been abandoned.

10 (3) FINAL AGENCY ACTION.—The determina-
 11 tion by the Secretary under paragraph (1), or the
 12 failure to make the determination by the date de-
 13 scribed in that paragraph, shall be a final agency ac-
 14 tion, subject to appeal, in accordance with section 6.

15 (f) DISCLAIMER AND RELINQUISHMENT RE-
 16 QUIRED.—

17 (1) IN GENERAL.—Subject to subsection (e),
 18 not later than 120 days after the date on which evi-
 19 dence to establish acceptance of a R.S. 2477 right-
 20 of-way has been filed under this section, the Sec-
 21 retary shall deliver to the claimant a written docu-
 22 ment disclaiming and relinquishing the right and in-
 23 terest of the United States in and to the R.S. 2477
 24 right-of-way.

1 (2) FORM.—The disclaimer and relinquishment
 2 under paragraph (1) shall be in a form that allows
 3 the recording of the disclaimer and relinquishment
 4 in State and local real estate records.

5 (3) RECORDING.—The disclaimer and relin-
 6 quishment under paragraph (1) shall—

7 (A) be recorded in the public land records
 8 under the jurisdiction of the Secretary; and

9 (B) conclusively establish the title of the
 10 claimant to use the R.S. 2477 right-of-way.

11 (4) REVIEW.—The document delivered by, and
 12 any actions of, the Secretary under paragraph (1)—

13 (A) shall only be subject to review as pro-
 14 vided in section 6; and

15 (B) shall not be subject to—

16 (i) quiet title proceedings under sec-
 17 tion 6(d) or any other provision of law; or

18 (ii) any other judicial or administra-
 19 tive de novo or on the record reviews,
 20 claims, actions, or proceedings.

21 (5) FEDERAL REGISTER NOTICE OF FINAL
 22 AGENCY ACTION.—Not later than 30 days after the
 23 date on which the document is delivered under para-
 24 graph (1), the Secretary shall publish in the Federal

1 Register notice of the action by the Secretary under
2 that paragraph.

3 **SEC. 6. JUDICIAL REVIEW.**

4 (a) JURISDICTION.—

5 (1) FILING.—If a claimant seeks to appeal the
6 denial by the Secretary of a claimed R.S. 2477
7 right-of-way under this Act, the claimant shall file
8 an appeal of the denial in the district court of the
9 United States for the judicial district in which the
10 longest lineal segment of the claimed R.S. 2477
11 right-of-way is located.

12 (2) EXCLUSIVE JURISDICTION.—A district
13 court described in paragraph (1) shall have the ex-
14 clusive jurisdiction to decide the appeal on the
15 record before the Secretary regarding the claimed
16 R.S. 2477 right-of-way, subject only to appeal or re-
17 view on the record by a court with appropriate Fed-
18 eral appellate jurisdiction.

19 (b) FILING.—Any action initiated under subsection
20 (a) shall be filed not later than 30 days after the date
21 on which the Secretary provides written notice to the
22 claimant of the denial by the Secretary of the claimed R.S.
23 2477 right-of-way.

24 (c) PRIOR ADJUDICATION NOT AFFECTED.—Nothing
25 in this Act affects a final settlement or final judgment in

1 any court of competent jurisdiction before the date of en-
 2 actment of this Act in which the United States was a party
 3 in determining rights to a R.S. 2477 right-of-way.

4 (d) ACTIONS TO QUIET TITLE UNAFFECTED.—

5 (1) IN GENERAL.—Subject to this section and
 6 section 5, Federal court actions to quiet R.S. 2477
 7 titles that involve R.S. 2477 claims previously filed
 8 under this Act in which a disclaimer and relinquish-
 9 ment are pending or have been issued are null and
 10 void.

11 (2) ALLOWABLE ACTIONS.—Any quiet title ac-
 12 tion not prohibited under paragraph (1) shall be
 13 filed during or before the date described in section
 14 4(a)(1).

15 **SEC. 7. APPLICABLE LAW AND TIME EXTENSIONS.**

16 (a) APPLICATION OF STATE AND FEDERAL LAW.—

17 (1) IN GENERAL.—This Act shall apply with re-
 18 spect to conclusively establishing the acceptance,
 19 scope, validity, or abandonment of a R.S. 2477
 20 right-of-way.

21 (2) PREEMPTION.—In the case of any inconsist-
 22 ency or conflict between the provisions of this Act
 23 and State law, this Act shall apply in determining
 24 the acceptance, scope, validity, and abandonment of
 25 a R.S. 2477 right-of-way.

1 (b) EXTENSION.—The Secretary shall grant a 1-time
 2 extension of a deadline established by this Act, for a max-
 3 imum period of 1 year, for good cause, if the claimant
 4 submits to the Secretary, not later than 30 days before
 5 the date on which the deadline expires, a written request
 6 for the extension signed by the claimant under oath or
 7 affirmation.

8 **SEC. 8. IMPLEMENTATION REQUIRED.**

9 (a) IN GENERAL.—Subject to section 4(e)—
 10 (1) not later than 90 days after the date of en-
 11 actment of this Act, the Secretary shall complete all
 12 policies, procedures, delegations, forms, and any
 13 other action necessary to implement this Act; and
 14 (2) on the completion of the actions described
 15 in paragraph (1), begin processing claims under this
 16 Act.

17 (b) INJUNCTION; LIABILITY.—The duties and obliga-
 18 tions of, or failure to perform by, the Secretary under this
 19 section—
 20 (1) are enforceable by injunction or restraining
 21 order ; and
 22 (2) may result in official and personal civil li-
 23 ability.

1 **SEC. 9. EFFECT; APPLICABILITY.**

2 (a) EFFECT ON OTHER LAWS.—Nothing in this Act
3 affects or modifies—

4 (1) title V of the Federal Land Policy and Man-
5 agement Act of 1976 (43 U.S.C. 1761 et seq.); or

6 (2) title XI of the Alaska National Interest
7 Lands Conservation Act (16 U.S.C. 3161 et seq.).

8 (b) EXCLUDED LAND.—Nothing in this Act applies
9 to or affects—

10 (1) the use of Department of Defense land or
11 land with respect to which the Department of De-
12 fense shares control or jurisdiction;

13 (2) land that is not owned by the United
14 States;

15 (3) land held in trust by the Secretary of the
16 Interior for any Indian tribe; or

17 (4) land within the outer boundary of—

18 (A) a National Park; or

19 (B) a congressionally designated National
20 Wilderness Area.

21 **SEC. 10. REPEAL OF RESTRICTIONS ON REGULATIONS.**

22 Section 108 of the Department of the Interior and
23 Related Agencies Appropriations Act, 1997 (Public Law
24 104–208; 110 Stat. 3009–200) is repealed.

