

H.R.3270**Historic Routes Preservation Act (Introduced in House - IH)**

HR 3270 IH

115th CONGRESS
1st Session
H. R. 3270

To establish a procedure for resolving claims to certain rights-of-way, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES**July 17, 2017**

Mr. COOK (for himself and Mr. O'HALLERAN) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To establish a procedure for resolving claims to certain rights-of-way, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the "Historic Routes Preservation Act".

(b) Table of Contents- The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purpose.
- Sec. 3. Definitions.
- Sec. 4. Filing of claim.
- Sec. 5. Evidence and final decision.
- Sec. 6. Judicial review.
- Sec. 7. Applicable law and time extensions.
- Sec. 8. Implementation required.
- Sec. 9. Effect; applicability.
- Sec. 10. Repeal of restrictions on regulations.

30 **SEC. 2. PURPOSE.**

31 The purpose of this Act is to preserve historical access to the public lands by achieving
 32 judicial and administrative efficiency for, and to reduce the costs typically associated
 33 with, resolving right-of-way claims under R.S. 2477 by--

- 34 (1) reducing the burden on Federal courts by establishing administrative
 35 procedures and evidentiary standards for the processing of R.S. 2477 right-of-way
 36 claims; and
 37 (2) establishing--
 38 (A) a deadline for filing R.S. 2477 right-of-way claims;
 39 (B) mandatory procedures for considering and acting on the R.S. 2477
 40 right-of-way claims; and
 41 (C) uniform legal and evidentiary standards of proof of public acceptance
 42 of R.S. 2477 right-of-way grants.

43 **SEC. 3. DEFINITIONS.**

44 In this Act:

- 45 (1) ABANDON OR ABANDONMENT- The terms "abandon" and
 46 "abandonment" mean formal action by the governing body of a claimant taken at
 47 a public meeting pursuant to notice that declares all right, title, and claim to a R.S.
 48 2477 right-of-way is relinquished.
 49 (2) ACCEPTANCE OR ACCEPTED- The terms "acceptance" and "accepted"
 50 mean--
 51 (A) a positive or affirmative action by a State or county governmental
 52 authority on or before October 21, 1976, including--
 53 (i) a formal resolution or declaration of ownership of, or
 54 responsibility for maintaining, a highway; or
 55 (ii) the inclusion of a highway in an official map;
 56 (B) the construction, improvement, repair or maintenance of a highway by
 57 a State or county governmental authority, or private party on or before
 58 October 21, 1976; or
 59 (C) the continuous use of a highway by the public for a period of not
 60 fewer than 5 consecutive years ending on a date that is on or before
 61 October 21, 1976.
 62 (3) CLAIM- The term "claim" means the assertion of acceptance of a R.S. 2477
 63 right-of-way filed under section 4(a)(1).
 64 (4) CLAIMANT- The term "claimant" means any State, county, political
 65 subdivision or agency of a State, company, or other person asserting the public
 66 acceptance of a right-of-way under R.S. 2477.
 67 (5) CONSTRUCTION- The term "construction" means the physical activity
 68 reasonably necessary, advisable, or desirable to allow continuous public use over
 69 a highway according to the intended mode of travel or transportation, which may
 70 be established by the use of any tools or equipment, or other means, including
 71 mere usage.

72 (6) CONTINUOUS PUBLIC USE- The term "continuous public use" means the
73 uninterrupted use of a highway by the public for passage as often as generally
74 regarded by the public to be convenient or necessary depending on the character
75 of the road and the nature of the use and does not require a determination of
76 frequency of use. Continuous public use includes use that may be interrupted by
77 events of nature or seasonal use.

78 (7) DISCLAIMER AND RELINQUISHMENT- The term "disclaimer and
79 relinquishment" means any type of deed or equivalent document in a form
80 suitable for recordation that is approved and issued by the Secretary disclaiming
81 and relinquishing any ownership interest of the Federal Government in a R.S.
82 2477 right-of-way, including a deed or equivalent document issued under section
83 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745).

84 (8) EVIDENCE- The term "evidence" means any testimony, object, or document
85 described in section 5 that would be reliable, authentic, probative, and persuasive
86 in Federal district court under the Federal Rules of Evidence that are in effect on
87 the date of the enactment of this Act.

88 (9) HIGHWAY- The term "highway" means any road, way, or other land surface
89 route of travel that the public has the right of use for passage, whether by carriage,
90 animal, foot, or non-motorized or motorized vehicle.

91 (10) IMPROVEMENT- The term "improvement" means--

92 (A) the widening of a highway;

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

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

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

97 (11) MAINTENANCE- The term "maintenance" means the preservation of an
98 existing highway, including but not limited to-

99 (A) the physical upkeep of the highway;

100 (B) the repair or replacement of wear or damage to the highway, including
101 to bridges, culverts, or other drainage structures or conduits, from natural
102 or other causes;

103 (C) the restoration of the shape or path of the highway; and

104 (D) the gradation of the highway or other measures to ensure that the
105 shape of the highway permits drainage.

106 (12) PUBLIC LAND- The term "public land" means land--

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

109 (B) that was not reserved on the date on which a R.S. 2477 right-of-way
110 grant was accepted.

111 (13) PUBLIC OR PUBLIC USER-

112 (A) IN GENERAL- The terms "public" or "public user" mean all natural
113 persons, including Federal lessees, permittees, licensees, invitees, and any
114 other natural person that holds an authorization or is otherwise allowed to
115 enter or use public land.

- 116 (B) EXCEPTIONS- The terms "public" or "public user" do not include
 117 any Federal agent or employee acting within the scope of the employment
 118 of the Federal agency or employee.
- 119 (14) R.S. 2477- The term "R.S. 2477" means section 2477 of the Revised Statutes
 120 (43 U.S.C. 932) repealed by section 706 of the Federal Land Policy and
 121 Management Act of 1976 (Public Law 94-579; 90 Stat. 2793).
- 122 (15) R.S. 2477 RIGHT-OF-WAY- The term "R.S. 2477 right-of-way" means an
 123 open-ended grant or dedication of land by the United States for rights-of-way
 124 allowing public use and passage, which could be accepted.
- 125 (16) RESERVED-
- 126 (A) IN GENERAL- The term "reserved" means action by the Secretary,
 127 before the earlier of a R.S. 2477 right-of-way acceptance or October 21,
 128 1976--
- 129 (i) to withdraw land from the public domain; and
 130 (ii) to make the land unavailable for appropriation under public
 131 land laws; and
 132 (iii) to dedicate the land by the United States to a specific public
 133 purpose, such as a park, military establishment, wilderness area,
 134 tribal land, or Federal enclave, that does not rely on a R.S. 2477
 135 right-of-way for the public purpose.
- 136 (B) EXCLUSION- The term "reserved" does not apply to an action of the
 137 Secretary with respect to the designation of a wilderness study area, an
 138 area of critical environmental concern, or land with wilderness
 139 characteristics.
- 140 (17) SCOPE- The term "scope" means the established width of a R.S. 2477 right-
 141 of-way as of October 21, 1976, including the area reasonable and necessary to
 142 meet the public convenience or safety, including maintenance and repair, or the
 143 exigencies of increased travel based on the traditional use of a highway (including
 144 permissible improvements, realignments, or relocation), and is not limited to the
 145 disturbed surface of the highway.
- 146 (18) SECRETARY- The term "Secretary" means the Secretary with management
 147 jurisdiction over land owned or controlled by the United States on which a R.S.
 148 2477 right-of-way is claimed to be located.

149 **SEC. 4. FILING OF CLAIM.**

- 150 (a) Filing-
- 151 (1) NEW ADMINISTRATIVE CLAIMS- During the 25-year period beginning
 152 on the date of the enactment of this Act, a claimant asserting the public
 153 acceptance of a right-of-way granted under R.S. 2477 may file a claim under this
 154 section.
- 155 (2) ADMINISTRATIVE CLAIM AFTER FILING CLAIM UNDER TITLE 28-
- 156 (A) IN GENERAL- A claimant may, at its option, file a claim under
 157 paragraph (1) if, before the date of the enactment of this Act, the claimant-
- 158 -

159 (i) filed a notice of an intent to file suit with respect to a claim
 160 asserting the public acceptance of a right-of-way granted under
 161 R.S. 2477 under section 2409a(m) of title 28, United States Code;
 162 or
 163 (ii) filed suit with respect to a claim asserting the public acceptance
 164 of a right-of-way granted under R.S. 2477 under section 2409a(m)
 165 of title 28, United States Code.

166 (B) PENDINGCOURT ACTION- If a claimant files a claim under
 167 paragraph (1) with respect to a previously filed claim asserting the public
 168 acceptance of a right-of-way granted under R.S. 2477 under section
 169 2409a(m) of title 28, United States Code, any suit filed by or on behalf of
 170 the claimant with respect to public acceptance of the right-of-way shall be
 171 held in abeyance pending final determination under this Act and shall be
 172 dismissed without prejudice when acceptance of the right-of-way is
 173 determined under this act..

174 (b) Form; Contents-

175 (1) FORM- Not later than 30 days after the date of the enactment of this Act, the
 176 Secretary shall establish a form to be used by claimants for filing claims under
 177 this section.

178 (2) CONTENTS- A claim filed under subsection (a)(1) shall include--

179 (A) evidence supporting the claim; and

180 (B) proof of notice or attempted notice by the claimant under subsection
 181 (d).

182 (c) Place of Filing- A claimant shall file a claim in the appropriate State or regional
 183 location designated by the Secretary for the filing of claims under this section.

184 (d) Notice-

185 (1) IN GENERAL- Except as provided in paragraph (3), a claimant shall provide
 186 notice of the right-of-way claim by--

187 (A) at least once per week during the 2-week period immediately
 188 preceding the filing of the claim, publishing in a newspaper authorized to
 189 publish public notice under the laws of the State in which the longest
 190 lineal part of the claimed R.S. 2477 right-of-way is located, a general
 191 summary of the claim, including the location and general description of
 192 the claimed R.S. 2477 right-of-way; and

193 (B) not later than 30 days after the date on which the claim is filed,
 194 providing, or reasonably attempting to provide, written notice of the claim
 195 to all owners of land contiguous to the boundary of the claimed right-of-
 196 way.

197 (2) ATTEMPTED NOTICE- The reasonable attempt of a claimant to provide
 198 written notice under paragraph (1)(B) shall be considered to be sufficient notice
 199 under this subsection if the claimant files with Secretary verification of the
 200 reasonable attempt under written oath or affirmation.

201 (3) EXCEPTION- Notwithstanding paragraph (1), a claimant shall be considered
 202 to have given sufficient notice under this subsection if the claimant has filed a
 203 notice of an intent to file suit with respect to the claimed R.S. 2477 right-of-way

204 under section 2409a(m) of title 28, United States Code, on or before the date of
 205 the enactment of this Act.

206 (e) Effect of Failure To Meet Filing Deadline or Requirements- If a claimant fails to
 207 comply with the requirements of--

208 (1) subsection (a), the failure shall be considered to be an automatic irrevocable
 209 abandonment of any R.S. 2477 right-of-way claim; or

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

213 (f) Statute of Limitations- Except as provided in subsection (a)(1), any statute of
 214 limitations for asserting the public acceptance of the R.S. 2477 right-of-way under this
 215 section is waived.

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

217 (a) Burden of Proof- A claimant shall have the burden to prove, by a preponderance of
 218 the evidence, the acceptance of a right-of-way under R.S. 2477.

219 (b) Presumptions-

220 (1) IN GENERAL- Except in a case in which the land underlying the claimed
 221 R.S. 2477 right-of-way was reserved before October 21, 1976, acceptance and
 222 scope of the R.S. 2477 right-of-way shall be conclusively verified, proven, and
 223 established on filing, under oath or affirmation by a claimant attesting to the
 224 authenticity and accuracy, of--

225 (A) at least 2 items of evidence from among the categories of evidence
 226 described in subsection (c)(1) relating to the R.S. 2477 right-of-way; or

227 (B) at least 3 items of evidence from among the categories of evidence
 228 described in subparagraphs (A) or (B) of subsection (c)(2), in the case of
 229 demonstrating scope and acceptance before October 21, 1976.

230 (2) COPIES- A copy of an original document may be used as evidence in the
 231 place of the original document under this section if the copy is accompanied by a
 232 written declaration, under oath by a custodian, owner, or author, that the copy is
 233 an accurate representation of the material terms of the original document.

234 (3) HEARSAY- Hearsay contained in a document or otherwise provided shall be
 235 considered reliable, admissible, and probative for the purposes of this Act.

236 (4) GRANT WITHDRAWAL- Evidence produced by the United States that
 237 establishes that the United States reserved the land underlying the R.S. 2477 right-
 238 of-way before acceptance conclusively establishes withdrawal of the Federal
 239 grant for the R.S. 2477 right-of-way.

240 (c) Description of Categories of Evidence- For the purposes of actions under this Act, the
 241 following categories of evidence shall be considered:

242 (1) CATEGORY 1- Category 1 evidence consists of each of the following types
 243 of evidence:

244 (A) A center line or other survey conducted by the Federal Government or
 245 duly licensed land surveyor, applying generally accepted survey standards
 246 and procedures or the Bureau of Land Management Manual of Surveying
 247 Instructions applicable to surveys before October 21, 1976, clearly

248 showing the, location, direction, beginning and end points and length,of
249 the R.S. 2477 right-of-way as of date certain.

250 (B) Maps, plats, maintenance records (including actual or estimated costs
251 of maintenance), photographs, GIS or global positioning data, or other
252 computer-generated images showing the location of the R.S. 2477 right-
253 of-way prepared, made, edited, kept, or relied on, generally or on a case-
254 by-case basis, by the Federal Government, a State or local government, an
255 institution of higher education, college, or a public or private organization
256 historically, customarily or regularly engaged in the preparation, retention,
257 analysis, or expert interpretation of contemporary or historic maps.

258 (C) Historical or other records of government entities or records
259 constructed, obtained, or kept by a government in the ordinary course of
260 business, including Federal, State, local, and territorial records, such as
261 records of the Departments of the Interior, Agriculture, or Defense, the
262 Bureau of Land Management, the Forest Service, the Natural Resources
263 Conservation Service, the Soil Conservation Service, General Land
264 Office, Federal centers or enclaves, the Smithsonian Institution, and the
265 Library of Congress that show that the right-of-way was accepted prior to
266 October 21, 1976.

267 (D) Written or transcribed oral statements given under oath before a
268 notary public, court reporter, judge or any other government official
269 authorized by law to administer oaths or otherwise authenticated stating
270 that the right-of-way was regularly maintained by a State or local
271 government or private individual prior to October 21, 1976.

272 (2) CATEGORY 2- Category 2 evidence consists of each of the following types
273 of evidence:

274 (A) In addition to the records described in paragraph (1)(C), other
275 historical records including original documents, authenticated copies,
276 facsimiles, and computer-transmitted images (including aerial
277 photographs, topographical maps, and government road maps), reliably
278 showing evidence of public usage of a R.S. 2477 right-of-way before
279 October 21, 1976.

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

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

287 (e) Determination of Abandonment-

288 (1) IN GENERAL- Not later than 90 days after the date on which a R.S. 2477
289 right-of-way is conclusively established as accepted under subsection (b)(1), the
290 Secretary shall determine, in writing, whether the R.S. 2477 right-of-way has
291 been previously abandoned by the claimant.

292 (2) FAILURE TO MAKE DETERMINATION- The failure of the Secretary to
 293 make a written determination within the 90-day period described in paragraph (1)
 294 shall conclusively establish that the right-of-way has not been abandoned.

295 (3) FINAL AGENCY ACTION- The determination by the Secretary under
 296 paragraph (1), or the failure to make the determination by the date described in
 297 that paragraph, shall be a final agency action, subject to appeal by the claimant
 298 only in accordance with section 6.

299 (f) Disclaimer and Relinquishment Required-

300 (1) IN GENERAL- Subject to subsection (e), not later than 120 days after the date
 301 on which evidence establishing acceptance of a R.S. 2477 right-of-way has been
 302 filed under this section, the Secretary shall deliver to the claimant a written
 303 document disclaiming and relinquishing the right and interest of the United States
 304 in and to the R.S. 2477 right-of-way.

305 (2) FORM- The disclaimer and relinquishment under paragraph (1) shall be in a
 306 form that allows the recording of the disclaimer and relinquishment in State and
 307 local real estate records.

308 (3) RECORDING- The disclaimer and relinquishment under paragraph (1) shall--
 309 (A) be recorded in the public land records under the jurisdiction of the
 310 Secretary; and
 311 (B) conclusively establish the title of the claimant to use the R.S. 2477
 312 right-of-way.

313 (4) REVIEW- The document delivered by, and any actions of, the Secretary under
 314 paragraph (1)--

315 (A) shall only be subject to review as provided in section 6; and

316 (B) shall not be subject to--

317 (i) quiet title proceedings under section 6(d) or any other provision
 318 of law; or

319 (ii) any other judicial or administrative de novo or on the record
 320 reviews, claims, actions, or proceedings.

321 (5) FEDERAL REGISTER NOTICE OF FINAL AGENCY ACTION- Not later
 322 than 30 days after the date on which the document is delivered under paragraph
 323 (1), the Secretary shall publish in the Federal Register notice of the action by the
 324 Secretary under that paragraph.

325 **SEC. 6. JUDICIAL REVIEW.**

326 (a) Jurisdiction-

327 (1) FILING- If a claimant seeks to appeal the denial by the Secretary of a claimed
 328 R.S. 2477 right-of-way under this Act, the claimant shall file an appeal of the
 329 denial in the district court of the United States for the judicial district in which the
 330 longest lineal segment of the claimed R.S. 2477 right-of-way is located.

331 (2) EXCLUSIVE JURISDICTION- A district court described in paragraph (1)
 332 shall have the exclusive jurisdiction to decide the appeal on the record before the
 333 Secretary regarding the claimed R.S. 2477 right-of-way, subject only to appeal or
 334 review on the record by a court with appropriate Federal appellate jurisdiction.

335 (b) Filing- Any action initiated under subsection (a) shall be filed not later than 30 days
 336 after the date on which the Secretary provides written notice to the claimant of the denial
 337 by the Secretary of the claimed R.S. 2477 right-of-way.

338 (c) Prior Adjudication Not Affected- Nothing in this Act affects a final settlement or final
 339 judgment in any court of competent jurisdiction before the date of the enactment of this
 340 Act in which the United States was a party in determining rights to a R.S. 2477 right-of-
 341 way.

342 (d) Actions To Quiet Title Unaffected-

343 (1) IN GENERAL- Subject to this section and section 5, Federal court actions to
 344 quiet R.S. 2477 titles that involve R.S. 2477 claims previously filed under this Act
 345 in which a disclaimer and relinquishment are pending or have been issued are null
 346 and void.

347 (2) ALLOWABLE ACTIONS- Any quiet title action not prohibited under
 348 paragraph (1) shall be filed during or before the date described in section 4(a)(1).

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

350 (a) Application of State and Federal Law-

351 (1) IN GENERAL- This Act shall apply with respect to conclusively establishing
 352 the acceptance, scope, validity, or abandonment of a R.S. 2477 right-of-way.

353 (2) PREEMPTION- In the case of any inconsistency or conflict between the
 354 provisions of this Act and State law, this Act shall apply in determining the
 355 acceptance, scope, validity, and abandonment of a R.S. 2477 right-of-way.

356 (b) Extension- The Secretary shall grant a 1-time extension of up to 180 days for any
 357 deadline established by this Act for a maximum period of 1 year, for good cause, if the
 358 claimant submits to the Secretary, not later than 30 days before the date on which the
 359 deadline expires, a written request for the extension signed by the claimant under oath or
 360 affirmation.

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

362 (a) In General- Subject to section 4(e)--

363 (1) not later than 90 days after the date of the enactment of this Act, the Secretary
 364 shall complete all policies, procedures, delegations, forms, and any other action
 365 necessary to implement this Act; and

366 (2) on the completion of the actions described in paragraph (1), begin processing
 367 claims under this Act.

368 (b) Injunction; Liability- The duties and obligations of, or failure to perform by, the
 369 Secretary under this section--

370 (1) are enforceable by injunction or restraining order; and

371 (2) may result in official and personal civil liability.

372 **SEC. 9. EFFECT; APPLICABILITY.**

373 (a) Effect on Other Laws- Nothing in this Act affects or modifies--

374 (1) title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C.
375 1761 et seq.); or
376 (2) title XI of the Alaska National Interest Lands Conservation Act (16 U.S.C.
377 3161 et seq.).

378 (b) Excluded Land- Nothing in this Act applies to or affects--

379 (1) the use of Department of Defense land or land with respect to which the
380 Department of Defense shares control or jurisdiction;

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

382 (3) land held in trust by the Secretary of the Interior for any Indian Tribe; or

383 (4) land within the exterior boundary of--

384 (A) a National Park (to exclude lands other than National Parks which are
385 under the jurisdiction or administration of the National Park Service); or

386 (B) a congressionally designated National Wilderness Area.

387 (c) Effect on Claims- This Act and the procedures and process implemented under this
388 Act--

389 (1) shall apply to--

390 (A) claims filed after the date of the enactment of this Act; and

391 (B) claims filed before the date of the enactment of this Act for which a
392 final determination has not been issued; and

393 (2) shall not affect the ability of a claimant to file or maintain a suit with respect
394 to the claimed R.S. 2477 right-of-way under section 2409a(m) of title 28, United
395 States Code, if the claimant has not filed a claim under section 4 regarding that
396 R.S. 2477 right-of-way.

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

398 Section 108 of the Department of the Interior and Related Agencies Appropriations Act,
399 1997 (Public Law 104-208; 110 Stat. 3009-200) is repealed.

400