

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.

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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Historic Routes Preservation Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 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.

1 **SEC. 2. PURPOSE.**

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

6 (1) reducing the burden on Federal courts by
7 establishing administrative procedures and evi-
8 dentiary standards for the processing of R.S. 2477
9 right-of-way claims; and

10 (2) establishing—

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

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

16 (C) uniform legal and evidentiary stand-
17 ards of proof of public acceptance of R.S. 2477
18 right-of-way claims.

19 **SEC. 3. DEFINITIONS.**

20 In this Act:

21 (1) ABANDON OR ABANDONMENT.—The terms
22 “abandon” and “abandonment” mean normal action
23 by the governing body of a claimant taken at a pub-
24 lic meeting pursuant to notice that declares all right,

1 title, and claim to a R.S. 2477 right-of-way is relin-
2 quished.

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

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

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

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

12 (B) the construction, improvement, or
13 maintenance of a highway by a State or county
14 governmental authority on or before October
15 21, 1976; or

16 (C) the continuous use of a highway by the
17 public for a period of not fewer than 5 consecu-
18 tive years ending on a date that is on or before
19 October 21, 1976.

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

23 (4) CLAIMANT.—The term “claimant” means
24 any State, county, political subdivision or agency of

1 a State, company, or other person asserting the pub-
2 lic acceptance of a right-of-way under R.S. 2477.

3 (5) CONSTRUCTION.—The term “construction”
4 means the physical activity reasonably necessary, ad-
5 visable, or desirable to allow continuous public use
6 over a highway according to the intended mode of
7 travel or transportation, which may be established
8 by the use of any tools or equipment, or other
9 means, including mere usage.

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

16 (7) DISCLAIMER AND RELINQUISHMENT.—The
17 term “disclaimer and relinquishment” means any
18 type of deed or equivalent document in a form suit-
19 able for recordation that is approved and issued by
20 the Secretary disclaiming and relinquishing the in-
21 terest of the Federal Government in a R.S. 2477
22 right-of-way, including a deed or equivalent docu-
23 ment issued under section 315 of the Federal Land
24 Policy and Management Act of 1976 (43 U.S.C.
25 1745).

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

7 (9) HIGHWAY.—The term “highway” means
8 any road, way, or other land surface route of travel
9 that the public has the right of use for passage,
10 whether by carriage, animal, foot, or non-motorized
11 or motorized vehicle.

12 (10) IMPROVEMENT.—The term “improvement”
13 means—

14 (A) the widening of a highway;

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

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

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

23 (11) MAINTENANCE.—The term “maintenance”
24 means the preservation of an existing highway, in-
25 cluding—

1 (A) the physical upkeep of the highway;

2 (B) the repair or replacement of wear or
3 damage to the highway, including bridges, cul-
4 verts, or other drainage structures or conduits,
5 from natural or other causes;

6 (C) the restoration of the shape of the
7 highway; and

8 (D) the gradation of the highway or other
9 measures to ensure that the shape of the high-
10 way permits drainage.

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

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

16 (B) that was not reserved on the date on
17 which a R.S. 2477 right-of-way grant was ac-
18 cepted.

19 (13) PUBLIC OR PUBLIC USER.—

20 (A) IN GENERAL.—The terms “public” or
21 “public user” mean all natural persons, includ-
22 ing Federal lessees, permittees, licensees,
23 invitees, and any other natural person that
24 holds an authorization or is otherwise allowed
25 to enter or use public land.

1 (B) EXCEPTIONS.—The terms “public” or
2 “public user” do not include any Federal agent
3 or employee acting within the scope of the em-
4 ployment of the Federal agency or employee.

5 (14) R.S. 2477.—The term “R.S. 2477” means
6 section 2477 of the Revised Statutes (43 U.S.C.
7 932) repealed by section 706 of the Federal Land
8 Policy and Management Act of 1976 (Public Law
9 94–579; 90 Stat. 2793).

10 (15) R.S. 2477 RIGHT-OF-WAY.—The term “R.S.
11 2477 right-of-way” means an open-ended grant or
12 dedication of land by the United States for rights-
13 of-way allowing public use and passage, which could
14 be accepted.

15 (16) RESERVED.—

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

20 (i) to withdraw land from the public
21 domain;

22 (ii) to make the land unavailable for
23 appropriation under public land laws; and

24 (iii) to dedicate the land by the
25 United States to a specific public purpose,

1 such as a park, military establishment, wil-
2 derness area, tribal land, or Federal en-
3 clave, that does not rely on a R.S. 2477
4 right-of-way for the public purpose.

5 (B) EXCLUSION.—The term “reserved”
6 does not apply to an action of the Secretary
7 with respect to the designation of a wilderness
8 study area, an area of critical environmental
9 concern, or land with wilderness characteristics.

10 (17) SCOPE.—The term “scope” means the es-
11 tablished width of a R.S. 2477 right-of-way as of the
12 date of acceptance, including the area needed to
13 meet the public convenience or safety or the exigen-
14 cies of increased travel based on the traditional use
15 of a highway (including permissible improvements,
16 realignments, or relocation), and is not limited to
17 the disturbed surface of the highway.

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

23 **SEC. 4. FILING OF CLAIM.**

24 (a) FILING.—

1 (1) NEW ADMINISTRATIVE CLAIMS.—During
2 the 25-year period beginning on the date of the en-
3 actment of this Act, a claimant asserting the public
4 acceptance of a right-of-way granted under R.S.
5 2477 may file a claim under this section.

6 (2) ADMINISTRATIVE CLAIM AFTER FILING
7 CLAIM UNDER TITLE 28.—

8 (A) IN GENERAL.—A claimant may file a
9 claim under paragraph (1) if, before the date of
10 the enactment of this Act, the claimant—

11 (i) filed a notice of an intent to file
12 suit with respect to a claim asserting the
13 public acceptance of a right-of-way granted
14 under R.S. 2477 under section 2409a(m)
15 of title 28, United States Code; or

16 (ii) filed suit with respect to a claim
17 asserting the public acceptance of a right-
18 of-way granted under R.S. 2477 under sec-
19 tion 2409a(m) of title 28, United States
20 Code.

21 (B) DISMISSAL OF COURT ACTION.—If a
22 claimant files a claim under paragraph (1) with
23 respect to a claim asserting the public accept-
24 ance of a right-of-way granted under R.S. 2477
25 under section 2409a(m) of title 28, United

1 States Code, any suit filed by or on behalf of
2 the claimant with respect to public acceptance
3 of the right-of-way shall be dismissed with prej-
4 udice.

5 (b) FORM; CONTENTS.—

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

10 (2) CONTENTS.—A claim filed under subsection

11 (a)(1) shall include—

12 (A) evidence supporting the claim; and

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

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

18 (d) NOTICE.—

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

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

1 State in which the longest lineal part of the
2 claimed R.S. 2477 right-of-way is located, a
3 general summary of the claim, including the lo-
4 cation and general description of the claimed
5 R.S. 2477 right-of-way; and

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

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

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

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

4 (1) subsection (a), the failure shall be consid-
5 ered to be an automatic irrevocable abandonment of
6 any R.S. 2477 right-of-way claim; or

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

11 (f) STATUTE OF LIMITATIONS.—Except as provided
12 in subsection (a)(1), any statute of limitations for assert-
13 ing the public acceptance of the R.S. 2477 right-of-way
14 under this section is waived.

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

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

19 (b) PRESUMPTIONS.—

20 (1) IN GENERAL.—Except in a case in which
21 the land underlying the claimed R.S. 2477 right-of-
22 way was reserved before October 21, 1976, accept-
23 ance (including continuous public use, location, con-
24 struction, and scope of the R.S. 2477 right-of-way)
25 shall be conclusively verified, proven, and established

1 on filing, under oath or affirmation by a claimant
2 attesting to the authenticity and accuracy, 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 subparagraphs (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, the following
5 categories of evidence 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) Historical records (other than those
22 described in paragraph (1)(C)), including origi-
23 nal documents, authenticated copies, facsimiles,
24 and computer-transmitted images reliably show-
25 ing evidence of construction (including tools

1 used, if any), location (including aerial photo-
2 graphs, topographical maps, and government
3 road maps), fixtures, and other structures, or
4 maintenance by a State or local government of
5 the R.S. 2477 right-of-way before October 21,
6 1976.

7 (B) Written or transcribed oral statements
8 from at least 2 persons, given under oath before
9 a notary public, court recorder, judge or any
10 other government official authorized by law to
11 administer oaths or otherwise authenticated re-
12 citing reliable knowledge of the facts that estab-
13 lish the acceptance by public usage of the R.S.
14 2477 right-of-way before October 21, 1976.

15 (C) A title opinion prepared by a duly li-
16 censed title examiner prepared in accordance
17 with generally accepted title standards, estab-
18 lishing the title, location, and dimensions of the
19 R.S. 2477 right-of-way.

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

23 (e) DETERMINATION OF ABANDONMENT.—

24 (1) IN GENERAL.—Not later than 90 days after
25 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 the
2 enactment of this Act in which the United States was a
3 party 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 inconsis-
22 tency 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 up to 180 days for any deadline established
3 by this Act for a maximum period of 1 year, for good
4 cause, if the claimant submits to the Secretary, not later
5 than 30 days before the date on which the deadline ex-
6 pires, a written request for the extension signed by the
7 claimant under oath or 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 the
11 enactment of this Act, the Secretary shall complete
12 all 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 exterior boundary of—

18 (A) a National Park; or

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

21 (c) EFFECT ON CLAIMS.—This Act and the proce-
22 dures and process implemented under this Act—

23 (1) shall apply to—

24 (A) claims filed after the date of the enact-
25 ment of this Act; and

1 (B) claims filed before the date of the en-
2 actment of this Act for which a final determina-
3 tion has not been issued; and

4 (2) shall not affect the ability of a claimant to
5 file or maintain a suit with respect to the claimed
6 R.S. 2477 right-of-way under section 2409a(m) of
7 title 28, United States Code, if the claimant has not
8 filed a claim under section 4 regarding that R.S.
9 2477 right-of-way.

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

11 Section 108 of the Department of the Interior and
12 Related Agencies Appropriations Act, 1997 (Public Law
13 104–208; 110 Stat. 3009–200) is repealed.

○