

1 **UTILITIES IN HIGHWAY RIGHTS-OF-WAY**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Leonard M. Blackham**

5 AN ACT RELATING TO TRANSPORTATION; PROVIDING CERTAIN DEFINITIONS;
6 AMENDING COST RESPONSIBILITIES FOR THE RELOCATION OF UTILITIES;
7 AMENDING PROVISIONS RELATED TO THE USE OF INTERSTATE HIGHWAY
8 RIGHTS-OF-WAY BY TELECOMMUNICATION PROVIDERS; CREATING AN ADVISORY
9 COUNCIL; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE
10 DATE.

11 This act affects sections of Utah Code Annotated 1953 as follows:

12 AMENDS:

13 **72-3-109**, as renumbered and amended by Chapter 270, Laws of Utah 1998

14 **72-6-116**, as last amended by Chapter 325, Laws of Utah 1999

15 **72-7-102**, as last amended by Chapter 325, Laws of Utah 1999

16 **72-7-108**, as enacted by Chapter 325, Laws of Utah 1999

17 ENACTS:

18 **72-7-109**, Utah Code Annotated 1953

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

20 Section 1. Section **72-3-109** is amended to read:

21 **72-3-109. Division of responsibility with respect to state highways in cities and towns.**

22 (1) Except as provided in Subsection (2), the jurisdiction and responsibility of the
23 department and the municipalities for state highways within municipalities is as follows:

24 (a) The department has jurisdiction over and is responsible for the construction and
25 maintenance of:

26 (i) the portion of the state highway located between the back of the curb on either side of
27 the state highway; or

- 28 (ii) if there is no curb, the traveled way, its contiguous shoulders, and appurtenances.
- 29 (b) The department may widen or improve state highways within municipalities.
- 30 (c) (i) A municipality has jurisdiction over all other portions of the right-of-way and is
- 31 responsible for construction and maintenance of the right-of-way.
- 32 (ii) If a municipality grants permission for the installation of any pole, pipeline, conduit,
- 33 sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or
- 34 character within the portion of the right-of-way under its jurisdiction:
- 35 (A) the permission shall contain the condition that any installation will be removed from
- 36 the right-of-way at the request of the municipality; and
- 37 (B) the municipality shall cause any installation to be removed at the request of the
- 38 department when the department finds the removal necessary:
- 39 (I) to eliminate a hazard to traffic safety;
- 40 (II) for the construction and maintenance of the state highway; or
- 41 (III) to meet the requirements of federal regulations.
- 42 (d) If it is necessary that a utility, as defined in Section 72-6-116, be relocated [~~on a~~
- 43 ~~highway eligible for federal aid~~], reimbursement shall be made for the relocation as provided for
- 44 in Section 72-6-116.
- 45 (e) (i) The department shall construct curbs, gutters, and sidewalks on the state highways
- 46 if necessary for the proper control of traffic, driveway entrances, or drainage.
- 47 (ii) If a state highway is widened or altered and existing curbs, gutters, or sidewalks are
- 48 removed, the department shall replace the curbs, gutters, or sidewalks.
- 49 (f) The department may furnish and install street lighting systems for state highways, but
- 50 their operation and maintenance is the responsibility of the municipality.
- 51 (g) If new storm sewer facilities are necessary in the construction and maintenance of the
- 52 state highways, the cost of the storm sewer facilities shall be borne by the state and the
- 53 municipality in a proportion mutually agreed upon between the department and the municipality.
- 54 (h) (i) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 55 department may make rules governing the location and construction of approach roads and
- 56 driveways entering the state highway.
- 57 (ii) The department may delegate the administration of the rules to the highway authorities
- 58 of a municipality.

59 (2) The department has jurisdiction and control over the entire right-of-way of interstate
60 highways within municipalities and is responsible for the construction, maintenance, and
61 regulation of the interstate highways within municipalities.

62 Section 2. Section **72-6-116** is amended to read:

63 **72-6-116. Regulation of utilities -- Relocation of utilities.**

64 (1) As used in this section:

65 (a) "Cost of relocation" includes the entire amount paid by the utility company properly
66 attributable to the relocation of the utility after deducting any increase in the value of the new
67 utility and any salvage value derived from the old utility.

68 (b) "Utility" includes telecommunication, gas, electricity, cable television, water, sewer,
69 data, and video transmission lines, drainage and irrigation systems, and other similar utilities
70 located in, on, along, across, over, through, or under any state highway.

71 (c) "Utility company" means a privately, cooperatively, or publicly owned utility,
72 including utilities owned by political subdivisions.

73 (2) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
74 the department may make rules for the installation, construction, maintenance, repair, renewal,
75 system upgrade, and relocation of all utilities.

76 (b) [(†)] If the department determines under the rules established in this section that it is
77 necessary that any utilities should be relocated, the utility company owning or operating the
78 utilities shall relocate the utilities in accordance with this section and the order of the department.

79 [(†)] (3) (a) The department shall pay 100% of the cost of relocation [in connection with
80 the] of a utility on a state highway [systems shall be paid by the department in all cases where: (A)
81 proportionate reimbursement of the cost may be obtained by the state of Utah from the United
82 States pursuant to the Federal-Aid Highway Act of 1956; and (B)] if the:

83 (i) utility is owned or operated by a political subdivision [whether or not federal
84 reimbursement may be obtained.] of the state; or

85 (ii) utility company owns the easement or fee title to the right-of-way in which the utility
86 is located.

87 (b) Except as provided in Subsection (3)(a) or (c), the department shall pay 50% of the cost
88 of relocation of a utility on a state highway and the utility company shall pay the remainder of the
89 cost of relocation.

90 (c) This Subsection (3), does not affect the provisions of Subsection 72-7-108(5).

91 [~~(3)~~] (4) If a utility is relocated, the utility company owning or operating the utility, its
92 successors or assigns, may maintain and operate the utility, with the necessary appurtenances, in
93 the new location.

94 [~~(4) The~~] (5) In accordance with this section, the cost of relocating a utility in connection
95 with any project on a highway [eligible for federal aid, or on the interstate system] is a cost of
96 highway construction.

97 [~~(5)~~] (6) (a) The department shall notify affected utility companies whenever the relocation
98 of utilities is likely to be necessary because of a reconstruction project.

99 (b) The notification shall be made during the preliminary design of the project or as soon
100 as practical in order to minimize the number, costs, and delays of utility relocations.

101 (c) A utility company notified under this Subsection [~~(5)~~] (6) shall coordinate with the
102 department and the department's contractor on the utility relocations, including the scheduling of
103 the utility relocations.

104 Section 3. Section **72-7-102** is amended to read:

105 **72-7-102. Excavations, structures, or objects prohibited within right-of-way except**
106 **in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty for violation.**

107 (1) As used in this section, "management costs" means the reasonable, direct, and actual
108 costs a highway authority incurs in exercising authority over the highways under its jurisdiction.

109 [~~(1)~~] (2) Except as provided in Subsection [~~(2)~~] (3) and Section 54-4-15, a person may not:

110 (a) dig or excavate, within the right-of-way of any state highway, county road, or city
111 street; or

112 (b) place, construct, or maintain any approach road, driveway, pole, pipeline, conduit,
113 sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or
114 character within the right-of-way.

115 [~~(2)~~] (3) (a) A highway authority having jurisdiction over the right-of-way may allow
116 excavating, installation of utilities and other facilities or access under rules made by the highway
117 authority and in compliance with federal, state, and local law as applicable.

118 (b) (i) The rules may require a permit for any excavation or installation and may require
119 a surety bond or other security.

120 (ii) The application for a permit for excavation or installation on a state highway shall be

121 accompanied by a fee established under Subsection ~~[(3)]~~ (4)(f).

122 (iii) The permit may be revoked and the surety bond or other security may be forfeited for
123 cause.

124 (4) (a) Except as provided in Section 72-7-108 with respect to the department concerning
125 the interstate highway system, a highway authority may require compensation from a utility service
126 provider for access to the right-of-way of a highway only as provided in this section.

127 (b) A highway authority may recover from a utility service provider, only those
128 management costs caused by the utility service provider's activities in the right-of-way of a
129 highway under the jurisdiction of the highway authority.

130 (c) (i) A fee or other compensation under this Subsection (4) shall be imposed on a
131 competitively neutral basis.

132 (ii) If a highway authority's management costs cannot be attributed to only one entity, the
133 management costs shall be allocated among all privately owned and government agencies using
134 the highway right-of-way for utility service purposes, including the highway authority itself. The
135 allocation shall reflect proportionately the management costs incurred by the highway authority
136 as a result of the various utility uses of the highway.

137 (d) A highway authority may not use the compensation authority granted under this
138 Subsection (4) as a basis for generating revenue for the highway authority that is in addition to its
139 management costs.

140 (e) A utility service provider that is assessed management costs or a franchise fee by a
141 highway authority is entitled to recover those costs. If the highway authority that assesses the
142 management costs or franchise fees is a political subdivision of the state and the utility service
143 provider serves customers within the boundaries of that highway authority, the management costs
144 may be recovered from those customers.

145 ~~[(3)]~~ (f) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
146 the department shall adopt a schedule of fees to be assessed for ~~[services provided]~~ management
147 costs incurred in connection with issuing and administering a permit on a state highway under this
148 section. ~~[The schedule of fees:]~~

149 ~~[(a) shall reflect the cost of services provided, and]~~

150 ~~[(b) may provide that the department bill for services reasonably incurred in connection~~
151 ~~with each permit.]~~

152 ~~[(4)]~~ (5) Permit fees collected by the department under this section shall be deposited with
153 the state treasurer and credited to the Transportation Fund.

154 ~~[(5) (a) Except as provided in Section 72-7-108, the department may not collect any fee
155 that is not authorized in this section for utility access to a highway right-of-way.]~~

156 ~~[(b) (i) A highway authority, other than the department, may not collect any fee that is not
157 cost-based for any utility access to a highway right-of-way.]~~

158 ~~[(ii)]~~ (6) Nothing in this section shall affect the authority of a municipality under Section
159 11-26-1 and Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act.

160 ~~[(6)]~~ (7) A person who violates the provisions of Subsection ~~[(+)]~~ (2) is guilty of a class
161 B misdemeanor.

162 Section 4. Section **72-7-108** is amended to read:

163 **72-7-108. Longitudinal telecommunication access in the interstate highway system**
164 **-- Definitions -- Agreements -- Compensation -- Restrictions -- Rulemaking.**

165 (1) As used in this section:

166 (a) "Longitudinal access" means access to or use of any part of a right-of-way of a highway
167 on the interstate system that extends generally parallel to the right-of-way for a total of 30 or more
168 linear meters.

169 (b) "Statewide telecommunications purposes" means the further development of the
170 statewide network that meets the telecommunications needs of state agencies and enhances the
171 learning purposes of higher and public education.

172 ~~[(b)]~~ (c) "Telecommunication facility" means any telecommunication cable, line, fiber,
173 wire, conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting
174 equipment, receiving equipment, power equipment, or other equipment, system, and device used
175 to transmit, receive, produce, or distribute via wireless, wireline, electronic, or optical signal for
176 communication purposes.

177 (2) (a) Except as provided in Subsection (4), the department may allow a
178 telecommunication facility provider longitudinal access to the right-of-way of a highway on the
179 interstate system for the installation, operation, and maintenance of a telecommunication facility.

180 (b) The department shall enter into an agreement with a telecommunication facility
181 provider and issue a permit before granting it any longitudinal access under this section.

182 (i) Except as specifically provided by the agreement, a property interest in a right-of-way

183 may not be granted under the provisions of this section.

184 (ii) An agreement entered into by the department under this section shall:

185 (A) specify the terms and conditions for the renegotiation of the agreement[-];

186 (B) specify maintenance responsibilities for each telecommunication facility;

187 (C) be nonexclusive; and

188 (D) be limited to a maximum term of 30 years.

189 (3) (a) The department shall require compensation from a telecommunication facility
190 provider under this section for longitudinal access to the right-of-way of a highway on the
191 interstate system.

192 (b) The compensation charged shall be:

193 (i) fair and reasonable;

194 (ii) competitively neutral;

195 (iii) nondiscriminatory;

196 (iv) open to public inspection;

197 (v) established to promote access by multiple telecommunication facility providers;

198 (vi) established for zones of the state, with zones determined based upon factors that
199 include population density, distance, numbers of telecommunication subscribers, and the impact
200 upon private right-of-way users;

201 (vii) established to encourage the deployment of digital infrastructure within the state;

202 [~~and~~]

203 (viii) set after the department conducts a market analysis to determine the fair and
204 reasonable values of the right-of-way based upon adjacent property values;

205 (ix) a lump sum payment or annual installment, at the option of the telecommunications
206 facility provider; and

207 [~~(viii)~~] (x) set in accordance with Subsection (3)[~~(c)~~] (f).

208 (c) (i) The compensation charged may be cash, in-kind compensation, or a combination
209 of cash and in-kind compensation.

210 (ii) In-kind compensation requires the agreement of both the telecommunication facility
211 provider and the department.

212 (iii) The department shall, in consultation with the Telecommunications Advisory Council
213 created in Section 72-7-109, determine the present value of any in-kind compensation based upon

214 the incremental cost to the telecommunication facility provider.

215 (iv) The value of in-kind compensation or a combination of cash and in-kind compensation
 216 shall be equal to or greater than the amount of cash compensation that would be charged if the
 217 compensation is cash only.

218 (d) § (i) § The department shall provide for the § **PROPORTIONATE** § sharing of costs
 218a among the department and
 219 telecommunications providers for joint trenching or trench sharing § [:] **BASED ON THE AMOUNT**
 219a **OF CONDUIT INNERDUCT SPACE THAT IS AUTHORIZED IN THE AGREEMENT FOR THE TRENCH.**

219b **(ii) IF TWO OR MORE TELECOMMUNICATIONS FACILITY PROVIDERS ARE REQUIRED TO**
 219c **SHARE A SINGLE TRENCH, EACH TELECOMMUNICATIONS FACILITY PROVIDER IN THE TRENCH**
 219d **SHALL SHARE THE COST AND BENEFITS OF THE TRENCH IN ACCORDANCE WITH SUBSECTION**
 219e **(3)(d)(i) ON A FAIR, REASONABLE, COMPETITIVELY NEUTRAL, AND NONDISCRIMINATORY BASIS.**

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220 (e) The market analysis under Subsection (3)(b)(viii) shall be conducted at least every five
 221 years and any adjustments warranted shall apply only to agreements entered after the date of the
 222 new market analysis.

223 ~~[(c)]~~ (f) [Beginning October 1, 1999 and in] In accordance with Title 63, Chapter 46a,
 224 Utah Administrative Rulemaking Act, the department shall establish a schedule of rates of
 225 compensation for any longitudinal access granted under this section.

226 (4) The department may not grant any longitudinal access under this section that results
 227 in a significant compromise of the safe, efficient, and convenient use of the interstate system for
 228 the traveling public.

229 (5) The department may not pay any cost of relocation of a telecommunication facility
 230 granted longitudinal access to the right-of-way of a highway on the interstate system under this
 231 section.

232 (6) (a) Monetary compensation collected by the department in accordance with this section
 233 shall be deposited with the state treasurer and credited to the Transportation Fund.

234 (b) Any telecommunications capacity acquired as in-kind compensation shall be used:

235 (i) exclusively for statewide telecommunications purposes and may not be sold or leased
 236 in competition with telecommunication or Internet service providers; and

237 (ii) as determined by the department after consultation with the Telecommunications
 238 Advisory Council created in Section 72-7-109.

239 (7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 240 department shall make rules:

241 (a) governing the installation, operation, and maintenance of a telecommunication facility
242 granted longitudinal access under this section;

243 (b) specifying the procedures for establishing an agreement for longitudinal access for a
244 telecommunication facility provider; ~~and~~]

245 (c) providing for the relocation or removal of a telecommunication facility for:
246 (i) needed changes to a highway on the interstate system;
247 (ii) expiration of an agreement; or
248 (iii) a breach of an agreement[-]; and
249 (d) providing an opportunity for all interested providers to apply for access within open
250 right-of-way segments.

251 (8) (a) Except for a right-of-way of a highway on the interstate system, nothing in this
252 section shall be construed to allow a highway authority to require compensation from a
253 telecommunication facility provider for longitudinal access to the right-of-way of a highway under
254 the highway authority's jurisdiction.

255 (b) Nothing in this section shall affect the authority of a municipality under Section
256 11-26-1 and Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act.

257 (9) Compensation paid to the department under Subsection (3) may not be used by any
258 person as evidence of the market or other value of the access for any other purpose, including
259 condemnation proceedings, other litigation, or the application of rates of taxation or the
260 establishment of franchise fees relating to longitudinal access rights.

261 Section 5. Section **72-7-109** is enacted to read:

262 **72-7-109. Telecommunications Advisory Council -- Membership -- Duties.**

263 (1) As used in this section:

264 (a) "Council" means the Telecommunications Advisory Council created in this section.

265 (b) "Statewide telecommunications purposes" has the same meaning provided in Section
266 72-7-108.

267 (2) (a) There is created within the department the Telecommunication Advisory Council
268 consisting of six members who represent:

269 (i) the governor's chief advisor on telecommunications;

270 (ii) the Public Service Commission;

271 (iii) the department;

272 (iv) the Utah Education Network;

273 (v) the Division of Purchasing and General Services within the Department of
274 Administrative Services; and

275 (vi) the Division of Public Utilities within the Department of Commerce.

276 (b) The members shall be appointed by the governor and confirmed by the Senate.

277 (3) (a) The members shall annually elect a chair from its members.

278 (b) The council shall meet as it determines necessary to accomplish its duties.

279 (c) A majority of the council constitutes a quorum for the transaction of business.

280 (d) Members shall receive no compensation or benefits for their services.

281 (4) (a) The department shall provide staff support for the council.

282 (b) The council may request assistance from other technical advisors as it determines
283 necessary to accomplish its duties.

284 (5) The council shall:

285 (a) provide information, suggestions, strategic plans, priorities, and recommendations to
286 assist the department in administering telecommunications access to interstate highway
287 rights-of-way for statewide telecommunications purposes.

288 (b) assist the department in valuing in-kind compensation in accordance with Subsection
289 72-7-108(3)(c);

290 (c) seek input from telecommunications providers and the public;

291 (d) coordinate and exchange information with other technology and telecommunications
292 entities of the state and its political subdivisions; and

293 (e) provide other assistance as requested by the department.

294 Section 6. **Effective date.**

295 This act takes effect on July 1, 2000.

Legislative Review Note
as of 11-17-99 4:53 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Public Utilities and Technology Interim Committee recommended this bill.