

Part 2
Department of Transportation

72-1-201 Creation of Department of Transportation -- Functions, powers, duties, rights, and responsibilities.

- (1) There is created the Department of Transportation which shall:
- (a) have the general responsibility for planning, research, design, construction, maintenance, security, and safety of state transportation systems;
 - (b) provide administration for state transportation systems and programs;
 - (c) implement the transportation policies of the state;
 - (d) plan, develop, construct, and maintain state transportation systems that are safe, reliable, environmentally sensitive, and serve the needs of the traveling public, commerce, and industry;
 - (e) establish standards and procedures regarding the technical details of administration of the state transportation systems as established by statute and administrative rule;
 - (f) advise the governor and the Legislature about state transportation systems needs;
 - (g) coordinate with utility companies for the reasonable, efficient, and cost-effective installation, maintenance, operation, relocation, and upgrade of utilities within state highway rights-of-way;
 - (h) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make policy and rules for the administration of the department, state transportation systems, and programs; and
 - (i) annually report to the Transportation Interim Committee, by November 30 of each year, as to the:
 - (i) operation, maintenance, condition, and safety needs for highways; and
 - (ii) condition, safety, and mobility of the state transportation system jointly with the Transportation Commission.
- (2)
- (a) The department shall exercise reasonable care in designing, constructing, and maintaining a state highway in a reasonably safe condition for travel.
 - (b) Nothing in this section shall be construed as:
 - (i) creating a private right of action; or
 - (ii) expanding or changing the department's common law duty as described in Subsection (2)(a) for liability purposes.

Amended by Chapter 137, 2016 General Session

72-1-202 Executive director of department -- Appointment -- Qualifications -- Term -- Responsibility -- Power to bring suits -- Salary.

- (1)
- (a) The governor, after consultation with the commission and with the consent of the Senate, shall appoint an executive director to be the chief executive officer of the department.
 - (b) The executive director shall be a qualified executive with technical and administrative experience and training appropriate for the position.
 - (c) The executive director shall remain in office until a successor is appointed.
 - (d) The executive director may be removed by the governor.
- (2) In addition to the other functions, powers, duties, rights, and responsibilities prescribed in this chapter, the executive director shall:

- (a) have responsibility for the administrative supervision of the state transportation systems and the various operations of the department;
- (b) have the responsibility for the implementation of rules, priorities, and policies established by the department and the commission;
- (c) have full power to bring suit in courts of competent jurisdiction in the name of the department as the executive director considers reasonable and necessary for the proper attainment of the goals of this chapter;
- (d) receive a salary, to be established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation, together with actual traveling expenses while away from the executive director's office on official business; and
- (e) purchase all necessary equipment and supplies for the department.

Amended by Chapter 78, 2013 General Session

72-1-203 Deputy director -- Appointment -- Qualifications -- Other assistants and advisers -- Salaries.

- (1) The executive director shall appoint a deputy director, who shall be a registered professional engineer in the state and shall serve at the discretion of the executive director.
- (2) The deputy director is the chief engineer of the department. The deputy director shall assist the executive director and is responsible for:
 - (a) program and project development; and
 - (b) operation and maintenance of the state transportation systems.
- (3) The executive director may also appoint assistants to administer the divisions of the department. These assistants shall serve at the discretion of the executive director.
- (4) In addition, the executive director may employ other assistants and advisers as the executive director finds necessary and fix salaries in accordance with the salary standards adopted by the Department of Human Resource Management.

Amended by Chapter 139, 2006 General Session

72-1-204 Divisions enumerated -- Duties.

The divisions of the department are:

- (1) the Administrative Services Division responsible for:
 - (a) all personnel management including recruiting, training, testing, developing, and assisting the transition of personnel into the department;
 - (b) maintaining records;
 - (c) data processing;
 - (d) procuring administrative supplies and equipment; and
 - (e) risk management;
- (2) the Comptroller Division responsible for:
 - (a) all financial aspects of the department, including budgeting, accounting, and contracting; and
 - (b) providing all material data and documentation necessary for effective fiscal planning and programming;
- (3) the Internal Audit Division responsible for:
 - (a) conducting and verifying all internal audits and reviews within the department;
 - (b) performing financial and compliance audits to determine the allowability and reasonableness of proposals, accounting records, and final costs of consultants, contractors, utility companies, and other entities used by the department; and

- (c) implementing audit procedures that meet or exceed generally accepted auditing standards relating to revenues, expenditures, and funding;
- (4) the Community Relations Division responsible for:
 - (a) coordinating, organizing, and managing the department's public hearing process;
 - (b) responding to citizens' complaints and requests;
 - (c) developing and implementing the department's public information programs;
 - (d) assisting the divisions and regions in the department's citizen involvement programs; and
 - (e) preparing and distributing internal department communications;
- (5) the Program Development Division responsible for:
 - (a) developing transportation plans for state transportation systems;
 - (b) collecting, processing, and storing transportation data to support department's engineering functions;
 - (c) designating state transportation systems qualifications;
 - (d) developing a statewide transportation improvement program for approval by the commission;
 - (e) providing cartographic services to the department; and
 - (f) assisting local governments in participating in federal-aid transportation programs;
- (6) the Project Development Division responsible for:
 - (a) developing statewide standards for project design and construction;
 - (b) providing support for project development in the areas of design environment, right-of-way, materials testing, structures, value engineering, and construction;
 - (c) designing specialty projects; and
 - (d) performing research into materials and methods for construction of state transportation systems; and
- (7) the Operations Division responsible for:
 - (a) maintaining the state transportation systems;
 - (b) state transportation systems safety;
 - (c) operating state ports-of-entry;
 - (d) operating state motor carrier safety programs in accordance with this title and federal law;
 - (e) aeronautical operations; and
 - (f) providing equipment for department engineering and maintenance functions.

Renumbered and Amended by Chapter 270, 1998 General Session

72-1-205 Region offices -- Region directors -- Qualifications -- Responsibilities.

- (1) The department shall maintain region offices throughout the state as the executive director finds reasonable and necessary for the efficient carrying out of the duties of the department.
- (2) The executive director shall appoint a region director for each region. Each region director shall be a qualified executive with technical and administrative experience and training.
- (3) The region director is responsible for:
 - (a) executing department policy within the region;
 - (b) supervising project development and operations of the state transportation systems within the region; and
 - (c) promoting the department's public involvement and information programs.
- (4) The executive director may also establish district offices within a region to implement maintenance, encroachment, safety, community involvement, and loss management functions of the region.

Renumbered and Amended by Chapter 270, 1998 General Session

72-1-206 Performance auditors -- Appointment -- Duties -- Reports.

- (1)
 - (a) The executive director, with the approval of a majority vote of the commission for each appointment, shall appoint not less than two performance auditors. A performance auditor may only be removed by the executive director with the approval of a majority vote of the commission.
 - (b) Each auditor shall have at least three years' experience in performance auditing prior to appointment.
- (2)
 - (a) The executive director shall ensure that the auditors receive:
 - (i) any staff support from the department that is necessary to fulfill their duties; and
 - (ii) access to all the department's records and information.
 - (b) The department may hire outside consultants to assist in the audits under Subsection (3).
- (3) The performance auditors shall conduct and supervise, as prioritized by the commission:
 - (a) performance audits to determine the efficiency and effectiveness of the department;
 - (b) financial audits to ensure the efficient and effective expenditure of department money;
 - (c) audits to ensure department compliance with state statutes, commission priorities, and legislative appropriation intent statements;
 - (d) audits to determine the impact of federal mandates, including air quality, wetlands, and other environmental standards on the cost and schedule of department projects;
 - (e) external audits on persons entering into contracts with the department, as necessary;
 - (f) studies to determine the time required to accomplish department and external contract work and their relative efficiencies;
 - (g) evaluations of the department's quality assurance and quality control programs; and
 - (h) any other executive director or commission requests.
- (4) The performance auditors shall conduct audits in accordance with applicable professional auditing standards.
- (5) The performance auditors shall provide copies of all reports of audit findings to the commission, the executive director, and the Legislative Auditor General.

Renumbered and Amended by Chapter 270, 1998 General Session

72-1-207 Department may sue and be sued -- Legal adviser of department -- Partial waiver of Eleventh Amendment immunity.

- (1) The department may sue, and it may be sued only on written contracts made by it or under its authority.
- (2) The department may sue in the name of the state.
- (3) In all matters requiring legal advice in the performance of its duties and in the prosecution or defense of any action growing out of the performance of its duties, the attorney general is the legal adviser of the commission, and the department, and shall perform any and all legal services required by the commission and the department without other compensation than his salary.
- (4) Upon request of the department, the attorney general shall aid in any investigation, hearing, or trial under the provisions of Chapter 9, Motor Carrier Safety Act, and institute and prosecute actions or proceedings for the enforcement of the provisions of the Constitution and statutes of this state or any rule or order of the department affecting motor carriers of persons and property.

- (5)
- (a) The state waives its immunity under the 11th Amendment of the United States Constitution and consents to suit in a federal court for lawsuits arising out of the department's compliance, discharge, or enforcement of responsibilities assumed pursuant to 23 U.S.C. Secs. 326 and 327.
 - (b) The waiver of immunity under this Subsection (5) is valid only if:
 - (i) the executive director or the executive director's designee executes a memorandum of understanding with the United States Department of Transportation accepting the jurisdiction of the federal courts as required by 23 U.S.C. Secs. 326(c) and 327(c);
 - (ii) before execution of the memorandum of understanding under Subsection (5)(b)(i), the attorney general has issued an opinion letter to the executive director and the administrator of the Federal Highway Administration that the memorandum of understanding and the waiver of immunity are valid and binding upon the state;
 - (iii) the act or omission that is the subject of the lawsuit arises out of or relates to compliance, discharge, or enforcement of responsibilities assumed by the department pursuant to 23 U.S.C. Secs. 326 and 327; and
 - (iv) the memorandum of understanding is in effect when the act or omission that is the subject of the federal lawsuit occurred.

Amended by Chapter 144, 2015 General Session

72-1-208 Cooperation with counties, cities, towns, the federal government, and all state departments -- Inspection of work done by a public transit district.

- (1) The department shall cooperate with the counties, cities, towns, and community reinvestment agencies in the construction, maintenance, and use of the highways and in all related matters, and may provide services to the counties, cities, towns, and community reinvestment agencies on terms mutually agreed upon.
- (2) The department, with the approval of the governor, shall cooperate with the federal government in all federal-aid projects and with all state departments in all matters in connection with the use of the highways.
- (3) The department:
 - (a) shall inspect all work done by a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, relating to safety appliances and procedures; and
 - (b) may make further additions or changes necessary for the purpose of safety to employees and the general public.

Amended by Chapter 350, 2016 General Session

72-1-208.5 Definition -- Cooperation with metropolitan planning organizations -- Cooperation in plans and programs required.

- (1) As used in this section, "metropolitan planning organization" means an organization established under 23 U.S.C. Sec. 134.
- (2) The department shall cooperate with a metropolitan planning organization in the metropolitan planning organization's responsibility to carry out a continuing, cooperative, and comprehensive process for transportation planning and project programming.
- (3) If a metropolitan planning organization has a contiguous boundary with another metropolitan planning organization, the department shall cooperate with those organizations if the metropolitan planning organizations have:

- (a) coordinated project priorities, transportation plans, and transportation improvement programs; and
 - (b) submitted joint priorities, plans, and programs to the department as comprehensive, integrated transportation plans.
- (4) Subject to the provisions of 23 U.S.C. Sec. 134, if the governor and the affected local units of government jointly determine that metropolitan planning organizations have failed to meet the guidelines under Subsection (3), the governor and local units of government may redesignate or realign the metropolitan planning organizations.
- (5)
- (a) A metropolitan planning organization is a governmental agency that is eligible to receive employment information from the Unemployment Insurance Division in accordance with Subsection 35A-4-312(5)(e) for the purpose of preparing transportation plans as required by 23 U.S.C. Sec. 134.
 - (b) Information obtained under Subsection (5)(a) is limited to the employer's:
 - (i) name;
 - (ii) worksite address;
 - (iii) industrial classification; and
 - (iv) number of employees.

Amended by Chapter 58, 2008 General Session

72-1-209 Department to cooperate in programs relating to scenic centers.

The department shall cooperate in planning and promoting road-building programs into the scenic centers of the state and in providing camping grounds and facilities in scenic centers for tourists with:

- (1) the Governor's Office of Economic Development;
- (2) other states;
- (3) all national, state, and local planning and zoning agencies and boards;
- (4) municipal and county officials; and
- (5) other agencies.

Amended by Chapter 148, 2005 General Session

72-1-210 Department to be assisted by faculties and personnel of universities.

The engineering machinery and apparatus and the force of mechanics and instructors in the University of Utah and Utah State University are at the disposal of the department, and any faculty member of the institutions shall furnish any information or assistance desired upon request of the department.

Renumbered and Amended by Chapter 270, 1998 General Session

72-1-211 Department to develop strategic initiatives -- Report -- Rulemaking.

- (1) The executive director shall develop strategic initiatives for the department.
- (2) The strategic initiatives developed under Subsection (1) shall include consideration of the following factors:
 - (a) corridor preservation;
 - (b) development of new transportation capacity projects;
 - (c) long-term maintenance and operations of the transportation system;

- (d) safety;
 - (e) incident management; and
 - (f) homeland security.
- (3)
- (a) The executive director or the executive director's designee shall report the strategic initiatives of the department developed under Subsection (1) to the Transportation Commission.
 - (b) The report required under Subsection (3)(a) shall include the measure that will be used to determine whether the strategic initiatives have been achieved.
- (4) After compliance with Subsection (3) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules establishing the strategic initiatives developed under this part.

Amended by Chapter 382, 2008 General Session

72-1-212 Special use permitting -- Rulemaking.

- (1) For purposes of this section, "special use permit" means a permit issued for a special use or a special event that takes place on a highway.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in consultation with representatives of the Utah League of Cities and Towns and the Utah Association of Counties, the department shall make rules that are not inconsistent with this chapter or the constitution and laws of this state or of the United States governing the issuance of a special use permit to maintain public safety and serve the needs of the traveling public.
- (3) The rules described in Subsection (2) may:
- (a) establish the highways for which the highest number of special use permits are issued;
 - (b) develop, in consultation with municipalities, a limit on the number of special use permits that may be issued in any calendar year on a particular highway;
 - (c) require a person to submit an application designated by the department before the department issues a special use permit;
 - (d) limit the number of special use permits issued on any one day for any specified location based on a first-come, first-served basis for completed applications;
 - (e) establish criteria for evaluating completed applications, such as historic use, potential economic benefit, or other relevant factors;
 - (f) specify conditions that are required to be met before a special use permit may be issued;
 - (g) establish a penalty for failure to fulfill conditions required by the special use permit, including suspension of the special use permit or suspension of a future special use permit;
 - (h) require an applicant to obtain insurance for certain special uses or special events; or
 - (i) provide other requirements to maintain public safety and serve the needs of the traveling public.
- (4) The limit on the number of special use permits described in Subsection (3)(b) may not include a special use permit issued for a municipality-sponsored special use or special event on a highway within the jurisdiction of the municipality.
- (5) The rules shall consider:
- (a) traveler safety and mobility;
 - (b) the safety of special use or special event participants;
 - (c) emergency access;
 - (d) the mobility of residents close to the event or use;
 - (e) access and economic impact to businesses affected by changes to the normal operation of highway traffic; and

- (f) past performance of an applicant's adherence to special use permit requirements.
- (6) The department shall adopt a fee schedule in accordance with Section 63J-1-504 that reflects the cost of services provided by the department associated with special use permits and with special uses or special events that take place on a highway.

Enacted by Chapter 267, 2015 General Session

72-1-213 Road usage charge study -- Recommendations.

The department shall:

- (1) continue to study a road usage charge mileage-based revenue system, including a potential demonstration program, as an alternative to the motor and special tax; and
- (2) make recommendations to the Legislature and other policymaking bodies on the potential use and future implementation of a road usage charge within the state.

Enacted by Chapter 275, 2015 General Session