Part 1
General Provisions

72-6-101 Title.

This chapter is known as the "Construction, Maintenance, and Operations Act."

Enacted by Chapter 270, 1998 General Session

72-6-102 Uniform plans and specifications for construction and maintenance.

The department shall:

(1) prepare and adopt uniform standard plans and specifications for the construction and maintenance of state highways; and

(2) issue a manual containing plans and specifications for the information and guidance of officials having supervision of the construction and maintenance of state highways.

Renumbered and Amended by Chapter 270, 1998 General Session

72-6-103 Plans, specifications, and estimates for culverts, bridges, and road construction.

The department shall furnish plans, specifications, and estimates for culverts, bridges, road construction, and other related information desired by local highway authorities for use on county roads and city streets on terms mutually agreed upon.

Renumbered and Amended by Chapter 270, 1998 General Session

72-6-104 Highways to conform to grade and direction in municipalities.

Except for the highways part of the interstate system, a highway that extends through a municipality shall conform to the direction and grade of other streets in the municipality unless permission is obtained from the highway authorities of the municipality for a variance in the direction and grade.

Renumbered and Amended by Chapter 270, 1998 General Session

72-6-105 Contracts for construction and maintenance -- Agreements with county or municipality.

The department may enter into written agreements on behalf of the state with any county or municipality for rights-of-way and the construction or maintenance of any part of a state highway:

(1) at the expense of the state;

(2) at the expense of any county or municipality; or

(3) at the joint expense of the state and any county and any municipality.

Renumbered and Amended by Chapter 270, 1998 General Session

72-6-106 Use of recycled asphalt.

(1) In making plans, specifications, and estimates, and in advertising for bids under this chapter, the department shall allow up to 25% but may allow up to 60% reclaimed asphalt pavement to be incorporated into hot asphaltic concrete used for road construction and maintenance.

(2) The department shall ensure that hot asphaltic concrete incorporating reclaimed asphalt pavement meets or exceeds the department quality standards for roads constructed or maintained with hot asphaltic concrete not containing reclaimed asphalt pavement.
(3) If the department rejects any hot asphaltic concrete containing reclaimed asphalt pavement, the department shall give a written statement to the provider indicating the specific reasons the hot asphaltic concrete was rejected.
(4) This section does not authorize the state to directly or indirectly subsidize the production of hot asphaltic concrete containing reclaimed asphalt pavement.

Renumbered and Amended by Chapter 270, 1998 General Session

72-6-106.5 Reuse of industrial byproducts.

(1) As used in this section:
(a) "Director" is as defined in Section 19-6-1102.
(b) "Industrial byproduct" has the same meaning as defined in Section 19-6-1102.
(c) "Public project" has the same meaning as defined in Section 19-6-1102.
(d) "Reuse" has the same meaning as defined in Section 19-6-1102.
(2) Consistent with the protection of public health and the environment and generally accepted engineering practices, the department shall, to the maximum extent possible considering budgetary factors:
(a) allow and encourage the reuse of an industrial byproduct in:
(i) a plan, specification, and estimate for a public project; and
(ii) advertising for a bid for a public project;
(b) allow for the reuse of an industrial byproduct in, among other uses:
(i) landscaping;
(ii) a general geotechnical fill;
(iii) a structural fill;
(iv) concrete or asphalt;
(v) a base or subbase; and
(vi) geotechnical drainage materials; and
(c) promulgate and apply public project specifications that allow reuse of an industrial byproduct based upon:
(i) cost;
(ii) performance; and
(iii) engineered equivalency in lifespan, durability, and maintenance.
(3) After the director issues an approval under Section 19-6-1104 and the department uses the industrial byproduct in compliance with the director's approval:
(a) the department is not responsible for further management of the industrial byproduct; and
(b) the generator or originator of the industrial byproduct is not responsible for the industrial byproduct under Title 19, Environmental Quality Code.

Amended by Chapter 360, 2012 General Session

72-6-107 Construction or improvement of highway -- Contracts -- Retainage -- Certain indemnification provisions forbidden.

(1) As used in this section, "design professional" means:
(a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;

(b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects Licensing Act; and
(c) a professional engineer or professional land surveyor, licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

(2)
(a) The department shall make plans, specifications, and estimates prior to the construction or improvement of any state highway.
(b) Except as provided in Section 63G-6a-1402 and except for construction or improvements performed with state prison labor, a construction or improvement project with an estimated cost exceeding the bid limit as defined in Section 72-6-109 for labor and materials shall be performed under contract awarded to the lowest responsible bidder.
(c)
(i) The department:
(A) shall publish an advertisement for bids in accordance with Section 45-1-101, for a period of two weeks ending no more than 10 days before bids are opened; and
(B) may publish an advertisement for bids in a newspaper of general circulation in the county in which the work is to be performed.
(ii) If the department publishes an advertisement for bids in a newspaper under Subsection (2)(c)(i)(B), the department shall publish the advertisement at least once a week for two consecutive weeks, with the last publication at least 10 days before bids are opened.
(d) The department shall receive sealed bids and open the bids at the time and place designated in the advertisement. The department may then award the contract but may reject any and all bids.
(e) If the department's estimates are substantially lower than any responsible bid received, the department may perform any work by force account.

(3) If any payment on a contract with a private contractor for construction or improvement of a state highway is retained or withheld, the payment shall be retained or withheld and released as provided in Section 13-8-5.

(4) If the department performs a construction or improvement project by force account, the department shall:
(a) provide an accounting of the costs and expenditures of the improvement including material and labor;
(b) disclose the costs and expenditures to any person upon request and allow the person to make a copy and pay for the actual cost of the copy; and
(c) perform the work using the same specifications and standards that would apply to a private contractor.

(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish procedures for:
(a) hearing evidence that a region within the department violated this section; and
(b) administering sanctions against the region if the region is found in violation.

(6)
(a) Beginning May 12, 2009, a contract, including an amendment to an existing contract, entered into under authority of this chapter may not require that a design professional indemnify another from liability claims that arise out of the design professional's services, unless the liability claim arises from the design professional's negligent act, wrongful act, error or omission, or other liability imposed by law.
(b) Subsection (6)(a) may not be waived by contract.

(c) Notwithstanding Subsections (6)(a) and (b), a design professional may be required to indemnify a person for whom the design professional has direct or indirect control or responsibility.

Amended by Chapter 347, 2012 General Session

72-6-107.5 Construction of improvements of highway -- Contracts -- Health insurance coverage.

(1) As used in this section:
(a) "Aggregate" means the sum of all contracts, change orders, and modifications related to a single project.
(b) "Change order" means the same as that term is defined in Section 63G-6a-103.
(c) "Employee" means, as defined in Section 34A-2-104, an "employee," "worker," or "operative" who:
(i) works at least 30 hours per calendar week; and
(ii) meets employer eligibility waiting requirements for health care insurance, which may not exceed the first day of the calendar month following 60 days after the day on which the individual is hired.
(d) "Health benefit plan" means:
(i) the same as that term is defined in Section 31A-1-301; or
(ii) an employee welfare benefit plan:
(A) established under the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.;
(B) for an employer with 100 or more employees; and
(C) in which the employer establishes a self-funded or partially self-funded group health plan to provide medical care for the employer's employees and dependents of the employees.
(e) "Qualified health coverage" means the same as that term is defined in Section 26B-3-909.
(f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.
(g) "Third party administrator" or "administrator" means the same as that term is defined in Section 31A-1-301.
(2) Except as provided in Subsection (3), the requirements of this section apply to:
(a) a contractor of a design or construction contract entered into by the department on or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than $2,000,000; and
(b) a subcontractor of a contractor of a design or construction contract entered into by the department on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than $1,000,000.
(3) The requirements of this section do not apply to a contractor or subcontractor described in Subsection (2) if:
(a) the application of this section jeopardizes the receipt of federal funds;
(b) the contract is a sole source contract; or
(c) the contract is an emergency procurement.
(4) A person that intentionally uses change orders, contract modifications, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.
(5)
(a) A contractor subject to the requirements of this section shall demonstrate to the department that the contractor has and will maintain an offer of qualified health coverage for the

contractor's employees and the employees' dependents during the duration of the contract by submitting to the department a written statement that:

(i) the contractor offers qualified health coverage that complies with Section 26B-3-909;

(ii) is from:

(A) an actuary selected by the contractor or the contractor's insurer;

(B) an underwriter who is responsible for developing the employer group's premium rates; or

(C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by a third party administrator; and

(iii) was created within one year before the day on which the statement is submitted.

(b)

(i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii) shall provide the actuary or underwriter selected by an administrator, as described in Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the actuarial value of the health benefit plan meet the requirements of qualified health coverage.

(ii) A contractor may not make a change to the contractor's contribution to the health benefit plan, unless the contractor provides notice to:

(A) the actuary or underwriter selected by an administrator, as described in Subsection (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in Subsection (5)(a) in compliance with this section; and

(B) the department.

(c) A contractor that is subject to the requirements of this section shall:

(i) place a requirement in each of the contractor's subcontracts that a subcontractor that is subject to the requirements of this section shall obtain and maintain an offer of qualified health coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(ii) obtain from a subcontractor that is subject to the requirements of this section a written statement that:

(A) the subcontractor offers qualified health coverage that complies with Section 26B-3-909;

(B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an underwriter who is responsible for developing the employer group's premium rates, or if the subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by an administrator; and

(C) was created within one year before the day on which the contractor obtains the statement.

(d)

(i)

(A) A contractor that fails to maintain an offer of qualified health coverage described in Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

(ii)

(A) A subcontractor that fails to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c) during the duration of the subcontract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health coverage described in Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
(b) in coordination with:
(i) the Department of Environmental Quality in accordance with Section 19-1-206;
(ii) the Department of Natural Resources in accordance with Section 79-2-404;
(iii) the Division of Facilities Construction and Management in accordance with Section 63A-5b-607;
(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
(v) a public transit district in accordance with Section 17B-2a-818.5; and
(vi) the Legislature's Administrative Rules Review and General Oversight Committee; and
(c) that establish:
(i) the requirements and procedures a contractor and a subcontractor shall follow to demonstrate compliance with this section, including:
(A) that a contractor or subcontractor's compliance with this section is subject to an audit by the department or the Office of the Legislative Auditor General;
(B) that a contractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(a); and
(C) that a subcontractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(c)(ii);
(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:
(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;
(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;
(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and
(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for an employee and a dependent of the employee of the contractor or subcontractor who was not offered qualified health coverage during the duration of the contract; and
(iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by the Department of Health and Human Services, in accordance with Subsection 26B-3-909(2).
(7)
(a)
(i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor or subcontractor who intentionally violates the provisions of this section is liable to the employee for health care costs that would have been covered by qualified health coverage.
(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:
(A) the employer relied in good faith on a written statement described in Subsection (5)(a) or (5)(c)(ii); or
(B) the department determines that compliance with this section is not required under the provisions of Subsection (3).
(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).
(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26B-1-309.

(9) The failure of a contractor or subcontractor to provide qualified health coverage as required by this section:
  (a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:
    (i) Section 63G-6a-1602; or
    (ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and
  (b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.
(10) An administrator, including an administrator's actuary or underwriter, who provides a written statement under Subsection (5)(a) or (c) regarding the qualified health coverage of a contractor or subcontractor who provides a health benefit plan described in Subsection (1)(d)(ii):
  (a) subject to Subsection (10)(b), is not liable for an error in the written statement, unless the administrator commits gross negligence in preparing the written statement;
  (b) is not liable for any error in the written statement if the administrator relied in good faith on information from the contractor or subcontractor; and
  (c) may require as a condition of providing the written statement that a contractor or subcontractor hold the administrator harmless for an action arising under this section.

Amended by Chapter 330, 2023 General Session

72-6-108 Class B and C roads -- Improvement projects -- Notice -- Contracts -- Retainage.
(1) A county executive for class B roads and the municipal executive for class C roads shall cause plans, specifications, and estimates to be made prior to the construction of any improvement project, as defined in Section 72-6-109, on a class B or C road if the estimated cost for any one project exceeds the bid limit as defined in Section 72-6-109 for labor, equipment, and materials.
(2)
  (a) All projects in excess of the bid limit shall be performed under contract to be let to the lowest responsible bidder.
  (b) If the estimated cost of the improvement project exceeds the bid limit for labor, equipment, and materials, the project may not be divided to permit the construction in parts, unless each part is done by contract.
(3) The advertisement on bids shall be published for the county, as a class A notice under Section 63G-30-102, for three weeks.
(4) The county or municipal executive or their designee shall receive sealed bids and open the bids at the time and place designated in the advertisement. The county or municipal executive or their designee may then award the contract but may reject any and all bids.
(5) The person, firm, or corporation that is awarded a contract under this section is subject to the provisions of Title 63G, Chapter 6a, Utah Procurement Code.
(6) If any payment on a contract with a private contractor for construction or improvement of a class B or C road is retained or withheld, the payment shall be retained or withheld and released as provided in Section 13-8-5.

Amended by Chapter 435, 2023 General Session

72-6-108.5 Class B and C roads -- Federal-aid highway construction contract.
(1) Subject to the requirements of 23 C.F.R. 1.3 and if requested by a local highway authority that is the sponsor of the federal-aid highway construction project, the department shall allow a local

highway authority to be an additional contracting party for a federal-aid highway construction contract on a class B or C road along with the department.

(2) If a local highway authority makes a request to be an additional contracting party under Subsection (1), the department may include the local highway authority as an additional bondholder or obligee on the performance bond.

(3) Notwithstanding the provisions of this section, the department shall have the final authority to make decisions relating to a federal-aid highway construction contract on a class B or C road.

Enacted by Chapter 175, 2011 General Session

72-6-109 Class B and C roads -- Construction and maintenance -- Definitions -- Estimates lower than bids -- Accountability.

(1) As used in this section and Section 72-6-108:

(a) "Bid limit" means:

(i) for the year 2003, $125,000; and

(ii) for each year after 2003, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the lesser of 3% or the actual percent change in the Consumer Price Index during the previous calendar year.

(b) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.

(c)

(i) "Construction" means the work that would apply to:

(A) any new roadbed either by addition to existing systems or relocation;

(B) resurfacing of existing roadways with more than two inches of bituminous pavement; or

(C) new structures or replacement of existing structures, except the replacement of drainage culverts.

(ii) "Construction" does not include maintenance, emergency repairs, or the installation of traffic control devices as described in Section 41-6a-302.

(d) "Improvement project" means construction and maintenance as defined in this section except for that maintenance excluded under Subsection (2).

(e) "Maintenance" means the keeping of a road facility in a safe and usable condition to which it was constructed or improved, and includes:

(i) the reworking of an existing surface by the application of up to and including two inches of bituminous pavement;

(ii) the installation or replacement of guardrails, seal coats, and culverts;

(iii) the grading or widening of an existing unpaved road or flattening of shoulders or side slopes to meet current width and safety standards; and

(iv) horizontal or vertical alignment changes necessary to bring an existing road in compliance with current safety standards.

(f) "Project" means the performance of a clearly identifiable group of associated road construction activities or the same type of maintenance process, where the construction or maintenance is performed on any one class B or C road, within a half-mile proximity and occurs within the same calendar year.

(2) The following types of maintenance work are not subject to the contract or bid limit requirements of this section:

(a) the repair of less than the entire surface by crack sealing or patching; and

(b) road repairs incidental to the installation, replacement, or repair of water mains, sewers, drainage pipes, culverts, or curbs and gutters.

(3)

(a)

(i) If the estimates of a qualified engineer referred to in Section 72-6-108 are substantially lower than any responsible bid received or in the event no bids are received, the county or municipality may perform the work by force account.

(ii) In no event shall "substantially lower" mean estimates that are less than 10% below the lowest responsible bid.

(b) If a county or municipality performs an improvement project by force account, it shall:

(i) provide an accounting of the costs and expenditures of the improvement including material, labor, and direct equipment costs to be calculated using the Cost Reference Guide for Construction Equipment by Dataquest Inc. or the Federal Emergency Management Agency schedule of equipment rates;

(ii) disclose the costs and expenditures to any person upon request and allow the person to make a copy and pay for the actual cost of the copy; and

(iii) perform the work using the same specifications and standards that would apply to a private contractor.

Amended by Chapter 69, 2007 General Session

72-6-110 Supervision and standards of construction for class B and C roads.

(1) All construction plans, specifications, and estimates and all construction work under Section 72-6-108 shall be prepared and performed under the direct supervision of a registered professional engineer.

(2) The supervising engineer shall certify to the county legislative body or the municipal executive that all road construction projects conform to design and construction standards as currently adopted by the American Association of State Highway and Transportation officials.

Renumbered and Amended by Chapter 270, 1998 General Session

72-6-111 Construction and maintenance of appurtenances -- Noise abatement measures.

(1) The department is authorized to construct and maintain appurtenances along the state highway system necessary for public safety, welfare, and information. Appurtenances include highway illumination, sidewalks, curbs, gutters, steps, driveways, retaining walls, fire hydrants, guard rails, noise abatement measures, storm sewers, and rest areas.

(2) A noise abatement measure may only be constructed by the department along a highway when:

(a) the department is constructing a new state highway or performing major reconstruction on an existing state highway;

(b) the Legislature provides an appropriation or the federal government provides funding for construction of retrofit noise abatement along an existing state highway; or

(c) the cost for the noise abatement measure is provided by citizens, adjacent property owners, developers, or local governments.

(3) In addition to the requirements under Subsection (2), the department may only construct noise abatement measures within the unincorporated area of a county or within a municipality that has an ordinance or general plan that requires:

(a) a study to be conducted to determine the noise levels along new development adjacent to an existing state highway or a dedicated right-of-way; and
(b) the construction of noise abatement measures at the expense of the developer if required to be constructed under standards established by a rule of the department.
(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules establishing:
(a) when noise abatement measures are required to be constructed, including standards for decibel levels of traffic noise;
(b) the decibel level of traffic noise which identifies the projects to be programmed by the commission for the earliest construction of retrofit noise abatement measures funded under Subsection (2)(b) based on availability of funding; and
(c) a priority system for the construction of other retrofit noise abatement measures that meet or exceed the standards established under this section and are funded under Subsection (2)(b) which includes:
(i) the number of residential dwellings adversely affected by the traffic noise;
(ii) the cost effectiveness of mitigating the traffic noise; and
(iii) the length of time the decibel level of traffic noise has met or exceeded the standards established under this section.

Amended by Chapter 382, 2008 General Session

72-6-112 Traffic Noise Abatement Program -- Uses.
(1) There is created the Traffic Noise Abatement Program.
(2) The program consists of money generated from the following revenue sources:
(a) any voluntary contributions received for traffic noise abatement; and
(b) appropriations made to the program by the Legislature.
(3) The department shall use program money as prioritized by the commission and as provided by law for the study, design, construction, and maintenance of noise abatement measures.
(4) All funding for the Traffic Noise Abatement Program shall be nonlapsing.

Renumbered and Amended by Chapter 270, 1998 General Session

72-6-112.5 Definitions -- Nighttime highway construction noise -- Exemptions -- Permits.
(1) As used in this section:
(a) "Commuter rail" means the same as that term is defined in Section 63N-3-602.
(b)
(i) "Front row receptor" means a noise-sensitive residential receptor that is:
(A) immediately adjacent to a transportation facility; or
(B) within 800 feet of a transportation facility that is within a commercial or industrialized area.
(ii) "Front row receptor" includes a residence that is contiguous to a property immediately adjacent to a transportation facility in a residential area.
(c) "Nighttime construction" means highway or public transit facility construction occurring between the hours of 10:00 p.m. and 7:00 a.m.
(d) "Nuisance" means the same as that term is defined in Section 78B-6-1101.
(e)
(i) "Permitted activities" means activities occurring between the hours of 7:00 p.m. and 7:00 a.m. that are related to and necessary for nighttime construction, whether occurring at the construction site or at a gravel pit or other site for production of raw materials, and includes:

(A) loading and unloading of trucks;
(B) asphalt mixing and hauling; and
(C) concrete mixing and hauling.
(ii) "Permitted activities" does not include:
(A) blasting; or
(B) crushing.
(2) The following projects are exempt from any noise ordinance, regulation, or standard of a local jurisdictional authority:
(a) a state highway construction project conducted on a road where the normal posted speed limit is 55 miles per hour or greater; or
(b) a commuter rail construction project.
(3) Except for a project described in Subsection (2), a state highway or a public transit facility construction project is exempt from any noise ordinance, regulation, or standard of a local jurisdictional authority if the department:
(a) provides reasonable written notice at least 48 hours in advance of any required nighttime construction to each residential dwelling located within front row receptors of the activity;
(b) determines a net community, including traveler community, benefit exists to conduct nighttime highway construction after considering the following:
(i) public health;
(ii) project completion time;
(iii) air quality;
(iv) traffic;
(v) economics;
(vi) safety; and
(vii) local jurisdiction concerns; and
(c) institutes best management noise reduction practices, as determined by the department, for front row receptors, in consultation with local government or the local jurisdictional authority for all nighttime construction, which may include:
(i) equipment maintenance;
(ii) noise shielding;
(iii) scheduling the most noise intrusive activities during the day; and
(iv) other noise mitigation methods.
(4)
(a) Subject to Subsection (2) or (3), a state highway project or public transit facility construction shall secure required noise permits from the local jurisdictional authority to conduct nighttime construction.
(b) To the extent practical, the department shall coordinate with the local jurisdictional authority during the pre-construction phase of a project to address noise exemption conditions.
(5) A local jurisdictional authority shall issue a nighttime construction permit limited to permitted activities if:
(a) the applicant provides evidence that the permitted activities are directly related to and necessary for a nighttime construction project for which the department has obtained a noise permit from a local jurisdictional authority pursuant to Subsection (4); and
(b) the local jurisdictional authority determines that any nuisance that may be caused by the nighttime construction may be reasonably mitigated.
(6) A local jurisdictional authority shall issue a nighttime construction noise permit without additional requirements to the department at the request of the department or the department's designated project agent if the requirements of Subsection (2) or (3) are met.

(7)
(a) A local jurisdictional authority may request adjustments to a nighttime construction permit to mitigate unreasonable noise disturbances caused by nighttime construction or permitted activities.
(b) If adjustments are requested as described in Subsection (7)(a), the nighttime construction permit holder shall use best management noise reduction practices to mitigate unreasonable noise disturbances.
(8)
(a) For the exemption provided in Subsection (3) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules establishing procedures:
(i) for a local jurisdictional authority or local government to appeal the decision of the department to conduct nighttime construction; and
(ii) for the local jurisdictional authority to request that the department enforce the terms of a noise permit.
(b) After review and upon receiving a written notice from a local jurisdictional authority that the conditions for the noise exemption permit are not met, the department shall take corrective action to ensure nighttime construction activities meet requirements of the local permit.

Amended by Chapter 22, 2023 General Session

72-6-113 Acquisition and improvement of land for preservation of scenic beauty -- Authority of department.
(1) The department is authorized to acquire and improve strips of land necessary for the restoration, preservation, and enhancement of scenic beauty within and adjacent to a federal-aid highway of this state, including acquisition of publicly owned and controlled rest and recreation areas, sanitary, and other facilities within or adjacent to the highway right-of-way reasonably necessary to accommodate the traveling public.
(2) Acquisition may be by gift, purchase, or exchange but may not be by condemnation.
(3) The interest in any land authorized to be acquired and maintained under this section may be fee simple or any lesser interest, as determined by the department to be reasonably necessary to accomplish the purposes of this section.
(4)
(a) Real property, or any interest in real property, acquired under this section is part of the adjacent or nearest highway and is under the jurisdiction of the department.
(b) The department may enter into an agreement with any state agency for maintenance of land acquired in accordance with this section.

Renumbered and Amended by Chapter 270, 1998 General Session

72-6-114 Restricting use of or closing highway -- Penalty for failure to observe barricade, warning light, etc.
(1) A highway authority may close or restrict travel on a highway under their jurisdiction due to construction, maintenance work, or emergency.
(2) If a highway or portion of a highway is closed or restricted to travel, a highway authority shall cause suitable barriers and notices to be posted and maintained in accordance with Section 41-6a-301.

(3) A person who willfully fails to observe any temporary or permanent barricade, warning light, sign, cone, or other object used in accordance with this section, or to obey a flagman, is guilty of a class B misdemeanor.

Amended by Chapter 59, 2012 General Session

72-6-115 Traffic Management Systems.

(1)
(a) The Department of Transportation shall implement and administer traffic management systems to:
(i) facilitate the efficient flow of motor vehicle traffic on state highways to improve regional mobility; and
(ii) reduce motor vehicle emissions where those improvements are cost effective.
(b) A traffic management system shall be designed to allow safe, efficient, and effective:
(i) integration of existing traffic management systems;
(ii) additions of highways and intersections under county and city administrative jurisdiction;
(iii) incorporation of other traffic management systems; and
(iv) adaptation to future traffic needs.

(2)
(a) The cost of implementing and administering a traffic management system shall be shared pro rata by the department and the counties and municipalities using it.
(b) The department shall enter into an agreement or contract under Title 11, Chapter 13, Interlocal Cooperation Act, with a county or municipality to share costs incurred under this section.

(3) Additional highways and intersections under the administrative jurisdiction of a county or municipality may be added to a traffic management system upon application of the county or municipality after:
(a) approval by the department;
(b) determination of the appropriate cost share of the addition under Subsection (2)(a); and
(c) an agreement under Subsection (2)(b).

Amended by Chapter 374, 2012 General Session

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

(1) As used in this section:
(a) "Cost of relocation" includes the entire amount paid by the utility company properly attributable to the relocation of the utility after deducting any increase in the value of the new utility and any salvage value derived from the old utility.
(b) "Exempt water supplier" means an entity that directly or indirectly supplies at least a portion of the entity's water for culinary purposes to the public for municipal, domestic, or industrial use, and is:
(i) a water corporation, as defined in Section 54-2-1, that is regulated by the Public Service Commission; or
(ii) a community water system:
(A) that either supplies water to at least 100 service connections used by year-round residents, or regularly serves at least 200 year-round residents; and
(B) whose voting members own a share in the community water system, receive water from the community water system in proportion to the member's share in the community water

system, and pay the rate set by the community water system based on the water the member receives.

(c) "Utility" includes telecommunication, crude oil, petroleum products, gas, electricity, cable television, water, sewer, data, and video transmission lines, drainage and irrigation facilities, and other similar utilities whether public, private, or cooperatively owned.

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

(2)

(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules for the installation, construction, maintenance, repair, renewal, system upgrade, and relocation of all utilities.

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

(3)

(a) The department shall pay 100% of the cost of relocation of a utility to accommodate construction of a state highway project, including the construction of a proposed state highway and the improvement, widening, or modification of an existing state highway if the:

(i) utility is owned or operated by:

(A) a political subdivision of the state; or

(B) an exempt water supplier;

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

(iii) utility is located in a public utility easement as defined in Section 54-3-27.

(b) Except as provided in Subsection (3)(a), (c), or (d) or Section 54-21-603, the department shall pay 50% of the cost of relocation of a utility to accommodate construction of a state highway project, including the construction of a proposed state highway and the improvement, widening, or modification of an existing state highway, and the utility company shall pay the remainder of the cost of relocation.

(c) If the utility described in Subsection (3)(b) is a crude oil or petroleum products pipeline, unless the utility meets the conditions described in Subsection (3)(a):

(i) the utility company shall pay the lesser of:

(A) 50% of the cost of relocation of the pipeline to accommodate construction of a proposed state highway and the improvement, widening, and modification of an existing highway; or

(B) 50% of the cost of any structure or facility necessary to avoid impinging on the pipeline, and the department shall pay the remainder of the cost of the structure or facility; and

(ii) the department shall pay the remainder of the cost.

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

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

(5) In accordance with this section, the cost of relocating a utility in connection with any project on a highway is a cost of highway construction.

(6)

(a) The department shall notify affected utility companies, in accordance with Section 54-3-29, whenever the relocation of utilities is likely to be necessary because of a reconstruction project.

(b) The notification shall be made during the preliminary design of the project or as soon as practical in order to minimize the number, costs, and delays of utility relocations.
(c) A utility company notified under this Subsection (6) shall coordinate and cooperate with the department and the department's contractor on the utility relocations, including the scheduling of the utility relocations.

Amended by Chapter 80, 2020 General Session

72-6-117 Limited-access facilities and service roads -- Access -- Right-of-way acquisition -- Grade separation -- Written permission required.

(1) A highway authority, acting alone or in cooperation with the federal government, another highway authority, or another state may plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide a limited-access facility including a service road to the limited-access facility.
(2) A highway authority may regulate, restrict, or prohibit the use of a limited-access facility by pedestrians, animals, or by the various classes of vehicles or traffic.
(3) A highway authority may divide and separate any limited-access facility into separate roadways by the construction of raised curbing, central dividing sections, or other physical separations, or by designating separate roadways by signs, markers, stripes, and other appropriate devices.
(4) A person may not enter, exit, or cross a limited-access facility, except at designated points at which access is permitted by the highway authority.
(5) A highway authority may acquire, by gift, devise, purchase, or condemnation, private or public property and property rights for a limited-access facility and service road, including rights of access, air, view, and light. All property rights acquired under this section may be in fee simple or in any lesser estate or interest. A highway authority may acquire an entire lot, block, or tract of land, if needed, even though the entire lot, block, or tract is not immediately needed for the right-of-way of the limited-access facility or service road.
(6) A highway authority may designate and establish limited-access highways as new facilities or may designate and establish an existing highway as part of a limited-access facility.
(7)
(a) A highway authority may provide for the elimination of at grade intersections of a limited-access facility and an existing highway by grade separation, service road, or by closing the intersecting highway.
(b) A highway authority may not connect or intersect a limited-access facility without the written consent and previous approval of the highway authority having jurisdiction over the limited-access facility.
(8) Highway authorities may enter into agreements with each other, or with the federal government, on the financing, planning, establishment, improvement, maintenance, use, regulation, or vacation of limited-access facilities or other public ways in their respective jurisdiction, to facilitate the purposes of this section.

Enacted by Chapter 270, 1998 General Session

72-6-118 Definitions -- Establishment and operation of tollways -- Imposition and collection of tolls -- Amount of tolls -- Rulemaking.

(1) As used in this section:
(a) "High occupancy toll lane" means a high occupancy vehicle lane designated under Section 41-6a-702 that may be used by an operator of a vehicle carrying less than the number of

persons specified for the high occupancy vehicle lane if the operator of the vehicle pays a toll or fee.

(b) "Toll" means any tax, fee, or charge assessed for the specific use of a tollway.

(c) "Toll lane" means a designated new highway or additional lane capacity that is constructed, operated, or maintained for which a toll is charged for its use.

(d)

(i) "Tollway" means a highway, highway lane, bridge, path, tunnel, or right-of-way designed and used as a transportation route that is constructed, operated, or maintained through the use of toll revenues.

(ii) "Tollway" includes a high occupancy toll lane and a toll lane.

(e) "Tollway development agreement" has the same meaning as defined in Section 72-6-202.

(2) Subject to the provisions of Subsection (3), the department may:

(a) establish, expand, and operate tollways and related facilities for the purpose of funding in whole or in part the acquisition of right-of-way and the design, construction, reconstruction, operation, enforcement, and maintenance of or impacts from a transportation route for use by the public;

(b) enter into contracts, agreements, licenses, franchises, tollway development agreements, or other arrangements to implement this section;

(c) impose and collect tolls on any tollway established under this section, including collection of past due payment of a toll or penalty;

(d) grant exclusive or nonexclusive rights to a private entity to impose and collect tolls pursuant to the terms and conditions of a tollway development agreement;

(e) use technology to automatically monitor a tollway and collect payment of a toll, including:

(i) license plate reading technology; and

(ii) photographic or video recording technology; and

(f) in accordance with Subsection (5), request that the Division of Motor Vehicles deny a request for registration of a motor vehicle if the motor vehicle owner has failed to pay a toll or penalty imposed for usage of a tollway involving the motor vehicle for which registration renewal has been requested.

(3)

(a) The department may establish or operate a tollway on an existing highway if approved by the commission in accordance with the terms of this section.

(b) To establish a tollway on an existing highway, the department shall submit a proposal to the commission including:

(i) a description of the tollway project;

(ii) projected traffic on the tollway;

(iii) the anticipated amount of the toll to be charged; and

(iv) projected toll revenue.

(4)

(a) For a tollway established under this section, the department may:

(i) according to the terms of each tollway, impose the toll upon the owner of a motor vehicle using the tollway according to the terms of the tollway;

(ii) send correspondence to the owner of the motor vehicle to inform the owner of:

(A) an unpaid toll and the amount of the toll to be paid to the department;

(B) the penalty for failure to pay the toll timely; and

(C) a hold being placed on the owner's registration for the motor vehicle if the toll and penalty are not paid timely, which would prevent the renewal of the motor vehicle's registration;

(iii) require that the owner of the motor vehicle pay the toll to the department within 30 days of the date when the department sends written notice of the toll to the owner; and

(iv) impose a penalty for failure to pay a toll timely.

(b) The department shall mail the correspondence and notice described in Subsection (4)(a) to the owner of the motor vehicle according to the terms of a tollway.

(5)

(a) The Division of Motor Vehicles and the department shall share and provide access to information pertaining to a motor vehicle and tollway enforcement including:

(i) registration and ownership information pertaining to a motor vehicle;

(ii) information regarding the failure of a motor vehicle owner to timely pay a toll or penalty imposed under this section; and

(iii) the status of a request for a hold on the registration of a motor vehicle.

(b) If the department requests a hold on the registration in accordance with this section, the Division of Motor Vehicles may not renew the registration of a motor vehicle under Title 41, Chapter 1a, Part 2, Registration, if the owner of the motor vehicle has failed to pay a toll or penalty imposed under this section for usage of a tollway involving the motor vehicle for which registration renewal has been requested until the department withdraws the hold request.

(6)

(a) Except as provided in Subsection (6)(b), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall:

(i) set the amount of any toll imposed or collected on a tollway on a state highway; and

(ii) for tolls established under Subsection (6)(b), set:

(A) an increase in a toll rate or user fee above an increase specified in a tollway development agreement; or

(B) an increase in a toll rate or user fee above a maximum toll rate specified in a tollway development agreement.

(b) A toll or user fee and an increase to a toll or user fee imposed or collected on a tollway on a state highway that is the subject of a tollway development agreement shall be set in the tollway development agreement.

(7)

(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules:

(i) necessary to establish and operate tollways on state highways;

(ii) that establish standards and specifications for automatic tolling systems and automatic tollway monitoring technology; and

(iii) to set the amount of a penalty for failure to pay a toll under this section.

(b) The rules shall:

(i) include minimum criteria for having a tollway; and

(ii) conform to regional and national standards for automatic tolling.

(8)

(a) The commission may provide funds for public or private tollway pilot projects or high occupancy toll lanes from General Fund money appropriated by the Legislature to the commission for that purpose.

(b) The commission may determine priorities and funding levels for tollways designated under this section.

(9)

(a) Except as provided in Subsection (9)(b), all revenue generated from a tollway on a state highway shall be deposited into the Tollway Special Revenue Fund created in Section 72-2-120 and used for any state transportation purpose.
(b) Revenue generated from a tollway that is the subject of a tollway development agreement shall be deposited into the Tollway Special Revenue Fund and used in accordance with Subsection (9)(a) unless:
(i) the revenue is to a private entity through the tollway development agreement; or
(ii) the revenue is identified for a different purpose under the tollway development agreement.
(10) Data described in Subsection (2)(e) obtained for the purposes of this section:
(a) in accordance with Section 63G-2-305, is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, if the photographic or video data is maintained by a governmental entity;
(b) may not be used or shared for any purpose other than the purposes described in this section;
(c) may only be preserved:
(i) so long as necessary to collect the payment of a toll or penalty imposed in accordance with this section; or
(ii) pursuant to a warrant issued under the Utah Rules of Criminal Procedure or an equivalent federal warrant; and
(d) may only be disclosed:
(i) in accordance with the disclosure requirements for a protected record under Section 63G-2-202; or
(ii) pursuant to a warrant issued under the Utah Rules of Criminal Procedure or an equivalent federal warrant.
(11)
(a) The department may not sell for any purpose photographic or video data captured under Subsection (2)(e)(ii).
(b) The department may not share captured photographic or video data for a purpose not authorized under this section.
(12) Before November 1, 2018, the Driver License Division, the Division of Motor Vehicles, and the department shall jointly study and report findings and recommendations to the Transportation Interim Committee regarding the use of Title 53, Chapter 3, Part 6, Drivers' License Compact, and other methods to collect a toll or penalty under this section from:
(a) an owner of a motor vehicle registered outside this state; or
(b) a driver or lessee of a motor vehicle leased or rented for 30 days or less.

Amended by Chapter 377, 2020 General Session

72-6-119 "511" Traveler information services -- Lead agency -- Implementation -- Cooperation -- Rulemaking -- Costs.

(1) As used in this section, "511" or "511 service" means three-digit telecommunications dialing to access intelligent transportation system -- traveler information service provided in the state in accordance with the Federal Communications Commission and United States Department of Transportation.
(2) The department is the state's lead agency for implementing 511 service and is the state's point of contact for coordinating 511 service with telecommunications service providers.
(3) The department shall:
(a) implement and administer 511 service in the state;

(b) coordinate with the highway authorities and public transit districts to provide advanced multimodal traveler information through 511 service and other means; and
(c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules as necessary to implement this section.
(4)
(a) In accordance with Title 11, Chapter 13, Interlocal Cooperation Act, the department shall enter into agreements or contracts with highway authorities and public transit districts to share the costs of implementing and administering 511 service in the state.
(b) The department shall enter into other agreements or contracts relating to the 511 service to offset the costs of implementing and administering 511 service in the state.

Amended by Chapter 382, 2008 General Session

72-6-120 Department authorized to participate in federal program assuming responsibility for environmental review of highway projects -- Rulemaking authority.

(1) The department may:
(a) assume responsibilities under 23 U.S.C. Sec. 326 for:
(i) determining whether state highway design and construction projects are categorically excluded from requirements for environmental assessments or environmental impact statements; and
(ii) environmental review, consultation, or other actions required under federal law for categorically excluded projects;
(b) assume responsibilities under 23 U.S.C. Sec. 327 with respect to one or more railroad, public transportation, highway, or multimodal projects within the state under the National Environmental Policy Act of 1969 for environmental review, consultation, or other action required under any federal environmental law pertaining to the review or approval of a specific highway project;
(c) enter one or more memoranda of understanding with the United States Department of Transportation related to federal highway programs as provided in 23 U.S.C. Secs. 326 and 327 subject to the requirements of Subsection 72-1-207(5);
(d) accept, receive, and administer grants, other money, or gifts from public and private agencies, including the federal government, for the purpose of carrying out the programs authorized under this section; and
(e) cooperate with the federal government in implementing this section and any memorandum of understanding entered into under Subsection 72-1-207(5).
(2) Notwithstanding any other provision of law, in implementing a program under this section that is approved by the United States Department of Transportation, the department is authorized to:
(a) perform or conduct any of the activities described in a memorandum of understanding entered into under Subsection 72-1-207(5);
(b) take actions necessary to implement the program; and
(c) adopt relevant federal environmental standards as the standards for this state for categorically excluded projects.
(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may makes rules to implement the provisions of this section.

Amended by Chapter 424, 2018 General Session

72-6-121 Clean fuel vehicle decal.

(1) Subject to the requirements of this section, the department shall issue a clean fuel vehicle decal permit and a clean fuel vehicle decal to an applicant if:
  (a) the applicant is an owner of a vehicle:
    (i) powered by clean fuel that meets the standards established by the department in rules authorized under Subsection 41-6a-702(5)(b); and
    (ii) that is registered in the state of Utah;
  (b) the applicant remits an application and all fees required under this section; and
  (c) the department has clean fuel vehicle decals available subject to the limits established by the department in accordance with Subsection 41-6a-702(5)(b).
(2) The department shall establish the clean fuel vehicle decal design in consultation with the Utah Highway Patrol.
(3)
  (a) An applicant for a clean fuel vehicle decal shall pay a clean fuel vehicle decal fee established by the department in accordance with Section 63J-1-504.
  (b) Funds generated by the clean fuel vehicle decal fee may be used by the department to cover the costs incurred in issuing clean fuel vehicle decals under this section.
(4)
  (a) The department shall issue a clean fuel vehicle decal permit and a clean fuel vehicle decal to a person who has been issued a clean fuel special group license plate prior to July 1, 2011.
  (b) A person who applies to the department to receive a clean fuel vehicle decal permit and a clean fuel vehicle decal under Subsection (4)(a) is not subject to the fee imposed under Subsection (3).
(5)
  (a) An owner of a vehicle may not place a clean fuel vehicle decal on a vehicle other than the vehicle specified in the application for the clean fuel vehicle decal permit and the clean fuel vehicle decal.
  (b) An owner of a vehicle issued a clean fuel vehicle permit and clean fuel vehicle decal is not required to place the clean fuel vehicle decal on the vehicle specified to drive in the high occupancy lane described in Subsection 41-6a-702(5).
  (c) A person operating a motor vehicle that has been issued a clean fuel vehicle decal shall:
    (i) have in the person's immediate possession the clean fuel vehicle decal permit issued by the department for the motor vehicle the person is operating; and
    (ii) present the permit upon demand of a peace officer.
(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to administer the clean fuel vehicle decal program authorized in this section.

Amended by Chapter 299, 2023 General Session