

## Part 1 Protection of Rights-Of-Way

### 72-7-101 Title.

This chapter is known as the "Protection of Highways Act."

Enacted by Chapter 270, 1998 General Session

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

- (1) As used in this section, "management costs" means the reasonable, direct, and actual costs a highway authority incurs in exercising authority over the highways under the highway authority's jurisdiction.
- (2) Except as provided in Subsection (3) and Section 72-17-202, a person may not:
  - (a) dig or excavate, within the right-of-way of any state highway, county road, or city street; or
  - (b) place, construct, or maintain any approach road, driveway, pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or character within the right-of-way.
- (3)
  - (a)
    - (i) A highway authority having jurisdiction over the right-of-way may allow excavating, installation of utilities and other facilities or access under rules made by the highway authority and in compliance with federal, state, and local law as applicable.
    - (ii) Notwithstanding Subsection (3)(a)(i), a highway authority may not allow excavating, installation of utilities and other facilities, or access to any portion of a state highway, including portions thereof within a municipality, without the prior written approval of the department. The department may, by written agreement with a municipality, waive the requirement of its approval for certain types and categories of excavations, installations, and access.
  - (b)
    - (i) The rules may require a permit for any excavation or installation and may require a surety bond or other security.
    - (ii) The application for a permit for excavation or installation on a state highway shall be accompanied by a fee established under Subsection (4)(f).
    - (iii) The permit may be revoked and the surety bond or other security may be forfeited for cause.
    - (iv) Any portion of the right-of-way disturbed by a project permitted under this section shall be repaired using construction standards established by the highway authority with jurisdiction over the disturbed portion of the right-of-way.
  - (c)
    - (i) For a portion of a state highway right-of-way for which a municipality has jurisdiction, and upon request of the municipality, the department shall grant permission for the municipality to issue permits within the state highway right-of-way, provided that:
      - (A) the municipality gives the department seven calendar days to review and provide comments on the permit; and
      - (B) upon the request of the department, the municipality incorporates changes to the permit as jointly agreed upon by the municipality and the department.

- (ii) If the department fails to provide a response as described in Subsection (3)(c)(i) within seven calendar days, the municipality may issue the permit.
- (4)
- (a) Except as provided in Section 72-7-108 with respect to the department concerning the interstate highway system, a highway authority may require compensation from a utility service provider for access to the right-of-way of a highway only as provided in this section.
  - (b) A highway authority may recover from a utility service provider, only those management costs caused by the utility service provider's activities in the right-of-way of a highway under the jurisdiction of the highway authority.
  - (c)
    - (i) A highway authority shall impose a fee or other compensation under this Subsection (4) on a competitively neutral basis.
    - (ii)
      - (A) If a highway authority's management costs cannot be attributed to only one entity, the highway authority shall allocate the management costs among all privately owned and government agencies using the highway right-of-way for utility service purposes, including the highway authority itself.
      - (B) The allocation shall reflect proportionately the management costs incurred by the highway authority as a result of the various utility uses of the highway.
  - (d) A highway authority may not use the compensation authority granted under this Subsection (4) as a basis for generating revenue for the highway authority that is in addition to the highway authority's management costs.
  - (e)
    - (i) A utility service provider that is assessed management costs or a franchise fee by a highway authority is entitled to recover those management costs.
    - (ii) If the highway authority that assesses the management costs or franchise fees is a political subdivision of the state and the utility service provider serves customers within the boundaries of that highway authority, the management costs may be recovered from those customers.
  - (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall adopt a schedule of fees to be assessed for management costs incurred in connection with issuing and administering a permit on a state highway under this section.
  - (g) In addition to the requirements of this Subsection (4), a telecommunications tax or fee imposed by a municipality on a telecommunications provider, as defined in Section 10-1-402, is subject to Section 10-1-406.
- (5) Permit fees collected by the department under this section shall be deposited with the state treasurer and credited to the Transportation Fund.
- (6) Nothing in this section shall affect the authority of a municipality under:
- (a) Section 10-1-203 or 10-1-203.5;
  - (b) Section 11-26-201;
  - (c) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or
  - (d) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.
- (7) A person who violates the provisions of Subsection (2) is guilty of a class B misdemeanor.

Amended by Chapter 42, 2023 General Session, (Coordination Clause)

**72-7-103 Limitation on access authority.**

- (1) As used in this section:

- (a) "Highway facility" means:
  - (i) SR-7 as described in Section 72-4-106;
  - (ii) SR-67 as described in Section 72-4-112;
  - (iii) SR-85 as described in Section 72-4-114;
  - (iv) SR-154 as described in Section 72-4-121; or
  - (v) SR-201 as described in Section 72-4-126.
- (b) "Legal point of access" means an access established in accordance with applicable law:
  - (i) before July 1, 2003;
  - (ii) by permit issued by the highway authority; or
  - (iii) by a deed or court order.
- (2) A highway authority may not deny reasonable ingress and egress to property adjoining a public highway except where:
  - (a) the highway authority acquires right of ingress and egress by gift, agreement, purchase, eminent domain, or otherwise; or
  - (b) no right of ingress or egress exists between the right-of-way and the adjoining property.
- (3) For a property adjoining a public highway that is not an interstate system or a highway facility, a highway authority may not close a legal point of access to the public highway, unless:
  - (a) the property has reasonably equivalent access to the public highway after the legal access is closed; or
  - (b) the highway authority acquires the legal point of access by gift, agreement, purchase, or eminent domain.

Amended by Chapter 72, 2018 General Session

**72-7-104 Installations constructed in violation of rules -- Rights of highway authorities to remove or require removal.**

- (1) If any person, firm, or corporation installs, places, constructs, alters, repairs, or maintains any approach road, driveway, pole, pipeline, conduit, sewer, ditch, culvert, outdoor advertising sign, or any other structure or object of any kind or character within the right-of-way of any highway without complying with this title, the highway authority having jurisdiction over the right-of-way may:
  - (a) remove the installation from the right-of-way or require the person, firm, or corporation to remove the installation; or
  - (b) give written notice to the person, firm, or corporation to remove the installation from the right-of-way.
- (2) Notice under Subsection (1)(b) may be served by:
  - (a) personal service; or
  - (b)
    - (i) mailing the notice to the person, firm, or corporation by certified mail; and
    - (ii) posting a copy on the installation for 10 days.
- (3) If the installation is not removed within 10 days after the notice is complete, the highway authority may remove the installation at the expense of the person, firm, or corporation.
- (4) A highway authority may recover:
  - (a) the costs and expenses incurred in removing the installation, serving notice, and the costs of a lawsuit if any; and
  - (b) \$10 for each day the installation remained within the right-of-way after notice was complete.
- (5)

- (a) If the person, firm, or corporation disputes or denies the existence, placement, construction, or maintenance of the installation, or refuses to remove or permit its removal, the highway authority may bring an action to abate the installation as a public nuisance.
- (b) If the highway authority is granted a judgment, the highway authority may recover the costs of having the public nuisance abated as provided in Subsection (4).
- (6) The department, its agents, or employees, if acting in good faith, incur no liability for causing removal of an installation within a right-of-way of a highway as provided in this section.
- (7) The actions of the department under this section are not subject to the provisions of Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 382, 2008 General Session

**72-7-105 Obstructing traffic on sidewalks or highways prohibited.**

- (1) A person may not:
  - (a) drive or place any vehicle, animal, or other thing upon or along any sidewalk except in crossing the sidewalk to or from abutting property; or
  - (b) permit the vehicle, animal, or other thing to remain on or across any sidewalk in a way that impedes or obstructs the ordinary use of the sidewalk.
- (2)
  - (a) Except under Subsection (2)(b), vehicles, building material, or other similar things may be placed temporarily on highways in a manner that will not impede, endanger, or obstruct ordinary traffic.
  - (b) A highway authority may prohibit or may require the removal of vehicles, building material, or other obstructions on any highway under their jurisdiction.

Renumbered and Amended by Chapter 270, 1998 General Session

**72-7-106 Gates on class B and D roads.**

- (1) As used in this section, "county road" means:
  - (a) a class B road as defined in Section 72-3-103; and
  - (b) a class D road as defined in Section 72-3-105.
- (2) The county executive of a county may authorize the erection or maintenance of a gate on a county road in order to avoid the necessity of building highway fences.
- (3) The person for whose immediate benefit a gate is erected or maintained shall in all cases bear the expense.
- (4) Nothing contained in Section 72-7-105 shall be construed to prohibit a person from placing an unlocked, nonrestrictive gate across a county road, or maintaining the same, with the authorization of the county executive of that county.
- (5)
  - (a) A gate is not allowed on a county road unless authorized by the county executive in accordance with the provisions of this section.
  - (b) If the expense of the erection and maintenance of the gate is not paid or if a lock or other device is placed upon the gate so as to make it restrictive, the county executive of that county shall notify the responsible party that county approval is terminated and the gate is considered to be an obstruction under Section 72-7-105.
- (6) The placement or maintenance of a gate with the authorization of the county executive across a county road does not constitute or establish an abandonment under Section 72-5-105

or 72-5-305 by the county and does not establish an easement on behalf of the person establishing the gate.

- (7) A person who commits any of the following acts is guilty of a class B misdemeanor and is liable for all damages suffered by a party as a result of the acts:
- (a) leaves open a gate, erected or maintained under this section;
  - (b) unnecessarily drives over the ground adjoining the highway on which a gate is erected;
  - (c) places a lock or other restrictive device on a gate; or
  - (d) violates a rule or regulation of a county legislative body relating to the gates within the county.

Amended by Chapter 239, 2003 General Session

**72-7-107 Public safety program signs -- Permits.**

- (1) As used in this section, "public safety program sign" means a sign, placed on or adjacent to a highway, that is promoting a highway safety program or highway safety practice, or a crime or drug abuse prevention program that is being sponsored by the department, the Department of Public Safety, or a local law enforcement agency.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to allow public safety program signs on state highways by permit. The rules shall contain reasonable terms and conditions:
- (a) that are no more restrictive than motorist service signing requirements of the Manual on Uniform Traffic Control Devices for Streets and Highways adopted under Section 41-6a-301; and
  - (b) for granting and maintaining a permit.

Amended by Chapter 382, 2008 General Session

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

- (1) As used in this section:
- (a) "Longitudinal access" means access to or use of any part of a right-of-way of a highway on the interstate system that extends generally parallel to the right-of-way for a total of 30 or more linear meters.
  - (b) "Statewide telecommunications purposes" means the further development of the statewide network that meets the telecommunications needs of state agencies and enhances the learning purposes of higher and public education.
  - (c) "Telecommunication facility" means any telecommunication cable, line, fiber, wire, conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting equipment, receiving equipment, power equipment, or other equipment, system, and device used to transmit, receive, produce, or distribute via wireless, wireline, electronic, or optical signal for communication purposes.
- (2)
- (a) Except as provided in Subsection (4), the department may allow a telecommunication facility provider longitudinal access to the right-of-way of a highway on the interstate system for the installation, operation, and maintenance of a telecommunication facility.
  - (b) The department shall enter into an agreement with a telecommunication facility provider and issue a permit before granting it any longitudinal access under this section.
    - (i) Except as specifically provided by the agreement, a property interest in a right-of-way may not be granted under the provisions of this section.

- (ii) An agreement entered into by the department under this section shall:
  - (A) specify the terms and conditions for the renegotiation of the agreement;
  - (B) specify maintenance responsibilities for each telecommunication facility;
  - (C) be nonexclusive; and
  - (D) be limited to a maximum term of 30 years.
- (3)
  - (a) The department shall require compensation from a telecommunication facility provider under this section for longitudinal access to the right-of-way of a highway on the interstate system.
  - (b) The compensation charged shall be:
    - (i) fair and reasonable;
    - (ii) competitively neutral;
    - (iii) nondiscriminatory;
    - (iv) open to public inspection;
    - (v) established to promote access by multiple telecommunication facility providers;
    - (vi) established for zones of the state, with zones determined based upon factors that include population density, distance, numbers of telecommunication subscribers, and the impact upon private right-of-way users;
    - (vii) established to encourage the deployment of digital infrastructure within the state;
    - (viii) set after the department conducts a market analysis to determine the fair and reasonable values of the right-of-way based upon adjacent property values;
    - (ix) a lump sum payment or annual installment, at the option of the telecommunications facility provider; and
    - (x) set in accordance with Subsection (3)(f).
  - (c)
    - (i) The compensation charged may be cash, in-kind compensation, or a combination of cash and in-kind compensation.
    - (ii) In-kind compensation requires the agreement of both the telecommunication facility provider and the department.
    - (iii) The department shall determine the present value of any in-kind compensation based upon the incremental cost to the telecommunication facility provider.
    - (iv) The value of in-kind compensation or a combination of cash and in-kind compensation shall be equal to or greater than the amount of cash compensation that would be charged if the compensation is cash only.
  - (d)
    - (i) The department shall provide for the proportionate sharing of costs among the department and telecommunications providers for joint trenching or trench sharing based on the amount of conduit innerduct space that is authorized in the agreement for the trench.
    - (ii) If two or more telecommunications facility providers are required to share a single trench, each telecommunications facility provider in the trench shall share the cost and benefits of the trench in accordance with Subsection (3)(d)(i) on a fair, reasonable, competitively neutral, and nondiscriminatory basis.
  - (e) The department shall conduct the market analysis described in Subsection (3)(b)(viii) at least every five years and shall apply any necessary adjustments only to agreements entered after the date of the new market analysis.
  - (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish a schedule of rates of compensation for any longitudinal access granted under this section.

- (4) The department may not grant any longitudinal access under this section that results in a significant compromise of the safe, efficient, and convenient use of the interstate system for the traveling public.
- (5) The department may not pay any cost of relocation of a telecommunication facility granted longitudinal access to the right-of-way of a highway on the interstate system under this section.
- (6)
  - (a) Monetary compensation collected by the department in accordance with this section shall be deposited with the state treasurer and credited to the Transportation Fund.
  - (b) Any telecommunications capacity acquired as in-kind compensation shall be used exclusively for statewide telecommunications purposes and may not be sold or leased in competition with telecommunication or Internet service providers.
- (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules:
  - (a) governing the installation, operation, and maintenance of a telecommunication facility granted longitudinal access under this section;
  - (b) specifying the procedures for establishing an agreement for longitudinal access for a telecommunication facility provider;
  - (c) providing for the relocation or removal of a telecommunication facility for:
    - (i) needed changes to a highway on the interstate system;
    - (ii) expiration of an agreement; or
    - (iii) a breach of an agreement; and
  - (d) providing an opportunity for all interested providers to apply for access within open right-of-way segments.
- (8)
  - (a) Except for a right-of-way of a highway on the interstate system, nothing in this section shall be construed to allow a highway authority to require compensation from a telecommunication facility provider for longitudinal access to the right-of-way of a highway under the highway authority's jurisdiction.
  - (b) Nothing in this section shall affect the authority of a municipality under:
    - (i) Section 10-1-203;
    - (ii) Section 11-26-201;
    - (iii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or
    - (iv) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.
- (9) Compensation paid to the department under Subsection (3) may not be used by any person as evidence of the market or other value of the access for any other purpose, including condemnation proceedings, other litigation, or the application of rates of taxation or the establishment of franchise fees relating to longitudinal access rights.

Amended by Chapter 283, 2018 General Session

**72-7-110 Memorial signs honoring highway patrol officers.**

- (1)
  - (a) The Utah Department of Transportation may erect memorial signs along state highways, honoring Utah Highway Patrol officers who have been killed in the line of duty.
  - (b) The memorial signs shall:
    - (i) be located in the community of the fallen trooper that the memorial is intended to honor; and

(ii) correlate with, and where possible conform to, the sign requirements in the most recent edition of the Manual on Uniform Traffic Control Devices for Streets and Highways adopted under Section 41-6a-301.

(2) Memorial signs erected in accordance with this section shall be funded by:

- (a) any voluntary contributions the department receives for the memorial signs;
- (b) funds appropriated by the Legislature to the department for memorial signs under this section;
- or
- (c) a combination of the funds available under Subsections (2)(a) and (b).

Enacted by Chapter 42, 2012 General Session