

Effective 5/3/2023

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)