

UTILITIES IN HIGHWAY RIGHTS-OF-WAY

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Peter C. Knudson

AN ACT RELATING TO TRANSPORTATION; PROVIDING CERTAIN DEFINITIONS; ALLOWING CERTAIN TELECOMMUNICATION PROVIDERS ACCESS TO RIGHTS-OF-WAY ON THE INTERSTATE HIGHWAY SYSTEM; AMENDING PROVISIONS RELATED TO THE USE OF HIGHWAY RIGHTS-OF-WAY BY UTILITY COMPANIES; AMENDING PERMIT FEE PROVISIONS; PROVIDING RULEMAKING; CREATING THE UTILITIES IN HIGHWAY RIGHTS-OF-WAY TASK FORCE; PROVIDING FOR MEMBERSHIP; DELINEATING RESPONSIBILITIES AND PROCEDURES; PROVIDING A REPORTING DATE; APPROPRIATING \$39,500 FROM THE GENERAL FUND; MAKING TECHNICAL CORRECTIONS; AND PROVIDING A REPEAL DATE.

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

AMENDS:

72-1-201, as renumbered and amended by Chapter 270, Laws of Utah 1998

72-6-116, as renumbered and amended by Chapter 270, Laws of Utah 1998

72-7-102, as renumbered and amended by Chapter 270, Laws of Utah 1998

ENACTS:

72-7-108, Utah Code Annotated 1953

This act enacts uncodified material.

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

Section 1. Section **72-1-201** is amended to read:

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

There is created the Department of Transportation which shall:

(1) have the general responsibility for planning, research, design, construction, maintenance, security, and safety of state transportation systems;

(2) provide administration for state transportation systems and programs;

- (3) implement the transportation policies of the state;
 - (4) 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;
 - (5) establish standards and procedures regarding the technical details of administration of the state transportation systems as established by statute and administrative rule;
 - (6) advise the governor and the Legislature about state transportation systems needs; [and]
 - (7) 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; and
- [(7)] (8) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, make policy and rules for the administration of the department, state transportation systems, and programs.

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

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) "Utility" includes [~~telephone~~] telecommunication, gas, electricity, cable television, water, [~~and~~] sewer, data, and video transmission lines, drainage and irrigation systems, and other similar utilities located in, on, along, across, over, through, or under any state highway.
 - (c) "Utility company" means a privately, cooperatively, or publicly owned utility, including utilities owned by political subdivisions.
- (2) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department may make rules for the installation, construction, maintenance, repair, renewal, system upgrade, and relocation of all utilities.
 - (b) (i) 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.

(ii) The cost of relocation in connection with the highway systems shall be paid by the department in all cases where:

(A) proportionate reimbursement of the cost may be obtained by the state of Utah from the United States pursuant to the Federal-Aid Highway Act of 1956; and

(B) the utility is owned or operated by a political subdivision whether or not federal reimbursement may be obtained.

~~[(iii)]~~ (3) ~~[In case of any relocation of]~~ 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.

~~[(3)]~~ (4) The cost of relocating a utility in connection with any project on a highway eligible for federal aid, or on the interstate system is a cost of highway construction.

(5) (a) The department shall notify affected utility companies 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 (5) shall coordinate with the department and the department's contractor on the utility relocations, including the scheduling of the utility relocations.

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

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) Except as provided in Subsection (2) and Section 54-4-15, 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.

(2) (a) 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.

(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 (3).

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

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

(a) shall reflect the cost of services provided; and

(b) may provide that the department bill for services reasonably incurred in connection with each permit.

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

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

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

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

~~[(3)]~~ (6) A person who violates the provisions of Subsection (1) is guilty of a class B misdemeanor.

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

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) "Telecommunication facility" means any telecommunication cable, line, fiber, wire, conduit, innerduct, access manhole, handhole, 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 specify the terms and conditions for the renegotiation of the agreement.

(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; and

(viii) set in accordance with Subsection (3)(c).

(c) Beginning October 1, 1999 and in accordance with Title 63, Chapter 46a, 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) Monetary compensation collected by the department in accordance with this section shall be deposited with the state treasurer and credited to the Transportation Fund.

(7) In accordance with Title 63, Chapter 46a, 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; and

(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.

(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 Section 11-26-1 and Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act.

Section 5. Utilities in Highway Rights-of-Way Task Force -- Creation -- Membership -- Rules -- Compensation -- Staff.

(1) (a) There is created the Utilities in Highway Rights-of-Way Task Force consisting of the following members:

(i) five members of the Senate appointed by the president of the Senate, no more than three of whom may be from the same political party;

(ii) seven members of the House of Representatives appointed by the speaker of the House of Representatives, no more than four of whom may be from the same political party;

(iii) three members who represent telecommunication facility providers, at least one of whom shall represent a rural telecommunication facility provider;

(iv) one member who represents an energy utility provider;

(v) one member who represents special districts providing water utility services;

(vi) the executive director of the Department of Transportation;

(vii) one member who represents utility consumers; and

(viii) one member appointed by the governor.

(b) The members listed in Subsections (1)(a)(iii) through (vii) shall be appointed jointly by the president of the Senate and the speaker of the House of Representatives.

(2) (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a)(i) as a cochair of the task force.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(a)(ii) as a cochair of the task force.

(3) (a) A majority of the members of the task force constitute a quorum.

(b) The action of a majority of the quorum constitutes the action of the task force.

(4) (a) Salaries and expenses of the legislative members of the task force shall be paid in accordance with Section 36-2-2 and Legislative Joint Rule 15.03.

(b) Members of the task force who are not legislators receive no additional compensation for their work associated with the task force.

(5) The Office of Legislative Research and General Counsel shall provide staff support to the task force.

Section 6. Duties -- Interim reports.

During the 1999 interim the task force shall:

(1) (a) study the following issues relating to the relocation of utilities in highway rights-of-way and recommend:

(i) a process that provides uniform reimbursements for utility relocation in all state highway rights-of-way;

(ii) a simple formula that determines the share of relocation reimbursements for both highway authorities and utility providers so that both will have an incentive to minimize the relocation costs; and

(iii) methods to improve communication and coordination between the Department of Transportation and utility providers, especially notices and responses in the planning and design phases of projects; and

(b) present a final report, including any proposed legislation, on the issues under this Subsection (1) to the Public Utilities and Technology Interim Committee and the Transportation Interim Committee before November 30, 1999;

(2) (a) recommend a schedule of rates of compensation for the Department of Transportation to charge a telecommunication facility provider for longitudinal access to the right-of-way of a highway on the interstate system that is in accordance with Subsection 72-7-108(3)(b);

(b) present a final report, including any proposed legislation, on the issues under this Subsection (2) to the Legislative Management Committee before September 1, 1999; and

(3) study and report on any other related issues assigned to the task force by the Legislative Management Committee.

Section 7. Appropriation.

There is appropriated from the General Fund for fiscal year 1999-2000:

(1) \$6,000 to the Senate to pay for the compensation and expenses of senators on the task force;

(2) \$8,500 to the House of Representatives to pay for the compensation and expenses of representatives on the task force; and

(3) \$25,000 to the Office of Legislative Research and General Counsel to pay for staffing the task force.

Section 8. Repeal date.

Sections 5, 6, and 7 of this act are repealed November 30, 1999.