

Senator Peter C. Knudson proposes to substitute the following bill:

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; PROVIDING AN EFFECTIVE DATE; 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,

26 **rights, and responsibilities.**

27 There is created the Department of Transportation which shall:

- 28 (1) have the general responsibility for planning, research, design, construction,
- 29 maintenance, security, and safety of state transportation systems;
- 30 (2) provide administration for state transportation systems and programs;
- 31 (3) implement the transportation policies of the state;
- 32 (4) plan, develop, construct, and maintain state transportation systems that are safe,
- 33 reliable, environmentally sensitive, and serve the needs of the traveling public, commerce, and
- 34 industry;
- 35 (5) establish standards and procedures regarding the technical details of administration of
- 36 the state transportation systems as established by statute and administrative rule;
- 37 (6) advise the governor and the Legislature about state transportation systems needs; [and]
- 38 (7) coordinate with utility companies for the reasonable, efficient, and cost-effective
- 39 installation, maintenance, operation, relocation, and upgrade of utilities within state highway
- 40 rights-of-way; and

41 [~~(7)~~] (8) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
42 make policy and rules for the administration of the department, state transportation systems, and
43 programs.

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

45 **72-6-116. Regulation of utilities -- Relocation of utilities.**

46 (1) As used in this section:

47 (a) "Cost of relocation" includes the entire amount paid by the utility company properly
48 attributable to the relocation of the utility after deducting any increase in the value of the new
49 utility and any salvage value derived from the old utility.

50 (b) "Utility" includes [~~telephone~~] telecommunication, gas, electricity, cable television,
51 water, [~~and~~] sewer, data, and video transmission lines, drainage and irrigation systems, and other
52 similar utilities located in, on, along, across, over, through, or under any state highway.

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

55 (2) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
56 the department may make rules for the installation, construction, maintenance, repair, renewal,

57 system upgrade, and relocation of all utilities.

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

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

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

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

67 ~~[(iii)]~~ (3) ~~[In case of any relocation of]~~ If a utility is relocated, the utility company owning
68 or operating the utility, its successors or assigns, may maintain and operate the utility, with the
69 necessary appurtenances, in the new location.

70 ~~[(3)]~~ (4) The cost of relocating a utility in connection with any project on a highway
71 eligible for federal aid, or on the interstate system is a cost of highway construction.

72 (5) (a) The department shall notify affected utility companies whenever the relocation of
73 utilities is likely to be necessary because of a reconstruction project.

74 (b) The notification shall be made during the preliminary design of the project or as soon
75 as practical in order to minimize the number, costs, and delays of utility relocations.

76 (c) A utility company notified under this Subsection (5) shall coordinate with the
77 department and the department's contractor on the utility relocations, including the scheduling of
78 the utility relocations.

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

80 **72-7-102. Excavations, structures, or objects prohibited within right-of-way except**
81 **in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty for violation.**

82 (1) Except as provided in Subsection (2) and Section 54-4-15, a person may not:

83 (a) dig or excavate, within the right-of-way of any state highway, county road, or city
84 street; or

85 (b) place, construct, or maintain any approach road, driveway, pole, pipeline, conduit,
86 sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or
87 character within the right-of-way.

88 (2) (a) A highway authority having jurisdiction over the right-of-way may allow
89 excavating, installation of utilities and other facilities or access under rules made by the highway
90 authority and in compliance with federal, state, and local law as applicable.

91 (b) (i) The rules may require a permit for any excavation or installation and may require
92 a surety bond or other security.

93 (ii) The application for a permit for excavation or installation on a state highway shall be
94 accompanied by a fee established under Subsection (3).

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

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

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

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

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

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

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

109 [(3)] (6) A person who violates the provisions of Subsection (1) is guilty of a class B
110 misdemeanor.

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

112 **72-7-108. Longitudinal telecommunication access in the interstate highway system**
113 **-- Definitions -- Agreements -- Compensation -- Restrictions -- Rulemaking.**

114 (1) As used in this section:

115 (a) "Longitudinal access" means access to or use of any part of a right-of-way of a highway
116 on the interstate system that extends generally parallel to the right-of-way for a total of 30 or more
117 linear meters.

118 (b) "Telecommunication facility" means any telecommunication cable, line, fiber, wire,

119 conduit, innerduct, access manhole, handhole, hut, pedestal, pole, box, transmitting equipment,
120 receiving equipment, power equipment, or other equipment, system, and device used to transmit,
121 receive, produce, or distribute via wireless, wireline, electronic, or optical signal for
122 communication purposes.

123 (2) (a) Except as provided in Subsection (4) the department may allow a
124 telecommunication facility provider longitudinal access to the right-of-way of a highway on the
125 interstate system for the installation, operation, and maintenance of a telecommunication facility.

126 (b) The department shall enter into an agreement with a telecommunication facility
127 provider and issue a permit before granting it any longitudinal access under this section.

128 (i) Except as specifically provided by the agreement, a property interest in a right-of-way
129 may not be granted under the provisions of this section.

130 (ii) An agreement entered into by the department under this section shall specify the terms
131 and conditions for the renegotiation of the agreement.

132 (3) (a) The department shall require compensation from a telecommunication facility
133 provider under this section for longitudinal access to the right-of-way of a highway on the
134 interstate system.

135 (b) The compensation charged shall be:

136 (i) fair and reasonable;

137 (ii) competitively neutral;

138 (iii) nondiscriminatory;

139 (iv) open to public inspection;

140 (v) established to promote access by multiple telecommunication facility providers;

141 (vi) established for zones of the state, with zones determined based upon factors that
142 include population density, distance, numbers of telecommunication subscribers, and the impact
143 upon private right-of-way users;

144 (vii) established to encourage the deployment of digital infrastructure within the state; and

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

146 (c) Beginning October 1, 1999 and in accordance with Title 63, Chapter 46a, Utah
147 Administrative Rulemaking Act, the department shall establish a schedule of rates of compensation
148 for any longitudinal access granted under this section.

149 (4) The department may not grant any longitudinal access under this section that results

150 in a significant compromise of the safe, efficient, and convenient use of the interstate system for
151 the traveling public.

152 (5) The department may not pay any cost of relocation of a telecommunication facility
153 granted longitudinal access to the right-of-way of a highway on the interstate system under this
154 section.

155 (6) Monetary compensation collected by the department in accordance with this section
156 shall be deposited with the state treasurer and credited to the Transportation Fund.

157 (7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
158 department shall make rules:

159 (a) governing the installation, operation, and maintenance of a telecommunication facility
160 granted longitudinal access under this section;

161 (b) specifying the procedures for establishing an agreement for longitudinal access for a
162 telecommunication facility provider; and

163 (c) providing for the relocation or removal of a telecommunication facility for:

164 (i) needed changes to a highway on the interstate system;

165 (ii) expiration of an agreement; or

166 (iii) a breach of an agreement.

167 (8) Except for a right-of-way of a highway on the interstate system, nothing in this section
168 shall be construed to allow a highway authority to require compensation from a telecommunication
169 facility provider for longitudinal access to the right-of-way of a highway under the highway
170 authority's jurisdiction.

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

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

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

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

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

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

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

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

184 (vii) one member who represents utility consumers; and

185 (viii) one member appointed by the governor.

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

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

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

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

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

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

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

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

200 **Section 6. Duties -- Interim reports.**

201 During the 1999 interim the task force shall:

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

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

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

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

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

215 (2) (a) recommend a schedule of rates of compensation for the Department of
216 Transportation to charge a telecommunication facility provider for longitudinal access to the
217 right-of-way of a highway on the interstate system that is in accordance with Subsection
218 72-7-108(3)(b);

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

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

223 **Section 7. Appropriation.**

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

225 (1) \$6,000 to the Senate to pay for the compensation and expenses of senators on the task
226 force;

227 (2) \$8,500 to the House of Representatives to pay for the compensation and expenses of
228 representatives on the task force; and

229 (3) \$25,000 to the Office of Legislative Research and General Counsel to pay for staffing
230 the task force.

231 **Section 8. Effective date.**

232 If approved by two-thirds of all the members elected to each house, this act takes effect
233 upon approval by the governor, or the day following the constitutional time limit of Utah
234 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the
235 date of veto override.

236 **Section 9. Repeal date.**

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