

**AMENDMENTS TO TRANSPORTATION****RIGHTS-OF-WAY**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Peter C. Knudson**

AN ACT RELATING TO TRANSPORTATION; PROVIDING CERTAIN DEFINITIONS; ALLOWING CERTAIN TELECOMMUNICATION 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; SPECIFYING RESPONSIBILITIES FOR THE RELOCATION OF UTILITIES IN CERTAIN CIRCUMSTANCES; PROVIDING RULEMAKING; AND MAKING TECHNICAL CHANGES.

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

*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, 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 the order of the department.

[(ii)] (c) (i) 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.

(ii) The cost of relocation paid by the department under this section may not exceed the actual cost of relocation.

[(iii)] (3) In case of any relocation of a utility, 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 be reasonable, fair, and 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.

[~~(3)~~] (5) 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.

121 (b) The department shall enter into a negotiated agreement with a telecommunication  
122 facility provider before granting it any longitudinal access under this section.

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

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

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

130 (b) The compensation charged shall be:

131 (i) fair and reasonable;

132 (ii) competitively neutral;

133 (iii) nondiscriminatory; and

134 (iv) open to public inspection.

135 (c) The compensation charged may be in the form of:

136 (i) monetary payment in lump sum or periodic payment; and

137 (ii) telecommunication capacity or services provided to the department, the state, or any  
138 of its agencies or political subdivisions.

139 (d) The department shall negotiate the type and amount of compensation for any  
140 longitudinal access granted under this section.

141 (4) The department may not grant any longitudinal access under this section that results  
142 in a significant compromise of the safe, efficient, and convenient use of the interstate system for  
143 the traveling public.

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

146 (6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
147 department shall make rules:

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

150 (b) specifying the procedures for negotiating:

151 (i) longitudinal access for a telecommunication facility provider; and

- 152        (ii) compensation; and  
153        (c) providing for the relocation or removal of a telecommunication facility for:  
154        (i) needed changes to a highway on the interstate system;  
155        (ii) expiration of an agreement; or  
156        (iii) a breach of an agreement.

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**Legislative Review Note**

**as of 2-8-99 9:14 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**