

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

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; REQUIRING REPORTING;
MAKING TECHNICAL CHANGES; AND PROVIDING AN EFFECTIVE 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,

26 maintenance, security, and safety of state transportation systems;

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

28 (3) implement the transportation policies of the state;

29 (4) plan, develop, construct, and maintain state transportation systems that are safe,
30 reliable, environmentally sensitive, and serve the needs of the traveling public, commerce, and
31 industry;

32 (5) establish standards and procedures regarding the technical details of administration of
33 the state transportation systems as established by statute and administrative rule;

34 (6) advise the governor and the Legislature about state transportation systems needs; [and]

35 (7) coordinate with utility companies for the reasonable, efficient, and cost-effective
36 installation, maintenance, operation, relocation, and upgrade of utilities within state highway
37 rights-of-way; and

38 [(7)] (8) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
39 make policy and rules for the administration of the department, state transportation systems, and
40 programs.

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

42 **72-6-116. Regulation of utilities -- Relocation of utilities.**

43 (1) As used in this section:

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

47 (b) "DL" means the depreciated life in whole years determined under Subsection (9).

48 (c) "STIP" means the five-year statewide transportation improvement program revised and
49 published annually by the department and adopted by the commission, excluding traffic signal,
50 pavement preservation, and spot improvement projects.

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

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

56 (f) "Y" means the number of whole years since the utility installation permit was issued.

(2) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department may make rules;

(i) for the installation, construction, maintenance, repair, renewal, system upgrade, and relocation of all utilities; and

(ii) providing definitions of terms used under this section as necessary.

(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 until July 1, 2000, 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.

(3) Beginning July 1, 2000, the department shall pay the cost of relocation of a utility on a state highway:

(a) at 100% of the cost of relocation if the utility is owned or operated by a political subdivision of the state;

(b) at 100% of the cost of relocation if:

(i) the highway project was not listed on the STIP at the time the utility installation permit was issued; and

(ii) the utility installation permit was issued less than five years before the highway construction; or

(c) if Subsections (3)(a) or (b) do not apply and the DL is more than 10 years, at a percent calculated under the following formula:

Percent = 100 x (0.5 - (0.5 / (0.5 x DL - 5)) x (Y - 5)).

(4) (a) The department may not pay the cost of relocation of a utility on a state highway except as provided in this section.

(b) The cost of relocation paid by the department under this section may not exceed:

(i) the actual cost of relocation; or

(ii) the amount specified under this section.

88 [(iii)] (5) ~~[In case of any relocation of]~~ If a utility is relocated under this section, the utility
89 company owning or operating the utility, its successors or assigns, may maintain and operate the
90 utility, with the necessary appurtenances, in the new location.

91 [(3)] (6) The cost of relocating a utility ~~[in connection with any project on a highway~~
92 ~~eligible for federal aid, or on the interstate system]~~, as provided in this section, is a cost of highway
93 construction.

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

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

98 (c) A utility company notified under this Subsection (7) shall coordinate with the
99 department and the department's contractor on the utility relocations, including the scheduling of
100 the utility relocations.

101 (8) A municipality or county shall pay the cost of relocation of a utility on a highway under
102 its jurisdiction in accordance with the provisions of Subsections (2)(b)(ii) through (7) if the cost
103 of relocation is for a construction project in which federal highway funds are used.

104 (9) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and
105 in consultation with the Public Service Commission, the department shall make rules establishing
106 the depreciated life of each type of utility placed in a state highway right-of-way. The depreciated
107 life for any type of utility shall be more than 10 years and may not exceed 30 years.

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

109 **72-7-102. Excavations, structures, or objects prohibited within right-of-way except**
110 **in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty for violation.**

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

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

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

117 (2) (a) A highway authority having jurisdiction over the right-of-way may allow
118 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.

(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; and

(iv) open to public inspection.

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

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

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

(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 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) establishing, in consultation with the Public Service Commission, by zones of the state,

181 the type and schedule of rates of compensation for any longitudinal access granted under this
182 section;

183 (c) specifying the procedures for establishing an agreement for longitudinal access for a
184 telecommunication facility provider; and

185 (d) providing for the relocation or removal of a telecommunication facility for:

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

187 (ii) expiration of an agreement; or

188 (iii) a breach of an agreement.

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

193 **Section 5. Reporting provisions.**

194 The department shall report, as requested, to the Legislative Management Committee or
195 any legislative committee or task force designated by the Legislative Management Committee on:

196 (1) the rules proposed or made in accordance with this act;

197 (2) the department's progress in implementing this act; and

198 (3) other related issues of interest to the Legislative Management Committee.

199 **Section 6. Effective date.**

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