

**UTILITIES IN HIGHWAY RIGHTS-OF-WAY**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Leonard M. Blackham**

AN ACT RELATING TO TRANSPORTATION; PROVIDING CERTAIN DEFINITIONS; AMENDING COST RESPONSIBILITIES FOR THE RELOCATION OF UTILITIES; AMENDING PROVISIONS RELATED TO THE USE OF INTERSTATE HIGHWAY RIGHTS-OF-WAY BY TELECOMMUNICATION PROVIDERS; CREATING AN ADVISORY COUNCIL; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

**72-3-109**, as renumbered and amended by Chapter 270, Laws of Utah 1998

**72-6-116**, as last amended by Chapter 325, Laws of Utah 1999

**72-7-102**, as last amended by Chapter 325, Laws of Utah 1999

**72-7-108**, as enacted by Chapter 325, Laws of Utah 1999

ENACTS:

**72-7-109**, Utah Code Annotated 1953

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

Section 1. Section **72-3-109** is amended to read:

**72-3-109. Division of responsibility with respect to state highways in cities and towns.**

(1) Except as provided in Subsection (2), the jurisdiction and responsibility of the department and the municipalities for state highways within municipalities is as follows:

(a) The department has jurisdiction over and is responsible for the construction and maintenance of:

(i) the portion of the state highway located between the back of the curb on either side of the state highway; or

(ii) if there is no curb, the traveled way, its contiguous shoulders, and appurtenances.

(b) The department may widen or improve state highways within municipalities.

(c) (i) A municipality has jurisdiction over all other portions of the right-of-way and is responsible for construction and maintenance of the right-of-way.

(ii) If a municipality grants permission for the installation of any pole, pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or character within the portion of the right-of-way under its jurisdiction:

(A) the permission shall contain the condition that any installation will be removed from the right-of-way at the request of the municipality; and

(B) the municipality shall cause any installation to be removed at the request of the department when the department finds the removal necessary:

(I) to eliminate a hazard to traffic safety;

(II) for the construction and maintenance of the state highway; or

(III) to meet the requirements of federal regulations.

(d) If it is necessary that a utility, as defined in Section 72-6-116, be relocated [~~on a highway eligible for federal aid~~], reimbursement shall be made for the relocation as provided for in Section 72-6-116.

(e) (i) The department shall construct curbs, gutters, and sidewalks on the state highways if necessary for the proper control of traffic, driveway entrances, or drainage.

(ii) If a state highway is widened or altered and existing curbs, gutters, or sidewalks are removed, the department shall replace the curbs, gutters, or sidewalks.

(f) The department may furnish and install street lighting systems for state highways, but their operation and maintenance is the responsibility of the municipality.

(g) If new storm sewer facilities are necessary in the construction and maintenance of the state highways, the cost of the storm sewer facilities shall be borne by the state and the municipality in a proportion mutually agreed upon between the department and the municipality.

(h) (i) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department may make rules governing the location and construction of approach roads and driveways entering the state highway.

(ii) The department may delegate the administration of the rules to the highway authorities of a municipality.

(2) The department has jurisdiction and control over the entire right-of-way of interstate highways within municipalities and is responsible for the construction, maintenance, and regulation of the interstate highways within municipalities.

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 telecommunication, gas, electricity, cable television, water, 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)] (3) (a) The department shall pay 100% of the cost of relocation [in connection with the] of a utility on a state 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)] if the:

(i) utility is owned or operated by a political subdivision [whether or not federal reimbursement may be obtained.] of the state; or

(ii) utility company owns the easement or fee title to the right-of-way in which the utility is located.

(b) Except as provided in Subsection (3)(a) or (c), the department shall pay 50% of the cost of relocation of a utility on a state highway and the utility company shall pay the remainder of the cost of relocation.

(c) This Subsection (3) does not affect the provisions of Subsection 72-7-108(5).

~~[(3)]~~ (4) 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.

~~[(4) The]~~ (5) In accordance with this section, 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)]~~ (6) (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)]~~ (6) 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) 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 its jurisdiction.

~~[(1)]~~ (2) Except as provided in Subsection ~~[(2)]~~ (3) 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)]~~ (3) (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)]~~ (4)(f).

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

(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 fee or other compensation under this Subsection (4) shall be imposed on a competitively neutral basis.

(ii) If a highway authority's management costs cannot be attributed to only one entity, the management costs shall be allocated among all privately owned and government agencies using the highway right-of-way for utility service purposes, including the highway authority itself. 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 its management costs.

(e) A utility service provider that is assessed management costs or a franchise fee by a

highway authority is entitled to recover those costs. 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.

~~[(3)]~~ (f) 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]~~ management costs incurred 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)]~~ (5) 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)]~~ (6) 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.

~~[(6)]~~ (7) A person who violates the provisions of Subsection ~~[(1)]~~ (2) is guilty of a class B misdemeanor.

Section 4. Section **72-7-108** is amended 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) "Statewide telecommunications purposes" means the further development of the statewide network that meets the telecommunications needs of state agencies and enhances the learning purposes of higher and public education.

~~[(b)]~~ (c) "Telecommunication facility" means any telecommunication cable, line, fiber, wire, conduit, innerduct, access manhole, handhole, tower, 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:

(A) specify the terms and conditions for the renegotiation of the agreement[-];

(B) specify maintenance responsibilities for each telecommunication facility;

(C) be nonexclusive; and

(D) be limited to a maximum term of 30 years.

(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 after the department conducts a market analysis to determine the fair and reasonable values of the right-of-way based upon adjacent property values;

(ix) a lump sum payment or annual installment, at the option of the telecommunications facility provider; and

~~[(viii)] (x) set in accordance with Subsection (3)~~(c)~~ (f).~~

(c) (i) The compensation charged may be cash, in-kind compensation, or a combination of cash and in-kind compensation.

(ii) In-kind compensation requires the agreement of both the telecommunication facility provider and the department.

(iii) The department shall, in consultation with the Telecommunications Advisory Council created in Section 72-7-109, determine the present value of any in-kind compensation based upon the incremental cost to the telecommunication facility provider.

(iv) The value of in-kind compensation or a combination of cash and in-kind compensation shall be equal to or greater than the amount of cash compensation that would be charged if the compensation is cash only.

(d) (i) The department shall provide for the proportionate sharing of costs among the department and telecommunications providers for joint trenching or trench sharing based on the amount of conduit innerduct space that is authorized in the agreement for the trench.

(ii) If two or more telecommunications facility providers are required to share a single trench, each telecommunications facility provider in the trench shall share the cost and benefits of the trench in accordance with Subsection (3)(d)(i) on a fair, reasonable, competitively neutral, and nondiscriminatory basis.

(e) The market analysis under Subsection (3)(b)(viii) shall be conducted at least every five years and any adjustments warranted shall apply only to agreements entered after the date of the new



market analysis.

~~[(c)]~~ (f) ~~[Beginning October 1, 1999 and in]~~ 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) (a) Monetary compensation collected by the department in accordance with this section shall be deposited with the state treasurer and credited to the Transportation Fund.

(b) Any telecommunications capacity acquired as in-kind compensation shall be used:

(i) exclusively for statewide telecommunications purposes and may not be sold or leased in competition with telecommunication or Internet service providers; and

(ii) as determined by the department after consultation with the Telecommunications Advisory Council created in Section 72-7-109.

(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~~[-]; and~~

(d) providing an opportunity for all interested providers to apply for access within open

right-of-way segments.

(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.

(9) Compensation paid to the department under Subsection (3) may not be used by any person as evidence of the market or other value of the access for any other purpose, including condemnation proceedings, other litigation, or the application of rates of taxation or the establishment of franchise fees relating to longitudinal access rights.

Section 5. Section **72-7-109** is enacted to read:

**72-7-109. Telecommunications Advisory Council -- Membership -- Duties.**

(1) As used in this section:

(a) "Council" means the Telecommunications Advisory Council created in this section.

(b) "Statewide telecommunications purposes" has the same meaning provided in Section 72-7-108.

(2) (a) There is created within the department the Telecommunication Advisory Council consisting of six members who represent:

(i) the governor's chief advisor on telecommunications;

(ii) the Public Service Commission;

(iii) the department;

(iv) the Utah Education Network;

(v) the Division of Purchasing and General Services within the Department of Administrative Services; and

(vi) the Division of Public Utilities within the Department of Commerce.

(b) The members shall be appointed by the governor and confirmed by the Senate.

(3) (a) The members shall annually elect a chair from its members.

(b) The council shall meet as it determines necessary to accomplish its duties.

(c) A majority of the council constitutes a quorum for the transaction of business.

(d) Members shall receive no compensation or benefits for their services.

(4) (a) The department shall provide staff support for the council.

(b) The council may request assistance from other technical advisors as it determines necessary to accomplish its duties.

(5) The council shall:

(a) provide information, suggestions, strategic plans, priorities, and recommendations to assist the department in administering telecommunications access to interstate highway rights-of-way for statewide telecommunications purposes.

(b) assist the department in valuing in-kind compensation in accordance with Subsection 72-7-108(3)(c);

(c) seek input from telecommunications providers and the public;

(d) coordinate and exchange information with other technology and telecommunications entities of the state and its political subdivisions; and

(e) provide other assistance as requested by the department.

**Section 6. Effective date.**

This act takes effect on July 1, 2000.