

**TRANSPORTATION CHANGES**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kenneth W. Sumsion**

Senate Sponsor: Mark B. Madsen

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**LONG TITLE**

**General Description:**

This bill modifies State Lands and the Transportation Code by amending provisions relating to the construction of highway facilities over sovereign lands.

**Highlighted Provisions:**

This bill:

- ▶ provides that Division of Forestry, Fire, and State Lands may not issue a lease for the construction of a highway facility over sovereign lakebed lands unless the applicant for the lease submits an approval for the construction of the highway facility from the Transportation Commission with the application for the lease;
- ▶ specifies requirements for a lease for the construction of a highway facility over sovereign lakebed lands;
- ▶ requires the Transportation Commission to review and approve plans for the construction of a highway facility over sovereign lakebed lands;
- ▶ specifies requirements for an application for approval from the Transportation Commission to construct a highway facility over sovereign lakebed lands;
- ▶ grants the Transportation Commission rulemaking authority to establish minimum guidelines for an application to construct a highway facility over sovereign lakebed lands;
- ▶ requires the private entity, as part of an approval for the construction of a highway facility over sovereign lakebed lands, to enter an agreement with the Department of



28 Transportation authorizing the department to assure the safety of the design, construction,  
29 operation, and maintenance of the facility; and

30       ▶ makes technical changes.

31 **Money Appropriated in this Bill:**

32       None

33 **Other Special Clauses:**

34       None

35 **Utah Code Sections Affected:**

36 AMENDS:

37       **65A-7-5**, as last amended by Laws of Utah 1997, Chapter 10

38       **65A-10-1**, as last amended by Laws of Utah 1994, Chapter 294

39       **72-1-303**, as last amended by Laws of Utah 2009, Chapter 364

40 ENACTS:

41       **72-6-301**, Utah Code Annotated 1953

42       **72-6-302**, Utah Code Annotated 1953

43       **72-6-303**, Utah Code Annotated 1953



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

46       Section 1. Section **65A-7-5** is amended to read:

47       **65A-7-5. Surface leases -- Procedures for issuing leases.**

48       (1) The division may issue surface leases of state lands for any period up to 99 years.

49       (2) This section does not apply to leases for oil and gas, grazing, or mining purposes.

50       (3) The division shall disclose any known geologic hazard affecting leased property.

51       (4) (a) (i) Surface leases may be entered into by negotiation, public auction, or other  
52 public competitive bidding process as determined by rules of the division.

53       (ii) Requests for proposals (RFP) on state lands may be offered by the division after  
54 public notice.

55       (b) (i) A notice of an invitation for bids or a public auction shall, prior to the auction or  
56 acceptance of a bid, be published at least once a week for three consecutive weeks in one or  
57 more newspapers of general circulation in the county in which the lease is offered.

58       (ii) The notice shall be sent, by certified mail, at least 30 days prior to the auction or

59 acceptance of a bid, to each person who owns property adjoining the state lands offered for  
60 lease.

61 (c) (i) Surface leases entered into through negotiation shall be published in the manner  
62 set forth in Subsection (4)(b) 30 days prior to final approval.

63 (ii) The notice shall include, at a minimum, a general description of the lands proposed  
64 for lease and the type of lease.

65 (5) (a) The division may not issue a lease for the construction of a highway facility  
66 over sovereign lakebed lands unless the applicant for the lease submits an approval for the  
67 construction of a highway facility over sovereign lakebed lands from the Transportation  
68 Commission in accordance with Section 72-6-303 with the application for the lease.

69 (b) The division shall consider the information and analysis provided by the  
70 Transportation Commission under Section 72-6-303 when making its determination as to  
71 whether to issue a lease for the construction of a highway facility over sovereign lakebed lands.

72 (c) A lease for the construction of a highway facility over sovereign lakebed lands:

73 (i) may include an option to renew the lease upon expiration; and

74 (ii) shall include a provision that requires that at the termination of the lease:

75 (A) the ownership of the highway facility shall revert to the state;

76 (B) the highway facility shall be in a state of proper maintenance as outlined in the  
77 agreement under Subsection 72-6-303(4)(e) and determined by the Department of  
78 Transportation; and

79 (C) the highway facility shall be returned to the Department of Transportation in  
80 satisfactory condition at no further cost to the Department of Transportation, in a condition of  
81 good repair.

82 (d) The requirements under this Subsection (5) apply to all pending and future  
83 applications for a lease for the construction of a highway facility over sovereign lakebed lands.

84 Section 2. Section **65A-10-1** is amended to read:

85 **65A-10-1. Authority of division to manage sovereign lands.**

86 (1) The division is the management authority for sovereign lands, and may exchange,  
87 sell, or lease sovereign lands but only in the quantities and for the purposes as serve the public  
88 interest and do not interfere with the public trust.

89 (2) Nothing in this section shall be construed as asserting state ownership of the beds

90 of nonnavigable lakes, bays, rivers, or streams.

91 (3) A lease for the construction of a highway facility over sovereign lakebed lands shall  
92 comply with the requirements described in Subsection 65A-7-5(5).

93 Section 3. Section **72-1-303** is amended to read:

94 **72-1-303. Duties of commission.**

95 (1) The commission has the following duties:

96 (a) determining priorities and funding levels of projects in the state transportation  
97 systems for each fiscal year based on project lists compiled by the department;

98 (b) determining additions and deletions to state highways under Chapter 4, Designation  
99 of State Highways Act;

100 (c) holding public hearings and otherwise providing for public input in transportation  
101 matters;

102 (d) making policies and rules in accordance with Title 63G, Chapter 3, Utah  
103 Administrative Rulemaking Act, necessary to perform the commission's duties described under  
104 this section;

105 (e) in accordance with Section 63G-4-301, reviewing orders issued by the executive  
106 director in adjudicative proceedings held in accordance with Title 63G, Chapter 4,  
107 Administrative Procedures Act;

108 (f) advising the department in state transportation systems policy;

109 (g) approving settlement agreements of condemnation cases subject to Section  
110 63G-10-401;

111 (h) in accordance with Section 17B-2a-807, appointing a commissioner to serve as a  
112 nonvoting, ex officio member or a voting member on the board of trustees of a public transit  
113 district;

114 (i) in accordance with Section 17B-2a-808, reviewing, at least annually, the short-term  
115 and long-range public transit plans; and

116 (j) reviewing administrative rules made, amended, or repealed by the department.

117 (2) (a) For projects prioritized with funding provided under Sections 72-2-124 and  
118 72-2-125, the commission shall annually report to a committee designated by the Legislative  
119 Management Committee:

120 (i) a prioritized list of the new transportation capacity projects in the state

121 transportation system and the funding levels available for those projects; and

122 (ii) the unfunded highway construction and maintenance needs within the state.

123 (b) The committee designated by the Legislative Management Committee under  
124 Subsection (2)(a) shall:

125 (i) review the list reported by the Transportation Commission; and

126 (ii) make a recommendation to the Legislature on:

127 (A) the amount of additional funding to allocate to transportation; and

128 (B) the source of revenue for the additional funding allocation under Subsection  
129 (2)(b)(ii)(A).

130 (3) The commission shall review and may approve plans for the construction of a  
131 highway facility over sovereign lakebed lands in accordance with Chapter 6, Part 3, Approval  
132 of Highway Facilities on Sovereign Lands Act.

133 Section 4. Section **72-6-301** is enacted to read:

134 **Part 3. Approval of Highway Facilities on Sovereign Lands Act**

135 **72-6-301. Title.**

136 This part is known as the "Approval of Highway Facilities on Sovereign Lands Act."

137 Section 5. Section **72-6-302** is enacted to read:

138 **72-6-302. Definitions.**

139 As used in this section:

140 (1) "Sovereign lands" has the same meaning as defined in Section 65A-1-1.

141 (2) "Tollway" has the same meaning as defined in Section 72-6-118.

142 Section 6. Section **72-6-303** is enacted to read:

143 **72-6-303. Approval to construct highway facility over sovereign lakebed lands.**

144 (1) (a) The commission shall review and may approve a proposed plan for the  
145 construction of a highway facility over sovereign lakebed lands.

146 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
147 commission shall make rules establishing minimum guidelines for an application to construct a  
148 highway facility over sovereign lakebed lands.

149 (2) As part of an application to lease sovereign land, a private entity seeking to obtain a  
150 lease over sovereign lakebed lands shall submit an application to the commission for approval  
151 from the commission to construct a highway facility over sovereign lakebed lands.

152 (3) A private entity shall include in an application described in Subsection (2):

153 (a) a map indicating the location and legal description of the highway facility and all  
 154 proposed interconnections with other highway facilities;

155 (b) a description of the highway facility, including the conceptual design of the  
 156 highway facility and a statement whether the highway facility will be operated and maintained  
 157 as a tollway facility;

158 (c) a list of the major permits and approvals required for developing or operating  
 159 improvements to the highway facility from local, state, or federal agencies and a projected  
 160 schedule for obtaining the permits and approvals;

161 (d) a description of the types of public utility facilities, if any, that will be crossed by  
 162 the highway facility and a statement of the plans to accommodate the crossing;

162a **H→ (e) a description of the types of public utilities used, carried, or accommodated by**  
 162b **the highway facility and a statement of the plans to use, carry, or accommodate the public**  
 162c **utilities;**

163 ~~[(e)]~~ **(f) ←H** an estimate of the design and construction costs of the highway facility;

164 **H→ [(f)] (g) ←H** a statement setting forth the private entity's general plans for constructing,  
 165 operating, and maintaining the highway facility, including:

166 (i) the proposed date for development, operation, or both of the highway facility;

167 (ii) the proposed term of the lease over sovereign lakebed lands; and

168 (iii) a demonstration by the private entity that the proposal is financially viable;

169 **H→ [(g)] (h) ←H** the names and addresses of the persons who may be contacted for further  
 170 information concerning the highway facility application; **H→ [and]**

171 ~~[(h)]~~ **(i) ←H** any other material or information that the commission requires by rules made  
 171a under

172 this section **H→** ; and

172a **(j) a statement whether or how the highway facility can safely accommodate**  
 172b **recreational fishing or other recreational activities on the highway facility ←H** .

173 (4) The commission is not required to review an application submitted under this  
 174 section if it determines that the proposal does not meet the guidelines established under this  
 175 section.

176 (5) The commission shall review an application submitted under this section and  
 177 approve the application if the commission determines, based upon recommendations by the  
 178 department, that:

179 (a) construction, operation, and maintenance of the highway facility is feasible as  
 180 proposed by the private entity in the application;

181 (b) the proposed highway facility is contained **H→ anywhere ←H** within the  
 181a **H→ [-visionary] ←H** long-range highway

182 plan prepared by the department or by a metropolitan planning organization **H→** , including the  
 182a **visionary long-range highway plan ←H** ;

183 (c) the construction plan for the proposed highway facility meets the engineering and  
184 design standards specified by the commission in rules made under this section;

185 (d) the proposed plan for the construction, operation, and maintenance of the highway  
186 facility is financially viable, including a determination that sufficient bonding or other financial  
187 assurances are in place to cover construction, operation, and maintenance of the facility; and

188 (e) the private entity has entered an agreement with the department authorizing the  
189 department to assure the safety of the design, construction, operation, and maintenance of the  
190 facility.

191 (6) Approval by the commission under this section does not constitute approval of the  
192 lease application by the Division of Forestry, Fire, and State Lands under Section 65A-7-5.

193 (7) An agreement under Subsection (5)(e):

194 (a) shall provide compensation to the department to cover the costs of reviewing and  
195 inspecting the highway facility; and

196 (b) may include a time within which a notice to proceed can be given.

197 (8) The department may establish a fee in accordance with Section 63J-1-504 for  
198 reviewing applications submitted under this section.

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**Legislative Review Note**  
as of 2-24-11 9:30 AM

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 137

SHORT TITLE: **Transportation Changes**

SPONSOR: **Sumsion, K.**

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Provisions of this bill allows the Department of Transportation to charge fees of between \$200,000 and \$500,000 to pay for required feasibility studies of construction, operation, and maintenance of a highway proposed to be built over Sovereign Lands.

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.