

1 **TELECOMMUNICATIONS ADVISORY COUNCIL REPEAL**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Stephen G. Handy**

5 Senate Sponsor: J. Stuart Adams

7 **LONG TITLE**

8 **General Description:**

9 This bill repeals the section of the Transportation Code creating the
10 Telecommunications Advisory Council.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ repeals the section of the Transportation Code creating the Telecommunications
14 Advisory Council; and

15 ▶ makes technical changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **72-7-108**, as last amended by Laws of Utah 2008, Chapter 382

23 REPEALS:

24 **72-7-109**, as last amended by Laws of Utah 2014, Chapter 63

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

27 Section 1. Section **72-7-108** is amended to read:



28 **72-7-108. Longitudinal telecommunication access in the interstate highway**
29 **system -- Definitions -- Agreements -- Compensation -- Restrictions -- Rulemaking.**

30 (1) As used in this section:

31 (a) "Longitudinal access" means access to or use of any part of a right-of-way of a
32 highway on the interstate system that extends generally parallel to the right-of-way for a total of
33 30 or more linear meters.

34 (b) "Statewide telecommunications purposes" means the further development of the
35 statewide network that meets the telecommunications needs of state agencies and enhances the
36 learning purposes of higher and public education.

37 (c) "Telecommunication facility" means any telecommunication cable, line, fiber, wire,
38 conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting
39 equipment, receiving equipment, power equipment, or other equipment, system, and device
40 used to transmit, receive, produce, or distribute via wireless, wireline, electronic, or optical
41 signal for communication purposes.

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

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

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

50 (ii) An agreement entered into by the department under this section shall:

51 (A) specify the terms and conditions for the renegotiation of the agreement;

52 (B) specify maintenance responsibilities for each telecommunication facility;

53 (C) be nonexclusive; and

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

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

58 (b) The compensation charged shall be:

- 59 (i) fair and reasonable;
- 60 (ii) competitively neutral;
- 61 (iii) nondiscriminatory;
- 62 (iv) open to public inspection;
- 63 (v) established to promote access by multiple telecommunication facility providers;
- 64 (vi) established for zones of the state, with zones determined based upon factors that
- 65 include population density, distance, numbers of telecommunication subscribers, and the
- 66 impact upon private right-of-way users;
- 67 (vii) established to encourage the deployment of digital infrastructure within the state;
- 68 (viii) set after the department conducts a market analysis to determine the fair and
- 69 reasonable values of the right-of-way based upon adjacent property values;
- 70 (ix) a lump sum payment or annual installment, at the option of the
- 71 telecommunications facility provider; and
- 72 (x) set in accordance with Subsection (3)(f).
- 73 (c) (i) The compensation charged may be cash, in-kind compensation, or a combination
- 74 of cash and in-kind compensation.
- 75 (ii) In-kind compensation requires the agreement of both the telecommunication
- 76 facility provider and the department.
- 77 (iii) The department shall ~~in consultation with the Telecommunications Advisory~~
- 78 ~~Council created in Section 72-7-109;~~ determine the present value of any in-kind compensation
- 79 based upon the incremental cost to the telecommunication facility provider.
- 80 (iv) The value of in-kind compensation or a combination of cash and in-kind
- 81 compensation shall be equal to or greater than the amount of cash compensation that would be
- 82 charged if the compensation is cash only.
- 83 (d) (i) The department shall provide for the proportionate sharing of costs among the
- 84 department and telecommunications providers for joint trenching or trench sharing based on
- 85 the amount of conduit innerduct space that is authorized in the agreement for the trench.
- 86 (ii) If two or more telecommunications facility providers are required to share a single
- 87 trench, each telecommunications facility provider in the trench shall share the cost and benefits
- 88 of the trench in accordance with Subsection (3)(d)(i) on a fair, reasonable, competitively
- 89 neutral, and nondiscriminatory basis.

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

93 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
94 department shall establish a schedule of rates of compensation for any longitudinal access
95 granted under this section.

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

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

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

104 (b) Any telecommunications capacity acquired as in-kind compensation shall be used[:
105 (†)] exclusively for statewide telecommunications purposes and may not be sold or leased in
106 competition with telecommunication or Internet service providers[; and].

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

109 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
110 department shall make rules:

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

113 (b) specifying the procedures for establishing an agreement for longitudinal access for
114 a telecommunication facility provider;

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

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

117 (ii) expiration of an agreement; or

118 (iii) a breach of an agreement; and

119 (d) providing an opportunity for all interested providers to apply for access within open
120 right-of-way segments.

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

125 (b) Nothing in this section shall affect the authority of a municipality under:

126 (i) Section 10-1-203;

127 (ii) Section 11-26-1;

128 (iii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

129 (iv) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

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

134 Section 2. **Repealer.**

135 This bill repeals:

136 Section 72-7-109, **Telecommunications Advisory Council -- Membership -- Duties.**

Legislative Review Note
Office of Legislative Research and General Counsel