

LOCAL GOVERNMENT FEES AND TAXES AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Deidre M. Henderson

House Sponsor: Karianne Lisonbee

LONG TITLE

General Description:

This bill prohibits a municipality from imposing a transportation utility fee on a legal subdivision.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ limits any authority a municipality has to impose a transportation utility fee by prohibiting a municipality from imposing a transportation utility fee on a legal subdivision; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-7-102, as last amended by Laws of Utah 2012, Chapter 289

72-7-108, as last amended by Laws of Utah 2017, Chapter 80

ENACTS:

11-26-101, Utah Code Annotated 1953



28 **11-26-301**, Utah Code Annotated 1953

29 RENUMBERS AND AMENDS:

30 **11-26-201**, (Renumbered from 11-26-1, as last amended by Laws of Utah 2003,
31 Chapter 253)

32 **11-26-202**, (Renumbered from 11-26-2, as enacted by Laws of Utah 1981, Chapter 214)



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

35 Section 1. Section **11-26-101** is enacted to read:

36 **CHAPTER 26. LIMITATIONS ON LOCAL TAXES AND FEES ON UTILITIES**

37 **Part 1. General Provisions.**

38 **11-26-101. Title.**

39 This chapter is known as "Limitations on Local Taxes and Fees on Utilities."

40 Section 2. Section **11-26-201**, which is renumbered from Section 11-26-1 is
41 renumbered and amended to read:

42 **Part 2. Local Charges on a Public Service Provider**

43 ~~[11-26-1].~~ **11-26-201. Definitions -- Ceiling on local charges based on gross**
44 **revenues of public service provider.**

45 (1) As used in this [chapter] part:

46 (a) "Local charge" means one or more of the following charges paid by a public service
47 provider to a county or municipality:

- 48 (i) a tax;
- 49 (ii) a license;
- 50 (iii) a fee;
- 51 (iv) a license fee;
- 52 (v) a license tax; or
- 53 (vi) a charge similar to Subsections (1)(a)(i) through (v).

54 (b) "Municipality" means:

- 55 (i) a city; or
- 56 (ii) a town.

57 (c) "Public service provider" means a person engaged in the business of supplying
58 taxable energy as defined in Section **10-1-303**.

59 (2) A county or a municipality may not impose upon, charge, or collect from a public
60 service provider local charges:

61 (a) imposed on the basis of the gross ~~[revenues]~~ revenue of the public service provider;

62 (b) derived from sales, use, or both sales and use of the service within the county or
63 municipality; and

64 (c) in a total amount that is greater than 6% of gross ~~[revenues]~~ revenue.

65 (3) The determination of gross ~~[revenues]~~ revenue under this section may not include:

66 (a) the sale of gas or electricity as special fuel for motor vehicles; or

67 (b) a local charge.

68 (4) This section may not be construed to:

69 (a) affect or limit the power of ~~[counties or municipalities]~~ a county or a municipality
70 to impose sales and use taxes under:

71 (i) Title 59, Chapter 12, Sales and Use Tax Act; or

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

73 (b) grant any county or municipality the power to impose a local charge not otherwise
74 provided for by law.

75 (5) This section takes precedence over any conflicting provision of law.

76 Section 3. Section **11-26-202**, which is renumbered from Section 11-26-2 is
77 renumbered and amended to read:

78 ~~[11-26-2]~~. **11-26-202. Exemption of municipality from taxation limitation.**

79 A municipality is exempt from this limit by a majority vote of ~~[its voters voting]~~ the
80 municipality's voters who vote in a municipal election.

81 Section 4. Section **11-26-301** is enacted to read:

82 **Part 3. Transportation Utility Fee**

83 **11-26-301. Definitions -- Limitation on imposition of transportation utility fee.**

84 (1) As used in this section:

85 (a) (i) "Legal subdivision" means a local government that is recognized by Utah
86 Constitution, Article XI.

87 (ii) "Legal subdivision" does not include a local government that Utah Constitution,
88 Article XI, only authorizes the Legislature to create.

89 (b) "Municipality" means the same as that term is defined in Section [10-1-104](#).

- 90 (c) "Transportation utility fee" means an ongoing, regular fee or tax imposed:
- 91 (i) by a municipality for the purpose of maintaining public roads; and
- 92 (ii) on utility customers within the municipality.
- 93 (2) A municipality may not impose a transportation utility fee on a legal subdivision.
- 94 (3) This section does not grant to a municipality any authority not otherwise provided
- 95 for by law to impose a transportation utility fee.

96 Section 5. Section **72-7-102** is amended to read:

97 **72-7-102. Excavations, structures, or objects prohibited within right-of-way**
98 **except in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty**
99 **for violation.**

100 (1) As used in this section, "management costs" means the reasonable, direct, and
101 actual costs a highway authority incurs in exercising authority over the highways under [its] the
102 highway authority's jurisdiction.

103 (2) Except as provided in Subsection (3) and Section [54-4-15](#), a person may not:

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

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

109 (3) (a) A highway authority having jurisdiction over the right-of-way may allow
110 excavating, installation of utilities and other facilities, or access under rules made by the
111 highway authority and in compliance with federal, state, and local law as applicable.

112 (b) (i) The rules may require a permit for any excavation or installation and may
113 require a surety bond or other security.

114 (ii) The application for a permit for excavation or installation on a state highway shall
115 be accompanied by a fee established under Subsection (4)(f).

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

118 (4) (a) Except as provided in Section [72-7-108](#) with respect to the department
119 concerning the interstate highway system, a highway authority may require compensation from
120 a utility service provider for access to the right-of-way of a highway only as provided in this

121 section.

122 (b) A highway authority may recover from a utility service provider, only those
123 management costs caused by the utility service provider's activities in the right-of-way of a
124 highway under the jurisdiction of the highway authority.

125 (c) (i) A highway authority shall impose a fee or other compensation under this
126 Subsection (4) [~~shall be imposed~~] on a competitively neutral basis.

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

131 (B) The allocation shall reflect proportionately the management costs incurred by the
132 highway authority as a result of the various utility uses of the highway.

133 (d) A highway authority may not use the compensation authority granted under this
134 Subsection (4) as a basis for generating revenue for the highway authority that is in addition to
135 [its] the highway authority's management costs.

136 (e) (i) A utility service provider that is assessed management costs or a franchise fee by
137 a highway authority is entitled to recover those management costs.

138 (ii) If the highway authority that assesses the management costs or franchise fees is a
139 political subdivision of the state and the utility service provider serves customers within the
140 boundaries of that highway authority, the management costs may be recovered from those
141 customers.

142 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
143 department shall adopt a schedule of fees to be assessed for management costs incurred in
144 connection with issuing and administering a permit on a state highway under this section.

145 (g) In addition to the requirements of this Subsection (4), a telecommunications tax or
146 fee imposed by a municipality on a telecommunications provider, as defined in Section
147 [10-1-402](#), is subject to Section [10-1-406](#).

148 (5) Permit fees collected by the department under this section shall be deposited with
149 the state treasurer and credited to the Transportation Fund.

150 (6) Nothing in this section shall affect the authority of a municipality under:

151 (a) Section [10-1-203](#) or [10-1-203.5](#);

- 152 (b) Section ~~[11-26-1]~~ [11-26-201](#);
- 153 (c) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or
- 154 (d) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.
- 155 (7) A person who violates the provisions of Subsection (2) is guilty of a class B
- 156 misdemeanor.

157 Section 6. Section **72-7-108** is amended to read:

158 **72-7-108. Longitudinal telecommunication access in the interstate highway**
159 **system -- Definitions -- Agreements -- Compensation -- Restrictions -- Rulemaking.**

160 (1) As used in this section:

161 (a) "Longitudinal access" means access to or use of any part of a right-of-way of a
162 highway on the interstate system that extends generally parallel to the right-of-way for a total of
163 30 or more linear meters.

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

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

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

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

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

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

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

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

183 (C) be nonexclusive; and
184 (D) be limited to a maximum term of 30 years.

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

188 (b) The compensation charged shall be:

189 (i) fair and reasonable;
190 (ii) competitively neutral;
191 (iii) nondiscriminatory;
192 (iv) open to public inspection;
193 (v) established to promote access by multiple telecommunication facility providers;
194 (vi) established for zones of the state, with zones determined based upon factors that
195 include population density, distance, numbers of telecommunication subscribers, and the
196 impact upon private right-of-way users;
197 (vii) established to encourage the deployment of digital infrastructure within the state;
198 (viii) set after the department conducts a market analysis to determine the fair and
199 reasonable values of the right-of-way based upon adjacent property values;
200 (ix) a lump sum payment or annual installment, at the option of the
201 telecommunications facility provider; and
202 (x) set in accordance with Subsection (3)(f).

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

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

207 (iii) The department shall determine the present value of any in-kind compensation
208 based upon the incremental cost to the telecommunication facility provider.

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

212 (d) (i) The department shall provide for the proportionate sharing of costs among the
213 department and telecommunications providers for joint trenching or trench sharing based on

214 the amount of conduit innerduct space that is authorized in the agreement for the trench.

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

219 (e) The department shall conduct the market analysis [~~under~~] described in Subsection
220 (3)(b)(viii) [~~shall be conducted~~] at least every five years and [~~any adjustments warranted~~] shall
221 apply any necessary adjustments only to agreements entered after the date of the new market
222 analysis.

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

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

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

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

234 (b) Any telecommunications capacity acquired as in-kind compensation shall be used
235 exclusively for statewide telecommunications purposes and may not be sold or leased in
236 competition with telecommunication or Internet service providers.

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

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

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

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

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

245 (ii) expiration of an agreement; or
246 (iii) a breach of an agreement; and
247 (d) providing an opportunity for all interested providers to apply for access within open
248 right-of-way segments.

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

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

254 (i) Section [10-1-203](#);

255 (ii) Section ~~[11-26-1]~~ [11-26-201](#);

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

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

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

Legislative Review Note
Office of Legislative Research and General Counsel