

Senator David G. Buxton proposes the following substitute bill:

TRANSPORTATION REVISIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David G. Buxton

House Sponsor: Kay J. Christofferson

LONG TITLE

General Description:

This bill amends provisions related to authority to construct, encroach on, or access a state highway right-of-way.

Highlighted Provisions:

This bill:

- requires a highway authority to get permission from the Department of Transportation before any construction, encroachment, or access on a state highway right-of-way; and
- provides construction standards for certain repairs.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-3-109, as last amended by Laws of Utah 2011, Chapter 303

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



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

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

28 **72-3-109. Division of responsibility with respect to state highways in cities and**
29 **towns.**

30 (1) Except as provided in Subsection (3), the jurisdiction and responsibility of the
31 department and the municipalities for state highways within municipalities is as follows:

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

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

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

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

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

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

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

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

47 (I) to eliminate a hazard to traffic safety;

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

49 (III) to meet the requirements of federal regulations.

50 (iii) Except as provided in Subsection (1)(h), a municipality may not install or grant
51 permission for the installation of any pole, pipeline, conduit, sewer, ditch, culvert, billboard,
52 advertising sign, or any other structure or object of any kind or character within the portion of
53 the state highway right-of-way under its jurisdiction without the prior written approval of the
54 department.

55 (iv) The department may, by written agreement with a municipality, waive the
56 requirement of its approval under Subsection (1)(c)(iii) for certain types and categories of

57 installations.

58 (d) If it is necessary that a utility, as defined in Section 72-6-116, be relocated,
59 reimbursement shall be made for the relocation as provided for in Section 72-6-116.

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

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

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

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

70 (h) (i) For a portion of a state highway right-of-way for which a municipality has
71 jurisdiction, and upon request of the municipality, the department shall grant permission for the
72 municipality to issue permits within the state highway right-of-way, provided that:

73 (A) the municipality gives the department seven calendar days to review and provide
74 comments on the permit; and

75 (B) upon the request of the department, the municipality incorporates changes to the
76 permit as jointly agreed upon by the municipality and the department.

77 (ii) If the department fails to provide a response as described in Subsection (1)(h)(i)
78 within seven calendar days, the municipality may issue the permit.

79 (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
80 the department shall make rules governing the location and construction of approach roads and
81 driveways entering the state highway. The rules shall:

82 (i) include criteria for the design, location, and spacing of approach roads and
83 driveways based on the functional classification of the adjacent highway, including the urban
84 or rural nature of the area;

85 (ii) be consistent with the "Manual on Uniform Traffic Control Devices" and the model
86 access management policy or ordinance developed by the department under Subsection
87 72-2-117(8);

88 (iii) include procedures for:

89 (A) the application and review of a permit for approach roads and driveways including
90 review of related site plans that have been recommended according to local ordinances; and

91 (B) approving, modifying, denying, or appealing the modification or denial of a permit
92 for approach roads and driveways within 45 days of receipt of the application; and

93 (iv) require written justifications for modifying or denying a permit.

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

96 (c) In accordance with this section and Section 72-7-104, an approach road or driveway
97 may not be constructed on a state highway without a permit issued under this section.

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

101 Section 2. Section 72-7-102 is amended to read:

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

105 (1) As used in this section, "management costs" means the reasonable, direct, and
106 actual costs a highway authority incurs in exercising authority over the highways under its
107 jurisdiction.

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

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

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

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

117 (ii) Notwithstanding Subsection (3)(a)(i), a highway authority may not allow
118 excavating, installation of utilities and other facilities, or access to any portion of a state

119 highway, including portions thereof within a municipality, without the prior written approval of
120 the department. The department may, by written agreement with a municipality, waive the
121 requirement of its approval for certain types and categories of excavations, installations, and
122 access.

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

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

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

129 (iv) Any portion of the right-of-way disturbed by a project permitted under this section
130 shall be repaired using construction standards established by the highway authority with
131 jurisdiction over the disturbed portion of the right-of-way.

132 (c) (i) For a portion of a state highway right-of-way for which a municipality has
133 jurisdiction, and upon request of the municipality, the department shall grant permission for the
134 municipality to issue permits within the state highway right-of-way, provided that:

135 (A) the municipality gives the department seven calendar days to review and provide
136 comments on the permit; and

137 (B) upon the request of the department, the municipality incorporates changes to the
138 permit as jointly agreed upon by the municipality and the department.

139 (ii) If the department fails to provide a response as described in Subsection (3)(c)(i)
140 within seven calendar days, the municipality may issue the permit.

141 (4) (a) Except as provided in Section 72-7-108 with respect to the department
142 concerning the interstate highway system, a highway authority may require compensation from
143 a utility service provider for access to the right-of-way of a highway only as provided in this
144 section.

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

148 (c) (i) A fee or other compensation under this Subsection (4) shall be imposed on a
149 competitively neutral basis.

150 (ii) If a highway authority's management costs cannot be attributed to only one entity,
151 the management costs shall be allocated among all privately owned and government agencies
152 using the highway right-of-way for utility service purposes, including the highway authority
153 itself. The allocation shall reflect proportionately the management costs incurred by the
154 highway authority as a result of the various utility uses of the highway.

155 (d) A highway authority may not use the compensation authority granted under this
156 Subsection (4) as a basis for generating revenue for the highway authority that is in addition to
157 its management costs.

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

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

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

167 (g) In addition to the requirements of this Subsection (4), a telecommunications tax or
168 fee imposed by a municipality on a telecommunications provider, as defined in Section
169 [10-1-402](#), is subject to Section [10-1-406](#).

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

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

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

174 (b) Section [11-26-1](#);

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

176 (d) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

177 (7) A person who violates the provisions of Subsection (2) is guilty of a class B
178 misdemeanor.