

Senator Peter C. Knudson proposes the following substitute bill:

SITING OF HIGH VOLTAGE POWER LINE

ACT

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: Ben C. Ferry

LONG TITLE

General Description:

This bill authorizes the Public Service Commission to conduct hearings and designate the siting of certain high voltage power lines that traverse more than one local government entity.

Highlighted Provisions:

This bill:

- ▶ requires an electrical corporation to notify an affected entity and affected landowner before applying for a land use permit to construct a high voltage power line;
- ▶ requires an electrical corporation to conduct public workshops and distribute information to the public on the proposed high voltage power line;
- ▶ authorizes a land use authority to deny an electrical corporation's land use permit if the electrical corporation does not comply with notice and public workshop requirements;
- ▶ authorizes an electrical corporation or local government to appeal to the Utility Facility Review Board a high voltage power line route; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **54-14-103**, as last amended by Laws of Utah 2008, Chapter 360

32 **54-14-202**, as enacted by Laws of Utah 1997, Chapter 197

33 **54-14-303**, as enacted by Laws of Utah 1997, Chapter 197

34 **54-14-305**, as last amended by Laws of Utah 2007, Chapter 242

35 ENACTS:

36 **54-18-101**, Utah Code Annotated 1953

37 **54-18-102**, Utah Code Annotated 1953

38 **54-18-201**, Utah Code Annotated 1953

39 **54-18-301**, Utah Code Annotated 1953

40 **54-18-302**, Utah Code Annotated 1953

41 **54-18-303**, Utah Code Annotated 1953

42 **54-18-304**, Utah Code Annotated 1953

43 **54-18-305**, Utah Code Annotated 1953



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

46 Section 1. Section **54-14-103** is amended to read:

47 **54-14-103. Definitions.**

48 As used in this chapter:

49 (1) "Actual excess cost" means the difference in cost between:

50 (a) the standard cost of a facility; and

51 (b) the actual cost of the facility, including any necessary right-of-way, as determined
52 in accordance with Section 54-14-203.

53 (2) "Board" means the Utility Facility Review Board.

54 (3) "Commencement of construction of a facility" includes the project design and the
55 ordering of materials necessary to construct the facility.

56 (4) "Estimated excess cost" means any material difference in estimated cost between

57 the costs of a facility, including any necessary right-of-way, if constructed in accordance with
58 the requirements of a local government and the standard cost of the facility.

59 (5) (a) "Facility" means a transmission line, a substation, a gas pipeline, a tap, a
60 measuring device, or a treatment device.

61 (b) "Facility" includes a high voltage power line route as defined in Section 54-18-102.

62 (6) (a) "Gas pipeline" means equipment, material, and structures used to transport gas
63 to the public utility's customers, including:

64 (i) pipe;

65 (ii) a compressor;

66 (iii) a pressure regulator;

67 (iv) a support structure; and

68 (v) any other equipment or structure used to transport or facilitate transportation of gas
69 through a pipe.

70 (b) "Gas pipeline" does not include a service line.

71 (7) "Local government":

72 (a) means a city or town as defined in Section 10-1-104 or a county; or

73 (b) may refer to one or more of the local governments in whose jurisdiction a facility is
74 located if a facility is proposed to be located in more than one local government jurisdiction.

75 (8) "Pay" includes, in reference to a local government paying the actual excess cost of a
76 facility, payment by:

77 (a) a local district under Title 17B, Limited Purpose Local Government Entities - Local
78 Districts;

79 (b) a special service district under Title 17D, Chapter 1, Special Service District Act;

80 or

81 (c) a private entity other than the public utility pursuant to a regulation or decision of
82 the local government.

83 (9) (a) "Standard cost" means the estimated cost of a facility, including any necessary
84 right-of-way, if constructed in accordance with:

85 (i) the public utility's normal practices; and

86 (ii) zoning, subdivision, and building code regulations of a local government, including
87 siting, setback, screening, and landscaping requirements:

88 (A) imposed on similar land uses in the same zone; and
89 (B) that do not impair the ability of the public utility to provide service to its customers
90 in a safe, reliable, adequate, and efficient manner.

91 (b) With respect to a transmission line, "standard cost" is the cost of any overhead line
92 constructed in accordance with the public utility's normal practices.

93 (c) With respect to a facility of a gas corporation, "standard cost" is the cost of
94 constructing the facility in accordance with the public utility's normal practices.

95 (10) (a) "Substation" means a separate space within which electric supply equipment is
96 located for the purpose of switching, regulating, transforming, or otherwise modifying the
97 characteristics of electricity, including:

98 (i) electrical equipment such as transformers, circuit breakers, voltage regulating
99 equipment, buses, switches, capacitor banks, reactors, protection and control equipment, and
100 other related equipment;

101 (ii) the site at which the equipment is located, any foundations, support structures,
102 buildings, or driveways necessary to locate, operate, and maintain the equipment at the site;
103 and

104 (iii) the structure intended to restrict access to the equipment to qualified persons.

105 (b) "Substation" does not include a distribution pole-mounted or pad-mounted
106 transformer that is used for the final transformation of power to the voltage level utilized by the
107 customer.

108 (11) (a) "Transmission line" means an electrical line, including structures, equipment,
109 plant, or fixtures associated with the electrical line, operated at a nominal voltage of 34,000
110 volts or above.

111 (b) "Transmission line" includes, for purposes of Title 54, Chapter 18, Siting of High
112 Voltage Power Line Act, an electrical line as described in Subsection (11)(a) operated at a
113 nominal voltage of 138 kilovolts.

114 Section 2. Section **54-14-202** is amended to read:

115 **54-14-202. Public utility to provide standard cost and estimated excess cost.**

116 (1) If a local government is considering imposing requirements or conditions on
117 construction of a facility that may result in an estimated excess cost and requests the public
118 utility to provide the estimated excess cost, the public utility shall provide to the local

119 government the standard cost of the facility and the estimated excess cost of the facility if
120 constructed in accordance with local government requirements or conditions.

121 (2) If a public utility does not provide the information as described in Subsection (1),
122 the local government may:

123 (a) appeal to the board; and

124 (b) request that the board review the information provided by the public utility.

125 (3) (a) If the board finds that the public utility has failed to provide the standard costs
126 and estimated excess costs in accordance with the provisions of Subsection (1), the board may
127 request additional information from the public utility.

128 (b) In accordance with Subsection (3)(a), a public utility shall provide any information
129 requested by the board within 14 days of the day that the request was made.

130 (c) If a public utility fails to comply with Subsections (3)(a) and (b), the board may
131 suspend issuing its written decision in accordance with Section 54-14-305:

132 (i) until after the public utility provides the information requested under Subsection
133 (3)(a); and

134 (ii) for a period of time reasonable for the board and the local government to review the
135 public utility's standard costs and estimated excess costs information once that information is
136 provided.

137 Section 3. Section **54-14-303** is amended to read:

138 **54-14-303. Actions or disputes for which board review may be sought.**

139 A local government or public utility may seek review by the board, if:

140 (1) a local government has imposed requirements on the construction of a facility that
141 result in estimated excess costs without entering into an agreement with the public utility to pay
142 for the actual excess cost, except any actual excess costs specified in Subsection
143 54-14-201(2)(a) or (2)(b), at least 30 days before the date construction of the facility should
144 commence in order to avoid significant risk of impairment of safe, reliable, and adequate
145 service to customers of the public utility;

146 (2) there is a dispute regarding:

147 (a) the estimated excess cost or standard cost of a facility;

148 (b) when construction of a facility should commence in order to avoid significant risk
149 of impairment of safe, reliable, and adequate service to customers of the public utility; [or]

150 (c) whether the public utility has sought a permit, authorization, approval, exception, or
151 waiver with respect to a facility sufficiently in advance of the date construction should
152 commence, based upon reasonably foreseeable conditions, to allow the local government
153 reasonable time to pay for any estimated excess cost; or

154 (d) the location and siting of a facility under Title 54, Chapter 18, Siting of High
155 Voltage Power Line Act;

156 (3) a local government has required construction of a facility in a manner that will not
157 permit the utility to provide service to its customers in a safe, reliable, adequate, or efficient
158 manner;

159 (4) a local government has prohibited construction of a facility which is needed to
160 provide safe, reliable, adequate, and efficient service to the customers of the public utility;

161 (5) a local government has not made a final decision on the public utility's application
162 for a permit, authorization, approval, exception, or waiver with respect to a facility within 120
163 days of the date the public utility applied to the local government for the permit, authorization,
164 approval, exception, or waiver;

165 (6) a facility is located or proposed to be located in more than one local government
166 jurisdiction and the decisions of the local governments regarding the facility are inconsistent;
167 or

168 (7) a facility is proposed to be located within a local government jurisdiction to serve
169 customers exclusively outside the jurisdiction of the local government and there is a dispute
170 regarding the apportionment of the actual excess cost of the facility between the local
171 government and the public utility.

172 Section 4. Section **54-14-305** is amended to read:

173 **54-14-305. Written decisions of board.**

174 (1) The board shall issue a written decision on the review expeditiously and, in any
175 event, not later than 45 days following the initial hearing.

176 (2) The written decision shall:

177 (a) specify whether the facility should be constructed and, if so, whether any
178 requirements or conditions imposed by the local government may not be imposed because they
179 impair the ability of the public utility to provide safe, reliable, and adequate service to its
180 customers; and

181 (b) resolve any dispute regarding:
182 (i) the standard cost or estimated excess cost of the facility;
183 (ii) the date on which construction of the facility should commence in order to avoid a
184 significant risk of impairment of safe, reliable, and adequate service to customers of the public
185 utility;
186 (iii) whether the public utility has sought a permit, authorization, approval, exception,
187 or waiver with respect to a facility sufficiently in advance of the date construction should
188 commence, based upon reasonably foreseeable conditions, to allow the local government
189 reasonable time to pay for any estimated excess cost; [or]
190 (iv) apportionment of the actual excess cost of the facility between the local
191 government and the public utility pursuant to Subsection 54-14-303(7)[-]; or
192 (v) the location and siting of a facility subject to Title 54, Chapter 18, Siting of High
193 Voltage Power Line Act, and in accordance with Section 54-14-102.
194 (3) Notwithstanding Subsection (6), the written decision of the board may designate an
195 alternative facility route for a dispute described under Subsection (2)(b)(v).
196 [~~(3)~~] (4) If the board determines that a facility that a local government has prohibited
197 should be constructed, the written decision shall specify any general location parameters
198 required to provide safe, reliable, adequate, and efficient service to the customers of the public
199 utility.
200 [~~(4)~~] (5) The written decision shall leave to the local government any issue that does
201 not affect the provision of safe, reliable, adequate, and efficient service to customers of the
202 public utility or that does not involve an estimated excess cost.
203 [~~(5)~~] (6) With respect to local government requirements or conditions that impose an
204 estimated excess cost but do not impair the provision of safe, reliable, and adequate service to
205 the customers of the public utility, the written decision shall leave each siting issue to the local
206 government except determination of the estimated excess cost and determination of when the
207 construction of the facility should commence.
208 [~~(6)~~] (7) In determining when the construction of the facility should commence, the
209 board shall consider whether the public utility sought a permit, authorization, approval,
210 exception, or waiver from the local government in a timely manner based upon reasonably
211 foreseeable conditions, and, if the board determines that the public utility did not do so, it shall

212 allow sufficient time for the local government to pay any actual excess cost that may be
213 imposed as a result of requirements or conditions the local government has imposed that do not
214 impair the provision of safe, reliable, and adequate service to customers of the public utility.

215 Section 5. Section **54-18-101** is enacted to read:

216 **CHAPTER 18. SITING OF HIGH VOLTAGE POWER LINE ACT**

217 **Part 1. General Provisions**

218 **54-18-101. Title.**

219 This chapter is known as the "Siting of High Voltage Power Line Act."

220 Section 6. Section **54-18-102** is enacted to read:

221 **54-18-102. Definitions.**

222 As used in this chapter:

223 (1) "Affected entity" means an entity as defined in Sections 10-9a-103 and 17-27a-103.

224 (2) "Affected landowner" means an owner of a property interest, as reflected in the
225 most recent county or city tax records as receiving a property tax notice, whose property:

226 (a) is crossed or used by a high voltage power line, including all facility sites,
227 rights-of-way, access roads, and temporary work spaces; and

228 (b) either:

229 (i) abuts either side of an existing right-of-way or facility site owned in fee by any
230 electrical corporation;

231 (ii) abuts the edge of a proposed high voltage power line or abuts a proposed
232 right-of-way that runs along an affected landowner's property line; or

233 (iii) contains a residence within 50 feet of the high voltage power line.

234 (3) "Associated electrical high voltage power line" means:

235 (a) an appurtenant substation, as defined in Section 54-14-103, that must be
236 constructed or modified to accommodate a new electrical high voltage power line or a modified
237 electrical high voltage power line; and

238 (b) other facilities reasonably related to a new electrical high voltage power line or a
239 modified electrical high voltage power line that must be constructed or modified to
240 accommodate the new electrical high voltage power line or the modified electrical high voltage
241 power line.

242 (4) "Electrical corporation" has the same meaning as provided in Section 54-2-1.

243 (5) "High voltage power line" means a new electrical high voltage power line, a
244 modified electrical high voltage power line, or an associated electrical high voltage power line.

245 (6) "High voltage power line route" means the geographic area traversed by a high
246 voltage power line.

247 (7) "Land use application" has the same meaning as provided in Sections 10-9a-103
248 and 17-27a-103.

249 (8) "Land use authority" has the same meaning as provided in Sections 10-9a-103 and
250 17-27a-103.

251 (9) "Land use permit" has the same meaning as Sections 10-9a-103 and 17-27a-103.

252 (10) "Legislative body" has the same meaning as provided in Sections 10-9a-103 and
253 17-27a-103.

254 (11) "Modified electrical high voltage power line" means a proposed modification to
255 an existing electrical transmission line with a nominal operating voltage of 138 kilovolts or
256 more that would result in an increase in capacity or throughput of a cumulative total of 50% of
257 the total existing capacity of the electrical transmission line.

258 (12) "New electrical high voltage power line" means an electrical transmission line
259 with a nominal operating voltage of 138 kilovolts or more that an electrical corporation
260 proposes to construct.

261 Section 7. Section **54-18-201** is enacted to read:

262 **Part 2. Electrical Corporation Duties for High Voltage Power Lines**

263 **54-18-201. Electrical corporation to obtain approval for high voltage power lines.**

264 An electrical corporation shall obtain a land use permit from a land use authority
265 before:

266 (1) acquiring real property for a high voltage power line;

267 (2) beginning construction or operation of a high voltage power line; or

268 (3) beginning modifications to a high voltage power line.

269 Section 8. Section **54-18-301** is enacted to read:

270 **Part 3. Notification -- Process for Obtaining Land Use Permit --Appeal**

271 **54-18-301. Notice of intent to file -- Content -- Prefiling procedures.**

272 (1) An electrical corporation planning to build a high voltage power line shall submit a
273 notice of intent as described in Subsection (3) with the electrical corporation's next filing for a

274 certificate of convenience and necessity in accordance with the provisions of Section 54-4-25.

275 (2) (a) If an electrical corporation files a notice of intent under Subsection (1), the
276 electrical corporation shall send a notice of intent by certified mail to:

277 (i) an affected entity;

278 (ii) the land use authority of an affected entity; and

279 (iii) an affected landowner.

280 (b) A notice of intent sent in accordance with Subsection (2)(a) shall be sent at least
281 180 days before filing for a land use application for a high voltage power line.

282 (c) For purposes of Subsection (2)(a)(iii), a county, at the electrical corporation's
283 request, shall provide a certified list of the most recent county tax records showing all affected
284 landowners.

285 (d) An electrical corporation may not be required to restart the notification process if:

286 (i) the county information provided under Subsection (2)(c) is insufficient or incorrect
287 information; or

288 (ii) the electrical corporation fails to send an affected landowner a notice of intent
289 based on the insufficient or incorrect information.

290 (3) The notice of intent shall include:

291 (a) the name and mailing address of the electrical corporation, including a contact
292 name, address, and telephone number of the contact person for the notice of intent;

293 (b) copies of the electrical corporation's articles of incorporation and proof of its
294 authorization or registration to conduct business in Utah;

295 (c) a detailed description of the targeted high voltage power line route, including
296 location maps of targeted areas and plot plans to scale showing all major components,
297 including a description of zoning and site availability for the high voltage power line;

298 (d) a description of the targeted right-of-way width for the high voltage power line,
299 including to what extent a new right-of-way will be required or an existing right-of-way will be
300 widened;

301 (e) a description of each proposed associated electrical high voltage power line and its
302 dimensions;

303 (f) a description of the proposed project schedule, including:

304 (i) the expected land use application filing date;

305 (ii) the desired date for land use authority approval;
306 (iii) the proposed beginning date for construction; and
307 (iv) the proposed date that the high voltage power line will begin operating;
308 (g) a list of each land use authority from which the electrical corporation must obtain a
309 land use permit to proceed with the high voltage power line;
310 (h) a description of environmentally sensitive areas in the targeted area; and
311 (i) (i) a list and description of the website described in Subsection (4) and each
312 physical location where copies of the notice of intent are located in each affected entity
313 traversed by the high voltage power line; and
314 (ii) an explanation of the construction certificate application process, how an affected
315 landowner may participate in a land use authority's land use application process, and what
316 rights an affected land owner has under Title 78B, Chapter 6, Part 5, Eminent Domain.
317 (4) Within one week of filing the notice of intent with a land use authority, the
318 electrical corporation shall:
319 (a) (i) create and maintain an up-to-date high voltage power line website devoted solely
320 to dispense information about the proposed high voltage power line; and
321 (ii) on the website, designate a single electrical corporation point of contact and
322 explain how the electrical corporation will respond to requests for information from the public
323 and public officials; and
324 (b) (i) publish a public notice in a daily or weekly newspaper of general circulation at
325 least once per week for two weeks in each county where the high voltage power line is located
326 disclosing that the electrical corporation has filed a notice of intent with an affected entity; and
327 (ii) describe in the public notice the proposed high voltage power line, including a map
328 of the targeted high voltage power line route, and advise readers how to obtain more
329 information from the website or locations listed in Subsection (3)(i)(i).
330 Section 9. Section **54-18-302** is enacted to read:
331 **54-18-302. Public workshops.**
332 After an electrical corporation files the notice of intent in accordance with this part and
333 before it files a land use application, the electrical corporation shall:
334 (1) conduct informal public workshops at locations along the high voltage power line
335 route to provide information about:

- 336 (a) the high voltage power line; and
- 337 (b) the process for obtaining a land use permit; and
- 338 (2) provide notice of the public workshop at least 14 days before the public workshop

339 to:

- 340 (a) newspapers of general circulation in the affected area;
- 341 (b) radio stations in the affected area;
- 342 (c) an affected entity; and
- 343 (d) an affected landowner.

344 Section 10. Section **54-18-303** is enacted to read:

345 **54-18-303. Application for land use permit.**

346 (1) If an electrical corporation decides to file a land use application for a proposed high
347 voltage power line, the electrical corporation shall, in accordance with Subsection (2), identify
348 a final location for the high voltage power line route in the electrical corporation's land use
349 application after:

- 350 (a) providing the notice of intent required under Section 54-18-301; and
- 351 (b) conducting the public workshops required under Section 54-18-302.

352 (2) If an electrical corporation files a land use application for a high voltage power line,
353 the electrical corporation shall comply with the land use application requirements created by a
354 legislative body and land use authority in accordance with Title 10, Chapter 9a, Municipal
355 Land Use, Development, and Management Act, and Title 17, Chapter 27a, County Land Use,
356 Development, and Management Act.

357 Section 11. Section **54-18-304** is enacted to read:

358 **54-18-304. Review of land use application.**

359 (1) A land use authority may grant or deny an electrical corporation's land use permit in
360 accordance with the provisions of Title 10, Chapter 9a, Municipal Land Use, Development, and
361 Management Act, and Title 17, Chapter 27a, County Land Use, Development, and
362 Management Act.

363 (2) If an electrical corporation does not satisfy the notice of intent requirements under
364 Section 54-18-301 and public workshop requirements under Section 54-18-302, a land use
365 authority may:

- 366 (a) deny the electrical corporation's land use permit; or

367 (b) require the electrical corporation to restart the notification process under Subsection
368 54-18-301(2)(a).

369 Section 12. Section **54-18-305** is enacted to read:

370 **54-18-305. Appeal of high voltage power line route.**

371 An electrical corporation or affected entity may appeal a high voltage power line route
372 to the Utility Facilities Review Board in accordance with the provisions of Title 54, Chapter
373 14, Utility Facility Review Board Act.