

## SB0114S01 compared with SB0114

~~text~~ shows text that was in SB0114 but was deleted in SB0114S01.

text shows text that was not in SB0114 but was inserted into SB0114S01.

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Senator Jerry W. Stevenson proposes the following substitute bill:

### MUNICIPAL UTILITIES AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jerry W. Stevenson**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill allows a ~~local political subdivision~~ municipality to call an election on proposed public communications service ~~infrastructure~~ facilities.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies that a ~~local political subdivision~~ municipality may create public communications service ~~infrastructure~~ facilities; and
- ▶ allows a ~~local political subdivision~~ municipality to call an election on proposed public communications service ~~infrastructure~~ facilities.

##### Money Appropriated in this Bill:

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**10-8-14**, as last amended by Laws of Utah 2014, Chapter 55

**10-18-102**, as enacted by Laws of Utah 2001, Chapter 83

**10-18-105**, as last amended by Laws of Utah 2004, Chapter 270

**10-18-204**, as enacted by Laws of Utah 2001, Chapter 83

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

Section 1. Section **10-8-14** is amended to read:

**10-8-14. Utility and telecommunications services -- Service beyond municipal limits -- Retainage -- Notice of service and agreement.**

(1) As used in this section, "public telecommunications service ~~infrastructure~~ facilities" means the same as that term is defined in Section 10-18-102.

~~(1)~~ (2) A municipality may:

(a) construct, ~~finance,~~ maintain, and operate waterworks, sewer collection, sewer treatment systems, gas works, electric light works, telecommunications lines, cable television lines, ~~or~~ public transportation systems, or public telecommunications service ~~infrastructure~~ facilities;

(b) authorize the construction, maintenance and operation of the works or systems listed in Subsection ~~(1)~~ (2)(a) by others;

(c) purchase or lease the works or systems listed in Subsection (1)(a) from any person or corporation; and

(d) sell and deliver the surplus product or service capacity of any works or system listed in Subsection ~~(1)~~ (2)(a), not required by the municipality or the municipality's inhabitants, to others beyond the limits of the municipality, except the sale and delivery of:

(i) retail electricity beyond the municipal boundary is governed by Subsections (3) through (8); and

(ii) cable television services or public telecommunications services is governed by Subsection ~~(11)~~ (12).

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~~(2)~~ (3) If any payment on a contract with a private person, firm, or corporation to construct waterworks, sewer collection, sewer treatment systems, gas works, electric works, telecommunications lines, cable television lines, ~~or~~ public transportation systems, or public telecommunications service ~~infrastructure~~ facilities is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

~~(3)~~ (4) (a) Except as provided in Subsection ~~(3)~~ (4)(b), ~~(5)~~ (6), or ~~(9)~~ (10), a municipality may not sell or deliver the electricity produced or distributed by its electric works constructed, maintained, or operated in accordance with Subsection ~~(1)~~ (2) to a retail customer located beyond its municipal boundary.

(b) A municipality that provides retail electric service to a customer beyond its municipal boundary on or before June 15, 2013, may continue to serve that customer if:

(i) on or before December 15, 2013, the municipality provides the electrical corporation, as defined in Section 54-2-1, that is obligated by its certificate of public convenience and necessity to serve the customer with an accurate and complete verified written notice described in Subsection ~~(3)~~ (4)(c) that identifies each customer served by the municipality beyond its municipal boundary;

(ii) no later than June 15, 2014, the municipality enters into a written filing agreement for the provision of electric service with the electrical corporation; and

(iii) the Public Service Commission approves the written filing agreement in accordance with Section 54-4-40.

(c) The municipality shall include in the written notice required in Subsection ~~(3)~~ (4)(b)(i) for each customer:

(i) the customer's meter number;

(ii) the location of the customer's meter by street address, global positioning system coordinates, metes and bounds description, or other similar method of meter location;

(iii) the customer's class of service; and

(iv) a representation that the customer was receiving service from the municipality on or before June 15, 2013.

~~(4)~~ (5) The written filing agreement entered into in accordance with Subsection (3)(b)(ii) shall require the following:

(a) The municipality shall provide electric service to a customer identified in

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accordance with Subsection [~~(3)~~] (4)(b)(i) unless the municipality and the electrical corporation subsequently agree in writing that the electrical corporation will provide electric service to the customer.

(b) If a customer who is located outside the municipal boundary and who is not identified in accordance with Subsection [~~(3)~~] (4)(b)(i) requests service from the municipality after June 15, 2013, the municipality may not provide that customer electric service unless the municipality submits a request to and enters into a written agreement with the electric corporation in accordance with Subsection [~~(5)~~] (6).

[~~(5)~~] (6) (a) A municipality may submit to the electrical corporation a request to provide electric service to an electric customer described in Subsection [~~(4)~~] (5)(b).

(b) If a municipality submits a request, the electrical corporation shall respond to the request within 60 days.

(c) If the electrical corporation agrees to allow the municipality to provide electric service to the customer:

(i) the electrical corporation and the municipality shall enter into a written agreement;

(ii) the municipality shall agree in the written agreement to subsequently transfer service to the customer described in Subsection [~~(4)~~] (5)(b) if the electrical corporation notifies, in writing, the municipality that the electrical corporation has installed a facility capable of providing electric service to the customer; and

(iii) the municipality may provide the service if:

(A) except as provided in Subsection [~~(5)~~] (6)(c)(iii)(B), the Public Service Commission approves the agreement in accordance with Section 54-4-40; or

(B) for an electrical cooperative that meets the requirements of Subsection 54-7-12(7), the governing board of the electrical cooperative approves the agreement.

(d) The municipality or the electrical corporation may terminate the agreement for the provision of electric service if the Public Service Commission imposes a condition authorized in Section 54-4-40 that is a material change to the agreement.

[~~(6)~~] (7) If the municipality and electrical corporation make a transfer described in Subsection [~~(5)~~] (6)(c)(ii):

(a) (i) the municipality shall transfer the electric service customer to the electrical corporation; and

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(ii) the electrical corporation shall provide electric service to the customer; and

(b) the municipality shall transfer a facility in accordance with and for the value as provided in Section 10-2-421.

~~[(7)]~~ (8) (a) In accordance with Subsection ~~[(7)]~~ (8)(b), the municipality shall establish a reasonable mechanism for resolving potential future complaints by an electric customer located outside its municipal boundary.

(b) The mechanism shall require:

(i) that the rates and conditions of service for a customer outside the municipality's boundary are at least as favorable as the rates and conditions of service for a similarly situated customer within the municipality's boundary; and

(ii) if the municipality provides a general rebate, refund, or other payment to a customer located within the municipality's boundary, that the municipality also provide the same general rebate, refund, or other payment to a similarly situated customer located outside the municipality's boundary.

~~[(8)]~~ (9) The municipality is relieved of any obligation to transfer a customer described in Subsection ~~[(4)]~~ (5)(b) or facility used to serve the customer in accordance with Subsection ~~[(5)]~~ (6)(c)(ii) if the municipality annexes the property on which the customer is being served.

~~[(9)]~~ (10) (a) A municipality may provide electric service outside of its municipal boundary to a facility that is solely owned and operated by the municipality for municipal service.

(b) A municipality's provision of electric service to a facility that is solely owned and operated by the municipality does not expand the municipality's electric service area.

~~[(10)]~~ (11) Nothing in this section expands or diminishes the ability of a municipality to enter into a wholesale electrical sales contract with another municipality that serves electric customers to sell and deliver wholesale electricity to the other municipality.

~~[(11)]~~ (12) A municipality's actions under this section related to works or systems involving public telecommunications services or cable television services are subject to the requirements of Chapter 18, Municipal Cable Television and Public Telecommunications Services Act.

Section 2. Section **10-18-102** is amended to read:

**10-18-102. Definitions.**

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As used in this chapter:

(1) "Cable television service" means:

(a) the one-way transmission to subscribers of:

(i) video programming; or

(ii) other programming service; and

(b) subscriber interaction, if any, that is required for the selection or use of:

(i) the video programming; or

(ii) other programming service.

(2) "Capital costs" means all costs of providing a service that are capitalized in accordance with generally accepted accounting principles.

(3) "Cross subsidize" means to pay a cost included in the direct costs or indirect costs of providing a service that is not accounted for in the full cost of accounting of providing the service.

(4) "Direct costs" means those expenses of a municipality that:

(a) are directly attributable to providing:

(i) a cable television service; or

(ii) a public telecommunications service; and

(b) would be eliminated if the service described in Subsection (4)(a) were not provided by the municipality.

(5) "Feasibility consultant" means an individual or entity with expertise in the processes and economics of providing:

(a) cable television service; and

(b) public telecommunications service.

(6) (a) "Full-cost accounting" means the accounting of all costs incurred by a municipality in providing:

(i) a cable television service; or

(ii) a public telecommunications service.

(b) The costs included in a full-cost accounting include all:

(i) capital costs;

(ii) direct costs; and

(iii) indirect costs.

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(7) (a) "Indirect costs" means any costs:

- (i) identified with two or more services or other functions; and
- (ii) that are not directly identified with a single service or function.

(b) "Indirect costs" may include cost factors for:

- (i) administration;
- (ii) accounting;
- (iii) personnel;
- (iv) purchasing;
- (v) legal support; and
- (vi) other staff or departmental support.

~~{ (8) "Local political subdivision" means a county, municipality, local district, or special service district.~~

~~{ (8) (9) "Private provider" means a person that:~~

- (a) provides:
  - (i) cable television services; or
  - (ii) public telecommunications services; and
- (b) is a private entity.

~~{ (9) (10) "Public telecommunications service" means the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.~~

~~{ (11) (a) (10) "Public telecommunications service infrastructure" means infrastructure that is owned or leased by a local political subdivision and used by a third party service provider to provide public telecommunications service.~~

~~— (b) "Public telecommunications service infrastructure" includes:~~

- ~~— (i) cables;~~
- ~~— (ii) collocation space;~~
- ~~— (iii) conduits;~~
- ~~— (iv) innerducts;~~
- ~~— (v) manholes;~~
- ~~— (vi) nodes;~~
- ~~— (vii) optical fiber strands;~~

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- ~~\_\_\_\_\_ (viii) patch panels;~~
- ~~\_\_\_\_\_ (ix) splices;~~
- ~~\_\_\_\_\_ (x) switches;~~
- ~~\_\_\_\_\_ (xi) transmitters;~~
- ~~\_\_\_\_\_ (xii) junctions;~~
- ~~\_\_\_\_\_ (xiii) terminals;~~
- ~~\_\_\_\_\_ (xiv) internal power sources;~~
- ~~\_\_\_\_\_ (xv) access portals;~~
- ~~\_\_\_\_\_ (xvi) battery backups;~~
- ~~\_\_\_\_\_ (xvii) fault alarm systems;~~
- ~~\_\_\_\_\_ (xviii) structures;~~
- ~~\_\_\_\_\_ (xix) shelters;~~
- ~~\_\_\_\_\_ (xx) poles or pole line attachments;~~
- ~~\_\_\_\_\_ (xxi) business and operations support systems; and~~
- ~~\_\_\_\_\_ (xxii) any articles of personal property or similar equipment;~~ facilities" means a facility described in Subsection 10-18-105(2).

~~[(10)]~~ ~~(12)~~ (11) "Subscribers" means a person that lawfully receives:

- (a) cable television services; or
- (b) public telecommunications services.

~~{ \_\_\_\_\_ (13) "Third party service provider" means a non-governmental entity that provides public telecommunications service through public telecommunications service infrastructure.~~

~~‡~~ Section 3. Section **10-18-105** is amended to read:

### **10-18-105. Scope of chapter.**

(1) Nothing in this chapter authorizes any county or other political subdivision of this state to:

- (a) provide:
  - (i) a cable television service; or
  - (ii) a public telecommunications service; or
- (b) purchase, lease, construct, maintain, or operate a facility for the purpose of

providing:

- (i) a cable television service; or

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(ii) a public telecommunications service.

(2) Except as provided in ~~Subsection~~ Subsections (3) and (4), this chapter does not apply to a ~~{} municipality~~ {} local political subdivision purchasing, leasing, constructing, or equipping facilities:

(a) that are designed to provide services within the ~~{} municipality~~ {} local political subdivision; and

(b) that the ~~{} municipality~~ {} local political subdivision:

(i) uses for internal municipal government purposes; or

(ii) by written contract, leases, sells capacity in, or grants other similar rights to a private provider to use the facilities in connection with a private provider offering:

(A) cable television services; or

(B) public telecommunications services.

(3) (a) As used in this Subsection (3), "municipal entity" means:

(i) a municipality; or

(ii) an entity created pursuant to an agreement:

(A) under Title 11, Chapter 13, Interlocal Cooperation Act; and

(B) to which a municipality is a party.

(b) Notwithstanding Subsection (2), a municipal entity shall comply with Subsection (3)(c) if the municipal entity purchases, leases, constructs, or equips facilities that the municipal entity by written contract leases, sells capacity in, or grants other similar rights to a private provider to use the facilities in connection with a private provider offering:

(i) cable television services; or

(ii) public telecommunications services.

(c) A municipal entity described in Subsection (3)(b) shall, with respect to an action described in Subsection (3)(b), comply with the obligations imposed on a municipality pursuant to:

(i) Section 10-18-302; and

(ii) Subsections 10-18-303(3) and (4).

~~(4) (a) Except as provided in Subsection (4)(b), this chapter does not apply to a local political subdivision to the extent that the local political subdivision provides public telecommunications service infrastructure.~~

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~~(b) Notwithstanding Subsection (4)(a), a local political subdivision}~~ A municipality described in Subsection 10-18-105~~(4)(a)2~~ may call an election under Section 10-18-204 with ~~regards}~~ respect to the provision of public telecommunications service ~~infrastructure}~~ facilities.

Section 4. Section **10-18-204** is amended to read:

### **10-18-204. Vote permissible -- Referendum.**

(1) (a) (i) A legislative body of a municipality may, by a majority vote [~~may~~], call an election on whether [~~or not~~] the municipality shall provide [~~the~~] proposed:

~~(i)~~ (A) cable television services; or

~~(ii)~~ (B) public telecommunications services.

(i) A legislative body of a ~~flocal political subdivision}~~ municipality may, by a majority vote, call an election on whether the ~~flocal political subdivision}~~ municipality shall provide proposed public telecommunications service ~~infrastructure}~~ facilities.

(b) If under Subsection (1)(a) the legislative body calls an election, the election shall be held:

(i) (A) at the next municipal general election; or

(B) as provided in Subsection 20A-1-203(1), at a local special election the purpose of which is authorized by this section; and

(ii) in accordance with Title 20A, Election Code, except as provided in this section.

(c) (i) The notice of the election called under Subsection (1)(a)(i) shall include with any other information required by law:

~~(i)~~ (A) a summary of the cable television services or public telecommunications services that the legislative body of the municipality proposes to provide to subscribers residing within the boundaries of the municipality;

~~(ii)~~ (B) the feasibility study summary under Section 10-18-203;

~~(iii)~~ (C) a statement that a full copy of the feasibility study is available for inspection and copying; and

~~(iv)~~ (D) the location in the municipality where the feasibility study may be inspected or copied.

(ii) The notice of an election called under Subsection (1)(a)(ii) shall include a summary prepared by the ~~flocal political subdivision}~~ municipality describing the proposed public

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communications service ~~{infrastructure}~~ facilities.

(d) ~~[The ballot at]~~ (i) For an election called under Subsection (1)(a)(i), the ballot for the election shall pose the question substantially as follows:

"Shall the [name of the municipality] provide [cable television service or public telecommunications service] to the inhabitants of the [municipality] [-]?"

(ii) For an election called under Subsection (1)(a)(ii), the ballot for the election shall pose the question substantially as follows:

"Shall the [name of the ~~{local political subdivision}~~ municipality] provide public telecommunications service ~~{infrastructure}~~ facilities within [name of the ~~{local political subdivision}~~ municipality] by [brief description of the method or means and financing terms by which the public communications service ~~{infrastructure}~~ facilities will be provided]?"

(e) The ballot proposition may not take effect until submitted to the electors and approved by the majority of those voting on the ballot.

(2) In accordance with Title 20A, Chapter 7, Issues Submitted to the Voters, a [municipality] municipal legislative body's action to have the ~~{}~~ municipality ~~{}~~ ~~{political subdivision}~~ over which the legislative body presides provide cable television services or public telecommunications services is subject to local referenda.

(3) The results of an election called under Subsection (1)(a)(ii) are not binding and do not:

(a) require the ~~{local political subdivision}~~ municipality that called the election to take, or refrain from taking, any action; or

(b) limit the ~~{local political subdivision}~~ municipality that called the election from taking any action authorized under Section 10-8-14 or 10-18-105.

†

**Legislative Review Note**

**~~Office of Legislative Research and General Counsel~~**