

UTILITY FACILITY REVIEW BOARD

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Aaron Tilton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends Title 54, Chapter 14, Electrical Facility Review Board Act, to apply to a gas corporation.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ removes provisions allowing certain excess costs related to local government requirements to be apportioned between the local government and a public utility;
- ▶ addresses the calculation of excess costs created by local government requirements;
- ▶ reduces various time limits for board and local government action;
- ▶ clarifies that review of a board decision is independent of any judicial review of a local government land use decision; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

54-14-101, as enacted by Chapter 197, Laws of Utah 1997



- 28 **54-14-102**, as enacted by Chapter 197, Laws of Utah 1997
- 29 **54-14-103**, as enacted by Chapter 197, Laws of Utah 1997
- 30 **54-14-201**, as enacted by Chapter 197, Laws of Utah 1997
- 31 **54-14-203**, as enacted by Chapter 197, Laws of Utah 1997
- 32 **54-14-204**, as enacted by Chapter 197, Laws of Utah 1997
- 33 **54-14-301**, as enacted by Chapter 197, Laws of Utah 1997
- 34 **54-14-303**, as enacted by Chapter 197, Laws of Utah 1997
- 35 **54-14-304**, as enacted by Chapter 197, Laws of Utah 1997
- 36 **54-14-305**, as enacted by Chapter 197, Laws of Utah 1997
- 37 **54-14-306**, as enacted by Chapter 197, Laws of Utah 1997

38 ENACTS:

39 **54-14-309**, Utah Code Annotated 1953



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

42 Section 1. Section **54-14-101** is amended to read:

43 **CHAPTER 14. UTILITY FACILITY REVIEW BOARD ACT**

44 **Part 1. General Provisions**

45 **54-14-101. Short title.**

46 This chapter is known as the [~~Electrical~~] "Utility Facility Review Board Act."

47 Section 2. Section **54-14-102** is amended to read:

48 **54-14-102. Legislative findings.**

49 (1) (a) The Legislature finds that the construction of [~~transmission lines and substations~~
50 ~~by electrical corporations that are~~] facilities by public utilities under this title is a matter of
51 statewide concern.

52 (b) The construction of these facilities may affect the safety, reliability, adequacy, and
53 efficiency of service to customers in areas within the jurisdiction of more than a single local
54 government.

55 (c) Excess costs imposed by requirements of a local government for the construction of
56 facilities may affect either the rates and charges of the public utility to customers other than
57 customers within the jurisdiction of the local government or the financial viability of the public
58 utility, unless the local government pays for those excess costs.

59 (2) The Legislature finds that it is in the public interest to establish the [Electrical]
60 Utility Facility Review Board to resolve issues regarding the construction and installation of
61 [~~transmission lines and substations by any electrical corporation that is a~~] public utility
62 facilities.

63 Section 3. Section **54-14-103** is amended to read:

64 **54-14-103. Definitions.**

65 As used in this chapter:

66 (1) "Actual excess cost" means the difference in cost, determined in accordance with
67 Section 54-14-203, between:

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

69 (b) the actual cost of the facility, including:

70 (i) any necessary right-of-way [~~as determined in accordance with Section 54-14-203.~~];

71 and

72 (ii) the cost resulting from any requirement or condition, including:

73 (A) a lengthy or unusually expensive routing of a facility;

74 (B) a location different from the most efficient location at which a facility is allowed as
75 a conditional use;

76 (C) use of comparatively expensive construction materials or techniques; or

77 (D) a requirement or condition that increases:

78 (I) operational or maintenance costs of the facility; or

79 (II) capital, operational, or maintenance costs for public utility equipment other than
80 the facility that is necessary to allow the facility to perform its intended function.

81 (2) "Board" means the [Electrical] Utility Facility Review Board.

82 (3) "Commencement of construction of a facility" includes the ordering of materials
83 necessary to construct the facility.

84 (4) "Electrical substation":

85 (a) means a separate space within which electric supply equipment is located for the
86 purpose of switching, regulating, transforming, or otherwise modifying the characteristics of
87 electricity, including:

88 (i) electrical equipment such as transformers, circuit breakers, voltage regulating
89 equipment, buses, switches, capacitor banks, reactors, protection and control equipment, and

90 other related equipment;

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

94 (iii) the structure intended to restrict access to the equipment to qualified persons; and
95 (b) does not include a distribution pole-mounted or pad-mounted transformer that is
96 used for the final transformation of power to the voltage level utilized by the customer.

97 (5) "Electrical transmission" means an electrical line, including structures, equipment,
98 plant, or fixtures associated with the electrical line, operated at a nominal voltage of 34,000
99 volts or above.

100 ~~[(4)]~~ (6) "Estimated excess cost" means any material difference in estimated cost
101 between [the costs of a facility, including any necessary right-of-way, if constructed in
102 accordance with the requirements of a local government and the standard cost of the facility.];

103 ~~[(5) "Facility" means a transmission line or a substation.]~~

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

105 (b) the cost of the facility if constructed in accordance with the requirements of a local
106 government, including:

107 (i) any necessary right-of-way; and

108 (ii) the cost resulting from any requirement or condition, including:

109 (A) a lengthy or unusually expensive routing of a facility;

110 (B) a location different from the most efficient location at which a facility is allowed as
111 a conditional use;

112 (C) use of comparatively expensive construction materials or techniques; or

113 (D) a requirement or condition that increases:

114 (I) operational or maintenance costs of the facility; or

115 (II) capital, operational, or maintenance costs for public utility equipment other than
116 the facility that is necessary to allow the facility to perform its intended function.

117 (7) "Facility" includes:

118 (a) an electrical transmission line or electrical substation; and

119 (b) a gas pipeline, tap, measuring device, or treatment device.

120 (8) "Gas pipeline" means equipment, material, and structures used to transport gas to

121 the public utility's customers, including:

122 (a) pipe;

123 (b) a compressor;

124 (c) a pressure regulator;

125 (d) a support structure; and

126 (e) any other equipment or structure used to transport or facilitate transportation of gas
127 through a pipe.

128 ~~[(6)]~~ (9) "Local government":

129 (a) means a city or town as defined in Section 10-1-104 or a county~~[-Hf]; or~~

130 (b) may refer to one or more of the local governments in whose jurisdiction a facility is
131 located if a facility is proposed to be located in more than one local government jurisdiction[;
132 ~~"local government" may refer to one or more of the local governments in whose jurisdiction the~~
133 ~~facility is located].~~

134 ~~[(7)]~~ (10) "Pay" includes, in reference to a local government paying the actual excess
135 cost of a facility, payment by:

136 (a) a special district created by the local government; or

137 (b) a private entity other than the public utility pursuant to a regulation or decision of
138 the local government.

139 ~~[(8)]~~ (11) (a) "Standard cost" means the estimated cost of a facility, including any
140 necessary right-of-way, if constructed in accordance with:

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

142 (ii) zoning, subdivision, and building code regulations of a local government, including
143 siting, ~~[setbacks]~~ setback, screening, and landscaping requirements:

144 (A) imposed on similar land uses in the same zone; and

145 (B) that do not impair the ability of the public utility to provide service to its customers
146 in a safe, reliable, adequate, and efficient manner.

147 (b) With respect to ~~[a]~~ an electrical transmission line, "standard cost" is the cost of any
148 overhead line;

149 (i) constructed in accordance with the public utility's normal practices~~[-]; and~~

150 ~~[(9) (a) "Substation" means a separate space within which electric supply equipment is~~
151 ~~located for the purpose of switching, regulating, transforming, or otherwise modifying the~~

152 characteristics of electricity, including:]

153 ~~[(i) electrical equipment such as transformers, circuit breakers, voltage regulating~~
154 ~~equipment, buses, switches, capacitor banks, reactors, protection and control equipment, and~~
155 ~~other related equipment;]~~

156 ~~[(ii) the site at which the equipment is located, any foundations, support structures,~~
157 ~~buildings, or driveways necessary to locate, operate, and maintain the equipment at the site;~~
158 ~~and]~~

159 ~~[(iii) the structure intended to restrict access to the equipment to qualified persons:]~~

160 ~~[(b) "Substation" does not include a distribution pole-mounted or pad-mounted~~
161 ~~transformer that is used for the final transformation of power to the voltage level utilized by the~~
162 ~~customer.]~~

163 ~~[(10) "Transmission line" means an electrical line, including structures, equipment,~~
164 ~~plant, or fixtures associated with the electrical line, operated at a nominal voltage of 34,000~~
165 ~~volts or above.]~~

166 (ii) on the shortest route using a public right-of-way if available, or the least cost
167 private right-of-way acceptable to the public utility.

168 (c) With respect to an electrical substation, "standard cost" is the cost of:

169 (i) constructing the electrical substation in accordance with the public utility's normal
170 practices at a site preferred by the public utility on which the substation is a permitted or
171 conditional use; and

172 (ii) any required transmission or distribution line additions to allow the substation to
173 perform its intended function.

174 (d) With respect to a facility of a gas corporation, "standard cost" is the cost of
175 constructing the facility in accordance with the public utility's normal practices:

176 (i) at a site preferred by the public utility on which the facility is a permitted or
177 conditional use; and

178 (ii) if a pipeline, on the shortest route using a public right-of-way if available, or the
179 least cost private right-of-way acceptable to the public utility.

180 Section 4. Section **54-14-201** is amended to read:

181 **54-14-201. Conditions on siting of facilities by local governments -- Payment of**
182 **actual excess costs.**

183 If otherwise authorized by law, a local government may require or condition the
 184 construction of a facility in any manner if:

185 (1) the requirements or conditions do not impair the ability of the public utility to
 186 provide safe, reliable, and adequate service to its customers; and

187 (2) the local government pays for the actual excess cost resulting from the requirements
 188 or conditions, except~~[(a)]~~ any actual excess costs that the public utility collects from its
 189 customers pursuant to an order, rule, or regulation of the commission~~[, or]~~.

190 ~~[(b) any portion of the actual excess costs that the board requires to be borne by the~~
 191 ~~public utility.]~~

192 Section 5. Section **54-14-203** is amended to read:

193 **54-14-203. Actual excess cost.**

194 (1) If a local government issues a permit, authorization, approval, exception, or waiver
 195 based upon its agreement to pay for the actual excess cost of a facility, the local government
 196 shall within 30 days ~~[either]~~:

197 (a) accept the estimate of excess cost as the actual excess cost of a facility; or

198 (b) request the public utility to obtain competitive bids for the facility if constructed in
 199 accordance with the requirements and conditions of the local government.

200 (2) If the local government requests the public utility to obtain competitive bids, the
 201 public utility shall obtain competitive bids, and the actual excess cost of the facility shall be the
 202 difference between:

203 (a) the sum of:

204 (i) the lowest bid acceptable to the public utility ~~[plus]~~;

205 (ii) the public utility's contract administration and oversight expense; and

206 (iii) any increased operation and maintenance costs associated with the facility

207 attributable to the local government's requirements; and

208 (b) the standard cost of the facility.

209 (3) Any dispute regarding specifications, lowest acceptable bid, ~~[or]~~ administration and
 210 oversight expense, or increased operation and maintenance costs shall be resolved by the board
 211 on an expedited basis.

212 Section 6. Section **54-14-204** is amended to read:

213 **54-14-204. Requirements or conditions on facility considered waived if local**

214 **government does not pay for actual excess cost 30 days before construction.**

215 Any requirement or condition in any permit, authorization, approval, exception, or
216 waiver of a local government for a facility that imposes an actual excess cost shall be
217 considered waived if the local government does not pay the public utility for the actual excess
218 cost, except any actual excess costs [~~specified~~] excepted in Subsection 54-14-201(2)[~~(a)~~ or
219 ~~(2)(b)~~], within 30 days before the date construction of the facility should commence in order to
220 avoid a significant risk of impairment of safe, reliable, and adequate service to customers of the
221 public utility.

222 Section 7. Section **54-14-301** is amended to read:

223 **54-14-301. Creation, purpose, and composition of board.**

224 (1) The [~~Electrical~~] Utility Facility Review Board is created within the Department of
225 Commerce to resolve disputes between local governments and public utilities regarding the
226 siting and construction of [~~electrical~~] facilities as provided in this part.

227 (2) The board shall be composed of:

228 (a) the three members of the commission;

229 (b) an individual appointed by the governor from a list of nominees of the Utah League
230 of Cities and Towns; and

231 (c) an individual appointed by the governor from a list of nominees of the Utah
232 Association of Counties.

233 (3) The chair of the commission shall serve as chair of the board.

234 (4) Members of the commission shall serve as members of the board during their terms
235 of office as commissioners and until their successors on the commission have been appointed
236 and taken office.

237 (5) (a) Members of the board who are not commissioners:

238 (i) shall have four-year terms, except the initial term of the individual first appointed
239 by the governor from nominees of the Utah Association of Counties shall be two years;

240 (ii) may be appointed for one succeeding term; and

241 (iii) may continue to serve until their successor takes office.

242 (b) Vacancies in the board of members who are not commissioners shall be filled for
243 the unexpired term.

244 (6) Three members of the board [~~shall~~] constitute a quorum.

245 (7) A member of the board may be removed for cause by the governor.

246 (8) (a) (i) Members who are not state or local government employees shall receive no
247 compensation or benefits for their services, but may receive per diem and expenses incurred in
248 the performance of the member's official duties at the rates established by the Division of
249 Finance under Sections 63A-3-106 and 63A-3-107.

250 (ii) Members may decline to receive per diem and expenses for their service.

251 (b) (i) State government officer and employee members who do not receive salary, per
252 diem, or expenses from their agency for their service may receive per diem and expenses
253 incurred in the performance of their official duties from the board at the rates established by the
254 Division of Finance under Sections 63A-3-106 and 63A-3-107.

255 (ii) State government officer and employee members may decline to receive per diem
256 and expenses for their service.

257 (c) (i) Local government members who do not receive salary, per diem, or expenses
258 from their employer for their service on the board may receive per diem and expenses incurred
259 in the performance of their official duties at the rates established by the Division of Finance
260 under Sections 63A-3-106 and 63A-3-107.

261 (ii) Local government members may decline to receive per diem and expenses for their
262 service.

263 Section 8. Section **54-14-303** is amended to read:

264 **54-14-303. Actions or disputes for which board review may be sought.**

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

266 (1) a local government has imposed requirements or conditions on the construction of a
267 facility that result in estimated excess costs without entering into an agreement with the public
268 utility to pay for the actual excess cost, except any actual excess costs [~~specified~~] excepted in
269 Subsection 54-14-201(2)[~~(a) or (2)(b)~~], at least 30 days before the date construction of the
270 facility should commence in order to avoid significant risk of impairment of safe, reliable, and
271 adequate service to customers of the public utility;

272 (2) there is a dispute regarding:

273 (a) the estimated excess cost, actual excess cost, or standard cost of a facility;

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

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

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

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

285 (5) a local government has not made a final decision on the public utility's application
286 for a permit, authorization, approval, exception, or waiver with respect to a facility within
287 ~~[+20]~~ 90 days of the date the public utility applied to the local government for the permit,
288 authorization, approval, exception, or waiver; or

289 (6) a facility is located or proposed to be located in more than one local government
290 jurisdiction and the decisions of the local governments regarding the facility are inconsistent[;
291 or].

292 ~~[(7) a facility is proposed to be located within a local government jurisdiction to serve
293 customers exclusively outside the jurisdiction of the local government and there is a dispute
294 regarding the apportionment of the actual excess cost of the facility between the local
295 government and the public utility.]~~

296 Section 9. Section **54-14-304** is amended to read:

297 **54-14-304. Initial hearing.**

298 (1) The board shall convene an initial hearing within ~~[40]~~ 20 days of the date review is
299 initiated.

300 (2) At the initial hearing, the board shall determine how the review will take place,
301 including whether it will be conducted as a formal or informal adjudicative proceeding.

302 Section 10. Section **54-14-305** is amended to read:

303 **54-14-305. Written decisions of board.**

304 (1) The board shall issue a written decision on the review expeditiously and, in any
305 event, not later than ~~[+40]~~ 70 days following the initial hearing.

306 (2) The written decision shall:

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

311 (b) resolve any dispute regarding:

312 (i) the standard cost ~~[or]~~, estimated excess cost, or actual excess cost of the facility;

313 (ii) the date on which construction of the facility should commence in order to avoid a
314 significant risk of impairment of safe, reliable, and adequate service to customers of the public
315 utility; or

316 (iii) whether the public utility has sought a permit, authorization, approval, exception,
317 or waiver with respect to a facility sufficiently in advance of the date construction should
318 commence, based upon reasonably foreseeable conditions, to allow the local government
319 reasonable time to pay for any estimated excess cost~~[; or]~~.

320 ~~[(iv) apportionment of the actual excess cost of the facility between the local
321 government and the public utility pursuant to Subsection 54-14-303(7).]~~

322 (3) If the board determines that a facility that a local government has prohibited should
323 be constructed, the written decision shall specify any general location parameters required to
324 provide safe, reliable, adequate, and efficient service to the customers of the public utility.

325 (4) The written decision shall leave to the local government any issue that does not
326 affect the provision of safe, reliable, adequate, and efficient service to customers of the public
327 utility or that does not involve an estimated excess cost.

328 (5) With respect to local government requirements or conditions that impose an
329 estimated excess cost but do not impair the provision of safe, reliable, and adequate service to
330 the customers of the public utility, the written decision shall leave each siting issue to the local
331 government except determination of the estimated excess cost and determination of when the
332 construction of the facility should commence.

333 (6) In determining when the construction of the facility should commence, the board
334 shall consider whether the public utility sought a permit, authorization, approval, exception, or
335 waiver from the local government in a timely manner based upon reasonably foreseeable
336 conditions, and, if the board determines that the public utility did not do so, it shall allow
337 sufficient time for the local government to pay any actual excess cost that may be imposed as a

338 result of requirements or conditions the local government has imposed that do not impair the
339 provision of safe, reliable, and adequate service to customers of the public utility.

340 Section 11. Section **54-14-306** is amended to read:

341 **54-14-306. Action required of local government following board decision.**

342 (1) If the board decides that a facility permitted to be constructed by a local
343 government is subject to requirements or conditions that impose an estimated excess cost but
344 do not impair the provision of safe, reliable, and adequate service to customers of the public
345 utility, the local government shall, within 20 days following the decision of the board,
346 determine whether it will impose the requirement or conditions imposing an estimated excess
347 cost or issue the permit, authorization, approval, exception, or waiver without the requirements
348 or conditions imposing an estimated excess cost.

349 (2) If the board decides that a facility should be constructed that the local government
350 has prohibited, the local government shall, within [~~60~~] 40 days following the decision of the
351 board, issue the permit, authorization, approval, exception, or waiver consistent with the
352 decision of the board.

353 (3) The local government may impose requirements or conditions pursuant to its
354 zoning, subdivision, or building code regulations if:

355 (a) the requirements or conditions do not impair safe, reliable, and adequate service to
356 the customers of the utility; and

357 (b) the local government enters into an agreement with the public utility within the
358 20-day time limit specified by Subsection (1) or the [~~60-day~~] 40-day time limit specified by
359 Subsection (2) to pay for the actual excess cost to the public utility, except any actual excess
360 costs [~~specified~~] excepted in Subsection 54-14-201(2)[~~(a) or (2)(b)~~], at least 30 days before the
361 date construction of the facility should commence.

362 Section 12. Section **54-14-309** is enacted to read:

363 **54-14-309. Board review independent of judicial review of land use decisions.**

364 Review by a local government or public utility under Section 54-14-303 is independent
365 of judicial review of local government land use development and management decisions under
366 Sections 10-9a-801 and 17-27a-801.

Legislative Review Note
as of 12-14-06 10:46 AM

Office of Legislative Research and General Counsel

H.B. 120 - Utility Facility Review Board

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals. Some costs may be shifted from public utility companies to local governments.

1/23/2007, 12:39:54 PM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst