

**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

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**LONG TITLE**

**General Description:**

This bill requires a public utility give notice before constructing a high voltage power line.

**Highlighted Provisions:**

This bill:

- ▶ requires a public utility to notify an affected entity and affected landowner before applying for a land use permit to construct a high voltage power line;
- ▶ requires a public utility to conduct public workshops and distribute information to the public on the proposed high voltage power line;
- ▶ authorizes a land use authority to deny a public utility's land use permit if the public utility does not comply with notice and public workshop requirements;
- ▶ authorizes a public utility 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:**

None

**Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **54-14-103**, as last amended by Laws of Utah 2008, Chapter 360

30 **54-14-202**, as enacted by Laws of Utah 1997, Chapter 197

31 **54-14-303**, as enacted by Laws of Utah 1997, Chapter 197

32 **54-14-305**, as last amended by Laws of Utah 2007, Chapter 242

33 ENACTS:

34 **54-18-101**, Utah Code Annotated 1953

35 **54-18-102**, Utah Code Annotated 1953

36 **54-18-201**, Utah Code Annotated 1953

37 **54-18-301**, Utah Code Annotated 1953

38 **54-18-302**, Utah Code Annotated 1953

39 **54-18-303**, Utah Code Annotated 1953

40 **54-18-304**, Utah Code Annotated 1953

41 **54-18-305**, Utah Code Annotated 1953



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

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

45 **54-14-103. Definitions.**

46 As used in this chapter:

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

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

49 (b) the actual cost of the facility, including any necessary right-of-way, as determined

50 in accordance with Section 54-14-203.

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

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

54 (4) "Estimated excess cost" means any material difference in estimated cost between  
55 the costs of a facility, including any necessary right-of-way, if constructed in accordance with  
56 the requirements of a local government and the standard cost of the facility.

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

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

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

62 (i) pipe;

63 (ii) a compressor;

64 (iii) a pressure regulator;

65 (iv) a support structure; and

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

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

69 (7) "Local government":

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

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

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

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

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

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

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

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

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

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

87 (B) that do not impair the ability of the public utility to provide service to its customers

88 in a safe, reliable, adequate, and efficient manner.

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

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

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

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

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

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

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

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

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

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

113 **54-14-202. Public utility to provide standard cost and estimated excess cost.**

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

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

121 (a) appeal to the board; and

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

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

126 (b) In accordance with Subsection (3)(a), a public utility shall provide any information  
127 requested by the board within 30 days of the day that the request was made.

128 (c) If a public utility fails to comply with Subsections (3)(a) and (b), the board may  
129 suspend issuing its written decision in accordance with Section 54-14-305 for 30 days after the  
130 day on which the public utility provides the information requested under Subsection (3)(a).

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

132 **54-14-303. Actions or disputes for which board review may be sought.**

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

134 (1) a local government has imposed requirements on the construction of a facility that  
135 result in estimated excess costs without entering into an agreement with the public utility to pay  
136 for the actual excess cost, except any actual excess costs specified in Subsection  
137 54-14-201(2)(a) or (2)(b), at least 30 days before the date construction of the facility should  
138 commence in order to avoid significant risk of impairment of safe, reliable, and adequate  
139 service to customers of the public utility;

140 (2) there is a dispute regarding:

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

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

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

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

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

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

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

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

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

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

167 **54-14-305. Written decisions of board.**

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

170 (2) The written decision shall:

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

175 (b) resolve any dispute regarding:

176 (i) the standard cost or estimated excess cost of the facility;

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

180 (iii) whether the public utility has sought a permit, authorization, approval, exception,

181 or waiver with respect to a facility sufficiently in advance of the date construction should  
 182 commence, based upon reasonably foreseeable conditions, to allow the local government  
 183 reasonable time to pay for any estimated excess cost; ~~[or]~~

184 (iv) apportionment of the actual excess cost of the facility between the local  
 185 government and the public utility pursuant to Subsection 54-14-303(7)~~[-];~~ or

186 (v) the location and siting of a facility subject to Title 54, Chapter 18, Siting of High  
 187 Voltage Power Line Act, and in accordance with Section 54-14-102.

188 (3) Notwithstanding Subsection (6), the written decision of the board may designate an  
 189 alternative facility route for a dispute described under Subsection (2)(b)(v).

190 ~~[(3)]~~ (4) If the board determines that a facility that a local government has prohibited  
 191 should be constructed, the written decision shall specify any general location parameters  
 192 required to provide safe, reliable, adequate, and efficient service to the customers of the public  
 193 utility.

194 ~~[(4)]~~ (5) The written decision shall leave to the local government any issue that does  
 195 not affect the provision of safe, reliable, adequate, and efficient service to customers of the  
 196 public utility or that does not involve an estimated excess cost.

197 ~~[(5)]~~ (6) With respect to local government requirements or conditions that impose an  
 198 estimated excess cost but do not impair the provision of safe, reliable, and adequate service to  
 199 the customers of the public utility, the written decision shall leave each siting issue to the local  
 200 government except determination of the estimated excess cost and determination of when the  
 201 construction of the facility should commence.

202 ~~[(6)]~~ (7) In determining when the construction of the facility should commence, the  
 203 board shall consider whether the public utility sought a permit, authorization, approval,  
 204 exception, or waiver from the local government in a timely manner based upon reasonably  
 205 foreseeable conditions, and, if the board determines that the public utility did not do so, it shall  
 206 allow sufficient time for the local government to pay any actual excess cost that may be  
 207 imposed as a result of requirements or conditions the local government has imposed that do not  
 208 impair the provision of safe, reliable, and adequate service to customers of the public utility.

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

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

211 **Part 1. General Provisions**

212 **54-18-101. Title.**

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

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

215 **54-18-102. Definitions.**

216 As used in this chapter:

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

218 (2) "Affected landowner" means an owner of a property interest, as reflected in the  
219 most recent county or city tax records as receiving a property tax notice, whose property in a  
220 targeted high voltage power line route:

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

223 (b) abuts the edge of the targeted high voltage power line route; or

224 (c) contains a residence within 50 feet.

225 (3) (a) "Construction" means any clearing of land, excavation, construction or other  
226 action that would affect the environment of the site of any facility.

227 (b) "Construction" does not include changes needed for:

228 (i) temporary use of sites for less than 90 days; or

229 (ii) changes required to conduct required studies and tests for:

230 (A) requirements of this chapter;

231 (B) state regulations;

232 (C) federal regulations;

233 (C) access roads and services associated with utilities;

234 (D) routes for nonutility purposes; or

235 (E) uses in securing geological data, including necessary borings or drillings to  
236 ascertain foundation conditions.

237 (4) "High voltage power line" means a new electrical high voltage power line or a  
238 modified electrical high voltage power line.

239 (5) "High voltage power line route" means the geographic area traversed by a high  
240 voltage power line.

241 (6) "Land use application" has the same meaning as provided in Sections 10-9a-103  
242 and 17-27a-103.



243 (7) "Land use authority" has the same meaning as provided in Sections 10-9a-103 and  
244 17-27a-103.

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

246 (9) "Legislative body" has the same meaning as provided in Sections 10-9a-103 and  
247 17-27a-103.

248 (10) "Modified electrical high voltage power line" means a proposed modification:

249 (a) (i) to increase the voltage of an existing electrical transmission line with a nominal  
250 operating voltage of 138 kilovolts or more; or

251 (ii) that would increase the voltage of an existing electrical transmission line to 138  
252 kilovolts; and

253 (b) to all facility sites, rights-of-way access roads, and temporary work spaces.

254 (11) "New electrical high voltage power line" means an electrical transmission line  
255 with a nominal operating voltage of 138 kilovolts or more that a public utility proposes to  
256 construct.

257 (12) "Public utility" has the same meaning as provided in Section 54-2-1.

258 (13) (a) "Targeted high voltage power line route" means a general, identifiable area  
259 designated by a public utility for the placement of a proposed high voltage power line.

260 (b) "Targeted high voltage power line route" includes:

261 (i) the public utility's preferred high voltage power line route; and

262 (ii) all potential feasible alternative high voltage power line routes within the general,  
263 identifiable area.

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

265 **Part 2. Public Utility Duties for High Voltage Power Lines**

266 **54-18-201. Public utility to obtain approval for high voltage power lines.**

267 (1) Subject to Subsection (2), a public utility shall comply with the requirements of this  
268 chapter before:

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

270 (b) beginning modifications to a high voltage power line.

271 (2) A public utility that has obtained a land use permit for a high voltage power line on  
272 or before May 12, 2009, is not subject to the provisions of this chapter for that high voltage  
273 power line.

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

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

276 **54-18-301. Notice of intent to file -- Content -- Prefiling procedures.**

277 (1) A public utility planning to build a high voltage power line shall submit a notice of  
278 intent as described in Subsection (3) with the public utility's next filing for a certificate of  
279 convenience and necessity in accordance with the provisions of Section 54-4-25.

280 (2) (a) If a public utility files a notice of intent under Subsection (1), the public utility  
281 shall send a notice of intent by certified mail to:

282 (i) an affected entity;

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

284 (iii) an affected landowner.

285 (b) A notice of intent sent in accordance with Subsection (2)(a) shall be sent at least  
286 180 days before filing for a land use application for a high voltage power line.

287 (c) For purposes of Subsection (2)(a)(iii), a county, at the public utility's request, shall  
288 provide a certified list of the most recent county tax records showing all affected landowners.

289 (d) A public utility may not be required to restart the notification process if:

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

292 (ii) the public utility fails to send an affected landowner a notice of intent based on the  
293 insufficient or incorrect information.

294 (3) The notice of intent shall include:

295 (a) the name and mailing address of the public utility, including a contact name,  
296 address, and telephone number of the contact person for the notice of intent;

297 (b) a detailed description of the targeted high voltage power line route, including:

298 (i) location maps of:

299 (A) the targeted high voltage power line route;

300 (B) the public utility's preferred high voltage power line route within the targeted high  
301 voltage power line route; and

302 (C) a potential feasible alternative high voltage power line route within the targeted  
303 high voltage power line route;

304 (ii) a detailed description of existing zoning and site availability within the targeted

305 high voltage power line route;

306 (iii) a detailed description of all major components of each high voltage power line  
307 listed in Subsections (3)(b)(i)(B) and (C); and

308 (iv) the location and width for each high voltage power line listed in Subsections  
309 (3)(b)(i)(B) and (C);

310 (e) a list of each land use authority in the targeted high voltage power line route from  
311 which the public utility must obtain a land use permit to proceed with the high voltage power  
312 line;

313 (f) a description of environmentally sensitive areas in the targeted high voltage power  
314 line route area;

315 (g) (i) a list and description of the website described in Subsection (4) and each  
316 physical location where copies of the notice of intent are located in each affected entity  
317 traversed by the high voltage power line; and

318 (ii) (A) an explanation of the land use application process;

319 (B) how an affected landowner may participate in a land use authority's land use  
320 application process; and

321 (C) what rights an affected land owner has under Title 78B, Chapter 6, Part 5, Eminent  
322 Domain; and

323 (h) a description of an area within the targeted high voltage power line route for which  
324 the public utility already has a land use permit to construct a high voltage power line.

325 (4) Within one week of filing the notice of intent with a land use authority, the public  
326 utility shall:

327 (a) (i) create and maintain an up-to-date high voltage power line website devoted solely  
328 to dispense information about the proposed high voltage power line; and

329 (ii) on the website, designate a single public utility point of contact and explain how  
330 the public utility will respond to requests for information from the public and public officials;  
331 and

332 (b) (i) publish a public notice in a daily or weekly newspaper of general circulation at  
333 least once per week for two weeks in each county where the high voltage power line is located  
334 disclosing that the public utility has filed a notice of intent with an affected entity; and

335 (ii) describe in the public notice the proposed high voltage power line, including a map

336 of the targeted high voltage power line route, and advise readers how to obtain more  
337 information from the website or locations listed in Subsection (3)(g)(i).

338 Section 9. Section **54-18-302** is enacted to read:

339 **54-18-302. Public workshops.**

340 After a public utility files the notice of intent in accordance with this part and before it  
341 files a land use application, the public utility shall:

342 (1) conduct informal public workshops at locations along the high voltage power line  
343 route to provide information about:

344 (a) the high voltage power line; and

345 (b) the process for obtaining a land use permit; and

346 (2) provide notice of the public workshop at least 14 days before the public workshop

347 to:

348 (a) newspapers of general circulation in the affected area;

349 (b) radio stations in the affected area;

350 (c) an affected entity; and

351 (d) an affected landowner.

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

353 **54-18-303. Application for land use permit.**

354 (1) If a public utility decides to file a land use application for a proposed high voltage  
355 power line, the public utility shall, in accordance with Subsection (2), identify a final location  
356 for the high voltage power line route in the public utility's land use application after:

357 (a) providing the notice of intent required under Section 54-18-301; and

358 (b) conducting the public workshops required under Section 54-18-302.

359 (2) If a public utility files a land use application for a high voltage power line, the  
360 public utility shall comply with the land use application requirements created by a legislative  
361 body and land use authority in accordance with Title 10, Chapter 9a, Municipal Land Use,  
362 Development, and Management Act, and Title 17, Chapter 27a, County Land Use,  
363 Development, and Management Act.

364 (3) A local government may request cost information for the high voltage power line  
365 route in accordance with the provisions of Title 54, Chapter 14, Utility Facility Review Board  
366 Act.

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

368 **54-18-304. Review of land use application.**

369 (1) (a) Subject to Subsection (3), a land use authority may grant or deny a public  
370 utility's land use permit in accordance with the provisions of Title 10, Chapter 9a, Municipal  
371 Land Use, Development, and Management Act, and Title 17, Chapter 27a, County Land Use,  
372 Development, and Management Act.

373 (b) The Utility Facility Review Board may review a land use authority's land use  
374 permit decision in accordance with Title 54, Chapter 14, Part 3, Utility Facility Review Board  
375 Act.

376 (2) If a public utility does not satisfy the notice of intent requirements under Section  
377 54-18-301 and public workshop requirements under Section 54-18-302, a land use authority  
378 may:

379 (a) withhold a decision on a public utility's land use permit until the public utility  
380 satisfies the notification and public workshop requirements; or

381 (b) deny the public utility's land use permit if, after adequate notice and reasonable  
382 time to comply, the public utility fails to comply with the requirements of Sections 54-18-301  
383 and 54-18-302.

384 (3) In determining the high voltage power line route for a public utility's land use  
385 permit, a land use authority shall:

386 (a) (i) review and consider the public utility's preferred high voltage power line route  
387 within the targeted high voltage power line route; and

388 (ii) review and consider a potential feasible alternative high voltage power line route  
389 within the targeted high voltage power line route; and

390 (b) consider the following factors as applied to a route described in Subsection (3)(a):

391 (i) whether or not the high voltage power line will provide regional and statewide  
392 benefits;

393 (ii) whether or not granting the land use permit for the high voltage power line is  
394 consistent with the public interest;

395 (iii) whether or not the proposed high voltage power line route minimizes, to the extent  
396 reasonable and economical, adverse impacts on the important environmental features of the  
397 state and local government entities;

398 (iv) whether or not the costs associated with the high voltage power line would be:

399 (A) costs recovered by the public utility in a rate case and those costs are just and

400 reasonable; or

401 (B) actual excess costs as defined in Section 54-14-103; and

402 (v) whether or not the high voltage power line will maximize, to the extent reasonable

403 and economical and consistent with planning for reliable electricity, the transmission

404 capabilities of existing towers or structures.

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

406 **54-18-305. Appeal of high voltage power line route.**

407 This section does not affect a public utility's or affected entity's right to appeal a high

408 voltage power line route to the Utility Facility Review Board in accordance with the provisions

409 of Title 54, Chapter 14, Utility Facility Review Board Act.

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**S.B. 41 2nd Sub. (Salmon) - Siting of High Voltage Power Line Act**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment will require an additional appropriation from the Commerce Service Fund-Public Utility Regulatory Fund of \$50,000 in FY 2010 and \$50,000 in FY 2011 for current expenses for the Department Commerce, Division of Public Utilities.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
Restricted Funds	\$0	\$50,000	\$50,000	\$0	\$50,000	\$50,000
<b>Total</b>	<b>\$0</b>	<b>\$50,000</b>	<b>\$50,000</b>	<b>\$0</b>	<b>\$50,000</b>	<b>\$50,000</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Individuals and businesses may be affected due to increased regulatory fees.

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