

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 requires a public utility to 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 when 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 public utility or local government to appeal a high voltage power line route to the Utility Facility Review Board; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **54-14-103**, as last amended by Laws of Utah 2008, Chapter 360

28 **54-14-202**, as enacted by Laws of Utah 1997, Chapter 197

29 **54-14-303**, as enacted by Laws of Utah 1997, Chapter 197

30 **54-14-305**, as last amended by Laws of Utah 2007, Chapter 242

31 ENACTS:

32 **54-18-101**, Utah Code Annotated 1953

33 **54-18-102**, Utah Code Annotated 1953

34 **54-18-201**, Utah Code Annotated 1953

35 **54-18-301**, Utah Code Annotated 1953

36 **54-18-302**, Utah Code Annotated 1953

37 **54-18-303**, Utah Code Annotated 1953

38 **54-18-304**, Utah Code Annotated 1953

39 **54-18-305**, Utah Code Annotated 1953



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

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

43 **54-14-103. Definitions.**

44 As used in this chapter:

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

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

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

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

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

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

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

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

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

60 (i) pipe;

61 (ii) a compressor;

62 (iii) a pressure regulator;

63 (iv) a support structure; and

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

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

67 (7) "Local government":

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

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

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

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

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

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

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

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

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

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

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

87 (b) With respect to a transmission line, "standard cost" is the cost of any overhead line

88 constructed in accordance with the public utility's normal practices.

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

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

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

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

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

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

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

107 (b) "Transmission line" includes, for purposes of Title 54, Chapter 18, Siting of High
108 Voltage Power Line Act, an electrical line as described in Subsection (11)(a) operated at a
109 nominal voltage of 230 kilovolts or more.

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

111 **54-14-202. Public utility to provide standard cost and estimated excess cost.**

112 [Hf] (1) (a) A public utility shall provide the information described in Subsection (1)(b)
113 if a local government;

114 (i) is considering imposing requirements or conditions on construction of a facility that
115 may result in an estimated excess cost and requests that the public utility [tø] provide the
116 estimated excess cost[~~,-the~~]; or

117 (ii) recommends an alternative to the public utility's proposed high voltage
118 transmission line corridor in accordance with the provisions of Title 54, Chapter 18, Siting of

119 High Voltage Power Line Act.

120 (b) Subject to Subsection (1)(a), a public utility shall provide to the local government
121 [the];

122 (i) (A) the estimated standard cost of the facility; and

123 (B) the estimated excess cost of the facility if constructed in accordance with local
124 government requirements or conditions[-]; and

125 (ii) the estimated cost of the alternative line corridor proposed by a local government
126 provided that all affected land use authorities agree to the alternative line corridor proposed by
127 the local government.

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

130 (a) appeal to the board; and

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

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

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

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

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

141 **54-14-303. Actions or disputes for which board review may be sought.**

142 (1) A local government or public utility may seek review by the board, if:

143 [(+)] (a) a local government has imposed requirements on the construction of a facility
144 that result in estimated excess costs without entering into an agreement with the public utility
145 to pay for the actual excess cost, except any actual excess costs specified in Subsection
146 54-14-201(2)(a) or (2)(b), at least 30 days before the date construction of the facility should
147 commence in order to avoid significant risk of impairment of safe, reliable, efficient, and
148 adequate service to customers of the public utility;

149 [(2)] (b) there is a dispute regarding:

150 ~~[(a)]~~ (i) the estimated excess cost or standard cost of a facility;

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

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

157 (iv) the geographic boundaries of a proposed corridor as set forth in a notice submitted
158 by a public utility to a local government pursuant to the provisions of Subsection
159 54-18-301(1)(a), provided the action is filed by the local government before the public utility
160 files an application for a land use permit as set forth in Subsection 54-18-304(1)(a); or

161 (v) a modification proposed by a local government to a utility's proposed corridor that
162 is identified in the public utility's notice of intent required pursuant to Subsection
163 54-18-301(3);

164 ~~[(3)]~~ (c) a local government has required construction of a facility in a manner that will
165 not permit the utility to provide service to its customers in a safe, reliable, adequate, or efficient
166 manner;

167 ~~[(4)]~~ (d) a local government has prohibited construction of a facility which is needed to
168 provide safe, reliable, adequate, and efficient service to the customers of the public utility;

169 ~~[(5)]~~ (e) a local government has not made a final decision on the public utility's
170 application for a permit, authorization, approval, exception, or waiver with respect to a facility
171 within ~~[+20]~~ 60 days of the date the public utility applied to the local government for the
172 permit, authorization, approval, exception, or waiver;

173 ~~[(6)]~~ (f) a facility is located or proposed to be located in more than one local
174 government jurisdiction and the decisions of the local governments regarding the facility are
175 inconsistent; or

176 ~~[(7)]~~ (g) a facility is proposed to be located within a local government jurisdiction to
177 serve customers exclusively outside the jurisdiction of the local government and there is a
178 dispute regarding the apportionment of the actual excess cost of the facility between the local
179 government and the public utility.

180 (2) (a) If an action is filed by a local government pursuant to Subsection (1)(b)(iv) or

181 (v) seeking a modification to a target study area or a proposed corridor, the local government
182 shall provide written notice of the action to any potentially affected landowner, as defined in
183 Section 54-18-102, or affected entity, as defined in Section 54-18-102.

184 (b) A potentially affected landowner, as defined in Section 54-18-102, or affected
185 entity, as defined in Section 54-18-102, shall have a right to intervene as a party in the
186 proceeding.

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

188 **54-14-305. Written decisions of board.**

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

191 (2) The written decision shall:

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

196 (b) resolve any dispute regarding:

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

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

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

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

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

209 (3) (a) Notwithstanding Subsection (6), the written decision of the board may designate
210 the facility route for a high voltage transmission line pursuant to a dispute described under
211 Section 54-14-304.

212 (b) The public utility shall be entitled to recover from its ratepayers any actual excess
213 costs apportioned to it under Subsection (2)(b)(iv).

214 [~~(3)~~] (4) If the board determines that a facility that a local government has prohibited
215 should be constructed, the written decision shall specify any general location parameters
216 required to provide safe, reliable, adequate, and efficient service to the customers of the public
217 utility.

218 [~~(4)~~] (5) The written decision shall leave to the local government any issue that does
219 not affect the provision of safe, reliable, adequate, and efficient service to customers of the
220 public utility or that does not involve an estimated excess cost.

221 [~~(5)~~] (6) With respect to local government requirements or conditions that impose an
222 estimated excess cost but do not impair the provision of safe, reliable, and adequate service to
223 the customers of the public utility, the written decision shall leave each siting issue to the local
224 government except determination of the estimated excess cost and determination of when the
225 construction of the facility should commence.

226 [~~(6)~~] (7) In determining when the construction of the facility should commence, the
227 board shall consider whether the public utility sought a permit, authorization, approval,
228 exception, or waiver from the local government in a timely manner based upon reasonably
229 foreseeable conditions, and, if the board determines that the public utility did not do so, it shall
230 allow sufficient time for the local government to pay any actual excess cost that may be
231 imposed as a result of requirements or conditions the local government has imposed that do not
232 impair the provision of safe, reliable, and adequate service to customers of the public utility.

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

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

235 **Part 1. General Provisions**

236 **54-18-101. Title.**

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

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

239 **54-18-102. Definitions.**

240 As used in this chapter:

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

242 (2) "Affected landowner" means an owner of a property interest, as reflected in the

243 most recent county or city tax records as receiving a property tax notice, whose property is
244 located within a proposed corridor.

245 (3) (a) "Construction" means the excavation, construction, and installation of a high
246 voltage electric power line or upgraded high voltage transmission line.

247 (b) "Construction" does not include:

248 (i) the temporary use of sites; or

249 (ii) studies and tests for:

250 (A) requirements of this chapter;

251 (B) state regulations;

252 (C) federal regulations;

253 (D) securing geological and survey data; or

254 (E) any other actions taken by a public utility reasonably necessary to determine the
255 location of a target study area or proposed corridor.

256 (4) "High voltage power line" means:

257 (a) an electrical high voltage power line with a nominal voltage of 230 kilovolts or
258 more; and

259 (b) an upgraded high voltage power line.

260 (5) "Land use application" has the same meaning as provided in Sections 10-9a-103
261 and 17-27a-103.

262 (6) "Land use authority" has the same meaning as provided in Sections 10-9a-103 and
263 17-27a-103.

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

265 (8) "Legislative body" has the same meaning as provided in Sections 10-9a-103 and
266 17-27a-103.

267 (9) "Proposed corridor" means the transmission line route within a target study area
268 selected by the public utility as the public utility's proposed alignment for a high voltage power
269 line.

270 (10) "Proposed route" means the right-of-way needed for construction of the high
271 voltage power line.

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

273 (12) "Target study area" means the geographic area for a new high voltage transmission

274 line or an upgraded high voltage power line as proposed by a public utility.

275 (13) "Upgraded high voltage power line" means increasing the voltage of an existing
276 transmission line to 230 kilovolts or more.

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

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

279 **54-18-201. Public utility to obtain approval for high voltage power lines.**

280 (1) Except as provided in Subsections (2) and (3), a public utility shall comply with the
281 requirements of this chapter before beginning construction or operation of:

282 (a) a high voltage power line; or

283 (b) an upgraded high voltage power line.

284 (2) A public utility is not subject to the provisions of this chapter if the public utility
285 has on or before May 12, 2009:

286 (a) filed an application for or obtained a certificate of convenience and necessity for a
287 high voltage power line in accordance with the provisions of Section 54-4-25; or

288 (b) has initiated the acquisition of right-of-way for the construction of the high voltage
289 transmission line.

290 (3) A transmission line that is subject to federal permitting is not subject to the
291 provisions of this chapter.

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

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

294 **54-18-301. Notice of intent to file -- Content -- Prefiling procedures.**

295 (1) If a public utility conducts any field work in preparation of establishing a target
296 study area before a notice of intent is filed in accordance with Subsection (2)(a), the public
297 utility shall first notify the local land use authority of the public utility's work.

298 (2) (a) At least 90 days before the day on which a public utility files a land use
299 application in a city or county that requires a permit for the construction of a high voltage
300 power line or an upgraded high voltage power line, the public utility shall submit a notice of
301 intent to the land use authority of each affected entity.

302 (b) The notice of intent described in Subsection (2)(a) shall include:

303 (i) the name and mailing address of the public utility, including:

304 (A) the name of a contact person; and

305 (B) an address and telephone number for the contact person;
306 (ii) the purpose and need for the high voltage power line;
307 (iii) a map showing the target study area;
308 (iv) a description of environmentally sensitive areas in the target study area;
309 (v) the timing of construction; and
310 (vi) a list of affected entities.
311 (c) The land use authority of an affected entity may provide written comments to the
312 public utility within 30 days after the day on which the notice of intent is mailed under
313 Subsection (2)(a).

314 (3) At least 60 days before filing a conditional use permit application with a local land
315 use authority, the public utility shall send a notice to:

316 (a) an affected entity;
317 (b) the land use authority of an affected entity; and
318 (c) an affected landowner.

319 (4) The notice required under Subsection (3) shall include:

320 (a) the name and mailing address of the public utility, including:

321 (i) the name of a contact person; and

322 (ii) an address and telephone number for the contact person;

323 (b) a description of the proposed corridor, including:

324 (i) location maps of:

325 (A) the target study area; and

326 (B) the public utility's proposed corridor within the target study area;

327 (ii) the width of the proposed route needed for the high voltage power line;

328 (iii) a description of the website described in Subsection (6); and

329 (iv) an explanation of:

330 (A) the land use application process;

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

333 (C) the rights of an affected land owner under Title 78B, Chapter 6, Part 5, Eminent
334 Domain.

335 (5) (a) For purposes of Subsection (3), a county, at the public utility's request, shall

336 provide a certified list of the most recent county tax records showing all affected landowners
337 within 30 days after the day on which the public utility submits the request.

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

339 (i) the county information provided under Subsection (5)(a) is insufficient or incorrect;

340 and

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

343 (6) Within one week of filing the notice of intent with a land use authority in

344 accordance with Subsection (2), the public utility shall:

345 (a) (i) create and update a website to dispense information about the proposed high
346 voltage power line; and

347 (ii) on the website:

348 (A) designate a public utility point of contact; and

349 (B) explain how the public utility will respond to requests for information from the
350 public and public officials; and

351 (b) (i) publish a public notice in a daily or weekly newspaper of general circulation at
352 least once per week for two weeks in each county where the target study area is located
353 disclosing that the public utility has filed a notice of intent with an affected entity; and

354 (ii) describe in the public notice:

355 (A) the proposed high voltage power line, including a map of the target study area; and

356 (B) how readers may obtain more information from the website or locations listed in

357 Subsection (3).

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

359 **54-18-302. Public workshops.**

360 After a public utility files the notice of intent in accordance with Subsection
361 54-18-301(3) and before it files a land use application, the public utility shall:

362 (1) conduct informal public workshops at locations along the proposed corridor to
363 provide information about:

364 (a) the high voltage power line; and

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

366 (2) provide notice of the public workshops at least 14 days before a public workshop

367 to:

368 (a) a newspaper of general circulation in the target study area;

369 (b) radio stations in the target study area; and

370 (c) an affected entity.

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

372 **54-18-303. Application for land use permit.**

373 (1) Before a public utility may file a land use application for a proposed high voltage

374 power line, the public utility shall, in accordance with Subsection (2), identify a proposed

375 corridor in the public utility's land use application after:

376 (a) providing a notice of intent in accordance with Section 54-18-301; and

377 (b) conducting the public workshops in accordance with Section 54-18-302.

378 (2) If a public utility files a land use application for a high voltage power line, the

379 public utility shall comply with the land use application requirements created by a legislative

380 body and land use authority in accordance with Title 10, Chapter 9a, Municipal Land Use,

381 Development, and Management Act, and Title 17, Chapter 27a, County Land Use,

382 Development, and Management Act.

383 (3) A local government may request cost information for modifications to the utility's

384 proposed corridor in accordance with the provisions of Title 54, Chapter 14, Utility Facility

385 Review Board Act.

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

387 **54-18-304. Review of land use application.**

388 (1) (a) A land use authority shall grant or deny a public utility's land use permit within

389 60 days after filing in accordance with the provisions of Title 10, Chapter 9a, Municipal Land

390 Use, Development, and Management Act, and Title 17, Chapter 27a, County Land Use,

391 Development, and Management Act.

392 (b) The Utility Facility Review Board may review a land use authority's land use

393 permit decision in accordance with Title 54, Chapter 14, Part 3, Utility Facility Review Board.

394 (2) Notwithstanding Subsection (1), if a public utility does not satisfy the notice of

395 intent requirements in accordance with Section 54-18-301 and public workshop requirements

396 in accordance with Section 54-18-302, a land use authority may withhold a decision on a public

397 utility's land use permit until the public utility satisfies the notification and public workshop

398 requirements.

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

400 **54-18-305. Appeal of high voltage power line route.**

401 This section does not affect a public utility's or local government's right to appeal a high
402 voltage power line route to the Utility Facility Review Board in accordance with the provisions
403 of Title 54, Chapter 14, Utility Facility Review Board Act.

S.B. 41 3rd Sub. (Ivory) - Siting of High Voltage Power Line Act

Fiscal Note

2009 General Session

State of Utah

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
Total	\$0	\$50,000	\$50,000	\$0	\$50,000	\$50,000

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.
