

**Representative Douglas Sagers** proposes the following substitute bill:

**UTILITY FACILITY SITING**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Douglas Sagers**

Senate Sponsor: Peter C. Knudson

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**LONG TITLE**

**General Description:**

This bill addresses the review of utility siting decisions by the Utility Facility Review Board.

**Highlighted Provisions:**

This bill:

- ▶ modifies the time period for hearings and decisions of the Utility Facility Review Board;
- ▶ establishes a deadline for the board to hold a hearing on the merits;
- ▶ establishes a presumption that the utility has taken certain action under specified circumstances; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**54-14-301**, as last amended by Laws of Utah 2010, Chapter 286



26 **54-14-304**, as enacted by Laws of Utah 1997, Chapter 197

27 **54-14-305**, as last amended by Laws of Utah 2011, Chapter 340

28 **54-18-305**, as enacted by Laws of Utah 2009, Chapter 316

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

31 Section 1. Section **54-14-301** is amended to read:

32 **54-14-301. Creation, purpose, and composition of board.**

33 (1) The Utility Facility Review Board is created ~~H~~→ [~~within the Department of~~

33a ~~Commerce~~] ←~~H~~

34 to resolve disputes between local governments and public utilities regarding the siting and  
35 construction of facilities as provided in this part.

36 (2) The board shall be composed of:

37 (a) the three members of the commission;

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

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

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

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

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

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

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

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

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

53 (6) Three members of the board constitute a quorum.

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

55 (8) A member may not receive compensation or benefits for the member's service, but  
56 may receive per diem and travel expenses in accordance with:

57 (a) Section 63A-3-106;  
58 (b) Section 63A-3-107; and  
59 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
60 63A-3-107.

61 Section 2. Section **54-14-304** is amended to read:

62 **54-14-304. Initial hearing.**

63 (1) The board shall convene an initial hearing within [~~40~~] 50 days [~~of~~] after the date  
64 review is initiated.

65 (2) At the initial hearing, the board shall:

66 (a) determine how the review will take place, including whether it will be conducted as  
67 a formal or informal adjudicative proceeding[-]; and

68 (b) set a schedule for the review proceeding.

69 (3) The board shall hold a hearing on the merits within 60 days after the initial hearing.

70 Section 3. Section **54-14-305** is amended to read:

71 **54-14-305. Written decisions of board.**

72 (1) The board shall issue a written decision on the review expeditiously and, in any  
73 event, not later than [~~45~~] 75 days following the initial hearing.

74 (2) The written decision shall:

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

79 (b) resolve any dispute regarding:

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

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

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

88 (iv) apportionment of the actual excess cost of the facility between the local  
89 government and the public utility pursuant to Subsection 54-14-303~~(+)(g)~~(7); or

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

92 (3) (a) Notwithstanding Subsection (6), the written decision of the board may designate  
93 the facility route for a high voltage transmission line pursuant to a dispute described under  
94 Section ~~[54-14-304]~~ 54-18-304.

95 (b) The public utility ~~[shall be]~~ is entitled to recover from its ratepayers any actual  
96 excess costs apportioned to it under Subsection (2)(b)(iv).

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

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

103 (6) With respect to local government requirements or conditions that impose an  
104 estimated excess cost but do not impair the provision of safe, reliable, and adequate service to  
105 the customers of the public utility, the written decision shall leave each siting issue to the local  
106 government except determination of the estimated excess cost and determination of when the  
107 construction of the facility should commence.

108 (7) (a) In determining when the construction of the facility should commence, the  
109 board shall consider whether the public utility sought a permit, authorization, approval,  
110 exception, or waiver from the local government in a timely manner based upon reasonably  
111 foreseeable conditions~~[, and, if]~~.

112 (b) If the board determines that the public utility did not ~~[do so, it]~~ seek a permit,  
113 authorization, approval, exception, or waiver in a timely manner, the board shall allow  
114 sufficient time for the local government to pay any actual excess cost that may be imposed as a  
115 result of requirements or conditions the local government has imposed that do not impair the  
116 provision of safe, reliable, and adequate service to customers of the public utility.

117 (c) There is a presumption that the utility has sought a permit, authorization, approval,  
118 exception, or waiver in a timely manner if the utility has complied with:

119            (i) the notice and filing requirements of Chapter 18, Siting of High Voltage Power Line

120 Act; ~~H~~→ [and] or ←~~H~~

121            (ii) the timing requirements imposed by a local government land use ordinance.

122            Section 4. Section **54-18-305** is amended to read:

123            **54-18-305. Appeal of high voltage power line route.**

124            This ~~[section]~~ chapter does not affect a public utility's or local government's right to  
125 appeal a high voltage power line route to the Utility Facility Review Board in accordance with  
126 the provisions of Title 54, Chapter 14, Utility Facility Review Board Act.