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UTILITY FACILITY SITING

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas Sagers

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ removes a reference concerning the placement of the Utility Facility Review Board within the Department of Commerce;
- ▶ 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;
- ▶ modifies a provision regarding the board's written decision;
- ▶ 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:



28 54-14-301, as last amended by Laws of Utah 2010, Chapter 286

29 54-14-304, as enacted by Laws of Utah 1997, Chapter 197

30 54-14-305, as last amended by Laws of Utah 2011, Chapter 340

31 54-18-305, as enacted by Laws of Utah 2009, Chapter 316



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

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

35 **54-14-301. Creation, purpose, and composition of board.**

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

39 (2) The board shall be composed of:

40 (a) the three members of the commission;

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

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

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

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

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

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

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

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

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

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

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

58 (8) A member may not receive compensation or benefits for the member's service, but

59 may receive per diem and travel expenses in accordance with:

60 (a) Section 63A-3-106;

61 (b) Section 63A-3-107; and

62 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

63 63A-3-107.

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

65 **54-14-304. Initial hearing.**

66 (1) The board shall convene an initial hearing within ~~[40]~~ 50 days ~~[of]~~ after the date

67 review is initiated.

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

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

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

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

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

74 **54-14-305. Written decisions of board.**

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

77 (2) The written decision shall:

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

82 (b) resolve any dispute regarding:

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

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

87 (iii) whether the public utility has sought a permit, authorization, approval, exception,
88 or waiver with respect to a facility sufficiently in advance of the date construction should
89 commence, based upon reasonably foreseeable conditions, to allow the local government

90 reasonable time to pay for any estimated excess cost;

91 (iv) apportionment of the actual excess cost of the facility between the local
92 government and the public utility pursuant to Subsection 54-14-303~~[(1)(g)](7)~~; or

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

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

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

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

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

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

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

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

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

123 (i) the notice and filing requirements of Chapter 18, Siting of High Voltage Power Line
124 Act; and

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

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

127 **54-18-305. Appeal of high voltage power line route.**

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

Legislative Review Note
as of 11-10-11 3:09 PM

Office of Legislative Research and General Counsel