

HB0320S01 compared with HB0320

~~{deleted text}~~ shows text that was in HB0320 but was deleted in HB0320S01.

inserted text shows text that was not in HB0320 but was inserted into HB0320S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative Douglas Sagers proposes the following substitute bill:

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

HB0320S01 compared with HB0320

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

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

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

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

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

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

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

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

(2) The board shall be composed of:

(a) the three members of the commission;

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

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

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

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

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

(i) shall have four-year terms, except the initial term of the individual first appointed

HB0320S01 compared with HB0320

by the governor from nominees of the Utah Association of Counties shall be two years;

- (ii) may be appointed for one succeeding term; and
- (iii) may continue to serve until their successor takes office.

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

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

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

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

(a) Section 63A-3-106;

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

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

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

54-14-304. Initial hearing.

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

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

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

(b) set a schedule for the review proceeding.

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

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

54-14-305. Written decisions of board.

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

(2) The written decision shall:

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

HB0320S01 compared with HB0320

(b) resolve any dispute regarding:

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

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

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

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

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

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

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

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

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

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

(7) (a) In determining when the construction of the facility should commence, the

HB0320S01 compared with HB0320

board shall consider whether the public utility sought a permit, authorization, approval, exception, or waiver from the local government in a timely manner based upon reasonably foreseeable conditions~~[, and, if]~~.

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

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

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

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

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

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

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

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Legislative Review Note

~~as of 11-10-11 3:09 PM~~

~~Office of Legislative Research and General Counsel~~