

UTILITY FEE LIMITATIONS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John L. Valentine

House Sponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill amends the general operating limitations on a municipality that provides a cable television service or a public telecommunications service.

Highlighted Provisions:

This bill:

⚡→ ▶ authorizes a municipality, in certain circumstances, to enact a per address utility fee to cover costs related to the utility if the municipality has established a procedure for a person who is economically indigent to opt out of the fee; and ←⚡

▶ clarifies that any other means by which a municipality may not cross subsidize its cable television services or its public telecommunications services includes a fee.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

⚡→ 10-8-14, as last amended by Laws of Utah 2013, Chapter 242 ←⚡

10-18-303, as last amended by Laws of Utah 2009, Chapter 388

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

⚡→ Section 1. Section 10-8-14 is amended to read: ←⚡

10-8-14. Water, sewer, gas, electricity, and public transportation -- Service beyond municipal limits←⚡



23c §→-- Retainage -- Notice of service and agreement -- Cable television and public telecommunications services.

23d (1) A municipality may:

23e (a) construct, maintain, and operate waterworks, sewer collection, sewer treatment systems, gas

23f works, electric light works, telecommunications lines, cable television lines, or public transportation systems;

23g (b) authorize the construction, maintenance and operation of the works or systems listed in

23h Subsection (1)(a) by others;

23i (c) purchase or lease the works or systems listed in Subsection (1)(a) from any person or

23j corporation; and

23k (d) sell and deliver the surplus product or service capacity of any works or system listed in

23l Subsection (1)(a), not required by the municipality or the municipality's inhabitants, to others beyond the

23m limits of the municipality, except the sale and delivery of:

23n (i) retail electricity beyond the municipal boundary is governed by Subsections (3) through (8); and

23o (ii) cable television services or public telecommunications services is governed by Subsection (11).

23p (2) If any payment on a contract with a private person, firm, or corporation to construct waterworks,

23q sewer collection, sewer treatment systems, gas works, electric works, telecommunications lines, cable

23r television lines, or public transportation systems is retained or withheld, it shall be retained or withheld and

23s released as provided in Section 13-8-5.

23t (3) (a) Except as provided in Subsection (3)(b), (5), or (9), a municipality may not sell or deliver the

23u electricity produced or distributed by its electric works constructed, maintained, or operated in accordance

23v with Subsection (1) to a retail customer located beyond its municipal boundary.

23w (b) A municipality that provides retail electric service to a customer beyond its municipal boundary

23x on or before June 15, 2013, may continue to serve that customer if:

23y (i) on or before December 15, 2013, the municipality provides the electrical corporation, as defined

23z in Section 54-2-1, that is obligated by its certificate of public convenience and necessity to serve the

23aa customer with an accurate and complete verified written notice described in Subsection (3)(c) that identifies

23ab each customer served by the municipality beyond its municipal boundary;

23ac (ii) no later than June 15, 2014, the municipality enters into a written filing agreement for the

23ad provision of electric service with the electrical corporation; and

23ae (iii) the Public Service Commission approves the written filing agreement in accordance with

23af Section 54-4-40.

23ag (c) The municipality shall include in the written notice required in Subsection (3)(b)(i) for each

23ah customer:

23ai (i) the customer's meter number;

23aj (ii) the location of the customer's meter by street address, global positioning system coordinates,

23ak metes and bounds description, or other similar method of meter location;

23al (iii) the customer's class of service; and

23am (iv) a representation that the customer was receiving service from the municipality on or before June

23an 15, 2013.←Ŝ

23ao ~~§~~→(4) The written filing agreement entered into in accordance with Subsection (3)(b)(ii) shall require
 23ap the following:

23aq (a) The municipality shall provide electric service to a customer identified in accordance with
 23ar Subsection (3)(b)(i) unless the municipality and the electrical corporation subsequently agree in writing that
 23as the electrical corporation will provide electric service to the customer.

23at (b) If a customer who is located outside the municipal boundary and who is not identified in
 23au accordance with Subsection (3)(b)(i) requests service from the municipality after June 15, 2013, the
 23av municipality may not provide that customer electric service unless the municipality submits a request to and
 23aw enters into a written agreement with the electric corporation in accordance with Subsection (5).

23ax (5) (a) A municipality may submit to the electrical corporation a request to provide electric service
 23ay to an electric customer described in Subsection (4)(b).

23az (b) If a municipality submits a request, the electrical corporation shall respond to the request within
 23ba 60 days.

23bb (c) If the electrical corporation agrees to allow the municipality to provide electric service to the
 23bc customer:

23bd (i) the electrical corporation and the municipality shall enter into a written agreement;

23be (ii) the municipality shall agree in the written agreement to subsequently transfer service to the
 23bf customer described in Subsection (4)(b) if the electrical corporation notifies, in writing, the municipality that
 23bg the electrical corporation has installed a facility capable of providing electric service to the customer; and

23bh (iii) the municipality may provide the service if the Public Service Commission approves the
 23bi agreement in accordance with Section 54-4-40.

23bj (d) The municipality or the electrical corporation may terminate the agreement for the provision of
 23bk electric service if the Public Service Commission imposes a condition authorized in Section 54-4-40 that is a
 23bl material change to the agreement.

23bm (6) If the municipality and electrical corporation make a transfer described in Subsection (5)(c)(ii):

23bn (a) (i) the municipality shall transfer the electric service customer to the electrical corporation; and

23bo (ii) the electrical corporation shall provide electric service to the customer; and

23bp (b) the municipality shall transfer a facility in accordance with and for the value as provided in
 23bq Section 10-2-421.

23br (7) (a) In accordance with Subsection (7)(b), the municipality shall establish a reasonable
 23bs mechanism for resolving potential future complaints by an electric customer located outside its municipal
 23bt boundary.

23bu (b) The mechanism shall require:

23bv (i) that the rates and conditions of service for a customer outside the municipality's boundary are at
 23bw least as favorable as the rates and conditions of service for a similarly situated customer within the
 23bx municipality's boundary; and

23by (ii) if the municipality provides a general rebate, refund, or other payment to a customer located
 23bz within the municipality's boundary, that the municipality also provide the same general rebate, refund, or ←~~§~~

23ca ~~§~~→other payment to a similarly situated customer located outside the municipality's boundary.

23cb (8) The municipality is relieved of any obligation to transfer a customer described in Subsection
23cc (4)(b) or facility used to serve the customer in accordance with Subsection (5)(c)(ii) if the municipality
23cd annexes the property on which the customer is being served.

23ce (9) (a) A municipality may provide electric service outside of its municipal boundary to a facility
23cf that is solely owned and operated by the municipality for municipal service.

23cg (b) A municipality's provision of electric service to a facility that is solely owned and operated by
23ch the municipality does not expand the municipality's electric service area.

23ci (10) Nothing in this section expands or diminishes the ability of a municipality to enter into a
23cj wholesale electrical sales contract with another municipality that serves electric customers to sell and deliver
23ck wholesale electricity to the other municipality.

23cl (11) ~~§~~→ [~~A~~] **Except as provided in Subsection (12), a** ~~←§~~ municipality's actions under this
23cl1 section related to works or systems involving public
23cm telecommunications services or cable television services are subject to the requirements of Chapter 18,
23cn Municipal Cable Television and Public Telecommunications Services Act.

23co ~~§~~→ **(12) A municipality that constructs telecommunication lines and related facilities, and**
23cp **operates them as a communications utility that is open to providers, may enact a per address**
23cq **utility fee to cover costs related to the utility if the municipality has established a procedure for**
23cr **a person who is economically indigent to opt out of the fee.** ~~←§~~

24 Section ~~§~~→ [~~H~~] ~~2~~ ~~←§~~ . Section **10-18-303** is amended to read:

25 **10-18-303. General operating limitations.**

26 A municipality that provides a cable television service or a public telecommunications
27 service under this chapter is subject to the operating limitations of this section.

28 (1) A municipality that provides a cable television service shall comply with:
 29 (a) the Cable Communications Policy Act of 1984, 47 U.S.C. 521, et seq.; and
 30 (b) the regulations issued by the Federal Communications Commission under the Cable
 31 Communications Policy Act of 1984, 47 U.S.C. 521, et seq.

32 (2) A municipality that provides a public telecommunications service shall comply
 33 with:

- 34 (a) the Telecommunications Act of 1996, Pub. L. 104-104;
- 35 (b) the regulations issued by the Federal Communications Commission under the
 36 Telecommunications Act of 1996, Pub. L. 104-104;
- 37 (c) Section 54-8b-2.2 relating to:
 - 38 (i) the interconnection of essential facilities; and
 - 39 (ii) the purchase and sale of essential services; and
 - 40 (d) the rules made by the Public Service Commission of Utah under Section 54-8b-2.2.

41 (3) (a) A municipality may not cross subsidize its cable television services or its public
 42 telecommunications services with:

- 43 [~~(a)~~] (i) tax dollars;
- 44 [~~(b)~~] (ii) income from other municipal or utility services;
- 45 [~~(c)~~] (iii) below-market rate loans from the municipality; or
- 46 [~~(d)~~] (iv) except as provided in Subsection (3)(b), any other means[-], including a fee
 47 collected by the municipality or a private provider on behalf of the municipality.

48 (b) Subsection (3)(a)(iv) does not apply to a fee collected to pay the debt service on
 49 bonded indebtedness incurred before January 1, 2014.

50 (4) (a) A municipality may not make or grant any undue or unreasonable preference or
 51 advantage to itself or to any private provider of:

- 52 (i) cable television services; or
- 53 (ii) public telecommunications services.

54 (b) A municipality shall apply without discrimination as to itself and to any private
 55 provider the municipality's ordinances, rules, and policies, including those relating to:

- 56 (i) obligation to serve;
- 57 (ii) access to public rights of way;
- 58 (iii) permitting;

- 59 (iv) performance bonding;
- 60 (v) reporting; and
- 61 (vi) quality of service.

62 (c) Subsections (4)(a) and (b) do not supersede the exception for a rural telephone
63 company in Section 251 of the Telecommunications Act of 1996, Pub. L. 104-104.

64 (5) In calculating the rates charged by a municipality for a cable television service or a
65 public telecommunications service, the municipality:

66 (a) shall include within its rates an amount equal to all taxes, fees, and other
67 assessments that would be applicable to a similarly situated private provider of the same
68 services, including:

- 69 (i) federal, state, and local taxes;
- 70 (ii) franchise fees;
- 71 (iii) permit fees;
- 72 (iv) pole attachment fees; and
- 73 (v) fees similar to those described in Subsections (5)(a)(i) through (iv); and

74 (b) may not price any cable television service or public telecommunications service at a
75 level that is less than the sum of:

- 76 (i) the actual direct costs of providing the service;
- 77 (ii) the actual indirect costs of providing the service; and
- 78 (iii) the amount determined under Subsection (5)(a).

79 (6) (a) A municipality that provides cable television services or public
80 telecommunications services shall establish and maintain a comprehensive price list of all cable
81 television services or public telecommunications services offered by the municipality.

82 (b) The price list required by Subsection (6)(a) shall:

83 (i) include all terms and conditions relating to the municipality providing each cable
84 television service or public telecommunications service offered by the municipality;

85 (ii) (A) be published in a newspaper having general circulation in the municipality; and

86 (B) be published in accordance with Section 45-1-101; and

87 (iii) be available for inspection:

88 (A) at a designated office of the municipality; and

89 (B) during normal business hours.

90 (c) At least five days before the date a change to a municipality's price list becomes
91 effective, the municipality shall:

92 (i) notify the following of the change:

93 (A) all subscribers to the services for which the price list is being changed; and

94 (B) any other persons requesting notification of any changes to the municipality's price
95 list; and

96 (ii) (A) publish notice in a newspaper of general circulation in the municipality; and

97 (B) publish notice in accordance with Section 45-1-101.

98 (d) In accordance with Subsection (6)(c)(ii)(A), if there is no newspaper of general
99 circulation in the municipality, the municipality shall publish the notice required by this
100 Subsection (6) in a newspaper of general circulation that is nearest the municipality.

101 (e) A municipality may not offer a cable television service or a public
102 telecommunications service except in accordance with the prices, terms, and conditions set
103 forth in the municipality's price list.

104 (7) A municipality may not offer to provide or provide cable television services or
105 public telecommunications services to a subscriber that does not reside within the geographic
106 boundaries of the municipality.

107 (8) (a) A municipality shall keep accurate books and records of the municipality's:

108 (i) cable television services; and

109 (ii) public telecommunications services.

110 (b) The books and records required to be kept under Subsection (8)(a) are subject to
111 legislative audit to verify the municipality's compliance with the requirements of this chapter
112 including:

113 (i) pricing;

114 (ii) recordkeeping; and

115 (iii) antidiscrimination.

116 (9) A municipality may not receive distributions from the Universal Public
117 Telecommunications Service Support Fund established in Section 54-8b-15.

Legislative Review Note
as of 2-12-14 9:14 AM

Office of Legislative Research and General Counsel