

1 **SMALL WIRELESS FACILITIES DEPLOYMENT ACT**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Timothy D. Hawkes

7 **LONG TITLE**

8 **General Description:**

9 This bill creates the Small Wireless Facilities Deployment Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ permits a wireless provider to deploy a small wireless facility and any associated
- 14 utility pole within a right-of-way under certain conditions;
- 15 ▶ permits an authority to establish a permitting process for the deployment of a small
- 16 wireless facility and any associated utility pole under certain conditions;
- 17 ▶ describes a wireless provider's access to an authority pole within a right-of-way;
- 18 ▶ sets rates and fees for the placement of:
 - 19 • a small wireless facility; and
 - 20 • a utility pole;
- 21 ▶ describes the implementation of requirements in relation to agreements and
- 22 ordinances; and
- 23 ▶ permits an authority to adopt indemnification, insurance, or bonding requirements
- 24 for a small wireless facility permit, under certain conditions.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **72-6-116**, as last amended by Laws of Utah 2014, Chapter 184

32 ENACTS:

33 **54-21-101**, Utah Code Annotated 1953

34 **54-21-102**, Utah Code Annotated 1953

35 **54-21-103**, Utah Code Annotated 1953

36 **54-21-201**, Utah Code Annotated 1953

37 **54-21-202**, Utah Code Annotated 1953

38 **54-21-203**, Utah Code Annotated 1953

39 **54-21-204**, Utah Code Annotated 1953

40 **54-21-205**, Utah Code Annotated 1953

41 **54-21-206**, Utah Code Annotated 1953

42 **54-21-207**, Utah Code Annotated 1953

43 **54-21-208**, Utah Code Annotated 1953

44 **54-21-209**, Utah Code Annotated 1953

45 **54-21-210**, Utah Code Annotated 1953

46 **54-21-301**, Utah Code Annotated 1953

47 **54-21-302**, Utah Code Annotated 1953

48 **54-21-303**, Utah Code Annotated 1953

49 **54-21-401**, Utah Code Annotated 1953

50 **54-21-402**, Utah Code Annotated 1953

51 **54-21-403**, Utah Code Annotated 1953

52 **54-21-501**, Utah Code Annotated 1953

53 **54-21-502**, Utah Code Annotated 1953

54 **54-21-503**, Utah Code Annotated 1953

55 **54-21-504**, Utah Code Annotated 1953

56 **54-21-601**, Utah Code Annotated 1953

57 **54-21-602**, Utah Code Annotated 1953

58 54-21-603, Utah Code Annotated 1953

59

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

61 Section 1. Section **54-21-101** is enacted to read:

62 **CHAPTER 21. SMALL WIRELESS FACILITIES DEPLOYMENT ACT**

63 **Part 1. General Provisions**

64 **54-21-101. Definitions.**

65 As used in this chapter:

66 (1) "Antenna" means communications equipment that transmits or receives an
67 electromagnetic radio frequency signal used in the provision of a wireless service.

68 (2) "Applicable codes" means the International Building Code, the International Fire
69 Code, the National Electrical Code, the International Plumbing Code, and the International
70 Mechanical Code, as adopted and amended under Title 15A, State Construction and Fire Codes
71 Act.

72 (3) "Applicable standards" means the structural standards for antenna supporting
73 structures and antenna, known as ANSI/TIA-222, from the American National Standards
74 Institute and the Telecommunications Industry Association.

75 (4) "Applicant" means a wireless provider who submits an application.

76 (5) "Application" means a request submitted by a wireless provider to an authority for a
77 permit to:

78 (a) collocate a small wireless facility in a right-of-way; or

79 (b) install, modify, or replace a utility pole or a wireless support structure.

80 (6) (a) "Authority" means:

81 (i) the state;

82 (ii) a state agency;

83 (iii) a county;

84 (iv) a municipality;

85 (v) a town;

- 86 (vi) a metrotownship;
- 87 (vii) a subdivision of an entity described in Subsections (6)(a)(i) through (vi); or
- 88 (viii) a special district or entity established to provide a single public service within a
- 89 specific geographic area, including:
- 90 (A) a public utility district; or
- 91 (B) an irrigation district.
- 92 (b) "Authority" does not include a state court having jurisdiction over an authority.
- 93 (7) "Authority pole" means a utility pole owned, managed, or operated by, or on behalf
- 94 of, an authority.
- 95 (8) "Authority wireless support structure" means a wireless support structure owned,
- 96 managed, or operated by, or on behalf of, an authority.
- 97 (9) "Category one authority" means a single authority with a population of 65,000 or
- 98 greater.
- 99 (10) "Category two authority" means a single authority with a population of less than
- 100 65,000.
- 101 (11) "Collocate" means to install, mount, maintain, modify, operate, or replace a small
- 102 wireless facility:
- 103 (a) on a wireless support structure or utility pole; or
- 104 (b) for ground-mounted equipment, adjacent to a wireless support structure or utility
- 105 pole.
- 106 (12) "Communications service" means:
- 107 (a) a cable service, as defined in 47 U.S.C. Sec. 522(6);
- 108 (b) a telecommunications service, as defined in 47 U.S.C. Sec. 153(53);
- 109 (c) an information service, as defined in 47 U.S.C. Sec. 153(24); or
- 110 (d) a wireless service.
- 111 (13) "Communications service provider" means:
- 112 (a) a cable operator, as defined in 47 U.S.C. Sec. 522(5);
- 113 (b) a provider of information service, as information service is defined in 47 U.S.C.

114 Sec. 153(24);

115 (c) a telecommunications carrier, as defined in 47 U.S.C. Sec. 153(51); or

116 (d) a wireless provider.

117 (14) "Decorative pole" means an authority pole:

118 (a) that is specially designed and placed for an aesthetic purpose; and

119 (b) (i) on which a nondiscriminatory rule or code prohibits an appurtenance or
120 attachment, other than:

121 (A) a small wireless facility;

122 (B) a specialty designed informational or directional sign; or

123 (C) a temporary holiday or special event attachment; or

124 (ii) on which no appurtenance or attachment has been placed, other than:

125 (A) a small wireless facility;

126 (B) a specialty designed informational or directional sign; or

127 (C) a temporary holiday or special event attachment.

128 (15) "Design district" means an area:

129 (a) that is zoned or otherwise designated by municipal ordinance or code; and

130 (b) for which the authority maintains and enforces unique design and aesthetic
131 standards on a uniform and nondiscriminatory basis.

132 (16) "FCC" means the Federal Communications Commission of the United States.

133 (17) "Fee" means a one-time, nonrecurring charge.

134 (18) "Gross revenue" means the same as gross receipts from telecommunications
135 service is defined in Section [10-1-402](#).

136 (19) "Historic district" means a group of buildings, properties, or sites that are:

137 (a) in accordance with 47 C.F.R. Part 1, Appendix C:

138 (i) listed in the National Register of Historic Places; or

139 (ii) formally determined eligible for listing in the National Register of Historic Places
140 by the Keeper of the National Register; or

141 (b) in an historic district or area created under Section [10-9a-503](#).

142 (20) "Nondiscriminatory" means treating similarly situated entities the same absent a
143 reasonable, and competitively neutral basis, for different treatment.

144 (21) "Micro wireless facility" means a type of small wireless facility:

145 (a) that, not including any antenna, is no larger in dimension than 24 inches in length,
146 15 inches in width, and 12 inches in height;

147 (b) on which any exterior antenna is no longer than 11 inches; and

148 (c) that only provides Wi-Fi service.

149 (22) "Permit" means a written authorization an authority requires for a wireless
150 provider to perform an action or initiate, continue, or complete a project.

151 (23) "Rate" means a recurring charge.

152 (24) (a) "Right-of-way" means the area on, below, or above a public:

153 (i) roadway;

154 (ii) highway;

155 (iii) street;

156 (iv) sidewalk;

157 (v) alley; or

158 (vi) property similar to property listed in Subsections (24)(a)(i) through (v).

159 (b) "Right-of-way" does not include:

160 (i) the area on, below, or above a federal interstate highway; or

161 (ii) a fixed guideway, as defined in Section [59-12-102](#).

162 (25) "Small wireless facility" means a type of wireless facility:

163 (a) on which each wireless provider's antenna could fit within an enclosure of no more
164 than six cubic feet in volume; and

165 (b) for which all wireless equipment associated with the wireless facility, whether
166 ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet in volume, not
167 including any:

168 (i) electric meter;

169 (ii) concealment element;

- 170 (iii) telecommunications demarcation box;
- 171 (iv) grounding equipment;
- 172 (v) power transfer switch;
- 173 (vi) cut-off switch;
- 174 (vii) vertical cable run for the connection of power or other service;
- 175 (viii) wireless provider antenna; or
- 176 (ix) coaxial or fiber-optic cable that is immediately adjacent to or directly associated
- 177 with a particular collocation, unless the cable is a wireline backhaul facility.

178 (26) "Substantial modification" means:

179 (a) a proposed modification or replacement to an existing wireless support structure
180 that will substantially change the physical dimensions of the wireless support structure under
181 the substantial change standard established in 47 C.F.R. Sec. 1.40001(7); or

182 (b) a proposed modification in excess of the site dimensions specified in 47 C.F.R. Part
183 1, Appendix C, Sec. III.B.

184 (27) "Technically feasible" means that by virtue of engineering or spectrum usage, the
185 proposed placement for a small wireless facility, or the small wireless facility's design or site
186 location, can be implemented without a significant reduction or impairment to the functionality
187 of the small wireless facility.

188 (28) (a) "Utility pole" means a pole or similar structure that:

189 (i) is in a right-of-way; and

190 (ii) is or may be used, in whole or in part, for:

191 (A) wireline communications;

192 (B) electric distribution;

193 (C) lighting;

194 (D) traffic control;

195 (E) signage;

196 (F) a similar function to a function described in Subsections (28)(a)(ii)(A) through (E);

197 or

198 (G) the collocation of a small wireless facility.
199 (b) "Utility pole" does not include:
200 (i) a wireless support structure;
201 (ii) a structure that supports electric transmission lines; or
202 (iii) a municipally owned structure that supports electric lines used for the provision of
203 municipal electric service.
204 (29) (a) "Wireless facility" means equipment at a fixed location that enables wireless
205 communication between user equipment and a communications network, including:
206 (i) equipment associated with wireless communications; and
207 (ii) regardless of the technological configuration, a radio transceiver, an antenna, a
208 coaxial or fiber-optic cable, a regular or backup power supply, or comparable equipment.
209 (b) "Wireless facility" does not include:
210 (i) the structure or an improvement on, under, or within which the equipment is
211 collocated; or
212 (ii) a coaxial or fiber-optic cable that is:
213 (A) between wireless structures or utility poles;
214 (B) not immediately adjacent to or directly associated with a particular antenna; or
215 (C) a wireline backhaul facility.
216 (30) (a) "Wireless infrastructure provider" means a person that builds or installs
217 wireless communication transmission equipment, a wireless facility, or a wireless support
218 structure.
219 (b) "Wireless infrastructure provider" includes a person authorized to provide a
220 telecommunications service in the state.
221 (c) "Wireless infrastructure provider" does not include a wireless service provider.
222 (31) "Wireless provider" means a wireless infrastructure provider or a wireless service
223 provider.
224 (32) (a) "Wireless service" means any service using licensed or unlicensed spectrum,
225 whether at a fixed location or mobile, provided to the public using a wireless facility.

- 226 (b) "Wireless service" includes the use of Wi-Fi.
- 227 (33) "Wireless service provider" means a person who provides a wireless service.
- 228 (34) (a) "Wireless support structure" means an existing or proposed structure that is:
- 229 (i) in a right-of-way; and
- 230 (ii) designed to support or capable of supporting a wireless facility, including a:
- 231 (A) monopole;
- 232 (B) tower, either guyed or self-supporting;
- 233 (C) billboard; or
- 234 (D) building.
- 235 (b) "Wireless support structure" does not include a:
- 236 (i) structure designed solely for the collocation of a small wireless facility;
- 237 (ii) utility pole;
- 238 (iii) municipally owned structure that supports electric lines used for the provision of
- 239 municipal electric service; or
- 240 (iv) structure owned by an energy services interlocal entity, as described in Subsection
- 241 [11-13-203](#)(4), that uses electric lines that are used for the provision of electrical service.
- 242 (35) "Wireline backhaul facility" means a facility used to transport communications by
- 243 wire from a wireless facility to a communications network.
- 244 (36) (a) "Written" or "in writing" means a tangible or electronic record of a
- 245 communication or representation.
- 246 (b) "Written" or "in writing" includes a communication or representation that is
- 247 handwritten, typewritten, printed, photostated, photographed, or electronic.
- 248 Section 2. Section **54-21-102** is enacted to read:
- 249 **54-21-102. Scope.**
- 250 Nothing in this chapter:
- 251 (1) permits an entity to provide a service regulated under 47 U.S.C. Secs. 521 through
- 252 573, in a right-of-way without compliance with all applicable legal obligations;
- 253 (2) imposes a new requirement on the activity of a cable provider in a right-of-way for

254 a cable service provided in this state;

255 (3) governs:

256 (a) a pole that an electrical corporation owns or a wireless support structure that an
257 electrical corporation owns; or

258 (b) the attachment of a small wireless facility to a pole that an electrical corporation
259 owns or to a wireless support structure that an electrical corporation owns; or

260 (4) confers on an authority any new jurisdiction over an electrical corporation.

261 Section 3. Section **54-21-103** is enacted to read:

262 **54-21-103. Local authority jurisdiction.**

263 (1) Subject to Subsection (2), the provisions of this chapter, and applicable federal law,
264 an authority may continue to exercise zoning, land use, planning, and permitting authority
265 within the authority's territorial boundaries, including with respect to wireless support
266 structures and utility poles.

267 (2) An authority may exercise the authority's police-power-based regulations for the
268 management of a public right-of-way:

269 (a) on a nondiscriminatory basis to all users of the right-of-way;

270 (b) to the extent of the authority's jurisdiction; and

271 (c) consistent with state and federal law.

272 (3) An authority may impose a regulation based on the authority's police power in the
273 management of an activity of a wireless provider in a public right-of-way, if:

274 (a) to the extent the authority enforces the regulation, the authority enforces the
275 regulation on a nondiscriminatory basis; and

276 (b) the purpose of the regulation is to protect the health, safety, and welfare of the
277 public.

278 (4) An authority may adopt design standards for the installation and construction of a
279 small wireless facility or utility pole in a public right-of-way that:

280 (a) are reasonable and nondiscriminatory; and

281 (b) include additional installation and construction details that do not conflict with this

282 chapter, including a requirement that:

283 (i) an industry standard pole load analysis be completed and submitted to an authority,
284 indicating that the utility pole, to which the small wireless facility is to be attached, will safely
285 support the load; or

286 (ii) small wireless facility equipment, on new and existing utility poles, be placed
287 higher than eight feet above ground level.

288 (5) (a) A wireless provider shall comply with an authority's design standards described
289 in Subsection (4), if any, in place on the day on which the wireless provider files a permit
290 application in relation to work for which the authority approves the permit application.

291 (b) An authority's obligations under this chapter may not be tolled or extended pending
292 the adoption or modification of design standards.

293 (6) A wireless provider may not install a new utility pole in a public right-of-way
294 without the authority's discretionary, nondiscriminatory, and written consent, if the public
295 right-of-way is adjacent to a street or thoroughfare that is:

296 (a) not more than 60 feet wide, as depicted in the official plat records; and

297 (b) adjacent to single-family residential lots, other multifamily residences, or
298 undeveloped land that is designated for residential use by zoning or deed restrictions.

299 (7) Nothing in this chapter authorizes the state or any political subdivision, including
300 an authority, to:

301 (a) require the deployment of a wireless facility; or

302 (b) regulate a wireless service.

303 (8) Except as provided in this chapter or otherwise specifically authorized by state law,
304 an authority may not impose or collect a tax, fee, or charge on a communications service
305 provider authorized to operate in a right-of-way for the provision of communications service
306 over the communications service provider's communications facilities in the right-of-way.

307 Section 4. Section **54-21-201** is enacted to read:

308 **Part 2. Use of Right-of-Way for Small Wireless Facilities and Utility Poles**

309 **54-21-201. Applicability.**

310 This part only applies to a wireless provider deploying, within a right-of-way:

311 (1) a small wireless facility; or

312 (2) a utility pole associated with a small wireless facility.

313 Section 5. Section **54-21-202** is enacted to read:

314 **54-21-202. Prohibition on exclusive use.**

315 An authority may not enter into an exclusive arrangement with any person for:

316 (1) use of a right-of-way for the collocation of a small wireless facility; or

317 (2) the installation, operation, marketing, modification, maintenance, or replacement of
318 a utility pole.

319 Section 6. Section **54-21-203** is enacted to read:

320 **54-21-203. Right-of-way rates and fees.**

321 (1) An authority may charge a wireless provider a rate or fee for the use of a
322 right-of-way to collocate a small wireless facility, or to install, operate, modify, maintain, or
323 replace a utility pole associated with the wireless provider's collocation of a small wireless
324 facility, if the authority:

325 (a) charges all other similarly situated wireless providers for use of the right-of-way;
326 and

327 (b) charges only the rate or fee in accordance with Part 5, Rates and Fees.

328 (2) An authority may, on a nondiscriminatory basis, refrain from charging a rate or fee
329 to a wireless provider for the use of a right-of-way.

330 Section 7. Section **54-21-204** is enacted to read:

331 **54-21-204. Wireless provider right of access.**

332 (1) Subject to the provisions of this part, along, across, upon, or under a right-of-way, a
333 wireless provider may, as a permitted use under the authority's zoning regulation and subject
334 only to administrative review:

335 (a) collocate a small wireless facility; or

336 (b) install, operate, modify, maintain, or replace:

337 (i) a utility pole associated with the wireless provider's collocation of a small wireless

338 facility; or
339 (ii) equipment described in Subsections 54-21-101(25)(b)(i) through (ix) required for a
340 wireless provider's collocation of a small wireless facility.

341 (2) A small wireless facility or utility pole under Subsection (1) may not:
342 (a) obstruct or hinder the usual travel or public safety on a right-of-way; or
343 (b) obstruct, damage, or interfere with:
344 (i) another utility facility in a right-of-way; or
345 (ii) a utility's use of the utility's facility in a right-of-way.

346 (3) Construction and maintenance by the wireless provider shall comply with all
347 applicable legal obligations for the protection of underground and overhead utility facilities.

348 Section 8. Section 54-21-205 is enacted to read:

349 **54-21-205. Height limitations in a right-of-way.**

350 (1) A new or modified utility pole that has a collocated small wireless facility, and that
351 is installed in a right-of-way, may not exceed 50 feet above ground level.

352 (2) An antenna of a small wireless facility may not extend more than 10 feet above the
353 top of a utility pole existing on or before September 1, 2018.

354 Section 9. Section 54-21-206 is enacted to read:

355 **54-21-206. Decorative poles.**

356 If necessary to collocate a small wireless facility, a wireless provider may replace a
357 decorative pole, if the replacement pole reasonably conforms to the design aesthetic of the
358 displaced decorative pole.

359 Section 10. Section 54-21-207 is enacted to read:

360 **54-21-207. Underground district.**

361 A wireless provider shall comply with an authority's prohibition on a communications
362 service provider installing a structure in the right-of-way in an area designated solely for
363 underground or buried cable and utility facilities, if:

364 (1) the prohibition is reasonable and nondiscriminatory; and
365 (2) the authority:

- 366 (a) (i) requires that all cable and utility facilities, other than an authority pole and
367 attachment, be placed underground; and
- 368 (ii) establishes the requirement in Subsection (2)(a)(i) more than 90 days before the day
369 on which the applicant submits the application;
- 370 (b) does not prohibit the replacement of an authority pole in the designated area; and
- 371 (c) permits a wireless provider to seek a waiver, that is administered in a
372 nondiscriminatory manner, of the undergrounding requirement for the placement of a new
373 utility pole to support a small wireless facility.

374 Section 11. Section **54-21-208** is enacted to read:

375 **54-21-208. Historic and design districts.**

- 376 (1) Subject to the permit process described in Section 54-21-302, an authority may
377 require a reasonable, technically feasible, nondiscriminatory, or technologically neutral design
378 or concealment measure in an historic district, unless the facility is excluded from evaluation
379 for effects on historic properties under 47 C.F.R. Sec. 1.1307(a)(4).
- 380 (2) A design or concealment measure described in Subsection (1) may not:
- 381 (a) have the effect of prohibiting a provider's technology; or
- 382 (b) be considered a part of the small wireless facility for purposes of the size
383 parameters in the definition of a small wireless facility.
- 384 (3) (a) A wireless provider shall obtain advance approval from an authority before
385 collocating a new small wireless facility or installing a new utility pole in an area that is zoned
386 or otherwise designated as an historic district or a design district.
- 387 (b) As a condition for approval of a new small wireless facility or a new utility pole in
388 an historic district or a design district, an authority may require reasonable design or
389 concealment measures for the new small wireless facility or the new utility pole.
- 390 (4) A wireless provider shall comply with an authority's reasonable and
391 nondiscriminatory design and aesthetic standards requiring the use of certain camouflage
392 measures in connection with a new small wireless facility in an historic district or a design
393 district, if the camouflage measures are technically and economically feasible consistent with

394 this chapter.

395 (5) This section does not limit an authority's ability to enforce historic preservation
396 zoning regulations consistent with:

397 (a) the preservation of local zoning authority under 47 U.S.C. Sec. 332(c)(7);

398 (b) the requirements for facility modifications under:

399 (i) 47 U.S.C. Sec. 1455(a); or

400 (ii) the National Historic Preservation Act of 1966, 16 U.S.C. Sec. 470 et seq.;

401 (c) the regulations adopted to implement the laws described in Subsections (5)(a) and

402 (b); and

403 (d) Section [10-9a-503](#).

404 Section 12. Section **54-21-209** is enacted to read:

405 **54-21-209. Manner of regulation.**

406 (1) An authority shall manage a wireless provider's use of a right-of-way in a
407 nondiscriminatory manner with regard to any other user of the right-of-way.

408 (2) Any term or condition an authority imposes on a right-of-way user may not:

409 (a) be unreasonable or discriminatory; or

410 (b) violate an applicable legal obligation or law.

411 Section 13. Section **54-21-210** is enacted to read:

412 **54-21-210. Damage and repair.**

413 (1) If a wireless provider's activity causes damage to a right-of-way, the wireless
414 provider shall repair the right-of-way to substantially the same condition as before the damage.

415 (2) If a wireless provider fails to make a repair required by an authority under

416 Subsection (1) within a reasonable time after written notice, the authority may:

417 (a) make the required repair; and

418 (b) charge the wireless provider the reasonable, documented, actual cost for the repair.

419 (3) If the damage described in Subsection (1) causes an urgent safety hazard, an

420 authority may:

421 (a) immediately make the necessary repair; and

422 (b) charge the wireless provider the reasonable, documented, actual cost for the repair.

423 Section 14. Section **54-21-301** is enacted to read:

424 **Part 3. Permitting Process for Small Wireless Facilities**

425 **54-21-301. Applicability -- General.**

426 (1) This part applies to:

427 (a) the collocation of a small wireless facility in a right-of-way;

428 (b) the collocation of a small wireless facility on a wireless support structure in a
429 right-of-way; and

430 (c) the installation, modification, or replacement of a utility pole associated with a
431 small wireless facility in a right-of-way.

432 (2) Except as provided in this chapter, an authority may not prohibit, regulate, or
433 charge for the collocation of a small wireless facility.

434 Section 15. Section **54-21-302** is enacted to read:

435 **54-21-302. Permitting process, requirements, and limitations.**

436 (1) An authority may require an applicant to obtain a permit to:

437 (a) collocate a small wireless facility in a right-of-way; or

438 (b) install a new, modified, or replacement utility pole associated with a small wireless
439 facility in a right-of-way, as provided in Section [54-21-204](#).

440 (2) If an authority establishes a permitting process under Subsection (1), the authority:

441 (a) shall ensure that a required permit is of general applicability;

442 (b) may not require:

443 (i) directly or indirectly, that an applicant perform a service or provide a good unrelated
444 to the permit, including reserving fiber, conduit, or pole space for the authority;

445 (ii) an applicant to provide more information to obtain a permit than a communications
446 service provider that is not a wireless provider or a utility, except to the extent the applicant is

447 required to include construction or engineering drawings or other information to demonstrate
448 the applicant's application should be not denied under Subsection (7);

449 (iii) the placement of a small wireless facility on a specific utility pole or category of

450 poles;

451 (iv) multiple antenna systems on a single utility pole; or

452 (v) a minimum separation distance, limiting the placement of a small wireless facility;

453 and

454 (c) may require an applicant to attest that the small wireless facility will be operational

455 for use by a wireless service provider within 270 days after the day on which the authority

456 issues the permit, except in the case that:

457 (i) the authority and the applicant agree to extend the 270-day period; or

458 (ii) lack of commercial power or communications transport infrastructure to the site

459 delays completion.

460 (3) Within 30 days after the day on which an authority receives an application for the

461 collocation of a small wireless facility or for a new, modified, or replacement utility pole, the

462 authority shall:

463 (a) determine whether the application is complete; and

464 (b) notify the applicant in writing of the authority's determination of whether the

465 application is complete.

466 (4) If an authority determines, within the applicable time period described in

467 Subsection (3), that an application is incomplete:

468 (a) the authority shall specifically identify the missing information in the written

469 notification sent to the applicant under Subsection (3)(b); and

470 (b) the processing deadline in Subsection (6) is tolled:

471 (i) from the day on which the authority sends the applicant the written notice to the day

472 on which the authority receives the applicant's missing information; or

473 (ii) as the applicant and the authority agree.

474 (5) An application for a small wireless facility expires if:

475 (a) the authority notifies the wireless provider that the wireless provider's application is

476 incomplete, in accordance with Subsection (4); and

477 (b) the wireless provider fails to respond within 90 days after the day on which the

478 authority notifies the wireless provider under Subsection (5)(a).

479 (6) (a) An authority shall:

480 (i) process an application on a nondiscriminatory basis; and

481 (ii) approve or deny an application:

482 (A) for the collocation of a small wireless facility, within 60 days after the day on
483 which the authority receives the complete application; and

484 (B) for a new, modified, or replacement utility pole, within 105 days after the day on
485 which the authority receives the complete application.

486 (b) If an authority fails to approve or deny an application within the applicable time
487 period described in Subsection (6)(a)(ii), the application is approved.

488 (c) Notwithstanding Subsections (6)(a) and (b), an authority may extend the applicable
489 period described in Subsection (6)(a)(ii) for a single additional period of 10 business days, if
490 the authority notifies the applicant before the day on which approval or denial is originally due.

491 (7) An authority may deny an application to collocate a small wireless facility or to
492 install, modify, or replace a utility pole that meets the height limitations under Section
493 54-21-205, only if the action requested in the application:

494 (a) materially interferes with the safe operation of traffic control equipment;

495 (b) materially interferes with a sight line or a clear zone for transportation or
496 pedestrians;

497 (c) materially interferes with compliance with the Americans with Disabilities Act of
498 1990, 42 U.S.C. Sec. 12101 et seq., or a similar federal or state standard regarding pedestrian
499 access or movement;

500 (d) fails to comply with applicable laws or legal obligations;

501 (e) creates a public health or safety hazard; or

502 (f) obstructs or hinders the usual travel or public safety of the right-of-way.

503 (8) (a) If an authority denies an application under Subsection (7), the authority shall:

504 (i) document the basis for the denial, including any specific law on which the denial is
505 based; and

506 (ii) send the documentation described in Subsection (8)(a)(i) to the applicant on or
507 before the day on which the authority denies the application.

508 (b) Within 30 days after the day on which an authority denies an application, the
509 applicant may, without paying an additional application fee:

510 (i) cure any deficiency the authority identifies in the applicant's application; and

511 (ii) resubmit the application.

512 (c) (i) An authority shall approve or deny an application revised in accordance with
513 Subsection (8)(b) within 30 days after the day on which the authority receives the revised
514 application.

515 (ii) A review of an application revised in accordance with Subsection (8)(b) is limited
516 to the deficiencies documented as the basis for denial unless the applicant has changed another
517 portion of the application.

518 (9) (a) Subject to Subsections (9)(b) and (c), if an applicant seeks to:

519 (i) collocate multiple small wireless facilities within a single authority, the authority
520 shall allow the applicant, at the applicant's discretion, to file a consolidated application for the
521 collocation of up to 25 small wireless facilities, if all of the small wireless facilities in the
522 consolidated application are:

523 (A) substantially the same type; and

524 (B) proposed for collocation on substantially the same types of structures; or

525 (ii) install, modify, or replace multiple utility poles within a single authority, the
526 authority shall allow the applicant, at the applicant's discretion, to file a consolidated
527 application for the installation, modification, or replacement of up to 25 utility poles.

528 (b) An applicant may not file within a 30-day period:

529 (i) with a category one authority, more than:

530 (A) three consolidated applications; or

531 (B) multiple applications that collectively seek permits for a combined total of more
532 than 75 small wireless facilities and utility poles; or

533 (ii) with a category two authority, more than:

534 (A) one consolidated application; or

535 (B) multiple applications that collectively seek permits for a combined total of more
536 than 25 small wireless facilities and utility poles.

537 (c) A consolidated application described in Subsection (9)(a) may not combine
538 applications solely for collocation of small wireless facilities on existing utility poles with
539 applications for the installation, modification, or replacement of a utility pole.

540 (d) If an authority denies the application for one or more utility poles, or one or more
541 small wireless facilities, in a consolidated application, the authority may not use the denial as a
542 basis to delay the application process of any other utility pole or small wireless facility in the
543 same consolidated application.

544 (10) A wireless provider shall complete the installation or collocation for which a
545 permit is granted under this part within 270 days after the day on which the authority issues the
546 permit, unless:

547 (a) the authority and the applicant agree to extend the one-year period; or

548 (b) lack of commercial power or communications facilities at the site delays
549 completion.

550 (11) Approval of an application authorizes the applicant to:

551 (a) collocate or install a small wireless facility or utility pole, as requested in the
552 application; and

553 (b) subject to applicable relocation requirements and the applicant's right to terminate
554 at any time, operate and maintain for a period of at least 10 years:

555 (i) any small wireless facility covered by the permit; and

556 (ii) any utility pole covered by the permit.

557 (12) If there is no basis for denial under Subsection (7), an authority shall grant the
558 renewal of an application under this section for an equivalent duration.

559 (13) An authority may not institute, either expressly or de facto, a moratorium on
560 filing, receiving, or processing an application, or issuing a permit or another approval, if any,
561 for:

562 (a) the collocation of a small wireless facility; or

563 (b) the installation, modification, or replacement of a utility pole to support a small
564 wireless facility.

565 (14) The approval of the installation, placement, maintenance, or operation of a small
566 wireless facility, in accordance with this chapter, does not authorize:

567 (a) the provision of a communications service in the right-of-way; or

568 (b) the installation, placement, or operation of a facility, other than the approved small
569 wireless facility, in the right-of-way.

570 Section 16. Section **54-21-303** is enacted to read:

571 **54-21-303. Exceptions to permitting.**

572 (1) Except as provided in Subsection (2), an authority may not require a wireless
573 provider to submit an application, obtain a permit, or pay a rate for:

574 (a) routine maintenance;

575 (b) the replacement of a small wireless facility with a small wireless facility that is
576 substantially similar or smaller in size; or

577 (c) the installation, placement, maintenance, operation, or replacement of a micro
578 wireless facility that is strung on a cable between existing utility poles, in compliance with the
579 National Electrical Safety Code.

580 (2) (a) An authority may require a wireless provider to obtain a permit in accordance
581 with Section [72-7-102](#) for work that requires excavation or closing of sidewalks or vehicular
582 lanes in a public right-of-way.

583 (b) If an authority requires a permit under Subsection (2)(a), the authority shall process
584 and approve the permit within the same time period the authority processes and approves a
585 permit for all other types of entities.

586 (3) (a) An authority may require advance notice of an activity described in Subsection
587 (1).

588 (b) A wireless provider may replace or upgrade a utility pole only with the approval of
589 the utility pole's owner.

590 Section 17. Section **54-21-401** is enacted to read:

591 **Part 4. Access to Authority Poles Within a Right-of-Way**

592 **54-21-401. Applicability.**

593 This part applies to activities of a wireless provider within a right-of-way.

594 Section 18. Section **54-21-402** is enacted to read:

595 **54-21-402. Prohibition on exclusive use.**

596 (1) A person owning, managing, or controlling an authority pole in a right-of-way may
597 not enter into an exclusive arrangement with a person for the right to collocate a small wireless
598 facility to the authority pole.

599 (2) A person who purchases or otherwise acquires an authority pole is subject to the
600 requirements of this part.

601 (3) An authority shall allow the collocation of a small wireless facility on an authority
602 pole in a right-of-way:

603 (a) as provided in this chapter; and

604 (b) subject to the permitting process in Part 3, Permitting Process for Small Wireless
605 Facilities.

606 Section 19. Section **54-21-403** is enacted to read:

607 **54-21-403. Rates.**

608 The rate to collocate a small wireless facility on an authority pole:

609 (1) shall be nondiscriminatory, regardless of the service provided by the collocating
610 person; and

611 (2) is provided in Part 5, Rates and Fees.

612 Section 20. Section **54-21-501** is enacted to read:

613 **Part 5. Rates and Fees**

614 **54-21-501. Applicability.**

615 This part governs an authority's rates and fees for the placement in a right-of-way of:

616 (1) a small wireless facility; or

617 (2) a utility pole associated with a small wireless facility.

618 Section 21. Section **54-21-502** is enacted to read:

619 **54-21-502. Right-of-way rates.**

620 (1) Except as described in Subsection (2), an authority may not require a wireless
621 provider to pay any rate, fee, or compensation to the authority, or to any other person, beyond
622 what is expressly authorized in this chapter, for the right to use or occupy a right-of-way:

623 (a) for the collocation of a small wireless facility on a utility pole in the right-of-way;

624 or

625 (b) for the installation, operation, modification, maintenance, or replacement of a
626 utility pole in the right-of-way.

627 (2) (a) An authority may charge a wireless provider a rate for the right to use or occupy
628 a right-of-way as described in Subsection (1), if, except as provided in Subsection
629 54-21-601(6), the rate is:

630 (i) fair and reasonable;

631 (ii) competitively neutral;

632 (iii) nondiscriminatory;

633 (iv) directly related to the wireless provider's actual use of the right-of-way; and

634 (v) not more than the greater of:

635 (A) 3.5% of all gross revenue related to the wireless provider's use of the right-of-way
636 for small wireless facilities; or

637 (B) \$250 annually for each small wireless facility.

638 (b) A wireless provider subject to a rate under this Subsection (2) shall remit payments
639 to the authority on a monthly basis.

640 (c) A rate charged in accordance with Subsection (2)(a)(v) is presumed to be fair and
641 reasonable.

642 (3) Notwithstanding Subsection (2), an authority may not require a wireless provider to
643 pay an additional rate, fee, or compensation for the right to use or occupy a right-of-way as
644 described in Subsection (1), if the wireless provider is subject to the municipal
645 telecommunications license tax under Title 10, Chapter 1, Part 4, Municipal

646 Telecommunications License Tax Act.

647 Section 22. Section **54-21-503** is enacted to read:

648 **54-21-503. Application fees.**

649 (1) An authority may charge an application fee, if:

650 (a) a similar fee is required for similar types of commercial development or
651 construction within the authority's jurisdiction;

652 (b) the costs to be recovered by an application fee are not already recovered by existing
653 fees, rates, licenses, or taxes paid by the wireless provider; and

654 (c) the fee does not include:

655 (i) travel expenses incurred by a third party in review of an application; or

656 (ii) payment or reimbursement of a third-party rate or fee charged on a contingency
657 basis or a result-based arrangement.

658 (2) Subject to Subsection (3), an application fee for collocation of a small wireless
659 facility is limited to the cost of granting a building permit for similar types of commercial
660 development or construction within the authority's jurisdiction.

661 (3) An application fee for the collocation of a small wireless facility on an existing or
662 replacement utility pole may not exceed \$100 for each small wireless facility on the same
663 application.

664 (4) If the activity is a permitted use described in Section [54-21-204](#), an application fee
665 may not exceed \$250 per application to install, modify, or replace a utility pole associated with
666 a small wireless facility.

667 (5) If the activity is not a permitted use described in Section [54-21-204](#), an application
668 fee may not exceed \$1,000 per application to:

669 (a) install, modify, or replace a utility pole; or

670 (b) install, modify, or replace a new utility pole associated with a small wireless
671 facility.

672 Section 23. Section **54-21-504** is enacted to read:

673 **54-21-504. Authority pole collocation rate.**

674 The rate to collocate a small wireless facility on an authority pole is \$50 per year, per
675 authority pole.

676 Section 24. Section **54-21-601** is enacted to read:

677 **Part 6. Implementation**

678 **54-21-601. General.**

679 (1) An authority may, to the extent allowed by law and consistent with this chapter,
680 establish rates, fees, and other terms that comply with this chapter by:

681 (a) implementing an ordinance; or

682 (b) if applicable, executing an agreement with a wireless provider.

683 (2) In the absence of an ordinance or agreement that fully complies with this chapter, a
684 wireless provider may install and operate a small wireless facility or a utility pole associated
685 with a small wireless facility:

686 (a) subject to Section [54-21-602](#); and

687 (b) under the requirements of this chapter.

688 (3) An authority may establish an ordinance or require an agreement to implement this
689 chapter.

690 (4) (a) Subject to Subsection (4)(b), an authority may require a wireless provider to
691 agree to reasonable and nondiscriminatory indemnification, insurance, or bonding requirements
692 before a wireless provider collocates a small wireless facility in a right-of-way.

693 (b) An authority may not impose on a wireless provider an indemnification
694 requirement described in Subsection (4)(a) that requires the wireless provider to indemnify the
695 authority for the authority's negligence.

696 (5) An authority's obligations under this chapter may not be tolled or extended pending
697 the implementation of an ordinance or negotiation of an agreement to implement this chapter.

698 (6) (a) Nothing in this section prohibits an authority from entering into a written,
699 nondiscriminatory agreement with one or more wireless providers to jointly test certain
700 traffic-related functions, or other technology related to research, using specified assets of the
701 authority or the wireless providers.

- 702 (b) An agreement described in Subsection (6)(a) may:
- 703 (i) waive certain fees the participating wireless provider would otherwise be required to
- 704 pay to the authority; or
- 705 (ii) allow the participating wireless provider to pay certain fees in cash, in-kind
- 706 compensation, or in a combination of cash and in-kind compensation.

707 Section 25. Section **54-21-602** is enacted to read:

708 **54-21-602. Noncompliant agreements and ordinances.**

709 (1) An agreement or ordinance that does not fully comply with this chapter and applies

710 to a small wireless facility or a utility pole that is operational or installed before May 11, 2018:

711 (a) may not be renewed or extended unless the agreement is modified to fully comply

712 with this chapter; and

713 (b) is invalid and unenforceable beginning November 8, 2018, unless the agreement or

714 ordinance is modified before November 8, 2018, to fully comply with this chapter.

715 (2) An agreement or ordinance entered into or passed before May 11, 2018, that does

716 not fully comply with this chapter and applies to a small wireless facility or a utility pole that

717 was not operational or installed before May 11, 2018, is invalid and unenforceable:

718 (a) beginning May 11, 2018; and

719 (b) until the agreement or ordinance is modified to fully comply with this chapter.

720 (3) If an agreement or ordinance is invalid in accordance with this section, until an

721 agreement or ordinance that fully complies with this chapter is entered or adopted:

722 (a) a small wireless facility or a utility pole that is operational or installed before May

723 11, 2018, may remain installed and operate under the requirements of this chapter; and

724 (b) a small wireless facility or utility pole may become operational or be installed in the

725 right-of-way on or after May 11, 2018, under the requirements of this chapter.

726 Section 26. Section **54-21-603** is enacted to read:

727 **54-21-603. Relocation.**

728 (1) Notwithstanding any provision to the contrary, an authority may require a wireless

729 provider to relocate or adjust a small wireless facility in a public right-of-way:

- 730 (a) in a timely manner; and
- 731 (b) without cost to the authority owning the public right-of-way.
- 732 (2) The reimbursement obligations under Section [72-6-116\(3\)\(b\)](#) do not apply to the
- 733 relocation of a small wireless facility.

734 Section 27. Section **72-6-116** is amended to read:

735 **72-6-116. Regulation of utilities -- Relocation of utilities.**

736 (1) As used in this section:

737 (a) "Cost of relocation" includes the entire amount paid by the utility company properly

738 attributable to the relocation of the utility after deducting any increase in the value of the new

739 utility and any salvage value derived from the old utility.

740 (b) "Utility" includes telecommunication, gas, electricity, cable television, water,

741 sewer, data, and video transmission lines, drainage and irrigation facilities, and other similar

742 utilities whether public, private, or cooperatively owned.

743 (c) "Utility company" means a privately, cooperatively, or publicly owned utility,

744 including utilities owned by political subdivisions.

745 (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

746 the department may make rules for the installation, construction, maintenance, repair, renewal,

747 system upgrade, and relocation of all utilities.

748 (b) If the department determines under the rules established in this section that it is

749 necessary that any utilities should be relocated, the utility company owning or operating the

750 utilities shall relocate the utilities in accordance with this section and the order of the

751 department.

752 (3) (a) The department shall pay 100% of the cost of relocation of a utility to

753 accommodate construction of a state highway project, including the construction of a proposed

754 state highway and the improvement, widening, or modification of an existing state highway if

755 the:

756 (i) utility is owned or operated by a political subdivision of the state;

757 (ii) utility company owns the easement or fee title to the right-of-way in which the

758 utility is located; or

759 (iii) utility is located in a public utility easement as defined in Section [54-3-27](#).

760 (b) Except as provided in Subsection (3)(a) or (c) or [Section 54-21-603](#), the department
761 shall pay 50% of the cost of relocation of a utility to accommodate construction of a state
762 highway project, including the construction of a proposed state highway and the improvement,
763 widening, or modification of an existing state highway, and the utility company shall pay the
764 remainder of the cost of relocation.

765 (c) This Subsection (3) does not affect the provisions of Subsection [72-7-108\(5\)](#).

766 (4) If a utility is relocated, the utility company owning or operating the utility, its
767 successors or assigns, may maintain and operate the utility, with the necessary appurtenances,
768 in the new location.

769 (5) In accordance with this section, the cost of relocating a utility in connection with
770 any project on a highway is a cost of highway construction.

771 (6) (a) The department shall notify affected utility companies, in accordance with
772 Section [54-3-29](#), whenever the relocation of utilities is likely to be necessary because of a
773 reconstruction project.

774 (b) The notification shall be made during the preliminary design of the project or as
775 soon as practical in order to minimize the number, costs, and delays of utility relocations.

776 (c) A utility company notified under this Subsection (6) shall coordinate and cooperate
777 with the department and the department's contractor on the utility relocations, including the
778 scheduling of the utility relocations.

779 Section 28. **Effective date.**

780 This bill takes effect on September 1, 2018.