

Senator Curtis S. Bramble proposes the following substitute bill:

SMALL WIRELESS FACILITIES DEPLOYMENT ACT

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill creates the Small Wireless Facilities Deployment Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ permits a wireless provider to deploy a small wireless facility and any associated utility pole within a right-of-way under certain conditions;
- ▶ permits an authority to establish a permitting process for the deployment of a small wireless facility and any associated utility pole under certain conditions;
- ▶ describes a wireless provider's access to an authority pole within a right-of-way;
- ▶ sets rates and fees for the placement of:
 - a small wireless facility;
 - a wireless support structure; and
 - a utility pole;
- ▶ describes the implementation of requirements in relation to agreements and ordinances; and
- ▶ permits an authority to adopt indemnification, insurance, or bonding requirements for a small wireless facility permit, under certain conditions.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **72-6-116**, as last amended by Laws of Utah 2014, Chapter 184

33 ENACTS:

34 **54-21-101**, Utah Code Annotated 1953

35 **54-21-102**, Utah Code Annotated 1953

36 **54-21-103**, Utah Code Annotated 1953

37 **54-21-201**, Utah Code Annotated 1953

38 **54-21-202**, Utah Code Annotated 1953

39 **54-21-203**, Utah Code Annotated 1953

40 **54-21-204**, Utah Code Annotated 1953

41 **54-21-205**, Utah Code Annotated 1953

42 **54-21-206**, Utah Code Annotated 1953

43 **54-21-207**, Utah Code Annotated 1953

44 **54-21-208**, Utah Code Annotated 1953

45 **54-21-209**, Utah Code Annotated 1953

46 **54-21-210**, Utah Code Annotated 1953

47 **54-21-211**, Utah Code Annotated 1953

48 **54-21-301**, Utah Code Annotated 1953

49 **54-21-302**, Utah Code Annotated 1953

50 **54-21-303**, Utah Code Annotated 1953

51 **54-21-401**, Utah Code Annotated 1953

52 **54-21-402**, Utah Code Annotated 1953

53 **54-21-403**, Utah Code Annotated 1953

54 **54-21-404**, Utah Code Annotated 1953

55 **54-21-501**, Utah Code Annotated 1953

56 **54-21-502**, Utah Code Annotated 1953

- 57 [54-21-503](#), Utah Code Annotated 1953
- 58 [54-21-504](#), Utah Code Annotated 1953
- 59 [54-21-601](#), Utah Code Annotated 1953
- 60 [54-21-602](#), Utah Code Annotated 1953
- 61 [54-21-603](#), Utah Code Annotated 1953
- 62 [54-21-701](#), Utah Code Annotated 1953
- 63 [54-21-702](#), Utah Code Annotated 1953
- 64 [54-21-703](#), Utah Code Annotated 1953
- 65 [54-21-704](#), Utah Code Annotated 1953

66

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

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

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

70 **Part 1. General Provisions**

71 **54-21-101. Definitions.**

72 As used in this chapter:

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

75 (2) "Applicable codes" means the International Building Code, the International Fire
76 Code, the National Electrical Code, the International Plumbing Code, and the International
77 Mechanical Code, as adopted and amended under Title 15A, State Construction and Fire Codes
78 Act.

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

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

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

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

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

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

- 88 (i) the state;
- 89 (ii) a state agency;
- 90 (iii) a county;
- 91 (iv) a municipality;
- 92 (v) a town;
- 93 (vi) a metrotownship;
- 94 (vii) a subdivision of an entity described in Subsections (6)(a)(i) through (vi); or
- 95 (viii) a special district or entity established to provide a single public service within a
- 96 specific geographic area, including:
- 97 (A) a public utility district;
- 98 (B) an irrigation district; or
- 99 (C) a municipal electric utility.
- 100 (b) "Authority" does not include a state court having jurisdiction over an authority.
- 101 (7) "Authority pole" means a utility pole owned, managed, or operated by, or on behalf
- 102 of, an authority.
- 103 (8) "Authority wireless support structure" means a wireless support structure owned,
- 104 managed, or operated by, or on behalf of, an authority.
- 105 (9) "Collocate" means to install, mount, maintain, modify, operate, or replace a small
- 106 wireless facility on or adjacent to a wireless support structure or utility pole.
- 107 (10) "Communications service provider" means:
- 108 (a) a cable operator, as defined in 47 U.S.C. Sec. 522(5);
- 109 (b) a provider of information service, as information service is defined in 47 U.S.C.
- 110 Sec. 153(24);
- 111 (c) a telecommunications carrier, as defined in 47 U.S.C. Sec. 153(51); or
- 112 (d) a wireless provider.
- 113 (11) "Decorative pole" means an authority pole:
- 114 (a) that is specially designed and placed for an aesthetic purpose; and
- 115 (b) (i) on which a nondiscriminatory rule or code prohibits an appurtenance or
- 116 attachment, other than:
- 117 (A) a small wireless facility;
- 118 (B) a specialty designed informational or directional sign; or

- 119 (C) a temporary holiday or special event attachment; or
- 120 (ii) on which no appurtenance or attachment has been placed, 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.
- 124 (12) "Electrical corporation" means the same as that term is defined in Section [54-2-1](#).
- 125 (13) "FCC" means the Federal Communications Commission of the United States.
- 126 (14) "Fee" means a one-time, nonrecurring charge.
- 127 (15) (a) "Gross revenue" means recurring revenues a wireless provider receives that are
- 128 directly related to the use or provision of small wireless facilities within an authority's
- 129 jurisdiction.
- 130 (b) "Gross revenue" does not include:
- 131 (i) sales tax, ad valorem tax, or another add-on tax, levy, or fee calculated by:
- 132 (A) gross receipts that an authority may require a wireless provider to pay or collect for
- 133 the authority; or
- 134 (B) gross revenues that an authority may require a wireless provider to pay or collect
- 135 for the authority;
- 136 (ii) a retail discount to a promotion;
- 137 (iii) a noncollectable amount due a wireless provider or the wireless provider's
- 138 customers;
- 139 (iv) a refund or rebate;
- 140 (v) nonoperating revenues, including:
- 141 (A) interest income; or
- 142 (B) gain from the sale of an asset; or
- 143 (vi) a payment a wireless provider receives for the construction of a network facility.
- 144 (16) "Historic district" means a group of buildings, properties, or sites that are, in
- 145 accordance with 47 C.F.R. Part 1, Appendix C:
- 146 (a) listed in the National Register of Historic Places; or
- 147 (b) formally determined eligible for listing in the National Register of Historic Places
- 148 by the Keeper of the National Register.
- 149 (17) "Legal obligation" means:

- 150 (a) federal, state, or local:
- 151 (i) law;
- 152 (ii) statute;
- 153 (iii) common law;
- 154 (iv) code;
- 155 (v) rule;
- 156 (vi) regulation;
- 157 (vii) order; or
- 158 (viii) ordinance; or
- 159 (b) a legally binding obligation, including a contractual obligation.
- 160 (18) "Micro wireless facility" means a type of small wireless facility:
- 161 (a) that, not including any antenna, is no larger in dimension than 24 inches in length,
- 162 15 inches in width, and 12 inches in height; and
- 163 (b) on which any exterior antenna is no longer than 11 inches.
- 164 (19) "Permit" means a written authorization an authority requires for a wireless
- 165 provider to perform an action or initiate, continue, or complete a project.
- 166 (20) "Rate" means a recurring charge.
- 167 (21) (a) "Right-of-way" means the area on, below, or above a public:
- 168 (i) roadway;
- 169 (ii) highway;
- 170 (iii) street;
- 171 (iv) sidewalk;
- 172 (v) alley; or
- 173 (vi) property similar to property listed in Subsections (21)(a)(i) through (v).
- 174 (b) "Right-of-way" does not include the area on, below, or above a federal interstate
- 175 highway.
- 176 (22) "Small wireless facility" means a type of wireless facility:
- 177 (a) on which each wireless provider's antenna could fit within an enclosure of no more
- 178 than six cubic feet in volume; and
- 179 (b) for which all wireless equipment associated with the wireless facility, whether
- 180 ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet in volume, not

181 including any:

182 (i) electric meter;

183 (ii) concealment element;

184 (iii) telecommunications demarcation box;

185 (iv) grounding equipment;

186 (v) power transfer switch;

187 (vi) cut-off switch;

188 (vii) vertical cable run for the connection of power or other service; or

189 (viii) wireless provider antenna.

190 (23) "Substantial modification" means:

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

194 (b) a proposed modification in excess of the site dimensions specified in 47 C.F.R. Part
195 1, Appendix C, Sec. III.B.

196 (24) "Technically feasible" means that by virtue of engineering or spectrum usage, the
197 proposed placement for a small wireless facility, or the small wireless facility's design or site
198 location, can be implemented without a reduction or impairment to the functionality of the
199 small wireless facility.

200 (25) (a) "Utility pole" means a pole or similar structure that is or may be used, in whole
201 or in part, for:

202 (i) wireline communications;

203 (ii) electric distribution;

204 (iii) lighting;

205 (iv) traffic control;

206 (v) signage;

207 (vi) a similar function to a function described in Subsections (25)(a)(i) through (v); or

208 (vii) the collocation of a small wireless facility.

209 (b) "Utility pole" does not include:

210 (i) a wireless support structure; or

211 (ii) a structure that supports only electric transmission lines.

212 (26) (a) "Wireless facility" means equipment at a fixed location that enables wireless
213 communication between user equipment and a communications network, including:

214 (i) equipment associated with wireless communications; and

215 (ii) regardless of the technological configuration, a radio transceiver, an antenna, a
216 coaxial or fiber-optic cable, a regular or backup power supply, or comparable equipment.

217 (b) "Wireless facility" does not include:

218 (i) the structure or an improvement on, under, or within which the equipment is
219 collocated;

220 (ii) a coaxial or fiber-optic cable that is:

221 (A) between wireless structures or utility poles; or

222 (B) not immediately adjacent to or directly associated with a particular antenna; or

223 (iii) a wireline backhaul facility.

224 (27) (a) "Wireless infrastructure provider" means a person that builds or installs
225 wireless communication transmission equipment, a wireless facility, or a wireless support
226 structure.

227 (b) "Wireless infrastructure provider" includes a person authorized to provide a
228 telecommunications service in the state.

229 (c) "Wireless infrastructure provider" does not include a wireless service provider.

230 (28) "Wireless provider" means a wireless infrastructure provider or a wireless service
231 provider.

232 (29) (a) "Wireless service" means any service using licensed or unlicensed spectrum,
233 whether at a fixed location or mobile, provided to the public using a wireless facility.

234 (b) "Wireless service" includes the use of Wi-Fi.

235 (30) "Wireless service provider" means a person who provides a wireless service.

236 (31) (a) "Wireless support structure" means an existing or proposed structure designed
237 to support or capable of supporting a wireless facility, including a:

238 (i) monopole;

239 (ii) tower, either guyed or self-supporting;

240 (iii) billboard; or

241 (iv) building.

242 (b) "Wireless support structure" does not include a:

- 243 (i) structure designed solely for the collocation of a small wireless facility; or
- 244 (ii) utility pole.

245 (32) "Wireline backhaul facility" means a facility used to transport communications
246 data by wire from a wireless facility to a communications network.

247 (33) (a) "Written" or "in writing" means a tangible or electronic record of a
248 communication or representation.

249 (b) "Written" or "in writing" includes a communication or representation that is
250 handwritten, typewritten, printed, photostated, photographed, audio-recorded, video-recorded,
251 or electronic.

252 Section 2. Section **54-21-102** is enacted to read:

253 **54-21-102. Scope.**

254 Nothing in this chapter:

255 (1) permits an entity to provide a service regulated under 47 U.S.C. Secs. 521 through
256 573, in a right-of-way without compliance with all applicable legal obligations;

257 (2) imposes a new requirement on the activity of a cable provider in a right-of-way for
258 a cable service provided in this state;

259 (3) governs:

260 (a) a pole that an electrical corporation owns or a structure that an electrical
261 corporation owns; or

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

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

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

266 **54-21-103. Local authority jurisdiction.**

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

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

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

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

275 (c) consistent with state and federal law.

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

278 (a) to the extent the authority enforces the regulation, the authority enforces the
279 regulation on a nondiscriminatory basis to each user of the right of way; and

280 (b) the regulation is reasonably necessary to protect the health, safety, and welfare of
281 the public.

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

284 (a) are reasonable and nondiscriminatory; and

285 (b) include additional installation and construction details that do not conflict with this
286 chapter, including a requirement that:

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

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

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

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

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

300 (a) not more than 50 feet wide, as depicted in the official plat records; and

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

303 (7) An authority:

304 (a) may not have or exercise any jurisdiction or authority over the design, engineering,

305 construction, installation, or operation of a small wireless facility located in an interior
306 structure or upon the site of any campus, stadium, or athletic facility not owned or controlled
307 by the authority, other than to comply with applicable codes; and

308 (b) shall evaluate the structure classification for a wireless support structure under the
309 latest applicable standards.

310 (8) Nothing in this chapter authorizes the state or any political subdivision, including
311 an authority, to:

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

313 (b) regulate a wireless service.

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

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

316 **54-21-201. Applicability.**

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

318 (1) a small wireless facility; or

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

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

321 **54-21-202. Prohibition on exclusive use.**

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

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

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

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

327 **54-21-203. Right-of-way rates and fees.**

328 (1) An authority may not charge a wireless provider a rate or fee for the use of a
329 right-of-way to collocate a small wireless facility, or to install, operate, modify, maintain, or
330 replace a utility pole associated with the wireless provider's collocation of a small wireless
331 facility, unless the authority:

332 (a) also charges all other entities for use of the right-of-way; and

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

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

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

337 **54-21-204. Wireless provider right of access.**

338 (1) Subject to the provisions of this part, along, across, upon, or under the right-of-way,
339 a wireless provider may, as a permitted use not subject to zoning review or approval:

340 (a) collocate a small wireless facility; or

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

342 (i) a utility pole associated with the wireless provider's collocation of a small wireless
343 facility; or

344 (ii) equipment described in Subsections [54-21-101\(22\)\(b\)\(i\)](#) through (viii) required for
345 a wireless provider's collocation of a small wireless facility.

346 (2) A small wireless facility or utility pole under Subsection (1) may not:

347 (a) obstruct or hinder the usual travel or public safety on a right-of-way; or

348 (b) obstruct, damage, or interfere with:

349 (i) another utility facility in a right-of-way; or

350 (ii) a utility's use of the utility's facility in a right-of-way.

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

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

354 **54-21-205. Height limitations in a right-of-way.**

355 (1) Except as provided in Subsection (3), each new or modified utility pole installed in
356 a right-of-way may not exceed the greater of:

357 (a) the height of the tallest existing utility pole:

358 (i) in place on or before May 11, 2018;

359 (ii) located within 500 feet of the new or modified pole; and

360 (iii) in the same right-of-way as the new or modified pole; or

361 (b) 50 feet above ground level.

362 (2) Except as provided in Subsection (3), a new small wireless facility in a right-of-way
363 may not extend:

364 (a) above an existing utility pole in place in the right-of-way on or before May 11,
365 2018, except, if the owner of the utility pole on which the small wireless facility is placed and
366 the relevant authority give permission, an antenna may extend up to 10 feet above the utility

367 pole; or

368 (b) on a new utility pole, above the height permitted for a new utility pole under
369 Subsection (1).

370 (3) A wireless provider may collocate a small wireless facility or install, operate,
371 modify, maintain, or replace a utility pole associated with the wireless provider's collocation of
372 a small wireless facility that exceeds the height limitations in this section along, across, upon,
373 or under a right-of-way, subject to:

374 (a) the other provisions of this part;

375 (b) Part 4, Access to Authority Poles Within the Right-of-Way; and

376 (c) applicable zoning regulations.

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

378 **54-21-206. Decorative poles.**

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

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

383 **54-21-207. Underground district.**

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

387 (1) the prohibition is reasonable and nondiscriminatory; and

388 (2) the authority:

389 (a) (i) requires that all cable and utility facilities, other than an authority pole and
390 attachment, be placed underground; and

391 (ii) establishes the requirement in Subsection (2)(a)(i) more than 90 days before the day
392 on which the applicant submits the application;

393 (b) does not prohibit the replacement of an authority pole in the designated area; and

394 (c) permits a wireless provider to seek a waiver, that is administered in a
395 nondiscriminatory manner, of the undergrounding requirement for the placement of a new
396 utility pole to support a small wireless facility.

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

398 **54-21-208. Historic districts.**

399 (1) Subject to the permit process described in Section 54-21-302, an authority may
400 require a reasonable, technically feasible, nondiscriminatory, or technologically neutral design
401 or concealment measure in an historic district, unless the facility is excluded from evaluation
402 for effects on historic properties under 47 C.F.R. Sec. 1.1307(a)(4).

403 (2) A design or concealment measure described in Subsection (1) may not:

404 (a) have the effect of prohibiting a provider's technology; or

405 (b) be considered a part of the small wireless facility for purposes of the size

406 parameters in the definition of a small wireless facility.

407 (3) (a) A wireless provider shall obtain advance approval from an authority before
408 collocating a new small wireless facility or installing a new utility pole in an area that is zoned
409 or otherwise designated as an historic district.

410 (b) As a condition for approval of a new small wireless facility or a new utility pole in
411 an historic district, an authority may require reasonable design or concealment measures for the
412 new small wireless facility or the new utility pole.

413 (4) A wireless provider shall comply with an authority's reasonable and
414 nondiscriminatory design and aesthetic standards requiring the use of certain camouflage
415 measures in connection with a new small wireless facility in an historic district, if the
416 camouflage measures are technically and economically feasible consistent with this chapter.

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

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

420 (b) the requirements for facility modifications under:

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

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

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

424 (b).

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

426 **54-21-209. Manner of regulation.**

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

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

430 (a) be unreasonable or discriminatory; or

431 (b) violate an applicable legal obligation.

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

433 **54-21-210. Damage and repair.**

434 (1) If a wireless provider's activity directly causes damage to a right-of-way, the
435 authority may, pursuant to reasonable and nondiscriminatory requirements and specifications of
436 the authority, require the wireless provider to:

437 (a) repair the damage in the right-of-way; or

438 (b) return the right-of-way to the right-of-way's functional equivalence before the
439 damage.

440 (2) If a wireless provider fails to make a repair required by an authority under
441 Subsection (1) within a reasonable time after written notice, the authority may:

442 (a) make the required repair; and

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

444 (3) If the damage described in Subsection (1) causes an urgent safety hazard, an
445 authority may:

446 (a) immediately make the necessary repair; and

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

448 Section 14. Section **54-21-211** is enacted to read:

449 **54-21-211. Permitted use.**

450 Subject to the permit process in Section [54-21-302](#), a new, modified, or replacement
451 utility pole associated with a small wireless facility that meets the requirements of this part is a
452 permitted use.

453 Section 15. Section **54-21-301** is enacted to read:

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

455 **54-21-301. Applicability -- General -- Zoning.**

456 (1) This part applies to:

457 (a) the collocation of a small wireless facility in a public right-of-way, as specified in
458 Subsection (3);

459 (b) the collocation of a small wireless facility on a wireless support structure in a

460 right-of-way; and

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

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

465 (3) A small wireless facility shall be classified as a permitted use and not subject to
466 zoning review or approval if the small wireless facility is collocated in a right-of-way in any
467 zone.

468 Section 16. Section **54-21-302** is enacted to read:

469 **54-21-302. Permitting process, requirements, and limitations.**

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

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

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

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

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

476 (b) may not require:

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

479 (ii) an applicant to provide more information to obtain a permit than a communications
480 service provider that is not a wireless provider or a utility, except to the extent the applicant is
481 required to include construction or engineering drawings or other information to demonstrate
482 the applicant's application should be not denied under Subsection (7);

483 (iii) the placement of a small wireless facility on a specific utility pole or category of
484 poles;

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

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

487 and

488 (c) may require an applicant to attest that the small wireless facility will be operational
489 for use by a wireless service provider within one year after the day on which the authority
490 issues the permit, except in the case that:

491 (i) the authority and the applicant agree to extend the one-year period; or
492 (ii) lack of commercial power or communications transport infrastructure to the site
493 delays completion.

494 (3) Within 14 days after the day on which an authority receives an application for the
495 collocation of a small wireless facility and within 30 days after the day on which an authority
496 receives an application for a new, modified, or replacement utility pole, the authority shall:

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

498 (b) notify the applicant in writing of the authority's determination of whether the
499 application is complete.

500 (4) If an authority determines, within the applicable time period described in
501 Subsection (3), that an application is incomplete:

502 (a) the authority shall specifically identify the missing information in the written
503 notification sent to the applicant under Subsection (3)(b); and

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

505 (i) from the day on which the authority sends the applicant the written notice to the day
506 on which the authority receives the applicant's missing information; or

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

508 (5) An application for the collocation of a small wireless facility expires if:

509 (a) the authority notifies the wireless provider that the wireless provider's application is
510 incomplete, in accordance with Subsection (4); and

511 (b) the wireless provider fails to respond within 90 days after the day on which the
512 authority notifies the wireless provider under Subsection (5)(a).

513 (6) (a) An authority shall:

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

515 (ii) approve or deny an application:

516 (A) for the collocation of a small wireless facility, within 90 days after the day on
517 which the authority receives the complete application; and

518 (B) for a new, modified, or replacement utility pole, within 150 days after the day on
519 which the authority receives the complete application.

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

522 (7) An authority may deny an application to collocate a small wireless facility or to
523 install, modify, or replace a utility pole that meets the height limitations under Section
524 54-21-205, only if the action requested in the application:

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

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

528 (c) materially interferes with compliance with the Americans with Disabilities Act of
529 1990, 42 U.S.C. Sec. 12101 et seq., or a similar federal or state standard regarding pedestrian
530 access or movement;

531 (d) fails to comply with applicable legal obligations;

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

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

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

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

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

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

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

542 (ii) resubmit the application.

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

546 (ii) A review of an application revised in accordance with Subsection (8)(b) is limited
547 to the deficiencies documented as the basis for denial.

548 (9) (a) If an applicant seeks to collocate multiple small wireless facilities within the
549 jurisdiction of a single authority, the authority shall allow the applicant, at the applicant's
550 discretion, to:

551 (i) file a consolidated application for the collocation of up to 25 small wireless
552 facilities, if all of the small wireless facilities in the consolidated application:

553 (A) are substantially the same type; and
554 (B) proposed for collocation on substantially the same types of structures; and
555 (ii) receive a single permit for the collocation of the small wireless facilities.
556 (b) An applicant may not file more than one consolidated application within a
557 five-business-day period.
558 (c) If an authority denies one or more small wireless facilities in a consolidated
559 application, the authority may not use the denial as a basis to delay the application process of
560 any other small wireless facility in the same consolidated application.
561 (10) A wireless provider shall complete the installation or collocation for which a
562 permit is granted under this part within one year after the day on which the authority issues the
563 permit, unless:
564 (a) the authority and the applicant agree to extend the one-year period; or
565 (b) lack of commercial power or communications facilities at the site delays
566 completion.
567 (11) Approval of an application authorizes the applicant to:
568 (a) collocate or install a small wireless facility or utility pole, as requested in the
569 application; and
570 (b) subject to applicable relocation requirements and the applicant's right to terminate
571 at any time, operate and maintain for a period of at least 10 years:
572 (i) any small wireless facility covered by the permit; and
573 (ii) any utility pole covered by the permit.
574 (12) If there is no basis for denial under Subsection (7), an authority shall grant the
575 renewal of an application under this section for an equivalent duration.
576 (13) An authority may not institute, either expressly or de facto, a moratorium on
577 filing, receiving, or processing an application, or issuing a permit or another approval, if any,
578 for:
579 (a) the collocation of a small wireless facility; or
580 (b) the installation, modification, or replacement of a utility pole to support a small
581 wireless facility.
582 (14) The approval of the installation, placement, maintenance, or operation of a small
583 wireless facility, in accordance with this chapter, does not authorize the installation, placement,

584 or operation of a facility, other than a small wireless facility, in the right-of-way.

585 Section 17. Section **54-21-303** is enacted to read:

586 **54-21-303. Exceptions to permitting.**

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

589 (a) routine maintenance;

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

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

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

598 (b) If an authority requires a permit under Subsection (2)(a), the authority shall process
599 and approve the permit within the same period the authority processes and approves the permit
600 for all other types of entities, not to exceed five business days after the day on which the
601 wireless provider submits an application for the permit.

602 (3) (a) An authority may require advance notice of an activity described in Subsection
603 (1).

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

606 Section 18. Section **54-21-401** is enacted to read:

607 **Part 4. Access to Authority Poles Within the Right-of-Way**

608 **54-21-401. Applicability.**

609 The provisions of this part apply to activities of a wireless provider within a
610 right-of-way.

611 Section 19. Section **54-21-402** is enacted to read:

612 **54-21-402. Prohibition on exclusive use.**

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

615 facility to the authority pole.

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

618 (3) An authority shall allow the collocation of a small wireless facility on an authority
619 pole, subject to the permitting process in Part 3, Permitting Process for Small Wireless
620 Facilities.

621 Section 20. Section **54-21-403** is enacted to read:

622 **54-21-403. Rates.**

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

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

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

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

628 **54-21-404. Implementation -- Make-ready work.**

629 (1) A rate, fee, term, or condition for the make-ready work to collocate on an authority
630 pole must:

631 (a) be nondiscriminatory;

632 (b) be competitively neutral;

633 (c) be commercially reasonable; and

634 (d) comply with this chapter.

635 (2) (a) An authority shall provide a good-faith estimate for any make-ready work
636 necessary to enable the authority pole to support the requested collocation by a wireless
637 provider, including pole replacement if necessary, within 60 days after the day on which the
638 authority receives the completed application.

639 (b) Make-ready work, including any pole replacement, shall be completed within 60
640 days after the day on which the applicant gives written acceptance of the authority's good-faith
641 estimate.

642 (c) An authority may require replacement of the authority pole only if the authority
643 demonstrates that the collocation would make the authority pole structurally unsound.

644 (3) (a) The person owning, managing, or controlling an authority pole may not require
645 more make-ready work than necessary to meet applicable codes or industry standards.

- 646 (b) A fee for make-ready work, including any pole replacement, may not:
- 647 (i) include any cost related to:
- 648 (A) pre-existing or prior damage;
- 649 (B) noncompliance; or
- 650 (C) a consultant fee or expense; or
- 651 (ii) exceed:
- 652 (A) the actual cost of the pole, including the installation of the pole; or
- 653 (B) the amount charged to another communications service provider, or other attaching
- 654 entity, for similar work.

655 Section 22. Section **54-21-501** is enacted to read:

656 **Part 5. Rates and Fees**

657 **54-21-501. Applicability.**

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

- 659 (1) a small wireless facility;
- 660 (2) a wireless support structure; or
- 661 (3) a utility pole associated with a small wireless facility.

662 Section 23. Section **54-21-502** is enacted to read:

663 **54-21-502. Right-of-way rates.**

664 (1) Except as described in Subsection (2), an authority may not require a wireless

665 provider to pay any rate, fee, or compensation to the authority, or to any other person, beyond

666 what is expressly authorized in this chapter, for the right to use or occupy a right-of-way:

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

668 or

669 (b) for the installation, operation, modification, maintenance, or replacement of a

670 utility pole in the right-of-way.

671 (2) An authority may charge a wireless provider a rate for the right to use or occupy a

672 right-of-way as described in Subsection (1), if the rate is:

- 673 (a) fair and reasonable;
- 674 (b) competitively neutral;
- 675 (c) nondiscriminatory;
- 676 (d) directly related to the wireless provider's actual use of the right-of-way; and

677 (e) not more than the greater of:
678 (i) 3.5% of all gross revenue related to the wireless provider's use of the right-of-way
679 for small wireless facilities; or
680 (ii) \$100 annually for each small wireless facility.
681 (3) Notwithstanding Subsection (2), an authority may not require a wireless provider to
682 pay an additional rate, fee, or compensation for the right to use or occupy a right-of-way as
683 described in Subsection (1), if the wireless provider is subject to the municipal
684 telecommunications license tax under Title 10, Chapter 1, Part 4, Municipal
685 Telecommunications License Tax Act.
686 Section 24. Section **54-21-503** is enacted to read:
687 **54-21-503. Application fees.**
688 (1) An authority may charge an application fee, if:
689 (a) a similar fee is required for similar types of commercial development or
690 construction within the authority's jurisdiction;
691 (b) the costs to be recovered by an application fee are not already recovered by existing
692 fees, rates, licenses, or taxes paid by the wireless provider; and
693 (c) the fee does not include:
694 (i) travel expenses incurred by a third party in review of an application; or
695 (ii) payment or reimbursement of a third-party rate or fee charged on a contingency
696 basis or a result-based arrangement.
697 (2) Subject to Subsection (3), an application fee for collocation of a small wireless
698 facility is limited to the cost of granting a building permit for similar types of commercial
699 development or construction within the authority's jurisdiction.
700 (3) An application fee for the collocation of a small wireless facility on an existing or
701 replacement authority pole may not exceed:
702 (a) \$100 each for the first five small wireless facilities on the same application; and
703 (b) \$50 each for the sixth or subsequent small wireless facility on the same application.
704 (4) If the activity is a permitted use described in Section [54-21-204](#), an application fee
705 may not exceed \$250 per application to install, modify, or replace a utility pole associated with
706 a small wireless facility.
707 (5) If the activity is not a permitted use described in Section [54-21-204](#), an application

708 fee may not exceed \$1,000 per application to:

709 (a) install, modify, or replace a new wireless support structure;

710 (b) make a substantial modification to a wireless support structure or utility pole; or

711 (c) install, modify, or replace a new utility pole associated with a small wireless

712 facility.

713 Section 25. Section **54-21-504** is enacted to read:

714 **54-21-504. Authority pole collocation rate.**

715 The rate to collocate a small wireless facility to an authority pole is \$20 per year, per

716 authority pole.

717 Section 26. Section **54-21-601** is enacted to read:

718 **Part 6. Implementation**

719 **54-21-601. General.**

720 (1) An authority may, to the extent of its authority, create a legal obligation that makes
721 available to wireless providers rates, fees, and other terms that comply with this chapter.

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

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

726 (b) under the requirements of this chapter.

727 (3) An authority and a wireless provider may enter into an agreement implementing
728 this chapter, but an authority may not require a wireless provider to enter into an agreement
729 implementing this chapter.

730 Section 27. Section **54-21-602** is enacted to read:

731 **54-21-602. Noncompliant agreements and ordinances.**

732 (1) An agreement or ordinance that does not fully comply with this chapter and applies
733 to a small wireless facility or a utility pole that is operational or installed before May 11, 2018:

734 (a) may not be renewed or extended unless the agreement is modified to fully comply
735 with this chapter; and

736 (b) is invalid and unenforceable beginning November 8, 2018, unless the agreement or
737 ordinance is modified before November 8, 2018, to fully comply with this chapter.

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

739 not fully comply with this chapter and applies to a small wireless facility or a utility pole that
740 was not operational or installed before May 11, 2018, is invalid and unenforceable:

741 (a) beginning May 11, 2018; and

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

743 (3) If an agreement or ordinance is invalid in accordance with this section, until an
744 agreement or ordinance that fully complies with this chapter is entered or adopted:

745 (a) a small wireless facility or a utility pole that is operational or installed before May
746 11, 2018, may remain installed and operate under the requirements of this chapter; and

747 (b) a small wireless facility or utility pole may become operational or be installed in the
748 right-of-way on or after May 11, 2018, under the requirements of this chapter.

749 Section 28. Section **54-21-603** is enacted to read:

750 **54-21-603. Relocation.**

751 (1) Notwithstanding any provision to the contrary, a wireless provider shall relocate or
752 adjust a small wireless facility in a public right-of-way:

753 (a) in a timely manner; and

754 (b) without cost to the authority owning the public right-of-way.

755 (2) The reimbursement obligations under Section [72-6-116\(3\)\(b\)](#) do not apply to the
756 relocation of a small wireless facility.

757 Section 29. Section **54-21-701** is enacted to read:

758 **Part 7. Indemnification, Insurance, and Bonding**

759 **54-21-701. General.**

760 Subject to Subsection [72-7-102\(3\)\(b\)\(i\)](#) and the requirements of this part, an authority
761 may adopt an indemnification, insurance, or bonding requirement related to a small wireless
762 facility permit.

763 Section 30. Section **54-21-702** is enacted to read:

764 **54-21-702. Indemnification.**

765 An authority may not require a wireless provider to indemnify or hold the authority, or
766 an authority's officer or employee, harmless against a claim, lawsuit, judgment, cost, lien, loss,
767 expense, or fee, except for harm caused by the negligence of a wireless provider while
768 installing, repairing, or maintaining a small wireless facility or a utility pole associated with a
769 small wireless facility.

770 Section 31. Section **54-21-703** is enacted to read:

771 **54-21-703. Insurance requirements.**

772 An authority may not require a wireless provider to:

773 (1) have insurance coverage unless:

774 (a) the authority imposes a similar requirement on other right-of-way users; and

775 (b) the requirement is reasonable and nondiscriminatory;

776 (2) furnish proof of insurance before the effective date of a permit issued for a small

777 wireless facility, unless insurance is required in accordance with Subsection (1)(a); or

778 (3) obtain insurance naming the authority or an authority's officer or employee as an
779 additional insured.

780 Section 32. Section **54-21-704** is enacted to read:

781 **54-21-704. Bonding requirements.**

782 An authority may not adopt a bonding requirement for a small wireless facility, unless:

783 (1) the authority imposes a similar requirement in connection with permits issued for
784 other right-of-way users;

785 (2) the purpose of the requirement is to:

786 (a) provide for the removal of an abandoned or improperly maintained small wireless
787 facility, including a small wireless facility that an authority determines needs to be removed to
788 protect public health, safety, or welfare;

789 (b) restore a right-of-way in connection with a removal under Subsection (2)(a); or

790 (c) collect a rate or fee that a wireless provider has not paid in over 12 months, if the
791 wireless provider has received:

792 (i) reasonable notice from the authority of any noncompliance; and

793 (ii) an opportunity to cure; and

794 (3) (a) the bonding requirement does not exceed \$200 per small wireless facility; or

795 (b) if the wireless provider has multiple small wireless facilities within the jurisdiction
796 of a single authority, the total bond amount across all facilities does not exceed \$10,000, which
797 amount may be combined into one bond instrument.

798 Section 33. Section **72-6-116** is amended to read:

799 **72-6-116. Regulation of utilities -- Relocation of utilities.**

800 (1) As used in this section:

801 (a) "Cost of relocation" includes the entire amount paid by the utility company properly
802 attributable to the relocation of the utility after deducting any increase in the value of the new
803 utility and any salvage value derived from the old utility.

804 (b) "Utility" includes telecommunication, gas, electricity, cable television, water,
805 sewer, data, and video transmission lines, drainage and irrigation facilities, and other similar
806 utilities whether public, private, or cooperatively owned.

807 (c) "Utility company" means a privately, cooperatively, or publicly owned utility,
808 including utilities owned by political subdivisions.

809 (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
810 the department may make rules for the installation, construction, maintenance, repair, renewal,
811 system upgrade, and relocation of all utilities.

812 (b) If the department determines under the rules established in this section that it is
813 necessary that any utilities should be relocated, the utility company owning or operating the
814 utilities shall relocate the utilities in accordance with this section and the order of the
815 department.

816 (3) (a) The department shall pay 100% of the cost of relocation of a utility to
817 accommodate construction of a state highway project, including the construction of a proposed
818 state highway and the improvement, widening, or modification of an existing state highway if
819 the:

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

821 (ii) utility company owns the easement or fee title to the right-of-way in which the
822 utility is located; or

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

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

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

830 (4) If a utility is relocated, the utility company owning or operating the utility, its
831 successors or assigns, may maintain and operate the utility, with the necessary appurtenances,

832 in the new location.

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

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

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

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