

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: Timothy D. Hawkes

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; 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.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

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

53 **54-21-501**, Utah Code Annotated 1953

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

55 **54-21-503**, Utah Code Annotated 1953

56 **54-21-504**, Utah Code Annotated 1953

- 57 [54-21-601](#), Utah Code Annotated 1953
- 58 [54-21-602](#), Utah Code Annotated 1953
- 59 [54-21-603](#), Utah Code Annotated 1953

60

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

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

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

64 **Part 1. General Provisions**

65 **54-21-101. Definitions.**

66 As used in this chapter:

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

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

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

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

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

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

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

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

82 (i) the state;

83 (ii) a state agency;

84 (iii) a county;

85 (iv) a municipality;

86 (v) a town;

87 (vi) a metrotownship;

- 88 (vii) a subdivision of an entity described in Subsections (6)(a)(i) through (vi); or
89 (viii) a special district or entity established to provide a single public service within a
90 specific geographic area, including:
91 (A) a public utility district; or
92 (B) an irrigation district.
93 (b) "Authority" does not include a state court having jurisdiction over an authority.
94 (7) "Authority pole" means a utility pole owned, managed, or operated by, or on behalf
95 of, an authority.
96 (8) "Authority wireless support structure" means a wireless support structure owned,
97 managed, or operated by, or on behalf of, an authority.
98 (9) "Category one authority" means a single authority with a population of 65,000 or
99 greater.
100 (10) "Category two authority" means a single authority with a population of less than
101 65,000.
102 (11) "Collocate" means to install, mount, maintain, modify, operate, or replace a small
103 wireless facility:
104 (a) on a wireless support structure or utility pole; or
105 (b) for ground-mounted equipment, adjacent to a wireless support structure or utility
106 pole.
107 (12) "Communications service" means:
108 (a) a cable service, as defined in 47 U.S.C. Sec. 522(6);
109 (b) a telecommunications service, as defined 47 U.S.C. Sec. 153(53);
110 (c) an information service, as defined in 47 U.S.C. Sec. 153(24); or
111 (d) a wireless service.
112 (13) "Communications service provider" means:
113 (a) a cable operator, as defined in 47 U.S.C. Sec. 522(5);
114 (b) a provider of information service, as information service is defined in 47 U.S.C.
115 Sec. 153(24);
116 (c) a telecommunications carrier, as defined in 47 U.S.C. Sec. 153(51); or
117 (d) a wireless provider.
118 (14) "Decorative pole" means an authority pole:

- 119 (a) that is specially designed and placed for an aesthetic purpose; and
- 120 (b) (i) on which a nondiscriminatory rule or code prohibits an appurtenance or
- 121 attachment, other than:
- 122 (A) a small wireless facility;
- 123 (B) a specialty designed informational or directional sign; or
- 124 (C) a temporary holiday or special event attachment; or
- 125 (ii) on which no appurtenance or attachment has been placed, other than:
- 126 (A) a small wireless facility;
- 127 (B) a specialty designed informational or directional sign; or
- 128 (C) a temporary holiday or special event attachment.
- 129 (15) "Design district" means an area:
- 130 (a) that is zoned or otherwise designated by municipal ordinance or code; and
- 131 (b) for which the authority maintains and enforces unique design and aesthetic
- 132 standards on a uniform and nondiscriminatory basis.
- 133 (16) "FCC" means the Federal Communications Commission of the United States.
- 134 (17) "Fee" means a one-time, nonrecurring charge.
- 135 (18) (a) "Gross revenue" means the same as gross receipts from telecommunications
- 136 service is defined in Section [10-1-402](#).
- 137 (19) "Historic district" means a group of buildings, properties, or sites that are:
- 138 (a) in accordance with 47 C.F.R. Part 1, Appendix C:
- 139 (i) listed in the National Register of Historic Places; or
- 140 (ii) formally determined eligible for listing in the National Register of Historic Places
- 141 by the Keeper of the National Register; or
- 142 (b) in an historic district or area created under Section [10-9a-503](#).
- 143 (20) "Nondiscriminatory" means treating similarly situated entities the same absent a
- 144 reasonable, and competitively neutral basis, for different treatment.
- 145 (21) "Micro wireless facility" means a type of small wireless facility:
- 146 (a) that, not including any antenna, is no larger in dimension than 24 inches in length,
- 147 15 inches in width, and 12 inches in height; and
- 148 (b) on which any exterior antenna is no longer than 11 inches.
- 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)(i) through (v); or

197 (G) the collocation of a small wireless facility.

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

199 (i) a wireless support structure;

200 (ii) a structure that supports electric transmission lines; or

201 (iii) a municipally owned structure that supports electric lines used for the provision of
202 municipal electric service.

203 (29) (a) "Wireless facility" means equipment at a fixed location that enables wireless
204 communication between user equipment and a communications network, including:

205 (i) equipment associated with wireless communications; and

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

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

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

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

- 212 (A) between wireless structures or utility poles;
- 213 (B) not immediately adjacent to or directly associated with a particular antenna; or
- 214 (C) a wireline backhaul facility.

215 (30) (a) "Wireless infrastructure provider" means a person that builds or installs
216 wireless communication transmission equipment, a wireless facility, or a wireless support
217 structure.

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

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

221 (31) "Wireless provider" means a wireless infrastructure provider or a wireless service
222 provider.

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

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

226 (33) "Wireless service provider" means a person who provides a wireless service.

227 (34) (a) "Wireless support structure" means an existing or proposed structure that is:

228 (i) in a right-of-way; and

229 (ii) designed to support or capable of supporting a wireless facility, including a:

230 (A) monopole;

231 (B) tower, either guyed or self-supporting;

232 (C) billboard; or

233 (D) building.

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

235 (i) structure designed solely for the collocation of a small wireless facility;

236 (ii) utility pole; or

237 (iii) municipally owned structure that supports electric lines used for the provision of
238 municipal electric service.

239 (35) "Wireline backhaul facility" means a facility used to transport communications by
240 wire from a wireless facility to a communications network.

241 (36) (a) "Written" or "in writing" means a tangible or electronic record of a
242 communication or representation.

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

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

247 **54-21-102. Scope.**

248 Nothing in this chapter:

249 (1) permits an entity to provide a service regulated under 47 U.S.C. Secs. 521 through
250 573, in a right-of-way without compliance with all applicable legal obligations;

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

253 (3) governs:

254 (a) a pole that an electrical corporation owns or a wireless support structure that an
255 electrical corporation owns; or

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

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

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

260 **54-21-103. Local authority jurisdiction.**

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

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

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

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

269 (c) consistent with state and federal law.

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

272 (a) to the extent the authority enforces the regulation, the authority enforces the
273 regulation on a nondiscriminatory basis; and

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

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

278 (a) are reasonable and nondiscriminatory; and

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

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

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

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

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

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

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

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

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

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

300 (b) regulate a wireless service.

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

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

306 **Part 2. Use of Right-of-Way for Small Wireless Facilities and Utility Poles**
307 **54-21-201. Applicability.**

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

- 309 (1) a small wireless facility; or
- 310 (2) a utility pole associated with a small wireless facility.

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

312 **54-21-202. Prohibition on exclusive use.**

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

- 314 (1) use of a right-of-way for the collocation of a small wireless facility; or
- 315 (2) the installation, operation, marketing, modification, maintenance, or replacement of
316 a utility pole.

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

318 **54-21-203. Right-of-way rates and fees.**

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

- 323 (a) charges all other similarly situated wireless providers for use of the right-of-way;
324 and
- 325 (b) charges only the rate or fee in accordance with Part 5, Rates and Fees.

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

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

329 **54-21-204. Wireless provider right of access.**

330 (1) Subject to the provisions of this part, along, across, upon, or under a right-of-way, a
331 wireless provider may, as a permitted use subject only to administrative review and not subject
332 to zoning review:

- 333 (a) collocate a small wireless facility; or
- 334 (b) install, operate, modify, maintain, or replace:
 - 335 (i) a utility pole associated with the wireless provider's collocation of a small wireless

336 facility; or

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

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

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

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

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

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

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

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

347 **54-21-205. Height limitations in a right-of-way.**

348 (1) Except as provided in Subsection (2):

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

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

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

357 (a) the other provisions of this part;

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

359 (c) applicable zoning regulations.

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

361 **54-21-206. Decorative poles.**

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

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

366 **54-21-207. Underground district.**

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

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

371 (2) the authority:

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

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

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

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

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

381 **54-21-208. Historic and design districts.**

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

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

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

388 (b) be considered a part of the small wireless facility for purposes of the size
389 parameters in the definition of a small wireless facility.

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

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

396 (4) A wireless provider shall comply with an authority's reasonable and
397 nondiscriminatory design and aesthetic standards requiring the use of certain camouflage

398 measures in connection with a new small wireless facility in an historic district or a design
399 district, if the camouflage measures are technically and economically feasible consistent with
400 this chapter.

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

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

404 (b) the requirements for facility modifications under:

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

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

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

408 (b); and

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

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

411 **54-21-209. Manner of regulation.**

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

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

415 (a) be unreasonable or discriminatory; or

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

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

418 **54-21-210. Damage and repair.**

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

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

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

423 (a) make the required repair; and

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

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

426 authority may:

427 (a) immediately make the necessary repair; and

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

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

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

431 **54-21-301. Applicability -- General -- Zoning.**

432 (1) This part applies to:

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

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

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

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

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

441 **54-21-302. Permitting process, requirements, and limitations.**

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

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

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

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

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

448 (b) may not require:

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

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

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

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

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

459 and

460 (c) may require an applicant to attest that the small wireless facility will be operational
461 for use by a wireless service provider within 270 days after the day on which the authority
462 issues the permit, except in the case that:

463 (i) the authority and the applicant agree to extend the 270-day period; or
464 (ii) lack of commercial power or communications transport infrastructure to the site
465 delays completion.

466 (3) Within 30 days after the day on which an authority receives an application for the
467 collocation of a small wireless facility or for a new, modified, or replacement utility pole, the
468 authority shall:

469 (a) determine whether the application is complete; and
470 (b) notify the applicant in writing of the authority's determination of whether the
471 application is complete.

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

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

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

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

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

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

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

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

485 (6) (a) An authority shall:

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

487 (ii) approve or deny an application:

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

490 (B) for a new, modified, or replacement utility pole, within 105 days after the day on

491 which the authority receives the complete application.

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

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

497 (7) An authority may deny an application to collocate a small wireless facility or to
498 install, modify, or replace a utility pole that meets the height limitations under Section
499 54-21-205, only if the action requested in the application:

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

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

503 (c) materially interferes with compliance with the Americans with Disabilities Act of
504 1990, 42 U.S.C. Sec. 12101 et seq., or a similar federal or state standard regarding pedestrian
505 access or movement;

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

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

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

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

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

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

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

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

517 (ii) resubmit the application.

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

521 (ii) A review of an application revised in accordance with Subsection (8)(b) is limited

522 to the deficiencies documented as the basis for denial unless the applicant has changed another
523 portion of the application.

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

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

529 (A) substantially the same type; and

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

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

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

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

536 (A) three consolidated applications; or

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

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

540 (A) one consolidated application; or

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

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

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

550 (10) A wireless provider shall complete the installation or collocation for which a
551 permit is granted under this part within one year after the day on which the authority issues the
552 permit, unless:

553 (a) the authority and the applicant agree to extend the one-year period; or
554 (b) lack of commercial power or communications facilities at the site delays
555 completion.

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

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

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

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

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

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

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

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

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

571 (14) The approval of the installation, placement, maintenance, or operation of a small
572 wireless facility, in accordance with this chapter, does not authorize the installation, placement,
573 or operation of a facility, other than the approved small wireless facility, in the right-of-way.

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

575 **54-21-303. Exceptions to permitting.**

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

578 (a) routine maintenance;

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

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

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

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

590 (3) (a) An authority may require advance notice of an activity described in Subsection
591 (1).

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

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

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

596 **54-21-401. Applicability.**

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

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

599 **54-21-402. Prohibition on exclusive use.**

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

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

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

607 (a) as provided in this chapter; and

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

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

611 **54-21-403. Rates.**

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

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

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

616 Section 20. Section **54-21-404** is enacted to read:

617 **54-21-404. Implementation -- Make-ready work.**

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

620 (a) be nondiscriminatory;

621 (b) be competitively neutral;

622 (c) be commercially reasonable; and

623 (d) comply with this chapter.

624 (2) (a) An authority shall provide a good-faith estimate for any make-ready work

625 necessary to enable the authority pole to support the requested collocation by a wireless

626 provider, including pole replacement if necessary, within 60 days after the day on which the

627 authority receives the completed application.

628 (b) Make-ready work, including any pole replacement, shall be completed within 60

629 days after the day on which the applicant gives written acceptance of the authority's good-faith
630 estimate.

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

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

635 (b) A fee for make-ready work, including any pole replacement, may not:

636 (i) include any cost related to:

637 (A) pre-existing or prior damage;

638 (B) noncompliance; or

639 (C) a consultant fee or expense; or

640 (ii) exceed:

641 (A) the actual cost of the pole, including the installation of the pole; or

642 (B) the amount charged to another communications service provider, or other attaching
643 entity, for similar work.

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

645 **Part 5. Rates and Fees**

646 **54-21-501. Applicability.**

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

648 (1) a small wireless facility; or

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

650 Section 22. Section **54-21-502** is enacted to read:

651 **54-21-502. Right-of-way rates.**

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

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

656 or

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

659 (2) (a) An authority may charge a wireless provider a rate for the right to use or occupy
660 a right-of-way as described in Subsection (1), if, except as provided in Subsection
661 54-21-602(6), the rate is:

662 (i) fair and reasonable;

663 (ii) competitively neutral;

664 (iii) nondiscriminatory;

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

666 (v) not more than the greater of:

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

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

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

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

674 (3) Notwithstanding Subsection (2), an authority may not require a wireless provider to
675 pay an additional rate, fee, or compensation for the right to use or occupy a right-of-way as
676 described in Subsection (1), if the wireless provider is subject to the municipal

677 telecommunications license tax under Title 10, Chapter 1, Part 4, Municipal
678 Telecommunications License Tax Act.

679 Section 23. Section **54-21-503** is enacted to read:

680 **54-21-503. Application fees.**

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

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

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

686 (c) the fee does not include:

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

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

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

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

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

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

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

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

703 (c) install, modify, or replace a new utility pole associated with a small wireless
704 facility.

705 Section 24. Section **54-21-504** is enacted to read:

706 **54-21-504. Authority pole collocation rate.**

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

708 authority pole.

709 Section 25. Section **54-21-601** is enacted to read:

710 **Part 6. Implementation**

711 **54-21-601. General.**

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

714 (a) implementing an ordinance; or

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

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

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

720 (b) under the requirements of this chapter.

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

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

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

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

731 (6) (a) Nothing in this section prohibits an authority from entering into a written,
732 nondiscriminatory agreement with one or more wireless providers to jointly test certain
733 traffic-related functions using specified assets of the authority or the wireless providers.

734 (b) An agreement described in Subsection (6)(a) may:

735 (i) waive certain fees the participating wireless provider would otherwise be required to
736 pay to the authority; or

737 (ii) allow the participating wireless provider to pay certain fees in cash, in-kind
738 compensation, or in a combination of cash and in-kind compensation.

739 Section 26. Section **54-21-602** is enacted to read:

740 **54-21-602. Noncompliant agreements and ordinances.**

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

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

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

747 (2) An agreement or ordinance entered into or passed before May 11, 2018, that does
748 not fully comply with this chapter and applies to a small wireless facility or a utility pole that
749 was not operational or installed before May 11, 2018, is invalid and unenforceable:

750 (a) beginning May 11, 2018; and

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

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

754 (a) a small wireless facility or a utility pole that is operational or installed before May
755 11, 2018, may remain installed and operate under the requirements of this chapter; and

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

758 Section 27. Section **54-21-603** is enacted to read:

759 **54-21-603. Relocation.**

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

762 (a) in a timely manner; and

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

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

766 Section 28. Section **72-6-116** is amended to read:

767 **72-6-116. Regulation of utilities -- Relocation of utilities.**

768 (1) As used in this section:

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

770 attributable to the relocation of the utility after deducting any increase in the value of the new
771 utility and any salvage value derived from the old utility.

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

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

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

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

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

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

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

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

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

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

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

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

803 (6) (a) The department shall notify affected utility companies, in accordance with
804 Section 54-3-29, whenever the relocation of utilities is likely to be necessary because of a
805 reconstruction project.

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

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