

Representative Timothy D. Hawkes 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 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

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

32 ENACTS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

57 54-21-602, Utah Code Annotated 1953

58 54-21-603, Utah Code Annotated 1953



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

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

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

63 **Part 1. General Provisions**

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

65 As used in this chapter:

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

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

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

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

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

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

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

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

81 (i) the state;

82 (ii) a state agency;

83 (iii) a county;

84 (iv) a municipality;

85 (v) a town;

86 (vi) a metrotownship;

87 (vii) a subdivision of an entity described in Subsections (6)(a)(i) through (vi); or

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

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

150 provider to perform an action or initiate, continue, or complete a project.

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

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

153 (i) roadway;

154 (ii) highway;

155 (iii) street;

156 (iv) sidewalk;

157 (v) alley; or

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

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

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

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

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

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

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

168 (i) electric meter;

169 (ii) concealment element;

170 (iii) telecommunications demarcation box;

171 (iv) grounding equipment;

172 (v) power transfer switch;

173 (vi) cut-off switch;

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

175 (viii) wireless provider antenna; or

176 (ix) coaxial or fiber-optic cable that is immediately adjacent to or directly associated
177 with a particular collocation, unless the cable is a wireline backhaul facility.

178 (26) "Substantial modification" means:

179 (a) a proposed modification or replacement to an existing wireless support structure
180 that will substantially change the physical dimensions of the wireless support structure under

181 the substantial change standard established in 47 C.F.R. Sec. 1.40001(7); or

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

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

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

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

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

191 (A) wireline communications;

192 (B) electric distribution;

193 (C) lighting;

194 (D) traffic control;

195 (E) signage;

196 (F) a similar function to a function described in Subsections (28)(a)(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;
- 237 (iii) municipally owned structure that supports electric lines used for the provision of
- 238 municipal electric service; or
- 239 (iv) structure owned by an energy services interlocal entity, as described in Subsection
- 240 11-13-203(4), that uses electric lines that are used for the provision of electrical service.
- 241 (35) "Wireline backhaul facility" means a facility used to transport communications by
- 242 wire from a wireless facility to a communications network.

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

245 (b) "Written" or "in writing" includes a communication or representation that is
246 handwritten, typewritten, printed, photostated, photographed, or electronic.

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

248 **54-21-102. Scope.**

249 Nothing in this chapter:

250 (1) permits an entity to provide a service regulated under 47 U.S.C. Secs. 521 through
251 573, in a right-of-way without compliance with all applicable legal obligations;

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

254 (3) governs:

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

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

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

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

261 **54-21-103. Local authority jurisdiction.**

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

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

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

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

270 (c) consistent with state and federal law.

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

273 (a) to the extent the authority enforces the regulation, the authority enforces the

274 regulation on a nondiscriminatory basis; and

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

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

279 (a) are reasonable and nondiscriminatory; and

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

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

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

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

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

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

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

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

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

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

301 (b) regulate a wireless service.

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

305 over the communications service provider's communications facilities in the right-of-way.

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

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

308 **54-21-201. Applicability.**

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

310 (1) a small wireless facility; or

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

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

313 **54-21-202. Prohibition on exclusive use.**

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

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

316 (2) the installation, operation, marketing, modification, maintenance, or replacement of

317 a utility pole.

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

319 **54-21-203. Right-of-way rates and fees.**

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

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

325 and

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

327 (2) An authority may, on a nondiscriminatory basis, refrain from charging a rate or fee

328 to a wireless provider for the use of a right-of-way.

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

330 **54-21-204. Wireless provider right of access.**

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

334 (a) collocate a small wireless facility; or

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

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

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

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

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

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

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

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

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

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

348 **54-21-205. Height limitations in a right-of-way.**

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

351 (2) 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 Section 9. Section **54-21-206** is enacted to read:

354 **54-21-206. Decorative poles.**

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

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

359 **54-21-207. Underground district.**

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

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

364 (2) the authority:

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

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

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

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

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

374 **54-21-208. Historic and design districts.**

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

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

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

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

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

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

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

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

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

397 (b) the requirements for facility modifications under:

398 (i) 47 U.S.C. Sec. 1455(a); or
 399 (ii) the National Historic Preservation Act of 1966, 16 U.S.C. Sec. 470 et seq.;
 400 (c) the regulations adopted to implement the laws described in Subsections (5)(a) and
 401 (b); and

402 (d) Section 10-9a-503.

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

404 **54-21-209. Manner of regulation.**

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

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

408 (a) be unreasonable or discriminatory; or

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

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

411 **54-21-210. Damage and repair.**

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

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

416 (a) make the required repair; and

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

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

420 (a) immediately make the necessary repair; and

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

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

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

424 **54-21-301. Applicability -- General -- Zoning.**

425 (1) This part applies to:

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

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

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

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

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

434 **54-21-302. Permitting process, requirements, and limitations.**

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

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

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

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

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

441 (b) may not require:

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

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

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

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

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

452 and

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

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

457 (ii) lack of commercial power or communications transport infrastructure to the site
458 delays completion.

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

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

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

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

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

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

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

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

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

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

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

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

478 (6) (a) An authority shall:

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

480 (ii) approve or deny an application:

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

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

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

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

490 (7) An authority may deny an application to collocate a small wireless facility or to

491 install, modify, or replace a utility pole that meets the height limitations under Section
492 54-21-205, only if the action requested in the application:

493 (a) materially interferes with the safe operation of traffic control equipment;
494 (b) materially interferes with a sight line or a clear zone for transportation or
495 pedestrians;

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

499 (d) fails to comply with applicable laws or legal obligations;
500 (e) creates a public health or safety hazard; or
501 (f) obstructs or hinders the usual travel or public safety of the right-of-way.

502 (8) (a) If an authority denies an application under Subsection (7), the authority shall:
503 (i) document the basis for the denial, including any specific law on which the denial is
504 based; and

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

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

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

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

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

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

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

522 (A) substantially the same type; and
523 (B) proposed for collocation on substantially the same types of structures; or
524 (ii) install, modify, or replace multiple utility poles within a single authority, the
525 authority shall allow the applicant, at the applicant's discretion, to file a consolidated
526 application for the installation, modification, or replacement of up to 25 utility poles.
527 (b) An applicant may not file within a 30-day period:
528 (i) with a category one authority, more than:
529 (A) three consolidated applications; or
530 (B) multiple applications that collectively seek permits for a combined total of more
531 than 75 small wireless facilities and utility poles; or
532 (ii) with a category two authority, more than:
533 (A) one consolidated application; or
534 (B) multiple applications that collectively seek permits for a combined total of more
535 than 25 small wireless facilities and utility poles.
536 (c) A consolidated application described in Subsection (9)(a) may not combine
537 applications solely for collocation of small wireless facilities on existing utility poles with
538 applications for the installation, modification, or replacement of a utility pole.
539 (d) If an authority denies the application for one or more utility poles, or one or more
540 small wireless facilities, in a consolidated application, the authority may not use the denial as a
541 basis to delay the application process of any other utility pole or small wireless facility in the
542 same consolidated application.
543 (10) A wireless provider shall complete the installation or collocation for which a
544 permit is granted under this part within 270 days after the day on which the authority issues the
545 permit, unless:
546 (a) the authority and the applicant agree to extend the one-year period; or
547 (b) lack of commercial power or communications facilities at the site delays
548 completion.
549 (11) Approval of an application authorizes the applicant to:
550 (a) collocate or install a small wireless facility or utility pole, as requested in the
551 application; and
552 (b) subject to applicable relocation requirements and the applicant's right to terminate

553 at any time, operate and maintain for a period of at least 10 years:

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

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

556 (12) If there is no basis for denial under Subsection (7), an authority shall grant the

557 renewal of an application under this section for an equivalent duration.

558 (13) An authority may not institute, either expressly or de facto, a moratorium on

559 filing, receiving, or processing an application, or issuing a permit or another approval, if any,

560 for:

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

562 (b) the installation, modification, or replacement of a utility pole to support a small

563 wireless facility.

564 (14) The approval of the installation, placement, maintenance, or operation of a small

565 wireless facility, in accordance with this chapter, does not authorize:

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

567 (b) the installation, placement, or operation of a facility, other than the approved small

568 wireless facility, in the right-of-way.

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

570 **54-21-303. Exceptions to permitting.**

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

572 provider to submit an application, obtain a permit, or pay a rate for:

573 (a) routine maintenance;

574 (b) the replacement of a small wireless facility with a small wireless facility that is

575 substantially similar or smaller in size; or

576 (c) the installation, placement, maintenance, operation, or replacement of a micro

577 wireless facility that is strung on a cable between existing utility poles, in compliance with the

578 National Electrical Safety Code.

579 (2) (a) An authority may require a wireless provider to obtain a permit in accordance

580 with Section [72-7-102](#) for work that requires excavation or closing of sidewalks or vehicular

581 lanes in a public right-of-way.

582 (b) If an authority requires a permit under Subsection (2)(a), the authority shall process

583 and approve the permit within the same time period the authority processes and approves a

584 permit for all other types of entities.

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

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

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

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

591 **54-21-401. Applicability.**

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

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

594 **54-21-402. Prohibition on exclusive use.**

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

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

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

602 (a) as provided in this chapter; and

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

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

606 **54-21-403. Rates.**

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

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

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

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

Part 5. Rates and Fees

613 **54-21-501. Applicability.**

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

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

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

618 **54-21-502. Right-of-way rates.**

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

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

623 or

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

626 (2) (a) An authority may charge a wireless provider a rate for the right to use or occupy
627 a right-of-way as described in Subsection (1), if, except as provided in Subsection
628 54-21-602(6), the rate is:

629 (i) fair and reasonable;

630 (ii) competitively neutral;

631 (iii) nondiscriminatory;

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

633 (v) not more than the greater of:

634 (A) 3.5% of all gross revenue related to the wireless provider's use of the right-of-way

635 for small wireless facilities; or

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

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

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

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

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

647 **54-21-503. Application fees.**

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

649 (a) a similar fee is required for similar types of commercial development or

650 construction within the authority's jurisdiction;

651 (b) the costs to be recovered by an application fee are not already recovered by existing

652 fees, rates, licenses, or taxes paid by the wireless provider; and

653 (c) the fee does not include:

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

655 (ii) payment or reimbursement of a third-party rate or fee charged on a contingency

656 basis or a result-based arrangement.

657 (2) Subject to Subsection (3), an application fee for collocation of a small wireless

658 facility is limited to the cost of granting a building permit for similar types of commercial

659 development or construction within the authority's jurisdiction.

660 (3) An application fee for the collocation of a small wireless facility on an existing or

661 replacement utility pole may not exceed \$100 for each small wireless facility on the same

662 application.

663 (4) If the activity is a permitted use described in Section [54-21-204](#), an application fee

664 may not exceed \$250 per application to install, modify, or replace a utility pole associated with

665 a small wireless facility.

666 (5) If the activity is not a permitted use described in Section [54-21-204](#), an application

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

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

669 (b) install, modify, or replace a new utility pole associated with a small wireless

670 facility.

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

672 **54-21-504. Authority pole collocation rate.**

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

674 authority pole.

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

676 **Part 6. Implementation**

677 **54-21-601. General.**

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

680 (a) implementing an ordinance; or

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

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

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

686 (b) under the requirements of this chapter.

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

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

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

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

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

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

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

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

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

707 **54-21-602. Noncompliant agreements and ordinances.**

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

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

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

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

717 (a) beginning May 11, 2018; and

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

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

721 (a) a small wireless facility or a utility pole that is operational or installed before May
722 11, 2018, may remain installed and operate under the requirements of this chapter; and

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

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

726 **54-21-603. Relocation.**

727 (1) Notwithstanding any provision to the contrary, an authority may require a wireless
728 provider to relocate or adjust a small wireless facility in a public right-of-way:

729 (a) in a timely manner; and

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

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

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

734 **72-6-116. Regulation of utilities -- Relocation of utilities.**

735 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

778 Section 28. **Effective date.**

779 This bill takes effect on September 1, 2018.