

UTILITY FACILITY SITING

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas Sagers

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the review of utility siting decisions by the Utility Facility Review Board.

Highlighted Provisions:

This bill:

- ▶ removes a reference concerning the placement of the Utility Facility Review Board;
- ▶ lengthens time periods for hearings and decisions of the Utility Facility Review Board;
- ▶ eliminates a provision requiring the Utility Facility Review Board to determine whether a facility should be constructed; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

54-14-301, as last amended by Laws of Utah 2010, Chapter 286

54-14-304, as enacted by Laws of Utah 1997, Chapter 197

54-14-305, as last amended by Laws of Utah 2009, Chapter 316



28 **54-18-305**, as enacted by Laws of Utah 2009, Chapter 316



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

31 Section 1. Section **54-14-301** is amended to read:

32 **54-14-301. Creation, purpose, and composition of board.**

33 (1) The Utility Facility Review Board is created [~~within the Department of Commerce~~]
34 to resolve disputes between local governments and public utilities regarding the siting and
35 construction of facilities as provided in this part.

36 (2) The board shall be composed of:

37 (a) the three members of the commission;

38 (b) an individual appointed by the governor from a list of nominees of the Utah League
39 of Cities and Towns; and

40 (c) an individual appointed by the governor from a list of nominees of the Utah
41 Association of Counties.

42 (3) The chair of the commission shall serve as chair of the board.

43 (4) Members of the commission shall serve as members of the board during their terms
44 of office as commissioners and until their successors on the commission have been appointed
45 and taken office.

46 (5) (a) Members of the board who are not commissioners:

47 (i) shall have four-year terms, except the initial term of the individual first appointed
48 by the governor from nominees of the Utah Association of Counties shall be two years;

49 (ii) may be appointed for one succeeding term; and

50 (iii) may continue to serve until their successor takes office.

51 (b) Vacancies in the board of members who are not commissioners shall be filled for
52 the unexpired term.

53 (6) Three members of the board constitute a quorum.

54 (7) A member of the board may be removed for cause by the governor.

55 (8) A member may not receive compensation or benefits for the member's service, but
56 may receive per diem and travel expenses in accordance with:

57 (a) Section 63A-3-106;

58 (b) Section 63A-3-107; and

59 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
60 63A-3-107.

61 Section 2. Section **54-14-304** is amended to read:

62 **54-14-304. Initial hearing.**

63 (1) The board shall convene an initial hearing within ~~[40]~~ 60 days ~~[of]~~ after the date
64 review is initiated.

65 (2) At the initial hearing, the board shall determine how the review will take place,
66 including whether it will be conducted as a formal or informal adjudicative proceeding.

67 Section 3. Section **54-14-305** is amended to read:

68 **54-14-305. Written decisions of board.**

69 (1) The board shall issue a written decision on the review expeditiously and, in any
70 event, not later than ~~[45]~~ 90 days following the initial hearing.

71 (2) The written decision shall:

72 (a) specify whether ~~[the facility should be constructed and, if so, whether]~~ any
73 requirements or conditions imposed by the local government may not be imposed because they
74 impair the ability of the public utility to provide safe, reliable, and adequate service to its
75 customers; and

76 (b) resolve any dispute regarding:

77 (i) the standard cost or estimated excess cost of the facility;

78 (ii) the date on which construction of the facility should commence in order to avoid a
79 significant risk of impairment of safe, reliable, and adequate service to customers of the public
80 utility;

81 (iii) whether the public utility has sought a permit, authorization, approval, exception,
82 or waiver with respect to a facility sufficiently in advance of the date construction should
83 commence, based upon reasonably foreseeable conditions, to allow the local government
84 reasonable time to pay for any estimated excess cost;

85 (iv) apportionment of the actual excess cost of the facility between the local
86 government and the public utility pursuant to Subsection 54-14-303(7); or

87 (v) the proposed location and siting of a facility subject to Title 54, Chapter 18, Siting
88 of High Voltage Power Line Act, and in accordance with Section 54-14-102.

89 (3) (a) Notwithstanding Subsection (6), the written decision of the board may designate

90 the facility route for a high voltage transmission line pursuant to a dispute described under
91 Section ~~[54-14-304]~~ 54-18-304.

92 (b) The public utility ~~[shall be]~~ is entitled to recover from its ratepayers any actual
93 excess costs apportioned to it under Subsection (2)(b)(iv).

94 (4) ~~[If the board determines that a facility that a local government has prohibited
95 should be constructed, the]~~ The written decision shall specify any general location parameters
96 required to provide safe, reliable, adequate, and efficient service to the customers of the public
97 utility.

98 (5) The written decision shall leave to the local government any issue that does not
99 affect the provision of safe, reliable, adequate, and efficient service to customers of the public
100 utility or that does not involve an estimated excess cost.

101 (6) With respect to local government requirements or conditions that impose an
102 estimated excess cost but do not impair the provision of safe, reliable, and adequate service to
103 the customers of the public utility, the written decision shall leave each siting issue to the local
104 government except determination of the estimated excess cost and determination of when the
105 construction of the facility should commence.

106 (7) (a) In determining when the construction of the facility should commence, the
107 board shall consider whether the public utility sought a permit, authorization, approval,
108 exception, or waiver from the local government in a timely manner based upon reasonably
109 foreseeable conditions~~[, and, if]~~.

110 (b) If the board determines that the public utility did not ~~[do so, it]~~ seek a permit,
111 authorization, approval, exception, or waiver in a timely manner, the board shall allow
112 sufficient time for the local government to pay any actual excess cost that may be imposed as a
113 result of requirements or conditions the local government has imposed that do not impair the
114 provision of safe, reliable, and adequate service to customers of the public utility.

115 Section 4. Section **54-18-305** is amended to read:

116 **54-18-305. Appeal of high voltage power line route.**

117 This ~~[section]~~ chapter does not affect a public utility's or local government's right to
118 appeal a high voltage power line route to the Utility Facility Review Board in accordance with
119 the provisions of Title 54, Chapter 14, Utility Facility Review Board Act.

Legislative Review Note
as of 1-3-11 1:10 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 49, 2011 General Session

SHORT TITLE: **Utility Facility Siting**

SPONSOR: **Sagers, D.**

STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.