

MUNICIPAL UTILITIES AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: _____

LONG TITLE

General Description:

This bill allows a local political subdivision to call an election on proposed public communications service infrastructure.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies that a local political subdivision may create public communications service infrastructure; and
- ▶ allows a local political subdivision to call an election on proposed public communications service infrastructure.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 10-8-14**, as last amended by Laws of Utah 2014, Chapter 55
- 10-18-102**, as enacted by Laws of Utah 2001, Chapter 83
- 10-18-105**, as last amended by Laws of Utah 2004, Chapter 270
- 10-18-204**, as enacted by Laws of Utah 2001, Chapter 83



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

Section 1. Section **10-8-14** is amended to read:

10-8-14. Utility and telecommunications services -- Service beyond municipal limits -- Retainage -- Notice of service and agreement.

(1) As used in this section, "public telecommunications service infrastructure" means the same as that term is defined in Section 10-18-102.

~~[(1)]~~ (2) A municipality may:

(a) construct, finance, maintain, and operate waterworks, sewer collection, sewer treatment systems, gas works, electric light works, telecommunications lines, cable television lines, ~~[or]~~ public transportation systems, or public telecommunications service infrastructure;

(b) authorize the construction, maintenance and operation of the works or systems listed in Subsection ~~[(1)]~~ (2)(a) by others;

(c) purchase or lease the works or systems listed in Subsection (1)(a) from any person or corporation; and

(d) sell and deliver the surplus product or service capacity of any works or system listed in Subsection ~~[(1)]~~ (2)(a), not required by the municipality or the municipality's inhabitants, to others beyond the limits of the municipality, except the sale and delivery of:

(i) retail electricity beyond the municipal boundary is governed by Subsections (3) through (8); and

(ii) cable television services or public telecommunications services is governed by Subsection ~~[(1)]~~ (12).

~~[(2)]~~ (3) If any payment on a contract with a private person, firm, or corporation to construct waterworks, sewer collection, sewer treatment systems, gas works, electric works, telecommunications lines, cable television lines, ~~[or]~~ public transportation systems, or public telecommunications service infrastructure is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

~~[(3)]~~ (4) (a) Except as provided in Subsection ~~[(3)]~~ (4)(b), ~~[(5)]~~ (6), or ~~[(9)]~~ (10), a municipality may not sell or deliver the electricity produced or distributed by its electric works constructed, maintained, or operated in accordance with Subsection ~~[(1)]~~ (2) to a retail customer located beyond its municipal boundary.

59 (b) A municipality that provides retail electric service to a customer beyond its
60 municipal boundary on or before June 15, 2013, may continue to serve that customer if:

61 (i) on or before December 15, 2013, the municipality provides the electrical
62 corporation, as defined in Section 54-2-1, that is obligated by its certificate of public
63 convenience and necessity to serve the customer with an accurate and complete verified written
64 notice described in Subsection ~~[(3)]~~ (4)(c) that identifies each customer served by the
65 municipality beyond its municipal boundary;

66 (ii) no later than June 15, 2014, the municipality enters into a written filing agreement
67 for the provision of electric service with the electrical corporation; and

68 (iii) the Public Service Commission approves the written filing agreement in
69 accordance with Section 54-4-40.

70 (c) The municipality shall include in the written notice required in Subsection ~~[(3)]~~
71 (4)(b)(i) for each customer:

72 (i) the customer's meter number;

73 (ii) the location of the customer's meter by street address, global positioning system
74 coordinates, metes and bounds description, or other similar method of meter location;

75 (iii) the customer's class of service; and

76 (iv) a representation that the customer was receiving service from the municipality on
77 or before June 15, 2013.

78 ~~[(4)]~~ (5) The written filing agreement entered into in accordance with Subsection
79 (3)(b)(ii) shall require the following:

80 (a) The municipality shall provide electric service to a customer identified in
81 accordance with Subsection ~~[(3)]~~ (4)(b)(i) unless the municipality and the electrical corporation
82 subsequently agree in writing that the electrical corporation will provide electric service to the
83 customer.

84 (b) If a customer who is located outside the municipal boundary and who is not
85 identified in accordance with Subsection ~~[(3)]~~ (4)(b)(i) requests service from the municipality
86 after June 15, 2013, the municipality may not provide that customer electric service unless the
87 municipality submits a request to and enters into a written agreement with the electric
88 corporation in accordance with Subsection ~~[(5)]~~ (6).

89 ~~[(5)]~~ (6) (a) A municipality may submit to the electrical corporation a request to

90 provide electric service to an electric customer described in Subsection [~~(4)~~] (5)(b).

91 (b) If a municipality submits a request, the electrical corporation shall respond to the
92 request within 60 days.

93 (c) If the electrical corporation agrees to allow the municipality to provide electric
94 service to the customer:

95 (i) the electrical corporation and the municipality shall enter into a written agreement;

96 (ii) the municipality shall agree in the written agreement to subsequently transfer
97 service to the customer described in Subsection [~~(4)~~] (5)(b) if the electrical corporation notifies,
98 in writing, the municipality that the electrical corporation has installed a facility capable of
99 providing electric service to the customer; and

100 (iii) the municipality may provide the service if:

101 (A) except as provided in Subsection [~~(5)~~] (6)(c)(iii)(B), the Public Service
102 Commission approves the agreement in accordance with Section 54-4-40; or

103 (B) for an electrical cooperative that meets the requirements of Subsection 54-7-12(7),
104 the governing board of the electrical cooperative approves the agreement.

105 (d) The municipality or the electrical corporation may terminate the agreement for the
106 provision of electric service if the Public Service Commission imposes a condition authorized
107 in Section 54-4-40 that is a material change to the agreement.

108 [~~(6)~~] (7) If the municipality and electrical corporation make a transfer described in
109 Subsection [~~(5)~~] (6)(c)(ii):

110 (a) (i) the municipality shall transfer the electric service customer to the electrical
111 corporation; and

112 (ii) the electrical corporation shall provide electric service to the customer; and

113 (b) the municipality shall transfer a facility in accordance with and for the value as
114 provided in Section 10-2-421.

115 [~~(7)~~] (8) (a) In accordance with Subsection [~~(7)~~] (8)(b), the municipality shall establish
116 a reasonable mechanism for resolving potential future complaints by an electric customer
117 located outside its municipal boundary.

118 (b) The mechanism shall require:

119 (i) that the rates and conditions of service for a customer outside the municipality's
120 boundary are at least as favorable as the rates and conditions of service for a similarly situated

121 customer within the municipality's boundary; and

122 (ii) if the municipality provides a general rebate, refund, or other payment to a
123 customer located within the municipality's boundary, that the municipality also provide the
124 same general rebate, refund, or other payment to a similarly situated customer located outside
125 the municipality's boundary.

126 [~~8~~] (9) The municipality is relieved of any obligation to transfer a customer described
127 in Subsection [~~4~~] (5)(b) or facility used to serve the customer in accordance with Subsection
128 [~~5~~] (6)(c)(ii) if the municipality annexes the property on which the customer is being served.

129 [~~9~~] (10) (a) A municipality may provide electric service outside of its municipal
130 boundary to a facility that is solely owned and operated by the municipality for municipal
131 service.

132 (b) A municipality's provision of electric service to a facility that is solely owned and
133 operated by the municipality does not expand the municipality's electric service area.

134 [~~10~~] (11) Nothing in this section expands or diminishes the ability of a municipality
135 to enter into a wholesale electrical sales contract with another municipality that serves electric
136 customers to sell and deliver wholesale electricity to the other municipality.

137 [~~11~~] (12) A municipality's actions under this section related to works or systems
138 involving public telecommunications services or cable television services are subject to the
139 requirements of Chapter 18, Municipal Cable Television and Public Telecommunications
140 Services Act.

141 Section 2. Section **10-18-102** is amended to read:

142 **10-18-102. Definitions.**

143 As used in this chapter:

144 (1) "Cable television service" means:

145 (a) the one-way transmission to subscribers of:

146 (i) video programming; or

147 (ii) other programming service; and

148 (b) subscriber interaction, if any, that is required for the selection or use of:

149 (i) the video programming; or

150 (ii) other programming service.

151 (2) "Capital costs" means all costs of providing a service that are capitalized in

152 accordance with generally accepted accounting principles.

153 (3) "Cross subsidize" means to pay a cost included in the direct costs or indirect costs
154 of providing a service that is not accounted for in the full cost of accounting of providing the
155 service.

156 (4) "Direct costs" means those expenses of a municipality that:

157 (a) are directly attributable to providing:

158 (i) a cable television service; or

159 (ii) a public telecommunications service; and

160 (b) would be eliminated if the service described in Subsection (4)(a) were not provided
161 by the municipality.

162 (5) "Feasibility consultant" means an individual or entity with expertise in the
163 processes and economics of providing:

164 (a) cable television service; and

165 (b) public telecommunications service.

166 (6) (a) "Full-cost accounting" means the accounting of all costs incurred by a
167 municipality in providing:

168 (i) a cable television service; or

169 (ii) a public telecommunications service.

170 (b) The costs included in a full-cost accounting include all:

171 (i) capital costs;

172 (ii) direct costs; and

173 (iii) indirect costs.

174 (7) (a) "Indirect costs" means any costs:

175 (i) identified with two or more services or other functions; and

176 (ii) that are not directly identified with a single service or function.

177 (b) "Indirect costs" may include cost factors for:

178 (i) administration;

179 (ii) accounting;

180 (iii) personnel;

181 (iv) purchasing;

182 (v) legal support; and

183 (vi) other staff or departmental support.

184 (8) "Local political subdivision" means a county, municipality, local district, or special
185 service district.

186 [~~8~~] (9) "Private provider" means a person that:

187 (a) provides:

188 (i) cable television services; or

189 (ii) public telecommunications services; and

190 (b) is a private entity.

191 [~~9~~] (10) "Public telecommunications service" means the two-way transmission of
192 signs, signals, writing, images, sounds, messages, data, or other information of any nature by
193 wire, radio, lightwaves, or other electromagnetic means offered to the public generally.

194 (11) (a) "Public telecommunications service infrastructure" means infrastructure that is
195 owned or leased by a local political subdivision and used by a third party service provider to
196 provide public telecommunications service.

197 (b) "Public telecommunications service infrastructure" includes:

198 (i) cables;

199 (ii) collocation space;

200 (iii) conduits;

201 (iv) innerducts;

202 (v) manholes;

203 (vi) nodes;

204 (vii) optical fiber strands;

205 (viii) patch panels;

206 (ix) splices;

207 (x) switches;

208 (xi) transmitters;

209 (xii) junctions;

210 (xiii) terminals;

211 (xiv) internal power sources;

212 (xv) access portals;

213 (xvi) battery backups;

- 214 (xvii) fault alarm systems;
- 215 (xviii) structures;
- 216 (xix) shelters;
- 217 (xx) poles or pole line attachments;
- 218 (xxi) business and operations support systems; and
- 219 (xxii) any articles of personal property or similar equipment.

220 [~~(10)~~] (12) "Subscribers" means a person that lawfully receives:

- 221 (a) cable television services; or
- 222 (b) public telecommunications services.

223 (13) "Third party service provider" means a non-governmental entity that provides
224 public telecommunications service through public telecommunications service infrastructure.

225 Section 3. Section **10-18-105** is amended to read:

226 **10-18-105. Scope of chapter.**

227 (1) Nothing in this chapter authorizes any county or other political subdivision of this
228 state to:

229 (a) provide:

- 230 (i) a cable television service; or
- 231 (ii) a public telecommunications service; or

232 (b) purchase, lease, construct, maintain, or operate a facility for the purpose of
233 providing:

- 234 (i) a cable television service; or
- 235 (ii) a public telecommunications service.

236 (2) Except as provided in Subsection (3), this chapter does not apply to a [~~municipality~~]
237 local political subdivision purchasing, leasing, constructing, or equipping facilities:

238 (a) that are designed to provide services within the [~~municipality~~] local political
239 subdivision; and

240 (b) that the [~~municipality~~] local political subdivision:

- 241 (i) uses for internal municipal government purposes; or
- 242 (ii) by written contract, leases, sells capacity in, or grants other similar rights to a
243 private provider to use the facilities in connection with a private provider offering:

244 (A) cable television services; or

245 (B) public telecommunications services.

246 (3) (a) As used in this Subsection (3), "municipal entity" means:

247 (i) a municipality; or

248 (ii) an entity created pursuant to an agreement:

249 (A) under Title 11, Chapter 13, Interlocal Cooperation Act; and

250 (B) to which a municipality is a party.

251 (b) Notwithstanding Subsection (2), a municipal entity shall comply with Subsection

252 (3)(c) if the municipal entity purchases, leases, constructs, or equips facilities that the

253 municipal entity by written contract leases, sells capacity in, or grants other similar rights to a

254 private provider to use the facilities in connection with a private provider offering:

255 (i) cable television services; or

256 (ii) public telecommunications services.

257 (c) A municipal entity described in Subsection (3)(b) shall, with respect to an action

258 described in Subsection (3)(b), comply with the obligations imposed on a municipality

259 pursuant to:

260 (i) Section [10-18-302](#); and

261 (ii) Subsections [10-18-303](#)(3) and (4).

262 (4) (a) Except as provided in Subsection (4)(b), this chapter does not apply to a local

263 political subdivision to the extent that the local political subdivision provides public

264 telecommunications service infrastructure.

265 (b) Notwithstanding Subsection (4)(a), a local political subdivision described in

266 Subsection (4)(a) may call an election under Section [10-18-204](#) with regards to the provision of

267 public telecommunications service infrastructure.

268 Section 4. Section **10-18-204** is amended to read:

269 **10-18-204. Vote permissible -- Referendum.**

270 (1) (a) (i) A legislative body of a municipality may, by a majority vote [~~may~~], call an

271 election on whether [~~or not~~] the municipality shall provide [~~the~~] proposed:

272 [(i)] (A) cable television services; or

273 [(ii)] (B) public telecommunications services.

274 (ii) A legislative body of a local political subdivision may, by a majority vote, call an

275 election on whether the local political subdivision shall provide proposed public

276 telecommunications service infrastructure.

277 (b) If under Subsection (1)(a) the legislative body calls an election, the election shall be
278 held:

279 (i) (A) at the next municipal general election; or

280 (B) as provided in Subsection 20A-1-203(1), at a local special election the purpose of
281 which is authorized by this section; and

282 (ii) in accordance with Title 20A, Election Code, except as provided in this section.

283 (c) (i) The notice of the election called under Subsection (1)(a)(i) shall include with
284 any other information required by law:

285 [(i)] (A) a summary of the cable television services or public telecommunications
286 services that the legislative body of the municipality proposes to provide to subscribers residing
287 within the boundaries of the municipality;

288 [(ii)] (B) the feasibility study summary under Section 10-18-203;

289 [(iii)] (C) a statement that a full copy of the feasibility study is available for inspection
290 and copying; and

291 [(iv)] (D) the location in the municipality where the feasibility study may be inspected
292 or copied.

293 (ii) The notice of an election called under Subsection (1)(a)(ii) shall include a summary
294 prepared by the local political subdivision describing the proposed public communications
295 service infrastructure.

296 (d) ~~The ballot at~~ (i) For an election called under Subsection (1)(a)(i), the ballot for the
297 election shall pose the question substantially as follows:

298 "Shall the [name of the municipality] provide [cable television service or public
299 telecommunications service] to the inhabitants of the [municipality][:]?"

300 (ii) For an election called under Subsection (1)(a)(ii), the ballot for the election shall
301 pose the question substantially as follows:

302 "Shall the [name of the local political subdivision] provide public telecommunications
303 service infrastructure within [name of the local political subdivision] by [brief description of
304 the method or means by which the public communications service infrastructure will be
305 provided]?"

306 (e) The ballot proposition may not take effect until submitted to the electors and

307 approved by the majority of those voting on the ballot.

308 (2) In accordance with Title 20A, Chapter 7, Issues Submitted to the Voters, a
309 [municipality] legislative body's action to have the [municipality] political subdivision over
310 which the legislative body presides provide cable television services or public
311 telecommunications services is subject to local referenda.

312 (3) The results of an election called under Subsection (1)(a)(ii) are not binding and do
313 not:

314 (a) require the local political subdivision that called the election to take, or refrain from
315 taking, any action; or

316 (b) limit the local political subdivision that called the election from taking any action
317 authorized under Section [10-8-14](#) or [10-18-105](#).

Legislative Review Note
Office of Legislative Research and General Counsel