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:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

54-21-101, Utah Code Annotated 1953

54-21-102, Utah Code Annotated 1953

54-21-103, Utah Code Annotated 1953

54-21-201, Utah Code Annotated 1953

54-21-202, Utah Code Annotated 1953

54-21-203, Utah Code Annotated 1953

54-21-204, Utah Code Annotated 1953

54-21-205, Utah Code Annotated 1953

54-21-206, Utah Code Annotated 1953

54-21-207, Utah Code Annotated 1953

54-21-208, Utah Code Annotated 1953

54-21-209, Utah Code Annotated 1953

54-21-210, Utah Code Annotated 1953

54-21-301, Utah Code Annotated 1953

54-21-302, Utah Code Annotated 1953

54-21-303, Utah Code Annotated 1953

54-21-401, Utah Code Annotated 1953

54-21-402, Utah Code Annotated 1953

54-21-403, Utah Code Annotated 1953

54-21-501, Utah Code Annotated 1953

54-21-502, Utah Code Annotated 1953

54-21-503, Utah Code Annotated 1953

54-21-504, Utah Code Annotated 1953

54-21-601, Utah Code Annotated 1953

54-21-602, Utah Code Annotated 1953

54-21-603, Utah Code Annotated 1953

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

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

CHAPTER 21. SMALL WIRELESS FACILITIES DEPLOYMENT ACT

Part 1. General Provisions

54-21-101. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

(6) (a) "Authority" means:

(i) the state;

(ii) a state agency;

(iii) a county;

(iv) a municipality;

(v) a town;

(vi) a metrotownship;

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

(viii) a special district or entity established to provide a single public service within a specific geographic area, including:

(A) a public utility district; or

(B) an irrigation district.

(b) "Authority" does not include a state court having jurisdiction over an authority.

(7) "Authority pole" means a utility pole owned, managed, or operated by, or on behalf of, an authority.

(8) "Authority wireless support structure" means a wireless support structure owned, managed, or operated by, or on behalf of, an authority.

(9) "Category one authority" means a single authority with a population of 65,000 or greater.

(10) "Category two authority" means a single authority with a population of less than 65,000.

(11) "Collocate" means to install, mount, maintain, modify, operate, or replace a small wireless facility:

(a) on a wireless support structure or utility pole; or

(b) for ground-mounted equipment, adjacent to a wireless support structure or utility pole.

(12) "Communications service" means:

(a) a cable service, as defined in 47 U.S.C. Sec. 522(6);

(b) a telecommunications service, as defined in 47 U.S.C. Sec. 153(53);

(c) an information service, as defined in 47 U.S.C. Sec. 153(24); or

(d) a wireless service.

(13) "Communications service provider" means:

(a) a cable operator, as defined in 47 U.S.C. Sec. 522(5);

(b) a provider of information service, as information service is defined in 47 U.S.C.

Sec. 153(24);

(c) a telecommunications carrier, as defined in 47 U.S.C. Sec. 153(51); or

(d) a wireless provider.

(14) "Decorative pole" means an authority pole:

(a) that is specially designed and placed for an aesthetic purpose; and

(b) (i) on which a nondiscriminatory rule or code prohibits an appurtenance or attachment, other than:

(A) a small wireless facility;

(B) a specialty designed informational or directional sign; or

(C) a temporary holiday or special event attachment; or

(ii) on which no appurtenance or attachment has been placed, other than:

(A) a small wireless facility;

(B) a specialty designed informational or directional sign; or

(C) a temporary holiday or special event attachment.

(15) "Design district" means an area:

(a) that is zoned or otherwise designated by municipal ordinance or code; and

(b) for which the authority maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.

(16) "FCC" means the Federal Communications Commission of the United States.

(17) "Fee" means a one-time, nonrecurring charge.

(18) "Gross revenue" means the same as gross receipts from telecommunications service is defined in Section 10-1-402.

(19) "Historic district" means a group of buildings, properties, or sites that are:

(a) in accordance with 47 C.F.R. Part 1, Appendix C:

(i) listed in the National Register of Historic Places; or

(ii) formally determined eligible for listing in the National Register of Historic Places by the Keeper of the National Register; or

(b) in an historic district or area created under Section 10-9a-503.

(20) "Nondiscriminatory" means treating similarly situated entities the same absent a reasonable, and competitively neutral basis, for different treatment.

(21) "Micro wireless facility" means a type of small wireless facility:

(a) that, not including any antenna, is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height;

(b) on which any exterior antenna is no longer than 11 inches; and

(c) that only provides Wi-Fi service.

(22) "Permit" means a written authorization an authority requires for a wireless provider to perform an action or initiate, continue, or complete a project.

(23) "Rate" means a recurring charge.

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

(i) roadway;

(ii) highway;

(iii) street;

(iv) sidewalk;

(v) alley; or

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

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

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

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

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

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

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

(i) electric meter;

(ii) concealment element;

(iii) telecommunications demarcation box;

(iv) grounding equipment;

(v) power transfer switch;

(vi) cut-off switch;

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

(viii) wireless provider antenna; or

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

(26) "Substantial modification" means:

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

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

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

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

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

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

(A) wireline communications;

(B) electric distribution;

(C) lighting;

(D) traffic control;

(E) signage;

(F) a similar function to a function described in Subsections (28)(a)(ii)(A) through (E); or

(G) the collocation of a small wireless facility.

(b) "Utility pole" does not include:

(i) a wireless support structure;

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

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

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

(i) equipment associated with wireless communications; and

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

(b) "Wireless facility" does not include:

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

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

(A) between wireless structures or utility poles;

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

(C) a wireline backhaul facility.

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

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

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

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

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

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

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

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

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

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

(A) monopole;

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

(C) billboard; or

(D) building.

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

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

(ii) utility pole;

(iii) municipally owned structure that supports electric lines used for the provision of municipal electric service; or

(iv) structure owned by an energy services interlocal entity, as described in Subsection 11-13-203(4), that uses electric lines that are used for the provision of electrical service.

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

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

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

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

54-21-102. Scope.

Nothing in this chapter:

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

(2) imposes a new requirement on the activity of a cable provider in a right-of-way for

a cable service provided in this state;

(3) governs:

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

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

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

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

54-21-103. Local authority jurisdiction.

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

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

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

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

(c) consistent with state and federal law.

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

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

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

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

(a) are reasonable and nondiscriminatory; and

(b) include additional installation and construction details that do not conflict with this

chapter, including a requirement that:

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

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

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

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

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

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

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

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

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

(b) regulate a wireless service.

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

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

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

54-21-201. Applicability.

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

(1) a small wireless facility; or

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

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

54-21-202. Prohibition on exclusive use.

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

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

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

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

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

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

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

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

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

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

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

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

(a) collocate a small wireless facility; or

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

(i) a utility pole associated with the wireless provider's collocation of a small wireless

facility; or

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

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

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

(b) obstruct, damage, or interfere with:

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

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

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

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

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

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

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

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

54-21-206. Decorative poles.

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

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

54-21-207. Underground district.

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

(1) the prohibition is reasonable and nondiscriminatory; and

(2) the authority:

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

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

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

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

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

54-21-208. Historic and design districts.

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

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

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

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

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

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

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

this chapter.

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

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

(b) the requirements for facility modifications under:

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

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

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

(d) Section 10-9a-503.

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

54-21-209. Manner of regulation.

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

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

(a) be unreasonable or discriminatory; or

(b) violate an applicable legal obligation or law.

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

54-21-210. Damage and repair.

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

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

(a) make the required repair; and

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

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

(a) immediately make the necessary repair; and

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

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

Part 3. Permitting Process for Small Wireless Facilities

54-21-301. Applicability -- General.

(1) This part applies to:

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

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

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

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

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

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

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

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

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

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

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

(b) may not require:

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

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

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

poles;

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

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

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

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

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

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

(a) determine whether the application is complete; and

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

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

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

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

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

(ii) as the applicant and the authority agree.

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

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

(b) the wireless provider fails to respond within 90 days after the day on which the

authority notifies the wireless provider under Subsection (5)(a).

(6) (a) An authority shall:

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

(ii) approve or deny an application:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) resubmit the application.

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

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

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

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

(A) substantially the same type; and

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

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

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

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

(A) three consolidated applications; or

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

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

(A) one consolidated application; or

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

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

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

(10) A wireless provider shall complete the installation or collocation for which a permit is granted under this part within 270 days after the day on which the authority issues the permit, unless:

(a) the authority and the applicant agree to extend the one-year period; or

(b) lack of commercial power or communications facilities at the site delays completion.

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

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

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

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

(ii) any utility pole covered by the permit.

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

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

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

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

(14) The approval of the installation, placement, maintenance, or operation of a small wireless facility, in accordance with this chapter, does not authorize:

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

(b) the installation, placement, or operation of a facility, other than the approved small wireless facility, in the right-of-way.

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

54-21-303. Exceptions to permitting.

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

(a) routine maintenance;

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

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

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

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

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

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

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

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

54-21-401. Applicability.

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

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

54-21-402. Prohibition on exclusive use.

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

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

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

(a) as provided in this chapter; and

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

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

54-21-403. Rates.

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

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

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

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

Part 5. Rates and Fees

54-21-501. Applicability.

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

(1) a small wireless facility; or

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

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

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

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

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

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

(2) (a) An authority may charge a wireless provider a rate for the right to use or occupy a right-of-way as described in Subsection (1), if, except as provided in Subsection 54-21-601(6), the rate is:

(i) fair and reasonable;

(ii) competitively neutral;

(iii) nondiscriminatory;

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

(v) not more than the greater of:

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

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

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

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

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

Telecommunications License Tax Act.

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

54-21-503. Application fees.

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

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

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

(c) the fee does not include:

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

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

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

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

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

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

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

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

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

54-21-504. Authority pole collocation rate.

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

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

Part 6. Implementation

54-21-601. General.

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

(a) implementing an ordinance; or

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

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

(a) subject to Section 54-21-602; and

(b) under the requirements of this chapter.

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

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

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

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

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

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

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

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

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

54-21-602. Noncompliant agreements and ordinances.

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

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

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

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

(a) beginning May 11, 2018; and

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

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

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

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

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

54-21-603. Relocation.

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

(a) in a timely manner; and

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

(ii) utility company owns the easement or fee title to the right-of-way in which the

utility is located; or

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

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

(c) This Subsection (3) does not affect the provisions of Subsection 72-7-108(5).

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

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

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

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

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

Section 28. **Effective date.**

This bill takes effect on September 1, 2018.