

BILL ANALYSIS

C.S.H.B. 1505
By: Paddie
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Certain practices by electric cooperatives regarding access to electric poles can act as a barrier to broadband deployment, including in unserved areas where the available infrastructure has often outlived its useful life. Currently, there is no statewide regime for how electric cooperatives charge for pole replacement or established procedures for permitting pole attachments that provide for the deployment of broadband service, as these cooperatives do not have to follow the same FCC pole attachment guidelines that apply to other electric utilities. This has led to uncertainty when broadband companies attempt to build out new service in their coverage areas. C.S.H.B. 1505 seeks to address this uncertainty and establish a modernized pole attachment regime that applies to Texas' electric cooperatives and promotes consistency, transparency, and fairness in the deployment of broadband service to rural Texans while ensuring consistency with FCC rules and regulations for investor-owned utilities.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 1505 amends the Utilities Code to set out provisions regulating the affixture of a pole attachment by a broadband provider to a pole owned and controlled by an electric cooperative. The bill defines, among other terms, "pole attachment" as an affixture of cables, strands, wires, and associated equipment used in the provision of a broadband provider's services attached to a pole directly or indirectly or placed in a right-of-way owned or controlled by an electric cooperative.

Pole Access

C.S.H.B. 1505 requires a broadband provider to apply for access to a pole owned by an electric cooperative before placing a pole attachment on the pole and authorizes a broadband provider to use a pole attachment for any service delivered over the provider's facilities, including cable service. The bill prohibits an electric cooperative from denying access to a pole if a capacity, safety, reliability, or engineering consideration that would supply a basis for denial of access under Section 224 of the federal Communications Act of 1934, which governs pole attachments for investor-owned utilities, or any rule, regulation, or order issued by the FCC thereunder may be remedied by rearranging, expanding, replacing, or otherwise safely reengineering the pole or pole attachments through make-ready activities. A cooperative granting access to its poles must

rearrange, expand, replace, or otherwise safely reengineer any pole if to do so is reasonably necessary to accommodate a pole attachment and consistent with applicable safety and engineering standards.

Pole Attachment Contracts

C.S.H.B. 1505 authorizes an electric cooperative that owns a pole to require a broadband provider that attaches a pole attachment to the pole to enter into a contract for access to the pole. The terms and conditions of the contract must comply with the bill's provisions and be consistent with Section 224 and any rule, regulation, or order issued by the FCC thereunder, as the section, rule, regulation, or order existed on April 1, 2021, unless the terms and conditions address recurring pole rental rates.

C.S.H.B. 1505 requires a broadband provider and an electric cooperative to do the following:

- establish the rates, terms, and conditions for pole attachments by a written pole attachment contract executed by both parties; and
- negotiate the contract and any amendment, modification, or renewal thereof in good faith.

The bill requires the rates to be just, reasonable, and nondiscriminatory and sets out certain factors that must be considered in determining whether they are just and reasonable. The bill requires a request to negotiate a new contract or to amend, modify, or renew a contract to be made in writing.

C.S.H.B. 1505 provides for the holdover of an expiring contract's rates, terms, and conditions, as well as the terms and conditions of the electric cooperative's application and permitting processes, for a certain period after expiration to accommodate ongoing negotiations for a new contract. The bill establishes a mediation process, including location and cost-sharing requirements, for use if the provider and cooperative are unable to agree to a new contract after the expiration of that period and unable to agree to an extension. If the mediation process does not resolve the disagreement, or if a dispute arises under the terms of an existing agreement or the bill's requirements, the provider or cooperative may file suit in a district court to resolve the disagreement or dispute. The rates, terms, and conditions continue to remain in force during the negotiation period, mediation period, and pending final disposition of any litigation.

Pole Replacement Costs

C.S.H.B. 1505 requires an electric cooperative that replaces a pole under the bill's provision to assess charges for the replacement from a broadband provider consistent with Section 224, as that section existed on April 1, 2021, and any applicable FCC rules, regulations, or orders in existence on that date.

C.S.H.B. 1505 requires the Public Utility Commission of Texas (PUC) to adopt and enforce rules regarding the compensation that an electric cooperative may require from a broadband provider to replace a pole if Section 224, as that section existed on April 1, 2021, is amended in a manner that pertains to the charges that may be assessed by a pole owner for a pole replacement or if an applicable FCC rule, regulation, or order is repealed, amended, or replaced after that date. The PUC must adopt these rules not later than the 180th day after the date that an amendment, repeal, or replacement takes effect. The bill requires the rules to be just, reasonable, and nondiscriminatory and sets out certain factors the PUC must consider in adopting the rules.

Transfer of Attachments

C.S.H.B. 1505 requires an electric cooperative planning to install a new pole to replace an existing pole due to the rerouting, maintenance, or upgrading of the electric distribution system to provide notice of that replacement to each broadband provider with a pole attachment on the existing pole before installation. The notice must specify a date by which the provider must

remove the pole attachment from the existing pole and transfer the attachment to the new pole. If the provider does not transfer the attachment to the new pole before the 31st day after the date specified in the notice, the cooperative may transfer the attachment to the new pole at the provider's expense, including the cost for the cooperative to return to the site.

C.S.H.B. 1505 requires a broadband provider to indemnify, defend, and hold harmless an electric cooperative and the cooperative's members, directors, officers, agents, and employees from and against all liability for the removal and transfer of a pole attachment, except for personal injury or property damage arising from the cooperative's gross negligence or wilful misconduct during the removal and transfer process.

Removal of Abandoned Pole Attachments

C.S.H.B. 1505 requires a broadband provider that receives a written request from an electric cooperative to remove an abandoned pole attachment owned by the provider from a pole owned by the cooperative to remove the attachment not later than the 60th day after the date the provider receives the request. Before that deadline, the provider, in writing, may request and the cooperative may grant, a reasonable extension of that deadline. If the provider does not remove the pole attachment by the applicable deadline, the cooperative may remove, use, sell, or dispose of the pole attachment at the provider's expense.

C.S.H.B. 1505 authorizes an electric cooperative to require that a broadband provider post a security instrument in an amount reasonably sufficient to cover the potential cost to the cooperative of removal and disposal of abandoned pole attachments. The bill requires a provider to indemnify, defend, and hold harmless a cooperative and the cooperative's members, directors, officers, agents, and employees from and against all liability for the removal, use, sale, or disposal of abandoned pole attachments, except for personal injury or property damage arising from the cooperative's gross negligence or wilful misconduct during the removal and disposal process.

Rights-of-Way and Easements

C.S.H.B. 1505 establishes the following:

- a broadband provider is responsible for obtaining all rights-of-way and easements necessary for the installation, operation, and maintenance of the provider's pole attachments;
- an electric cooperative is not required to obtain or expand a right-of-way or easement to accommodate a requested pole attachment; and
- a cooperative is not liable if a provider is prevented from placing or maintaining a pole attachment because the provider did not obtain a necessary right-of-way or easement.

The bill requires a provider to indemnify, defend, and hold harmless a cooperative and the cooperative's members, directors, officers, agents, and employees from and against any liability resulting from the provider's failure to obtain a necessary right-of-way or easement for a pole attachment.

General Provisions

C.S.H.B. 1505 sets out certain minimum download and upload speeds for Internet service to be considered broadband service for purposes of the bill's provisions. The bill provides for the construction of its provisions with respect to the abrogation or right or obligation of a party to a pole attachment contract entered into before September 1, 2021, and the construction of certain technical terms and phrases used therein. The bill establishes that its provisions neither constitute state certification to the FCC that the state regulates the rates, terms and conditions for pole attachments nor provide to a department, agency, or political subdivision of the state any enforcement or regulatory authority over attachments to electric cooperative poles. If a court determines that the bill's provisions constitute such certification, those provisions are not

enforceable and have no effect. The bill clarifies that its provisions do not apply to a pole attachment regulated by the FCC and may not be construed to subject an electric cooperative to FCC regulation. The bill requires any authorized nonrecurring charges to be cost-based.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1505 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include the following provisions establishing a state-specific pole attachment regime for electric cooperatives:

- provisions establishing an application process for pole attachments;
- provisions establishing procedures relating to make-ready activities and the contractors related to those activities;
- provisions giving a broadband provider the option to perform simple make-ready activities;
- provisions providing for the sharing of costs for pole modifications;
- provisions governing the use of extension arms and temporary pole attachments;
- provisions relating to pole attachment specifications; and
- provisions regulating overlashing by a broadband provider.

The substitute sets out the following provisions to establish a regime that aligns with Section 224 of the federal Communications Act of 1934, which regulates pole attachments for investor-owned utilities:

- provisions providing for the modification or replacement of a pole to accommodate an attachment; and
- provisions establishing requirements for the terms and conditions of a contract for pole attachments.

The substitute changes the standards with which an electric cooperative's modification or replacement of a pole to accommodate a pole attachment must be consistent from the National Electrical Safety Code to the applicable safety and engineering standards authorized under the contract terms and conditions.

The substitute does not establish a specific process for the recovery of costs for replacing poles as in the original. The substitute provides instead for the recovery of costs in the manner consistent with Section 224 and any rules, regulations, or orders issued by the FCC thereunder. The substitute also includes provisions that provide for the PUC to adopt rules regarding the compensation an electric cooperative may require from a broadband provider to replace a pole if the federal standards change.

The substitute does not include a provision in the original subjecting a broadband provider with a pole attachment to certain provisions applicable to cable operators relating to transfer of pole attachments, removal of abandoned pole attachments, and responsibility to obtain rights-of-way and easements for pole attachments in the same manner as if the provider were a cable operator. The substitute instead sets out provisions applicable specifically to broadband providers that are substantially the same as those cable operator provisions.