

BILL ANALYSIS

Senate Research Center
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H.B. 3355
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Telecommunications and electric utilities have an established system of utility poles to carry the wires that move their resources from provider to the consumer. However, cable companies rarely have their own utility poles so they often lease space from utility pole owners. Historically, rates, terms, and conditions for attachments to cooperative poles have been established through private contracts. However, specific requirements for rate setting, transfer, and removal of such attachments would provide a framework for future contract negotiations and create a more predictable and efficient system.

H.B. 3355 amends current law relating to cable operators' attachments on distribution poles owned or controlled by electric cooperatives.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 5, Utilities Code, by adding Chapter 252, as follows:

CHAPTER 252. ATTACHMENTS TO ELECTRIC COOPERATIVE'S DISTRIBUTION POLES

Sec. 252.001. DEFINITIONS. Defines "abandoned pole attachment," "cable operator," "pole," "pole attachment," and "security instrument" in this chapter.

Sec. 252.002. APPLICABILITY. (a) Provides that this chapter applies to a pole attachment affixed by a cable operator to a pole owned and controlled by an electric cooperative. Provides that this chapter does not apply to a pole attachment regulated by the Federal Communications Commission under 47 U.S.C. Section 224.

(b) Provides that this chapter does not abrogate or affect a right or obligation of a party to a pole attachment contract entered into by a cable operator and an electric cooperative before September 1, 2013.

Sec. 252.003. LIMITATION. (a) Provides that this chapter does not constitute state certification under 47 U.S.C. Section 224(c). Provides that if a court determines that this chapter constitutes certification under that section, this chapter is not enforceable and has no effect.

(b) Prohibits this chapter from being construed to subject an electric cooperative to regulation by the Federal Communications Commission under 47 U.S.C. Section 224. Provides that this chapter does not authorize a department, agency, or political subdivision of the state to exercise enforcement or regulatory authority over attachments to electric cooperative poles.

Sec. 252.004. CONSTRUCTION. Requires that the technical terms and phrases in this chapter, unless defined by Section 252.001, be construed using their usual and customary meanings in the electric and cable industries.

Sec. 252.005. POLE ATTACHMENT CONTRACTS; ACCESS REQUIREMENTS. (a) Requires a cable operator and an electric cooperative to establish the rates, terms, and conditions for pole attachments, including the cooperative's application and permitting processes by a written pole attachment contract executed by both parties. Requires that the rates, terms, and conditions for attachments by a cable operator on an electric cooperative's poles be just and reasonable.

(b) Requires a cable operator and an electric cooperative to negotiate a pole attachment contract in good faith.

(c) Requires that a request to negotiate a new pole attachment contract by a cable operator or an electric cooperative be in writing. Provides that if a cable operator and an electric cooperative are unable to agree to a new pole attachment contract before the expiration date of an existing pole attachment contract, the rates, terms, and conditions of the existing pole attachment contract and the terms and conditions of the electric cooperative's application and permitting processes remain in force:

(1) during the 180-day negotiation period described by Subsection (d) and during the period of any agreed extension; and

(2) during the 90-day mediation period described by Subsection (d) and during the period of any agreed extension.

(d) Provides that if a cable operator and an electric cooperative are unable to agree to a new pole attachment contract before the 181st day after the expiration date of the existing pole attachment contract and are unable to agree to an extension of the negotiation period for a certain number of days, the cable operator and electric cooperative shall attempt to resolve any disagreement over the rates, terms, or conditions by submitting the contract negotiations to mediation. Prohibits the mediation process from extending later than the 90th day after the end of the 180-day negotiation period and any agreed extension of that period unless the cable operator and an electric cooperative agree to an extension of the mediation period for a certain number of days. Requires that the mediation process be conducted in a county in which the electric cooperative has distribution poles. Requires the cable operator and an electric cooperative to share the expenses for the mediator equally.

(e) Authorizes the cable operator or the electric cooperative to request that a court resolve the disagreement over the rates, terms, or conditions if the mediation process does not resolve the disagreement over the rates, terms, or conditions.

(f) Authorizes access to a pole to be denied where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

(g) Requires that at least the following factors be considered in determining whether rates, terms, and conditions are just and reasonable:

(1) the interests of and benefits to the consumers and potential consumers of the electric cooperative's services;

(2) the interests of and benefits to the subscribers and potential subscribers of the services offered through the pole attachments;

(3) compliance with applicable safety standards; and

(4) the maintenance and reliability of both electric distribution and cable services.

Sec. 252.006. TRANSFER OF ATTACHMENTS. (a) Requires an electric cooperative to provide a cable operator with notice when the electric cooperative is installing a new pole to replace an existing pole to which a pole attachment is affixed due to the rerouting, maintenance, or upgrading of the electric distribution system. Requires the electric cooperative, in the notice, to specify a date for the cable operator to remove its attachment from the existing pole and transfer the attachment to the new pole.

(b) Authorizes the electric cooperative to transfer the pole attachment to the new pole at the cable operator's expense, including the cost for the electric cooperative to return to the site if a cable operator does not transfer a pole attachment to the new pole on or before the 30th day after the date specified by the electric cooperative under Subsection (a).

(c) Requires a cable operator to indemnify, defend, and hold harmless the 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 subject to this section, except for personal injury or property damage arising from gross negligence or wilful misconduct of the electric cooperative during the removal and transfer process.

Sec. 252.007. ABANDONED POLE ATTACHMENTS; REMOVAL. (a) Requires a cable operator to remove the operator's abandoned pole attachment from an electric cooperative's pole not later than the 60th day after the date the cable operator receives from the electric cooperative a written request for removal of the pole attachment. Authorizes a cable operator to request an electric cooperative to extend for a reasonable period the 60-day period prescribed by this section at any time before the 60-day period expires. Requires that the request for an extension be in writing. Authorizes the electric cooperative to grant a cable operator a reasonable extension of time to remove an abandoned attachment.

(b) Authorizes the electric cooperative to remove, use, sell, or dispose of the pole attachment at the cable operator's expense if a cable operator does not remove a pole attachment for which a request for removal was made under Subsection (a) before the expiration of the period described by that subsection or before the expiration of an extended period granted by the electric cooperative.

(c) Authorizes an electric cooperative to require that a cable operator post a security instrument in an amount reasonably sufficient to cover the potential cost to the electric cooperative of removal and disposal of abandoned pole attachments.

(d) Requires a cable operator to indemnify, defend, and hold harmless the electric 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 gross negligence or wilful misconduct of the electric cooperative during the removal and disposal process.

Sec. 252.008. EASEMENTS; INDEMNITY. (a) Provides that a cable operator is responsible for obtaining all rights-of-way and easements necessary for the installation, operation, and maintenance of the operator's pole attachments.

(b) Provides that an electric cooperative is not required to obtain or expand a right-of-way or easement to accommodate a pole attachment requested by a cable operator.

(c) Provides that an electric cooperative is not liable if a cable operator is prevented from placing or maintaining a pole attachment because the cable operator did not obtain a necessary right-of-way or easement.

(d) Requires a cable operator to indemnify, defend, and hold harmless the electric cooperative and the cooperative's members, directors, officers, agents, and employees from and against any liability resulting from the cable operator's failure to obtain a necessary right-of-way or an easement for a pole attachment.

SECTION 2. Provides that Chapter 252, Utilities Code, as added by this Act, applies to a pole attachment contract entered into, or renewed or extended, by a cable operator and an electric cooperative on or after the effective date of this Act. Provides that a contract entered into by a cable operator and an electric cooperative before the effective date of this Act is governed by the law in effect on the date the contract is executed, and the former law remains in effect for that purpose.

SECTION 3. Effective date: September 1, 2013.