

BILL ANALYSIS

H.B. 3355
By: Cook
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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, interested parties observe that cable companies rarely have their own utility poles so they often lease space from utility pole owners. Interested parties note that historically, rates, terms, and conditions for attachments to cooperative poles have been established through private contracts, but contend that 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 seeks to provide such a framework.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3355 amends the Utilities Code to require 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 and requires the rates, terms, and conditions for attachments by a cable operator on an electric cooperative's poles to be just and reasonable. The bill sets out the factors that must be considered in determining whether rates, terms, and conditions are just and reasonable. The bill requires a cable operator and an electric cooperative to negotiate a pole attachment contract in good faith and requires a request to negotiate a new pole attachment contract to be in writing. The bill establishes 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 contract, the rates, terms, and conditions of the existing contract and the terms and conditions of the electric cooperative's application and permitting processes remain in force for a certain time period and requires mediation to resolve a continuing dispute after a certain time period. The bill requires the mediation process to be conducted in a county in which the electric cooperative has distribution poles and requires the cable operator and electric cooperative to share the expenses for the mediator equally. The bill authorizes the cable operator or electric cooperative to request that a court resolve the disagreement over the rates, terms, or conditions if the mediation process does not resolve it. The bill authorizes access to a pole to be denied where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

H.B. 3355 requires an electric cooperative to provide a cable operator with notice when 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, and requires the electric cooperative in that 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. The bill authorizes an electric cooperative, if a cable operator does not timely transfer a pole attachment to the new pole 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. The bill 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 in that manner, except for personal injury or property damage arising from gross negligence or wilful misconduct of the electric cooperative during the removal and transfer process.

H.B. 3355 requires a cable operator to remove its abandoned pole attachment from an electric cooperative's pole within a certain timeframe, which can be extended. The bill authorizes an electric cooperative, if a cable operator does not timely remove a pole attachment for which a removal request was made, to remove, use, sell, or dispose of the pole attachment at the cable operator's expense. The bill authorizes an electric cooperative to require a cable operator to 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. The bill 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.

H.B. 3355 establishes 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 and does not require an electric cooperative to obtain or expand a right-of-way or easement to accommodate a pole attachment requested by a cable operator. The bill establishes 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 and 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.

H.B. 3355 applies to a pole attachment affixed by a cable operator to a pole owned and controlled by an electric cooperative, but does not apply to a pole attachment regulated under federal law. The bill 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. The bill does not constitute state certification under federal law, and if a court determines that the bill constitutes such certification, the bill becomes unenforceable and has no effect. The bill may not be construed to subject an electric cooperative to certain federal regulation and does not authorize a department, agency, or political subdivision of the state to exercise enforcement or regulatory authority over attachments to electric cooperative poles. The bill establishes that the technical terms and phrases used in the bill are to be construed using their usual and customary meanings in the electric and cable industries unless otherwise defined in the bill.

EFFECTIVE DATE

September 1, 2013.