

By: Cook

H.B. No. 3355

A BILL TO BE ENTITLED

AN ACT

relating to cable operators' attachments on distribution poles owned or controlled by electric cooperatives.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 5, Utilities Code, is amended by adding Chapter 252 to read as follows:

CHAPTER 252. ATTACHMENTS TO ELECTRIC COOPERATIVE'S DISTRIBUTION
POLES

Sec. 252.001. DEFINITIONS. In this chapter:

(1) "Abandoned pole attachment" means a pole attachment:

(A) for which a cable operator has not paid, for a period of 90 consecutive days or more, an invoice for rental charges presented by an electric cooperative, unless there is a bona fide dispute over the invoice; or

(B) that is not removed after authority for the pole attachment has terminated or expired, subject to any extension period for negotiation and mediation described by Section 252.005(c).

(2) "Cable operator" means an entity that owns or operates a cable system, as that term is defined by 47 U.S.C. Section 522, regardless of the nature of the services offered or provided by the entity in addition to cable services.

(3) "Pole" means a pole carrying distribution lines

1 with a voltage rating no higher than 34.5 kilovolts.

2 (4) "Pole attachment" means an affixture of cables,
3 strands, wires, and associated equipment attached to a pole
4 directly or indirectly.

5 (5) "Security instrument" means a performance bond or
6 an equivalent financial instrument that guarantees payments of
7 amounts payable to an electric cooperative by a cable operator.

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

13 (b) This chapter does not abrogate or affect a right or
14 obligation of a party to a pole attachment contract entered into by
15 a cable operator and an electric cooperative before September 1,
16 2013.

17 Sec. 252.003. LIMITATION. (a) This chapter does not
18 constitute state certification under 47 U.S.C. Section 224(c). If
19 a court determines that this chapter constitutes certification
20 under that section, this chapter is not enforceable and has no
21 effect.

22 (b) This chapter may not be construed to subject an electric
23 cooperative to regulation by the Federal Communications Commission
24 under 47 U.S.C. Section 224. This chapter does not authorize a
25 department, agency, or political subdivision of the state to
26 exercise enforcement or regulatory authority over attachments to
27 electric cooperative poles.

1 Sec. 252.004. CONSTRUCTION. Unless defined by Section
2 252.001, the technical terms and phrases in this chapter shall be
3 construed using their usual and customary meanings in the electric
4 and cable industries.

5 Sec. 252.005. POLE ATTACHMENT CONTRACTS; ACCESS
6 REQUIREMENTS. (a) A cable operator and an electric cooperative
7 shall establish the rates, terms, and conditions for pole
8 attachments, including the cooperative's application and
9 permitting processes by a written pole attachment contract executed
10 by both parties. The rates, terms, and conditions for attachments
11 by a cable operator on an electric cooperative's poles must be just
12 and reasonable.

13 (b) A cable operator and an electric cooperative shall
14 negotiate a pole attachment contract in good faith.

15 (c) A request to negotiate a new pole attachment contract by
16 a cable operator or an electric cooperative must be in writing. If
17 a cable operator and an electric cooperative are unable to agree to
18 a new pole attachment contract before the expiration date of an
19 existing pole attachment contract, the rates, terms, and conditions
20 of the existing pole attachment contract and the terms and
21 conditions of the electric cooperative's application and
22 permitting processes remain in force:

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

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

27 (d) If a cable operator and an electric cooperative are

1 unable to agree to a new pole attachment contract before the 181st
2 day after the expiration date of the existing pole attachment
3 contract and are unable to agree to an extension of the negotiation
4 period for a certain number of days, the cable operator and electric
5 cooperative shall attempt to resolve any disagreement over the
6 rates, terms, or conditions by submitting the contract negotiations
7 to mediation. The mediation process may not extend later than the
8 90th day after the end of the 180-day negotiation period and any
9 agreed extension of that period unless the cable operator and an
10 electric cooperative agree to an extension of the mediation period
11 for a certain number of days. The mediation process must be
12 conducted in a county in which the electric cooperative has
13 distribution poles. The cable operator and an electric cooperative
14 must share the expenses for the mediator equally.

15 (e) If the mediation process does not resolve the
16 disagreement over the rates, terms, or conditions, the cable
17 operator or the electric cooperative may request that a court
18 resolve the disagreement over the rates, terms, and conditions.

19 (f) Access to a pole may be denied where there is
20 insufficient capacity and for reasons of safety, reliability, and
21 generally applicable engineering purposes.

22 (g) In determining whether rates, terms, and conditions are
23 just and reasonable, at least the following factors must be
24 considered:

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

27 (2) the interests of and benefits to the subscribers

1 and potential subscribers of the services offered through the pole
2 attachments;

3 (3) compliance with applicable safety standards; and

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

6 Sec. 252.006. TRANSFER OF ATTACHMENTS. (a) An electric
7 cooperative shall provide a cable operator with notice when the
8 electric cooperative is installing a new pole to replace an
9 existing pole to which a pole attachment is affixed due to the
10 rerouting, maintenance, or upgrading of the electric distribution
11 system. In the notice, the electric cooperative shall specify a
12 date for the cable operator to remove its attachment from the
13 existing pole and transfer the attachment to the new pole.

14 (b) If a cable operator does not transfer a pole attachment
15 to the new pole on or before the 30th day after the date specified by
16 the electric cooperative under Subsection (a), the electric
17 cooperative may transfer the pole attachment to the new pole at the
18 cable operator's expense, including the cost for the electric
19 cooperative to return to the site.

20 (c) A cable operator shall indemnify, defend, and hold
21 harmless the electric cooperative and the cooperative's members,
22 directors, officers, agents, and employees from and against all
23 liability for the removal and transfer of a pole attachment subject
24 to this section, except for personal injury or property damage
25 arising from gross negligence or wilful misconduct of the electric
26 cooperative during the removal and transfer process.

27 Sec. 252.007. ABANDONED POLE ATTACHMENTS; REMOVAL. (a) A

1 cable operator shall remove the operator's abandoned pole
2 attachment from an electric cooperative's pole not later than the
3 60th day after the date the cable operator receives from the
4 electric cooperative a written request for removal of the pole
5 attachment. A cable operator may request an electric cooperative
6 to extend for a reasonable period the 60-day period prescribed by
7 this section at any time before the 60-day period expires. The
8 request for an extension must be in writing. The electric
9 cooperative may grant a cable operator a reasonable extension of
10 time to remove an abandoned attachment.

11 (b) If a cable operator does not remove a pole attachment
12 for which a request for removal was made under Subsection (a) before
13 the expiration of the period described by that subsection or before
14 the expiration of an extended period granted by the electric
15 cooperative, the electric cooperative may remove, use, sell, or
16 dispose of the pole attachment at the cable operator's expense.

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

21 (d) A cable operator shall indemnify, defend, and hold
22 harmless the electric cooperative and the cooperative's members,
23 directors, officers, agents, and employees from and against all
24 liability for the removal, use, sale, or disposal of abandoned pole
25 attachments, except for personal injury or property damage arising
26 from the gross negligence or wilful misconduct of the electric
27 cooperative during the removal and disposal process.

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

5 (b) An electric cooperative is not required to obtain or
6 expand a right-of-way or easement to accommodate a pole attachment
7 requested by a cable operator.

8 (c) An electric cooperative is not liable if a cable
9 operator is prevented from placing or maintaining a pole attachment
10 because the cable operator did not obtain a necessary right-of-way
11 or easement.

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

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

25 SECTION 3. This Act takes effect September 1, 2013.