

BILL ANALYSIS

C.S.H.B. 3448

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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The bill author has informed the committee that the expansion of modern communications networks in Texas depends on fair, nondiscriminatory, and reasonably priced access to existing pole infrastructure, and that, while current law requires investor-owned utilities, private telecom companies, and municipally owned utilities to follow the Federal Communication Commission's (FCC's) pricing formula for pole attachments, electric cooperatives being exempt from that requirement leads to significant disparities in rates. The bill author has further informed the committee that broadband providers report challenges negotiating with some cooperatives due to inflated costs, hindering efforts to expand service in rural areas where deployment is already expensive, and that addressing the disparity is essential to ensure equitable infrastructure access and advance statewide connectivity. C.S.H.B. 3448 seeks to address these issues by regulating certificated telecommunications providers' access to electric cooperative rights-of-way and distribution poles.

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 1 of this bill.

ANALYSIS

C.S.H.B. 3448 amends the Utilities Code to require an electric cooperative to provide a certificated telecommunications provider with just, reasonable, and nondiscriminatory access regarding the placement of a facility in the electric cooperative's right-of-way, a pole attachment rate or term or condition for a pole that the electric cooperative owns or controls, and access to a building relating to the placement of a facility in the electric cooperative's right-of-way or a pole attachment rate or term or condition for a pole that the electric cooperative owns or controls. The bill does the following:

- prohibits an electric cooperative from charging a certificated telecommunications provider a pole attachment rate that exceeds the following:
 - the rate agreed to in a contract between the cooperative and the provider; or
 - the rate that the electric cooperative would be permitted to charge under rules adopted by the FCC under certain federal law governing pole attachments if the electric cooperative's rates were regulated under federal law and the rules of the FCC, including the most recent default authorized rate of return for rate-of-return carriers;
- authorizes that rate that the electric cooperative would be permitted to charge under those rules adopted by the FCC to be established by the Public Utility Commission of Texas (PUC) in a contested case proceeding under the Administrative Procedure Act;
- prohibits an electric cooperative from charging a certificated telecommunications provider any additional make ready costs or other nonrecurring costs or imposing on the provider any additional requirements for evaluating the viability or load of the pole that exceed the costs or requirements the electric cooperative would be permitted to charge or impose under rules adopted by the FCC under certain federal law governing pole attachments if the electric cooperative's make ready costs and other nonrecurring costs were regulated under federal law and the rules of the FCC; and

- authorizes those costs and requirements to be established by the PUC in a contested case proceeding under the Administrative Procedure Act.

C.S.H.B. 3448 requires a certificated telecommunications provider, for the bill's purposes, to comply with the pole attachment requirements of existing statutory provisions (cross-referenced by the bill) relating to easements and indemnity to the same extent as a broadband provider under Section 253.0403, Utilities Code. The existing statutory provisions that the bill cross-references are located at Section 253.0403, Utilities Code, which provides that:

- 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 pole attachment requested by a broadband provider;
- an electric cooperative is not liable if a broadband provider is prevented from placing or maintaining a pole attachment because the broadband provider did not obtain a necessary right-of-way or easement; and
- a broadband provider shall 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 broadband provider's failure to obtain a necessary right-of-way or easement for a pole attachment.

C.S.H.B. 3448 authorizes the PUC, notwithstanding certain provisions of existing law that relate to limitations on the PUC's jurisdiction over electric cooperatives, on the filing of a complaint by a certificated telecommunications provider or an electric cooperative, to open a contested case proceeding under the Administrative Procedure Act to determine whether a pole attachment rate or make ready costs charged by an electric cooperative to a certificated telecommunications provider comply with certain of the bill's provisions relating to access. The bill requires the PUC, notwithstanding certain provisions of existing law that relate to limitations on the PUC's jurisdiction over electric cooperatives, to enforce the bill's provisions and adopt rules reasonably required for that purpose. The bill establishes that a reference to a person in certain statutory provisions in the Public Utility Regulatory Act relating to judicial review, enforcement, and penalties includes an electric cooperative for purposes of enforcing the bill's provisions.

C.S.H.B. 3448 defines the following terms:

- "certificated telecommunications provider" as a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the PUC to offer local exchange telephone service or a person who provides voice service;
- "make ready costs" as the costs associated with the modification or replacement of a pole, or of the lines or equipment on the pole, to accommodate additional facilities;
- "pole" as a pole carrying distribution lines with a voltage rating no higher than 34.5 kilovolts; and
- "pole attachment" as an affixture of cables, strands, wires, and associated equipment attached to a pole directly or indirectly or placed in a right-of-way owned or controlled by an electric cooperative.

The bill requires the technical terms and phrases in the bill's provisions, unless otherwise defined by the bill, to be construed using their usual and customary meanings in the electric and telecommunications industries. The bill establishes that, to the extent of any conflict between the bill and any other law, the bill controls.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF ORIGINAL TO SUBSTITUTE

While C.S.H.B. 3448 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions absent from the introduced that do the following:

- define "make ready costs" as the costs associated with the modification or replacement of a pole, or of the lines or equipment on the pole, to accommodate additional facilities;
- require the technical terms and phrases in the bill's provisions, unless otherwise defined by the bill, to be construed using their usual and customary meanings in the electric and telecommunications industries;
- establish that, to the extent of any conflict between the bill and any other law, the bill controls;
- prohibit an electric cooperative from charging a certificated telecommunications provider any additional make ready costs or other nonrecurring costs or imposing on the provider any additional requirements for evaluating the viability or load of the pole that exceed the costs or requirements the electric cooperative would be permitted to charge or impose under certain rules adopted by the FCC if the electric cooperative's make ready costs and other nonrecurring costs were regulated under federal law and the rules of the FCC;
- authorize those costs and requirements to be established by the PUC in a contested case proceeding under the Administrative Procedure Act; and
- require a certificated telecommunications provider, for the bill's purposes, to comply with the pole attachment requirements of certain existing statutory provisions relating to easements and indemnity to the same extent as a broadband provider under Section 253.0403, Utilities Code.

The substitute revises the introduced version's requirement for an electric cooperative to provide a certificated telecommunications provider with nondiscriminatory access regarding the placement of a facility in the electric cooperative's right-of-way, a pole attachment rate or term for a pole that the electric cooperative owns or controls, or access to a building relating to such a facility or pole, as follows:

- whereas the introduced gave an electric cooperative the option of satisfying that requirement by providing such access regarding any of those specified matters, the substitute corrects a drafting error by not giving that option and instead requires the electric cooperative to provide access regarding all of the matters specified by the substitute;
- requires the access provided by an electric cooperative to be just and reasonable in addition to being nondiscriminatory; and
- includes access regarding a pole attachment condition, in addition to a pole attachment rate or term, for a pole that the electric cooperative owns or controls as part of the requirement.

With respect to the prohibition included in the introduced against an electric cooperative charging a certificated telecommunications provider a pole attachment rate that exceeds the rate that the electric cooperative would be permitted to charge under rules adopted by the FCC under certain federal law governing pole attachments if the electric cooperative's rates were regulated under federal law and the rules of the FCC, which may be established by the PUC in a contested case proceeding, the substitute specifies that the rules adopted by the FCC under federal law governing pole attachments includes the most recent default authorized rate of return for rate-of-return carriers, which the introduced did not do. With respect to that prohibition, the substitute references the federal law by referencing the entire certain section of the federal statute instead of one subsection of that federal statute, as the introduced did.

The substitute revises the introduced version's authorization for the PUC to open a contested case proceeding to determine whether a pole attachment rate charged by an electric cooperative to a certificated telecommunications provider complies with the bill's provisions by doing the following:

- specifying that the PUC opens such a proceeding on the filing of a complaint by a certificated telecommunications provider or an electric cooperative; and

including as an authorized purpose for opening such a proceeding determining whether make ready costs charged by an electric cooperative to a certificated telecommunications provider comply with certain of the substitute's provisions.