

HCS HB 1361 -- UTILITIES

SPONSOR: Pollock

COMMITTEE ACTION: Voted "do pass" by the Committee on Utilities by a vote of 18 to 0.

This substitute allows telecommunications companies or rural electrical cooperatives to attach, maintain, and operate their equipment on another's pole in order to promote, encourage, and facilitate the deployment of electrical smart grid technologies, broadband communications, and similar advanced technologies in rural areas of the state under specified terms and conditions. Currently, pole attachment rules are enforced by the Federal Communications Commission (FCC). No attachment can be made without a written agreement between the pole owner and the attaching entity. The provisions of the substitute must be interpreted in a manner consistent with FCC rules for pole and conduit attachments unless otherwise specified.

The attaching party must give notice to a pole owner of the intent to attach and the specific location of the attachment, and the owner, unless otherwise agreed, must respond within 15 days with specified exceptions. If proper notice is not given, the parties may determine a penalty or, if the parties cannot agree on a reasonable penalty, it must equal 25% of the pole rate for a maximum period of 12 months. The attaching entity must pay for any damages and modification costs incurred by the pole owner to facilitate attachments, and the continued reliability and safety of the pole owner's system must have priority over the attachments.

A pole owner must be entitled to a reasonable rate for permitting attachments that may be specified by contract, but the rate must not exceed reasonable costs to the pole owner's system as calculated in a manner similar to the FCC rules for pole and conduit attachments. Additional costs may be charged upon a showing of inefficiencies in its maintenance of its system caused by attachments. An existing contract must remain in full force for its full term. The substitute specifies cost limitations for new contracts which may be enforced in circuit court, and also allows the use of non-binding mediation to resolve rate disputes. A pole owner may collect interest and penalties on the amount determined to be owed to him or her in court but must give 45 days' notice prior to filing a collection action.

A pole owner may allow an attachment under the scope of its existing property easement with the property owner if the attachment does not unreasonably burden the property owner or cause a diminution in value to the property owner's property. A

property owner retains the right to file suit for diminution in value, lack of use of property, and physical damages to property caused by the use and installation of poles and attachments. However, evidence of revenues or profits derived by telecommunication providers or rural electrical cooperatives from providing these services is not admissible in any proceeding by the property owner to recover damages.

The provisions of Section 523.283, RSMo, must continue to govern and apply to all easements or right-of-way interests acquired after August 28, 2006, and these provisions cannot be construed to abrogate or conflict with the provisions of Chapter 523 or to confer the power of eminent domain on any entity not granted that power prior to August 28, 2012.

The substitute contains a nonseverability clause and if any provision of the substitute is held to be invalid for any reason, the remaining provisions will be invalid.

FISCAL NOTE: No impact on state funds in FY 2013, FY 2014, and FY 2015.

PROPONENTS: Supporters say that the bill will help expand rural broadband coverage in a cost-effective manner. The bill does not expand the power of eminent domain and reflects agreements over infrastructure use by utilities regulated by the Missouri Public Service Commission. Most pole owners and telecommunications companies agree to shared use, but in a few instances there is a need for a legal process to bring about a resolution.

Testifying for the bill were Representative Pollock, Association of Missouri Electric Cooperatives, and CenturyLink.

OPPONENTS: Those who oppose the bill say that property rights should be protected so that land owners can receive just compensation for new uses of their property. The bill contains a requirement that easements must expressly state that poles cannot be used for broadband technology in order to be enforced. This is the opposite of traditional protection for property rights which forces an owner and user to come to an agreement. There is ongoing litigation over whether new uses such as broadband which go beyond the terms of existing easements are a taking of property that is compensable under the state or federal constitution.

Testifying against the bill were Fred O'Neil; and Heidi Dearhoff.

OTHERS: Others testifying on the bill say that the use of agreements to expand rural broadband is fine if a land owner is compensated for any actual damages or restricted use that occurs

to the property.

Testifying on the bill was Missouri Farm Bureau.