

HCS HB 1361 -- UTILITIES (Pollock)

COMMITTEE OF ORIGIN: Committee on Utilities

This substitute allows telecommunications and broadband service providers and 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). These provisions will apply to cable television providers and others transmitting information that are not capable of providing broadband except that they will be subject to the laws regarding easements as they existed prior to August 28, 2012. 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 its 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 the penalty fee or, if the parties cannot agree on a reasonable fee, 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 due solely to the attachment equipment. 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 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 and reasonable attorney fees but must give 45 days' notice to the attaching entity prior to filing a collection action.

For all easements and right-of-way interests acquired prior to

August 28, 2006, 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.

A property owner may additionally request to receive a one-time payment from a rural electric cooperative that is not provided for in an existing easement for the use of the cooperative's facilities for broadband or similar communications use. The payment is to be calculated at a rate of \$500 per mile prorated for the distance the attached line crosses the owner's property with a minimum payment of \$100 per parcel under specified circumstances. This provision will not apply to cable television providers and specified others transmitting information that are not capable of providing broadband.

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.