

HCS SS SCS SB 653 -- MUNICIPAL UTILITY POLES

Currently, "pole attachment" as it applies to the Uniform Wireless Communications Infrastructure Deployment Act means an attachment by a video service provider or a telecommunications or other communications-related service provider to a pole owned by a municipal utility but not a wireless antenna attachment or an attachment by a wireless communications provider to a pole. This bill revises the term to mean an attachment by an attaching entity, including a video service provider, a telecommunications provider, or other communications-related service provider to a pole owned or controlled by a municipal utility or municipality but not a wireless antenna attachment or an attachment by a wireless communications provider to a pole. The bill specifies that "pole" means a utility pole that is owned or controlled by a municipal utility or municipality but must not include poles that are not associated with the transmission or distribution of electric power, communications, broadband, or video services. A municipal utility or municipality may only deny an attaching entity access to the utility's poles on a nondiscriminatory basis if there is insufficient capacity or for reasons of safety and reliability and if the attaching entity will not resolve the issue. These provisions cannot be construed to prohibit a municipal utility or municipality from requiring an attaching entity to enter into a pole attachment agreement consistent with these provisions. The current provisions allowing either party to seek review of any fee, term, or condition by means of binding arbitration conducted by a single arbitrator mutually agreeable to the parties or, in the absence of an agreement, by means of binding arbitration conducted by the American Arbitration Association are repealed. The bill specifies that in the event of a dispute between the parties, either party may bring an action for review in any court of competent jurisdiction. The court must rule on any petition for review in an expedited manner by moving the petition to the head of the docket. Nothing can deny any party the right to a hearing before the court. These provisions must not supersede existing pole attachment agreements established prior to August 28, 2014, and must not confer any authority to the Public Service Commission or any other state agency to regulate attachment to poles.

Where no pole attachment agreement exists between an attaching entity and the municipal utility pole owner or controlling authority of a municipality and a dispute between a municipal utility pole owner or controlling authority of a municipality and an attaching entity exclusively concerns the per-pole fee or any requirement or issue not directly related to pole attachments, the attaching entity may proceed with its attachments during the pendency of the dispute under the agreed-upon terms and conditions at a rental rate of no more than specified in the bill. The

attaching entity must comply with applicable and reasonable engineering, safety, and reliability standards and hold the municipal pole owner or controlling authority of the municipality harmless for any liabilities or damages incurred that are caused by the attaching entity.

A municipal utility or municipality may, after reasonable written notice and an opportunity to cure, as provided in the applicable pole attachment agreement revoke a pole attachment permit granted to an attaching entity and require removal of the attachment for breach of the pole attachment agreement or permit until the breach is cured but only in the event of a substantial breach of material terms and conditions of the pole attachment agreement or permit. The conditions for a substantial breach are specified in the bill.

Unless otherwise provided for in an applicable pole attachment agreement, in the event of an imminent threat to public health, life, or safety, a municipality or municipal utility must, upon notice to the attaching entity, request the attaching entity rearrange, relocate, or remove a pole attachment from a pole or absent action from the attaching entity, have the authority to rearrange, relocate, or remove a pole attachment consistent with industry practices. The attaching entity must be notified as soon as practicable upon the cessation of the threat or upon restoration of the attachment by the municipal utility or municipality.