

HOUSE BILL No. 2589

By Committee on Energy, Utilities and Telecommunications

Requested by Representative Delperdang

1-24

Proposed Amendments to House Bill No. 2589

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Office of Revisor of Statutes

Revisions to pole attachment agreements, authorized charges, legal assurances, indemnification, right-of-way

1 AN ACT concerning utility pole-mounted law enforcement equipment;
2 relating to public utilities and law enforcement agencies; authorizing
3 public utilities to enter into pole attachment agreements to allow for the
4 attachment and operation of law enforcement equipment on utility
5 poles located in the public right-of-way; exempting public utilities from
6 civil liability relating thereto.

7
8 Be it enacted by the Legislature of the State of Kansas:

9 Section 1. (a) A public utility may enter into a pole attachment
10 agreement with any law enforcement agency to authorize the law
11 enforcement agency to attach and operate law enforcement equipment on
12 any utility pole that is owned or operated by the public utility and located
13 in the public right-of-way. A pole attachment agreement shall:

14 (1) Identify the utility poles in the public right-of-way where the law
15 enforcement equipment may be attached pursuant to such agreement;

16 (2) specify the nature of the law enforcement equipment to be
17 attached, including, but not limited to, the size and weight of the
18 equipment, the power supply and any other provisions relating to the safe
19 use of the equipment and the utility pole;

20 (3) establish the utility's safety specifications for attaching, accessing,
21 operating and removing the law enforcement equipment; and

22 (4) consistent with the provisions of subsection (b), require the law
23 enforcement agency to indemnify, defend and hold harmless the public
24 utility from and against all liability relating to the public utility's actions to
25 enter into a pole attachment agreement pursuant to this section.

26 (b) Pursuant to a pole attachment agreement, a public utility may
27 assess reasonable fees or charges to recover the actual costs incurred by
28 the public utility for the attachment, maintenance or removal of the law
29 enforcement equipment. A public utility shall not rent, lease or otherwise
30 assess any other fees or charges for the use of the space required for the
31 attachment of such law enforcement equipment.

32 (e) Any public utility that enters into a pole attachment agreement
33 with a law enforcement agency pursuant to this section shall be considered
34 an instrumentality of a governmental entity for the purposes of the Kansas
35 tort claims act, K.S.A. 75-6101 et seq., and amendments thereto, and

, access

, maintain or remove

where on the poles the law enforcement equipment may be installed

required and whether electric service is needed

installation and

and security

, maintaining

Attachment A

Attachment B

attaching, accessing, operating, maintaining or removing

charge a law enforcement agency

Attachment C

(e)

1 entitled to any limitations on liability therein with respect to any claim
 2 arising pursuant to such pole attachment agreement. ~~To the extent that a~~
 3 ~~law enforcement agency is found to be liable for any claim relating to law~~
 4 ~~enforcement activities conducted pursuant to a pole attachment agreement~~
 5 ~~authorized by this section, the law enforcement agency shall indemnify the~~
 6 public utility for any and all claims arising out of the attachment or
 7 operation of the law enforcement equipment pursuant to such agreement.

, defend and hold harmless

reasonable costs and expenses, including, but not limited to, attorney fees, that are associated with any and all:
(1)

or court actions

8 (d) As used in this section:
 9 (1) "Law enforcement agency" means any public agency that
 10 employs law enforcement personnel as defined in K.S.A. 60-473, and
 11 amendments thereto, or the federal bureau of investigation.

12 (2) "Public right-of-way" means only the area of real property in
 13 which a city, county or the state has a dedicated or acquired public right-
 14 of-way interest in the real property. "Public right-of-way" includes the area
 15 on, below or above the present and future streets, alleys, avenues, roads,
 16 highways, parkways or boulevards dedicated or acquired as right-of-way.

access, operation, maintenance or removal of law enforcement equipment or law enforcement activities conducted pursuant to such agreement, including, but not limited to, claims or court actions relating to crossing or remaining on private property to access the public right of way; and
 (2) damages to utility systems or infrastructure caused by the law enforcement equipment or attachment, access, operation, maintenance or removal of such equipment, except that if any such damage to the utility's systems or infrastructure is determined to have been caused solely by the public utility, the law enforcement agency shall not be liable for such damages.

17 (3) "Public utility" means any public utility as defined in K.S.A. 66-
 18 104, and amendments thereto, municipally owned or operated public
 19 utility or electric cooperative public utility.

20 (4) "Utility pole" means a structure owned or operated by a public
 21 utility that is designed and used to carry lines, cables or wires for
 22 telecommunications, electricity or cable or to provide lighting.

23 Sec. 2. This act shall take effect and be in force from and after its
 24 publication in the statute book.

"Public right-of-way" does not include a public or private easement that has not been designated a public right-of-way

Attachment A

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provide the public utility the sole discretion to require that the law enforcement equipment be attached, accessed, operated, maintained or removed by the public utility or a contractor who the public utility determines is qualified to perform such work; and

(5)

Attachment B

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A pole attachment agreement may contain other terms, conditions or provisions that are reasonable or necessary to facilitate the pole attachment agreement or to protect the public utility's systems and infrastructure.

(c)

Attachment C

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If the law enforcement equipment requires power to be supplied by the public utility, the public utility may charge the law enforcement agency for the energy supplied by the public utility. Nothing in this section shall prohibit a public utility from charging any other person or entity for the space required to attach equipment on utility poles.

(d) Any law enforcement agency that enters into a pole attachment agreement with a public utility shall warrant and guarantee to the public utility that the attachment, access, operation, maintenance or removal of any and all law enforcement equipment complies with all applicable laws, rules and regulations and ordinances. A law enforcement agency shall be solely responsible for determining the need for any court order before attaching, accessing, operating, maintaining or removing any law enforcement equipment and for securing such court order when necessary or appropriate. A public utility that enters into a pole attachment agreement pursuant to this section shall not be liable for any failure of a law enforcement agency to secure a court order when necessary or appropriate for any activity conducted pursuant to the pole attachment agreement.