

By: Paddie

H.B. No. 1505

A BILL TO BE ENTITLED

AN ACT

relating to attachments for broadband service on utility poles
owned by an electric cooperative.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 252, Utilities Code, is
amended to read as follows:

CHAPTER 252. CABLE ATTACHMENTS TO ELECTRIC COOPERATIVE'S
DISTRIBUTION POLES

SECTION 2. Title 5, Utilities Code, is amended by adding
Chapter 253 to read as follows:

CHAPTER 253. BROADBAND ATTACHMENTS TO ELECTRIC COOPERATIVE'S
DISTRIBUTION POLES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 253.0001. DEFINITIONS. In this chapter:

(1) "Broadband provider" means an entity that provides
broadband service either directly or through an affiliate that uses
the entity's communications facilities, regardless of whether the
entity:

(A) provides additional services in addition to
broadband service; or

(B) uses its facilities in whole or in part to
provide broadband service.

(2) "Broadband service" means Internet service with
the capability of providing:

1 (A) a download speed of 25 megabits per second or
2 faster; and

3 (B) an upload speed of three megabits per second
4 or faster.

5 (3) "Communications space" means the lower usable
6 space on a pole that is typically reserved for low-voltage
7 communications equipment.

8 (4) "Large order application" means an application
9 submitted by a broadband provider under this subchapter requesting
10 access to attach pole attachments to a number of poles:

11 (A) that exceeds the lesser of 300 poles or a
12 number equal to 0.5 percent of the electric cooperative's poles;
13 and

14 (B) that is not more than the lesser of 3,000
15 poles or a number equal to five percent of the electric
16 cooperative's poles.

17 (5) "Pole" has the meaning assigned by Section
18 [252.001](#).

19 (6) "Pole attachment" means an affixture of cables,
20 strands, wires, and associated equipment used in the provision of a
21 broadband provider's services attached to a pole directly or
22 indirectly or placed in a right-of-way owned or controlled by an
23 electric cooperative.

24 (7) "Simple make-ready activities" means work to
25 accommodate a new pole attachment on a pole and includes work where
26 existing attachments in the communications space are moved without
27 any reasonable expectation of:

1 (A) service outage or facility damage;
2 (B) a need to splice an existing communications
3 attachment; or
4 (C) a need to relocate an existing wireless
5 attachment.

6 Sec. 253.0002. APPLICABILITY AND CONSTRUCTION OF CHAPTER.

7 (a) This chapter applies to a pole attachment affixed by a
8 broadband provider to a pole owned and controlled by an electric
9 cooperative. This chapter does not apply to a pole attachment
10 regulated by the Federal Communications Commission under 47 U.S.C.
11 Section 224.

12 (b) This chapter does not abrogate or affect a right or
13 obligation of a party to a pole attachment contract entered into by
14 a broadband provider and an electric cooperative before September
15 1, 2021.

16 (c) A broadband provider that attaches a pole attachment to
17 a pole owned by an electric cooperative under the terms of this
18 chapter is subject to Sections 252.006, 252.007, and 252.008 in the
19 same manner as if the broadband provider were a cable operator.

20 (d) This chapter does not limit a right of a party to a pole
21 attachment contract to request modification, amendment, or renewal
22 of such contract to conform it to the provisions of this chapter.

23 Sec. 253.0003. NO STATE CERTIFICATION; NO REGULATORY

24 AUTHORITY. (a) This chapter does not constitute state
25 certification under 47 U.S.C. Section 224. If a court determines
26 that this chapter constitutes certification under that section,
27 this chapter is not enforceable and has no effect.

1 (b) This chapter may not be construed to subject an electric
2 cooperative to regulation by the Federal Communications Commission
3 under 47 U.S.C. Section 224.

4 (c) This chapter does not authorize a department, agency, or
5 political subdivision of this state to exercise enforcement or
6 regulatory authority over attachments to electric cooperative
7 poles.

8 Sec. 253.0004. CONSTRUCTION OF TERMS AND PHRASES.
9 Technical terms and phrases in this chapter, other than those
10 defined by Section 253.0001, shall be construed using the term's or
11 phrase's usual and customary meanings in the electric and broadband
12 industries.

13 Sec. 253.0005. COST-BASED NON-RECURRING CHARGES.
14 Non-recurring charges authorized by this chapter must be
15 cost-based.

16 SUBCHAPTER B. APPLICATION FOR ACCESS TO POLES

17 Sec. 253.0101. APPLICATION FOR POLE ACCESS. (a) A
18 broadband provider may not access a pole owned by an electric
19 cooperative for the purpose of placing a pole attachment unless the
20 provider applies for that access in accordance with this
21 subchapter.

22 (b) An electric cooperative shall:

23 (1) establish a timeline for a broadband provider to
24 apply for and obtain access to poles for placing a pole attachment
25 under this chapter; and

26 (2) make available an explanation of the information
27 reasonably required for an application for access to poles for

1 placing a pole attachment under this chapter to be considered
2 complete.

3 Sec. 253.0102. REVIEW OF APPLICATION FOR COMPLETENESS. (a)
4 An electric cooperative shall review an application for
5 completeness before the cooperative reviews the application on the
6 merits.

7 (b) An electric cooperative shall notify an applicant
8 whether an application is complete not later than:

9 (1) the 10th business day after the date the
10 cooperative receives the application;

11 (2) the 25th business day after the date the
12 cooperative receives a large order application;

13 (3) the fifth business day after the date the
14 cooperative receives a resubmitted application; or

15 (4) the 20th business day after the date the
16 cooperative receives a resubmitted large order application.

17 Sec. 253.0103. TREATMENT OF MULTIPLE APPLICATIONS BY SAME
18 APPLICANT. For purposes of this chapter, an electric cooperative
19 may treat as a single application for pole access an application the
20 cooperative receives from the same applicant before the 31st day
21 after the cooperative receives that applicant's most recent
22 previous application.

23 Sec. 253.0104. GRANT OR DENIAL OF APPLICATION. (a) Except
24 as provided by Sections 253.0204 and 253.0302, an electric
25 cooperative shall grant or deny an application for pole access
26 under this chapter and provide to the applicant a survey of the
27 poles affected by the application not later than:

1 (1) the 45th day after the date the cooperative
2 receives a complete application; or

3 (2) the 60th day after the date the cooperative
4 receives a complete large order application.

5 (b) An electric cooperative may deny an application for
6 access to a pole under this chapter if:

7 (1) generally applicable safety, reliability, or
8 engineering requirements established for the protection of public
9 health, safety, or welfare prevent granting access; or

10 (2) the pole lacks sufficient capacity.

11 (c) Notwithstanding Subsection (b)(1), an electric
12 cooperative may not deny access to a pole if the capacity, safety,
13 reliability, or engineering consideration may be remedied by
14 rearranging, expanding, replacing, or otherwise safely
15 reengineering the pole or pole attachments through make-ready
16 activities.

17 (d) An electric cooperative's denial of an application to
18 access a pole under this chapter must:

19 (1) be specific;

20 (2) include all relevant evidence and information that
21 supports the denial; and

22 (3) explain how the evidence and information relate to
23 the denial.

24 Sec. 253.0105. DEADLINES NOT APPLICABLE TO CERTAIN
25 APPLICATIONS. (a) An electric cooperative is not required to meet
26 the deadlines under this subchapter for an application for pole
27 access to place pole attachments on more than 3,000 poles or more

1 than 5 percent of the electric cooperative's poles.

2 (b) An electric cooperative may not act under Subsection (a)
3 to delay an application unreasonably and shall negotiate in good
4 faith with the applicant regarding the time required to fulfill the
5 cooperative's duties.

6 SUBCHAPTER C. MAKE-READY ACTIVITIES

7 Sec. 253.0201. DEADLINES FOR MAKE-READY ACTIVITIES. (a)
8 Not later than the 15th day after the date an electric cooperative
9 grants an application, the electric cooperative shall provide to
10 the broadband provider a detailed and itemized estimate of the
11 expected costs of all necessary make-ready activities.

12 (b) An electric cooperative shall complete all make-ready
13 activities in the communications space and send a detailed,
14 itemized final invoice to the broadband provider not later than:

15 (1) the 30th day after the date the electric
16 cooperative receives payment of the estimated make-ready cost from
17 the broadband provider; or

18 (2) for a large order application, the 75th day after
19 the date the electric cooperative receives payment of the estimated
20 make-ready cost from the broadband provider.

21 (c) An electric cooperative shall complete all make-ready
22 activities above the communications space, including pole
23 replacements, and send a detailed, itemized final invoice to the
24 broadband provider not later than:

25 (1) the 90th day after the date the electric
26 cooperative receives payment of the estimated make-ready cost from
27 the broadband provider; or

1 (2) for a large order application, the 135th day after
2 the date the electric cooperative receives payment of the estimated
3 make-ready cost from the broadband provider.

4 Sec. 253.0202. EXTENSION OF MAKE-READY ACTIVITIES
5 DEADLINE. (a) An electric cooperative may extend a deadline under
6 Section 253.0201(b) or (c) for a cause that renders the deadline
7 infeasible. A cooperative that chooses to extend a deadline shall:

8 (1) immediately and in writing notify the broadband
9 provider and each person with an affected existing pole attachment
10 about the delay; and

11 (2) identify the affected poles and provide a detailed
12 explanation of the reason for the delay and an estimated new
13 completion date to the broadband provider and each person with an
14 affected existing pole attachment.

15 (b) An electric cooperative may not extend a deadline under
16 this section for a period longer than is necessary to complete
17 make-ready activities on affected poles.

18 (c) An electric cooperative may not extend a deadline under
19 this section because of a preexisting violation on an affected pole
20 caused by a person other than the broadband provider. The
21 cooperative shall correct a preexisting violation as part of the
22 make-ready process and before the applicable deadline at the cost
23 of the responsible person.

24 (d) An electric cooperative shall resume make-ready
25 activities without discrimination when the cooperative returns to
26 routine operations.

27 Sec. 253.0203. DEADLINES NOT APPLICABLE TO CERTAIN

1 APPLICATIONS. (a) An electric cooperative is not required to meet
2 the deadlines under this subchapter for an application to place
3 pole attachments on more than 3,000 poles or more than five percent
4 of the electric cooperative's poles.

5 (b) An electric cooperative may not act under Subsection (a)
6 to delay an application unreasonably and shall negotiate in good
7 faith with the applicant regarding the time required to fulfill the
8 cooperative's duties.

9 Sec. 253.0204. CONTRACTORS FOR MAKE-READY ACTIVITIES. (a)
10 A broadband provider may hire a contractor approved by the electric
11 cooperative to complete a survey under Section 253.0104 or perform
12 a make-ready activity under this subchapter that is not timely
13 completed by the electric cooperative or a person with an existing
14 pole attachment.

15 (b) The broadband provider shall provide reasonably timely
16 notice to the electric cooperative and each person with an existing
17 pole attachment on an affected pole that the provider intends to
18 hire a contractor as authorized by Subsection (a).

19 (c) The broadband provider shall provide reasonably timely
20 notice to the electric cooperative and each person with an existing
21 pole attachment on an affected pole of the contractor's completion
22 of the make-ready activities.

23 (d) An electric cooperative may not act under Subsection (a)
24 unreasonably to withhold approval of a contractor for purposes of
25 this section.

26 (e) Not later than the 90th day after the date a broadband
27 provider provides notice as provided by Subsection (c), the

1 cooperative or person may inspect the make-ready work.

2 (f) Not later than the 14th day after the date that an
3 electric cooperative or person completes an inspection under
4 Subsection (e), the cooperative or person may notify the broadband
5 provider of any damage or code violations caused by such work. The
6 notice must include specific documentation.

7 (g) The electric cooperative or person that completes an
8 inspection may:

9 (1) remedy any defective make-ready work at the cost
10 of the broadband provider; or

11 (2) require the provider to remedy the defect not
12 later than the 14th day after the provider receives the notice under
13 Subsection (f).

14 Sec. 253.0205. LIST OF APPROVED CONTRACTORS. (a) An
15 electric cooperative shall maintain and make available a list of
16 approved contractors for work above the communications space and
17 pole replacements. An electric cooperative may require any work
18 above the communications space and pole replacements to be
19 performed by contractors on this list, including work performed by
20 a contractor hired under Section 253.0204.

21 (b) An electric cooperative may not act unreasonably to
22 withhold consent for a requested addition of a qualified contractor
23 to the list described by Subsection (a).

24 SUBCHAPTER D. OPTION FOR SIMPLE MAKE-READY ACTIVITIES

25 Sec. 253.0301. OPTION: SIMPLE MAKE-READY. A broadband
26 provider may choose to perform simple make-ready activities using
27 one-touch make-ready procedures in place of the process outlined

1 under Subchapter C.

2 Sec. 253.0302. GRANT OR DENIAL OF APPLICATION: SIMPLE
3 MAKE-READY. (a) A broadband provider that chooses to perform
4 simple make-ready activities as described by Section 253.0301 must
5 indicate that choice and describe the work to be performed as part
6 of the provider's initial application under Subchapter B.

7 (b) An electric cooperative shall grant or deny an
8 application for simple make-ready activities under this section not
9 later than:

10 (1) the 15th day after the date the cooperative
11 receives a complete application; or

12 (2) the 30th day after the date the cooperative
13 receives a complete large order application.

14 Sec. 253.0303. SIMPLE MAKE-READY ACTIVITIES PERFORMED BY
15 CONTRACTOR. (a) If an application for activities under Section
16 253.0302 is granted, a contractor hired by the broadband provider
17 shall perform all necessary surveys.

18 (b) The broadband provider and contractor shall provide a
19 reasonable opportunity for the electric cooperative and a person
20 with an existing pole attachment on an affected pole to be present
21 for any field inspections.

22 (c) A contractor hired by the broadband provider may perform
23 all simple make-ready activities. Not later than the 15th day
24 before the date the contractor begins performing simple make-ready
25 activities, the contractor shall provide to the electric
26 cooperative and a person with an existing pole attachment on an
27 affected pole written notice that:

1 (1) identifies the contractor performing the
2 activities; and

3 (2) sets out reasonable opportunities for the
4 cooperative and person to be present for the activities.

5 Sec. 253.0304. INSPECTION OF WORK AND REMEDIATION OF
6 DAMAGES. (a) A broadband provider immediately shall notify the
7 electric cooperative and a person with an existing pole attachment
8 on an affected pole of any damage to the cooperative's or person's
9 facilities reasonably likely to interrupt the entity's service.

10 (b) An electric cooperative or person that receives notice
11 under Subsection (a) may:

12 (1) complete any remedial work at a reasonable cost to
13 the broadband provider; or

14 (2) require the broadband provider immediately to
15 remedy the damage at the provider's own expense.

16 (c) Not later than the 15th day after the date a broadband
17 provider or contractor hired by the provider completes simple
18 make-ready activities on a pole, the provider shall notify the
19 electric cooperative and a person with an existing pole attachment
20 on the pole of the completed work.

21 (d) Not later than the 90th day after the date an electric
22 cooperative or person receives notice under Subsection (c), the
23 cooperative or person may inspect the work. Not later than the 14th
24 day after the date of the inspection, the cooperative or person may
25 provide notice to the broadband provider, with specific
26 documentation, of any damage or code violations caused by the work.

27 (e) An electric cooperative or person that provides notice

under Subsection (d) may:

(1) remedy any defective make-ready work at the cost of the broadband provider; or

(2) require the provider to remedy the defect not later than the 14th day after the date the provider received the notice under Subsection (d).

SUBCHAPTER E. POLES AND POLE ATTACHMENTS

Sec. 253.0401. DUTIES OF ELECTRIC COOPERATIVE. An electric cooperative shall rearrange, expand, replace, or otherwise safely reengineer any pole at the request of a broadband provider whose application for access to a pole is granted if the change is:

(1) consistent with the National Electrical Safety Code; and

(2) reasonably necessary to safely accommodate a pole attachment.

Sec. 253.0402. RECOVERY OF COSTS FOR REPLACING POLES. (a) If an electric cooperative is required under Section 253.0401 to replace a pole that has been in service for longer than 75 percent and less than 100 percent of the average service life of a pole owned by the cooperative, the cooperative may not require reimbursement of costs associated with replacing the pole from the broadband provider that exceed the cooperative's reasonable costs of advancing the retirement of the existing pole.

(b) The costs under Subsection (a) shall be determined by adding:

(1) the remaining undepreciated value of the existing pole;

1 (2) any interest expense of advancing the replacement
2 of the pole relative to replacing the pole at the end of the average
3 service life of a pole owned by the electric cooperative; and

4 (3) any reasonable incremental cost of increasing the
5 capacity of the replacement pole relative to the installation cost
6 of the average new pole installed by the electric cooperative.

7 (c) If an electric cooperative is required under Section
8 253.0401 to replace a pole that has been in service for the average
9 service life of a pole owned by the electric cooperative or longer,
10 the cooperative may not require reimbursement of costs associated
11 with replacing the pole from the broadband provider that exceed any
12 reasonable incremental cost of increasing the capacity of the
13 replacement pole relative to the installation cost of the average
14 new pole installed by the electric cooperative.

15 (d) An electric cooperative shall determine the average
16 service life of a pole as the period of time during which an
17 electric cooperative's books maintained for tax and accounting
18 purposes consider an average pole to have positive value, after
19 depreciation.

20 Sec. 253.0403. SHARING COSTS OF MODIFICATION TO POLE. (a)
21 The following entities must share proportionately in the costs of
22 modifying a pole under Section 253.0401:

23 (1) the broadband provider who obtains access to a
24 pole through a modification to the pole; and

25 (2) a person who directly benefits from a
26 modification, including:

27 (A) the electric cooperative;

1 (B) a person with an existing attachment on the
2 pole who adds to or modifies the person's attachment after
3 receiving notice of the modification; and

4 (C) a party that makes an attachment to a pole
5 after the completion of a modification that made the attachment
6 possible.

7 (b) This section does not affect the responsibility of the
8 electric cooperative under Sections 253.0401 and 253.0402.

9 Sec. 253.0404. EXTENSION ARMS AND TEMPORARY POLE
10 ATTACHMENTS. (a) A broadband provider may use extension arms and
11 temporary attachments pending the completion of make-ready
12 activities if use of extension arms and temporary attachments
13 complies with the National Electrical Safety Code or other
14 applicable safety codes.

15 (b) An electric cooperative may require a broadband
16 provider to convert a temporary attachment to a permanent
17 attachment not later than the 60th day after the date of the
18 completion of make-ready activities and may require the provider to
19 comply with the National Electrical Safety Code or other
20 applicable safety codes.

21 Sec. 253.0405. POLE ATTACHMENT SPECIFICATIONS. (a) A
22 broadband provider may not be required to meet pole attachment
23 specifications that exceed the specifications in the National
24 Electrical Safety Code, applicable fire safety codes, and any
25 building code or similar code of general applicability for the
26 protection of public health, safety, or welfare a political
27 subdivision adopted before the provider submitted an application to

1 the cooperative.

2 (b) This section may not be construed to expand the power of
3 any local government jurisdiction.

4 Sec. 253.0406. OVERLASHING. (a) A broadband provider with
5 an existing pole attachment may not be required to obtain advance
6 approval from an electric cooperative to overlash or permit a third
7 party to overlash the provider's existing wires.

8 (b) An electric cooperative may require a broadband
9 provider to provide notice before and after overlashing. The
10 cooperative may not require notice before overlashing to be
11 provided before the 15th day before the date of the overlashing
12 activities.

13 (c) An electric cooperative may require a broadband
14 provider to modify an overlashing proposal to address specific and
15 identified capacity, safety, reliability, or engineering issues.
16 The cooperative may not prohibit the provider from overlashing
17 because of a preexisting violation caused by another person.

18 (d) An electric cooperative may require a broadband
19 provider to remedy damage or code violations caused by overlashing
20 if the electric cooperative:

21 (1) inspects the overlash not later than the 90th day
22 after the date the cooperative receives notice that an overlash is
23 complete; and

24 (2) informs the provider of the damage or violation
25 not later than the 14th day after the date of the inspection.

26 Sec. 253.0407. USE OF POLE ATTACHMENTS FOR MULTIPLE
27 SERVICES. A broadband provider that attaches a pole attachment

under this chapter may use the attachment for any service delivered over the provider's facilities, including cable service.

SUBCHAPTER F. POLE ATTACHMENT CONTRACTS

Sec. 253.0501. POLE ATTACHMENT CONTRACTS WITH BROADBAND PROVIDERS. (a) A broadband provider and an electric cooperative shall establish the rates, terms, and conditions for pole attachments by a written pole attachment contract executed by both parties. The rates, terms, and conditions for attachments by a broadband provider on an electric cooperative's poles must be just, reasonable, and nondiscriminatory.

(b) In determining whether rates, terms, and conditions are just and reasonable, the following factors must be considered:

(1) the interests of and benefits to the consumers and potential consumers of the electric cooperative's services;

(2) the interests of and benefits to the subscribers and potential subscribers to broadband services offered through the pole attachments;

(3) the interests of and benefits to third parties from the availability of broadband services offered through the pole attachments;

(4) compliance with the specifications in the National Electrical Safety Code, applicable fire safety codes, and any building code or similar code of general applicability for the protection of public health, safety, or welfare applicable to the pole attachments; and

(5) the maintenance and reliability of both electric distribution and broadband services.

1 (c) A broadband provider and an electric cooperative shall
2 negotiate a pole attachment contract and any amendment,
3 modification, or renewal thereof in good faith.

4 (d) A request to negotiate a new pole attachment contract or
5 to amend, modify, or renew a contract pertaining to pole
6 attachments by a broadband provider or an electric cooperative must
7 be made in writing.

8 Sec. 253.0502. CONTRACT NEGOTIATIONS AND MEDIATION. (a)
9 If a broadband provider and an electric cooperative are unable to
10 agree to a new pole attachment contract before the expiration date
11 of an existing contract, the rates, terms, and conditions of the
12 existing contract and the terms and conditions of the electric
13 cooperative's application and permitting processes remain in
14 force:

15 (1) during the 90-day negotiation period described by
16 Subsection (b) and during the period of any agreed extension;

17 (2) during the 60-day mediation period described by
18 Subsection (b) and during the period of any agreed extension; and

19 (3) pending final disposition of any litigation
20 commenced under Subsection (c).

21 (b) If a broadband provider and an electric cooperative are
22 unable to agree to a new pole attachment contract before the 91st
23 day after the expiration date of an existing contract, and are
24 unable to agree to an extension of the negotiation period for a
25 certain number of days, the broadband provider and electric
26 cooperative shall attempt to resolve any disagreement over the
27 rates, terms, or conditions by submitting the contract negotiations

1 to a mediation process. The mediation process may not extend later
2 than the 60th day after the end of the initial 90-day negotiation
3 period and any agreed extension of that period unless the broadband
4 provider and electric cooperative agree to an extension of the
5 mediation period for a certain number of days. The mediation
6 process must be conducted in a county in which the electric
7 cooperative has distribution poles. The broadband provider and
8 electric cooperative must share equally the expenses for the
9 mediator.

10 (c) If the mediation process under Subsection (b) does not
11 resolve the disagreement over the rates, terms, or conditions of a
12 new pole attachment agreement, or if a dispute arises under the
13 terms of an existing agreement or the requirements of this chapter,
14 the broadband provider or electric cooperative may file suit in a
15 district court to resolve the disagreement or dispute, including to
16 enforce the terms of the agreement or of this chapter.

17 SECTION 3. This Act takes effect September 1, 2021.