

HB 1198 -- MUNICIPAL UTILITY POLES

SPONSOR: Funderburk

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Utilities by a vote of 17 to 2.

This bill revises the term "pole attachment" as it applies to the Uniform Wireless Communications Infrastructure Deployment Act 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. Currently, the term 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. A municipal utility or municipality may only deny an attaching entity access to the utility's poles on a nondiscriminatory basis only if there is insufficient capacity or for reasons of safety and reliability and if the attaching entity will not resolve the issue.

In the event of a dispute between the parties, either party may also bring an action for review in any court of competent jurisdiction. Currently, either party may seek review 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. Nothing can deny any party the right to a hearing before the court.

The attaching entity may proceed with its attachments during the pendency of the dispute at a rental rate of not more than the current established rate. The attaching entity must comply with applicable and reasonable engineering and safety 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.

These provisions cannot supersede existing pole attachment agreements established prior to the effective date of the bill.

PROPOSERS: Supporters say that this bill is needed to correct provisions in HB 331 and HB 345 passed in 2013 and to prevent adverse ruling on single subject, clear title, and original purpose doctrines in the Missouri Supreme Court. The bill will generally allow municipalities to increase fees for pole attachments and provides exceptions guaranteeing that cities retain authority to regulate health and safety issues and issues involving capacity.

Testifying for the bill were Representative Funderburk; Missouri Cable Telecommunications Association; Century Link; AT&T; Verizon Communications; and Missouri Telecommunications Industry Association.

OPPONENTS: Opponents say that the bill violates principles of local control and the rule against unfunded mandates. Federal formulas should not be used to set mandates for municipalities and electrical cooperatives since federal law exempts these entities and is not designed to regulate pricing for them. Cities and electrical cooperatives should retain authority to enter into contractual agreements regarding pole use and maintenance.

Testifying in opposition to the bill were Missouri Association of Municipal Utilities; Springfield Municipal Utilities; Missouri Municipal League; and Rick McKinley representing lineman interests.