

HOUSE BILL No. 2109

By Committee on Energy, Utilities and Telecommunications

Requested by Representative Hoheisel

1-28

1 AN ACT concerning law enforcement; relating to public utilities;
2 authorizing law enforcement agencies to attach and operate law
3 enforcement equipment on utility poles in the public right-of-way;
4 exempting public utilities from civil liability relating thereto.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

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

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

15 (2) specify the nature of the law enforcement equipment to be
16 attached, including, but not limited to, the size and weight of the
17 equipment, where on a utility pole the law enforcement equipment will be
18 installed, the power supply required and whether electric service is needed
19 and any other provisions relating to the safe installation and use of the
20 equipment and the utility pole;

21 (3) establish the utility's safety and security specifications for
22 attaching, accessing, operating, maintaining or removing the law
23 enforcement equipment;

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

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

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

1 (c) Pursuant to a pole attachment agreement, a public utility may
2 assess reasonable fees or charges to recover the actual costs incurred by
3 the public utility for attaching, accessing, operating, maintaining or
4 removing the law enforcement equipment. A public utility shall not charge
5 a law enforcement agency for the use of the space required for the
6 attachment of such law enforcement equipment. If the law enforcement
7 equipment requires electricity to be supplied by the public utility, such
8 public utility may charge the law enforcement agency for the electric
9 service. Nothing in this section shall prohibit a public utility from charging
10 any other person or entity for the space required to attach other equipment
11 on utility poles.

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

24 (e) Any public utility that enters into a pole attachment agreement
25 with a law enforcement agency pursuant to this section shall be considered
26 an instrumentality of a governmental entity for the purposes of the Kansas
27 tort claims act, K.S.A. 75-6101 et seq., and amendments thereto, and
28 entitled to any limitations on liability therein. The law enforcement agency
29 shall indemnify, defend and hold harmless the public utility for reasonable
30 costs and expenses, including attorney fees, that are associated with any
31 and all:

32 (1) Claims or court actions arising out of the attachment, access,
33 operation, maintenance or removal of law enforcement equipment or law
34 enforcement activities conducted pursuant to such agreement; and

35 (2) damages to utility systems or infrastructure caused by the law
36 enforcement equipment or attachment, access, operation, maintenance or
37 removal of such equipment, except that if any such damage to the utility's
38 systems or infrastructure is determined to have been caused solely by the
39 public utility, the law enforcement agency shall not be liable for such
40 damages.

41 (f) As used in this section:

42 (1) "Law enforcement agency" means any public agency that
43 employs law enforcement personnel as defined in K.S.A. 60-473, and

1 amendments thereto, or the federal bureau of investigation.

2 (2) "Public right-of-way" means only the area of real property in
3 which a city, county or the state has a dedicated or acquired public right-
4 of-way interest in the real property. "Public right-of-way" includes the area
5 on, below or above the present and future streets, alleys, avenues, roads,
6 highways, parkways or boulevards dedicated or acquired as right-of-way.
7 "Public right-of-way" does not include a public or private easement that
8 has not been designated a public right-of-way.

9 (3) "Public utility" means any public utility as defined in K.S.A. 66-
10 104, and amendments thereto, municipally owned or operated public
11 utility or electric cooperative public utility.

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

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