

**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 *{exempting public utilities from civil liability relating to the*  
6 *attachment, access, operation, maintenance or removal of law*  
7 *enforcement equipment on any utility pole or other structure that is*  
8 *owned or operated by the public utility}.*  
9

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

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

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

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

25 ~~(3) establish the utility's safety and security specifications for~~  
26 ~~attaching, accessing, operating, maintaining or removing the law~~  
27 ~~enforcement equipment;~~

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

32 ~~(5) consistent with the provisions of subsection (b), require the law~~  
33 ~~enforcement agency to indemnify, defend and hold harmless the public~~

1 ~~utility from and against all liability relating to the public utility's actions to~~  
2 ~~enter into a pole attachment agreement pursuant to this section.~~

3 ~~(b) A pole attachment agreement may contain other terms, conditions~~  
4 ~~or provisions that are reasonable or necessary to facilitate the pole~~  
5 ~~attachment agreement or to protect the public utility's systems and~~  
6 ~~infrastructure.~~

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

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

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

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

41 ~~(2) damages to utility systems or infrastructure caused by the law~~  
42 ~~enforcement equipment or attachment, access, operation, maintenance or~~  
43 ~~removal of such equipment, except that if any such damage to the utility's~~

1 ~~systems or infrastructure is determined to have been caused solely by the~~  
2 ~~public utility, the law enforcement agency shall not be liable for such~~  
3 ~~damages.~~

4 ~~(f) As used in this section:~~

5 ~~(1) "Law enforcement agency" means any public agency that~~  
6 ~~employs law enforcement personnel as defined in K.S.A. 60-473, and~~  
7 ~~amendments thereto, or the federal bureau of investigation.~~

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

15 ~~(3) "Public utility" means any public utility as defined in K.S.A. 66-~~  
16 ~~104, and amendments thereto, municipally owned or operated public~~  
17 ~~utility or electric cooperative public utility.~~

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

21 ~~**(g) *The provisions of this section shall expire on July 1, 2027 {Any***~~  
22 ~~***public utility that authorizes a law enforcement agency or enters into an***~~  
23 ~~***agreement with a law enforcement agency to authorize the law***~~  
24 ~~***enforcement agency to attach, access, operate, maintain or remove law***~~  
25 ~~***enforcement equipment on any utility pole or other structure that is***~~  
26 ~~***owned or operated by the public utility shall be immune from liability in***~~  
27 ~~***any civil action that is based upon or arises from such authorization or***~~  
28 ~~***agreement.***~~

29 ~~(b) As used in this section:~~

30 ~~(1) "Law enforcement agency" means a city police department, a~~  
31 ~~county sheriff's department or a county police department.~~

32 ~~(2) "Public utility" means any public utility as defined in K.S.A. 66-~~  
33 ~~104, and amendments thereto, municipally owned or operated public~~  
34 ~~utility or electric cooperative public utility}.~~

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