

A red lightning bolt graphic pointing towards the title.

Opposition Analysis

Texas Legislative Proposals HB 3448, HB 5604, and SB 1251

Overview

The intention behind HB 5604, HB 3448, and SB 1251 appears to be the expansion of the Public Utility Commission's (PUC) authority over electric cooperatives (co-ops), specifically regarding pole attachments and right-of-way (ROW) access. These bills would shift certain regulatory powers from the Texas Utilities Code (TUC) to the PUC, aligning co-op requirements more closely with those applicable to investor-owned utilities and Federal Communications Commission (FCC) standards.

Key Concerns and Proposed Changes: Section 254.002

FCC Rate Adoption for Co-ops



The legislation seems to propose applying FCC rate formulas to electric co-ops, effectively mandating a one-size-fits-all approach. As member-owned, non-profit entities, co-ops should retain the right to set rental rates for poles owned by their members. Mandating FCC rates transfers the financial burden from commercial broadband providers to co-op members.



Differentiation Between Utility Types

- **Investor-owned utilities:** Operate for profit.
- **Electric cooperatives:** Operate on a non-profit, member-owned model. Imposing the same regulatory model on both is inequitable and disregards their structural and financial differences.



Impact on Existing Agreements

If a pole attachment rate has already been negotiated and formalized through an executed agreement, that rate should stand. However, Section 254.003 appears to allow communications providers to contest those rates through the PUC, opening the door to forced rate reductions based on FCC methodologies. This could lead to widespread devaluation of existing agreements.



Right-of-Way Access and Easements

The proposal allows communications companies to access co-op easements. This effectively grants third-party access to land without landowner consent. No other industry grants such access without specific permission.

- **Landowner Rights:** Private property owners should have the exclusive right to approve access to their land.
- **Legal Risks:** Unauthorized use of private easements could lead to legal liability and landowner disputes.
- **Enforcement Issues:** Providers frequently violate property norms, leading to safety concerns, property damage, and reputational risks for co-ops.



Cost-Sharing and Make-Ready Work

HB 5604 proposes that the PUC set maximum allowable charges for make-ready work and related costs. This removes co-ops' ability to fully recover the actual costs of preparing poles for attachment, potentially forcing them to absorb unreimbursed expenses—costs that would ultimately be passed on to their member-owners.

Section 254.003 – PUC Authority Over Rates



PUC Dispute Resolution Over Existing Rates

Even if a negotiated pole attachment agreement is in place, the legislation allows the communications provider to challenge the rate through a contested case before the PUC. This could invalidate mutually agreed-upon rates and force co-ops to conform to lower FCC-calculated rates, in some cases reducing rates by up to 75%.



Financial and Safety Impacts

- **Cost Shifting:** Co-ops would be forced to absorb more costs, while for-profit communications providers continue to profit from access.
- **Safety Risks:** Communications lines are often the lowest on the pole and most susceptible to clearance violations and physical damage. Many incidents involving low-hanging lines and traffic have been traced to communications attachments, not electric distribution.
- **Pole Loading and Design Limitations:** Poles were not originally engineered to support multiple third-party attachments. Upgrades and reinforcements to meet loading and clearance requirements will financially burden co-op members.



Weather and Sag Considerations

Co-ops have documented numerous instances in which temperature shifts caused variable line sag, turning previously safe installations into hazards overnight. These issues typically stem from non-electric (communications) attachments.

Section 254.003 – Rate and Fee Schedule (HB 5604)

The bill proposes a standardized rate and fee schedule for all aspects of pole attachments, including make-ready work and structural assessments. This precludes co-ops from recovering actual costs on a case-by-case basis and undermines local control over co-op infrastructure and budgets.

Conclusion

These legislative proposals strip electric cooperatives of autonomy, shift private-sector costs to non-profit, member-owned organizations, and risk creating safety and legal complications. They also erode private property rights by allowing third-party access through co-op easements without proper consent.

Recommendation

Strongly oppose HB 5604, HB 3448, and SB 1251. Support local control, protect member equity, and ensure safety and fairness in infrastructure access.