Bond Case Briefs

Municipal Finance Law Since 1971

Five States Advance Bills Regulating Pole Attachment Rates.

This legislative session we're witnessing similar types of bills that aim to level the playing field between pole attaching entities and pole owners—including cooperatives and municipalities—by capping rates and requiring equal treatment among attachers. We summarize five different states' pending bills and recent enactments below.

Arizona

In Arizona, the governor signed into law House Bill No. 2036, which amends Ariz. Rev. Stat. Ann. § 10-2085, governing electric cooperatives' provision of broadband service. Specifically, the bill aims to level the playing field by requiring that if a cooperative starts providing broadband, the same pole attachment fees charged to unaffiliated providers "be equal to" the fees charged to affiliates on the same pole.

Florida

The Florida Legislature recently passed two bills that are now awaiting the governor's signature, Senate Bill No. 1944 and House Bill No. 1239 (and companion Senate Bill No. 1592, which has passed in the Senate).

Senate Bill No. 1944 would give the Florida Public Service Commission (PSC) authority to regulate pole attachments and mediate disputes. Specifically, the proposed law would require the PSC to adopt rules, regulate and enforce rates, terms, and conditions for pole attachments when parties are unable to reach an agreement; and to regulate safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles and pole attachments.

Further, the proposed law would direct the PSC to set cost-based rates, terms and conditions using Federal Communications Commission (FCC) formula orders "unless a pole owner or attaching entity establishes an alternative cost is appropriate and in the public interest." The PSC would be required to adopt procedural rules by January 1, 2022.

House Bill No. 1239, which supports the expansion of broadband internet service to consumers without access to high-speed internet service, would create a program to award grants to applicants seeking to install or deploy infrastructure that expands broadband service to unserved areas. The bill would require municipal electric utilities to offer broadband service providers at discounted rates for any new pole attachment necessary to make broadband service available to unserved or underserved consumers, through July 1, 2024. This bill would also prohibit municipal electric utilities from raising current pole attachment rates for broadband service providers until July 31, 2022.

Indiana

The governor of Indiana recently signed into law House Bill No. 1164, which is set to take effect on

July 1, 2021. This new law establishes a formula for determining nondiscriminatory, just, and reasonable pole attachment rental rates that electric service cooperative and municipal pole owners can charge cable operators attached to their poles.

The new law also sets forth rights and duties of pole owners and attaching entities with respect to unauthorized pole attachments (including the fee pole owners can charge for such [$500] absent a contract between the parties), and pole attachment transfers and relocations. Finally, the bill also provides that a communications service provider may access public rights-of-way under the control of a county or municipality to the same extent as a public utility. The new law will not control if an existing contract provides differently, unless the parties otherwise agree.

Nebraska

Legislative Bill No. 455, the "Broadband Pole Attachment Act," would provide access to Nebraska municipalities' and cooperatives' electric utility poles on terms that are similar to and in some cases better than FCC regulations. The bill also adopts FCC rates, terms and conditions, includes a 90-day make-ready timeframe, and bans pole owners from imposing construction standards that exceed the National Electrical Safety Code (NESC). This bill is still pending in the Nebraska Legislature.

Oklahoma

In Oklahoma, there are three pending bills (House Bill Nos. 1122 and 1923, and Senate Bill No. 621, which are at various stages of bill progression) that would cap the rates that electric cooperatives may charge for pole attachments at $20 per pole per year, and prevent electric cooperatives from increasing such rate beyond what is permitted by the FCC rules and regulations adopted pursuant to 47 U.S.C. § 224(d). Further, these bills would require electric cooperative pole owners to pay for attachment relocations that they cause and would prohibit electric cooperatives from offering cable television or video services without first obtaining a franchise from the city or town. If passed and signed into law, these bills would take effect on November 1, 2021.

These are just a few of the bills flowing through a busy legislative session. We are seeing a clear trend of states capping municipality and cooperative pole attachment rates, tying rate increases to the FCC rules and regulations, as well as providing additional uniformity in treatment of communications providers and pole owners' affiliates providing competing communications services. We are continuing to monitor these bills and related bills this session and will update this post as necessary.

Davis Wright Tremaine LLP – Soraya Mohamed

May 11 2021

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com