

SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2589

As Amended by House Committee on Energy,
Utilities and Telecommunications

Brief*

HB 2589, as amended, would authorize public utilities to enter into pole attachment agreements to allow law enforcement agencies to install equipment such as video cameras to utility poles in the public right-of-way. The bill would also exempt the public utilities from civil liability.

The bill would require the pole attachment agreements to:

- Identify the utility poles authorized for attachment;
- Specify the nature and placement of the equipment to be attached, including whether electric service is needed;
- Establish safety and security specifications;
- Provide the public utility the sole discretion to require that the work be done by the public utility or a qualified contractor; and
- Require the law enforcement agency to indemnify, defend, and hold harmless the public utility from liability.

The bill would also permit the agreements to include other terms, conditions, or provisions as are reasonable or necessary.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would permit the public utility to issue charges to recover costs for attaching, accessing, operating, maintaining, removing, or providing power to the law enforcement equipment. The utility may not otherwise charge the agency for the use of space, but the bill would not preclude the utility from charging other entities for space to attach other equipment.

The bill would make the law enforcement agency responsible for compliance with all laws, rules, regulations, and ordinances, and for determining the need for and securing court orders.

Public utilities that enter into pole attachment agreements would be considered an instrumentality of a governmental entity for the purposes of the Kansas Tort Claims Act and would be entitled to liability limitations therein. The bill would require the law enforcement agency to indemnify, defend, and hold harmless the utility for any and all reasonable costs and expenses, including, but not limited to, attorney fees that are associated with any and all:

- Claims or court actions;
 - Including, but not limited to, incursion on private property to access the public right-of-way; and
- Damages to utility systems or infrastructure caused by law enforcement equipment or action;
 - Except if damage has been caused solely by the public utility.

The bill would define relevant terms, which include “law enforcement agency” as a public agency that employs law enforcement officers or the Federal Bureau of Investigation, “public right-of-way,” “public utility” as in law regulating utilities, and “utility pole.”

Background

The bill was introduced by the House Committee on Energy, Utilities and Telecommunications at the request of Representative Delperdang.

House Committee on Energy, Utilities and Telecommunications

In the House Committee hearing on February 8, 2024, a representative of the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, and the Kansas Sheriffs Association collectively, followed by the Chief of Police from the city of Wichita, provided **proponent** testimony. The proponents stated that pole cameras are an often-utilized strategic asset to law enforcement and discussed examples of license plate recognition (LPR) technology being used to solve missing person and homicide investigations. They emphasized the privacy protections and data security measures that are already in place for surveillance technology. Conferees also stated that utilities have historically allowed law enforcement to attach cameras to utility poles but have moved away from the practice due to liability concerns.

Neutral testimony was provided by representatives of Kansas Municipal Utilities and of the Kansas Department of Transportation (KDOT) who suggested language could be added to the bill to further define terms such as “equipment,” further clarify liability, or mention the existing permit process.

Written-only neutral testimony was provided by representatives of Kansas Electric Cooperatives and Evergy.

Written-only opponent testimony was provided by representatives of the International Brotherhood of Electrical Workers (IBEW) Local Unions 53, 304, 1464, and 1523, citing concerns with surveillance and public perception of their members.

No other testimony was provided.

The House Committee amended the bill to:

- Clarify and make consistent that the bill would apply to the attachment, access, operation, maintenance, or removal of law enforcement equipment;
- Provide detail for the contents of a pole attachment agreement;
- Permit the agreements to include other terms as necessary;
- Permit the utility to charge for electric service for attached devices;
- Make the law enforcement agency responsible for compliance with all laws, rules, regulations, and ordinances, and for determining the need for and securing court orders;
- Clarify the law enforcement agency must indemnify, defend, and hold harmless the public utility for any and all reasonable costs and expenses, including, but not limited to, attorney fees, that are associated with any and all:
 - Claims or court actions, including, but not limited to, incursion on private property to access the public right-of-way; and
 - Damages to utility systems or infrastructure caused by law enforcement equipment or action, except if damage has been caused solely by the utility;
- Clarify that “public right-of-way” does not include a public or private easement that has not been designated as a public right-of-way; and

- Make technical amendments.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Kansas Highway Patrol and the Kansas Corporation Commission state the enactment of the bill would not have a fiscal effect for the state.

The League of Kansas Municipalities indicates the enactment of the bill would have a fiscal effect on cities for utility pole attachment agreements; however, the fiscal effect of the agreements cannot be estimated. The Kansas Association of Counties indicates the enactment of the bill would have a fiscal effect on counties: if liability concerns arose, the liability could be borne by the counties. Additionally, there could be costs for equipment and equipment mounting, which would affect county law enforcement agencies.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Public utilities; utility pole; pole attachment agreement; law enforcement; liability