

SUBJECT: Authorizing electric cooperatives to offer broadband on current easements

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Phelan, Deshotel, Guerra, Harless, Holland, Hunter, P. King,
Parker, Raymond, Smithee, Springer

0 nays

2 absent — Hernandez, E. Rodriguez

SENATE VOTE: On final passage, April 4 — 30-1 (Campbell)

WITNESSES: *On House companion bill, HB 1446:*

For — William Hetherington, Bandera Electric Cooperative; Jerry Hollingsworth, Bandera ISD; David Kocurek, City of Palacios; Darren Schauer, Guadalupe Valley Electric Cooperative, Inc.; Robert Fiorini and Christina Lopez, Palacios ISD; Eric Craven and Michael Williams, Texas Electric Cooperatives; John O'Brien, Van Vleck ISD; Tim Gescheidle; John Wolters; (*Registered but did not testify*: Kara Mayfield, Association of Rural Communities in Texas; Jason Winborn, AT&T; William Holford, Bluebonnet Electric Cooperative; Bill Kelly, City of Houston Mayor's Office; Glen Smith, City of Palacios; Priscilla Camacho, Dallas Regional Chamber; Dana Harris, Greater Austin Chamber of Commerce; Brian Cunningham, Jackson Electric Cooperative; Bill Lauderback, Lower Colorado River Authority; Andrew Wise, Microsoft; John McCord, National Federation of Independent Business; Sharon Estraca, Palacios ISD; David Edmonson, TechNet; Jeremy Fuchs, Texas and Southwestern Cattle Raisers Association; Ned Munoz, Texas Association of Builders; Jennifer Bergland, Texas Computer Education Association; Dan Finch, Texas Medical Association; Monty Wynn, Texas Municipal League; Ryan Skrobarczyk, Texas Nursery and Landscape Association; Shana Joyce, Texas Oil and Gas Association; Russell Keene, Texas Public Power Association; Deborah Giles, Texas Technology Consortium and Center for Technology)

Against — None

On — Walt Baum, Texas Cable Association; Lynden Kamerman, Texas Telephone Association; (*Registered but did not testify*: Diana Zake, Public Utility Commission)

BACKGROUND: Interested parties have noted that many Texans in rural and isolated areas of the state lack access to high-speed internet. It has been suggested that authorizing Texas electric cooperatives to use their existing easements to offer broadband service could help expand internet access in those areas.

DIGEST: CSSB 14 would authorize an electric cooperative or an affiliate to construct, operate, and maintain fiber optic cables and other facilities for providing broadband service.

Electric cooperatives and affiliates would be allowed to install fiber optic cables over, under, across, on, or along real property, personal property, rights-of-way easements, and other property rights that were owned, held, or used by the cooperative. Easements used to provide electricity or other services could be used to provide broadband.

The bill would define "broadband service" as internet service with the capability of providing a download speed of 25 megabits per second or faster and an upload speed of three megabits per second or faster.

Requirements. Rates charged by an electric cooperative or affiliate for attaching broadband facilities to the cooperative's poles could not be less than the rates the cooperative charged other broadband service providers for pole attachment. Terms and conditions applicable to a cooperative regarding pole attachment also would have to be comparable to the terms and conditions the cooperative applied to other broadband service providers. These restrictions would not limit or restrict a cooperative from installing fiber optic cables in the supply space of the cooperative's poles.

Rates charged by an electric cooperative or affiliate for the provision of electric service could not include any broadband service costs or any other

costs not related to the provision of electric service. The bill would require cooperatives and affiliates that provided broadband service to maintain separate books and records of broadband service operations and the broadband service operations of any subsidiary.

Notice requirements. By the 60th day before an electric cooperative or affiliate began construction of fiber optic cables and other facilities for providing broadband service in an easement or other property, the cooperative or affiliate would be required to provide written notice to the owners of property in which the easement or property right was located. The notice would have to specify the intent to use the easement or other property right for broadband service and whether any new fiber optic cables used for service would be located above or below ground in the easement or other property right.

The notice would have to be sent by first class mail to the last known address of each person in whose name the property was listed on the most recent tax roll of each county authorized to levy property taxes against the property. For 60 days after the notice was mailed, a property owner would be entitled to submit a written protest to the cooperative against the intended use of the easement. If a cooperative or affiliate received a timely written protest, the cooperative or affiliate could not use the easement or other property right for broadband services unless the protestor later agreed in writing to that use or that use was authorized by law.

If an easement or other property right included a provision authorizing the use of the easement or property right for broadband service, the cooperative would not have to provide this notice and property owners would not be entitled to protest.

Limits of provisions. CSSB 14 could not be construed to conflict with or limit existing requirements for the implementation of broadband over power lines. The bill also would not limit or prohibit an electric cooperative's use of the cooperative's fiber optic cables or other facilities to operate and maintain the cooperative's electric transmission or distribution system or to provide electric service.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.