

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1619 Session of 2023

INTRODUCED BY RYNCAVAGE, KAUFER, MARSHALL, BOROWSKI, PICKETT, KENYATTA, PROBST, WATRO, CABELL, FLICK, CIRESI, GREINER, MAJOR, KUTZ, NEILSON, GAYDOS, McANDREW, STENDER, BURGOS, MULLINS, HADDOCK, STAMBAUGH, SHUSTERMAN, STEELE AND COOPER, AUGUST 15, 2023

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, OCTOBER 30, 2023

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, in powers and duties, providing for
3 double utility poles.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 66 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 531. Double utility poles.

9 (a) Declaration of purpose.--The General Assembly finds and
10 declares as follows:

11 (1) The Commonwealth recognizes the temporary use of
12 double utility poles as an operational necessity, but
13 disfavors the long-term use OR RETENTION of double utility <--
14 poles on public rights-of-way due to concerns regarding
15 public safety, the efficient use of public easements,
16 ratepayer, subscriber or taxpayer expense and streetscape

1 aesthetics.

2 (2) The Commonwealth, through the commission, has
3 exercised reverse preemption over ~~jurisdictional~~ THE RATES, <--
4 TERMS AND CONDITIONS OF THE pole attachments ON A PUBLIC <--
5 UTILITY'S INFRASTRUCTURE in accordance with 47 U.S.C. § 224
6 (relating to pole attachments) as implemented by the
7 commission under 52 Pa. Code Ch. 77 (relating to pole
8 attachments).

9 (3) The migration of attached electric, telephone, cable
10 or other infrastructure from jurisdictional damaged or
11 outmoded utility poles to newly installed replacement utility
12 poles is within the commission's jurisdiction.

13 (4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN <--
14 ATTACHED INFRASTRUCTURE OWNER THAT CHOOSES TO ATTACH
15 INFRASTRUCTURE TO A PUBLIC UTILITY-OWNED POLE IS WITHIN THE
16 COMMISSIONS JURISDICTION FOR PURPOSES OF SUBSECTION (B).

17 (b) Rulemaking.--The commission shall commence rulemaking to
18 amend 52 Pa. Code Ch. 77 to provide support for the
19 coordination and compensation for pole attachment relocation and
20 removal OF DAMAGED OR UNUSED UTILITY POLES, OR REMNANTS THEREOF, <--
21 UNDER THE CONTROL OF ENTITIES UNDER COMMISSION JURISDICTION and
22 establish procedures for compensation, indemnification and
23 expeditious removal of an abandoned pole attachment. In
24 commencing the rulemaking, the commission shall, at a minimum,
25 consider the following:

26 (1) The duration, place and manner of acceptable use of
27 a double utility pole.

28 ~~(2) A requirement that a third party utility pole <--~~
29 ~~attacher register with the commission annually and provide~~
30 ~~and maintain current contact information for a responsible~~

~~point of contact and legal service agent in each service territory of a utility where the third party utility pole attacher has facilities.~~

(2) A REQUIREMENT THAT AN ATTACHED INFRASTRUCTURE OWNER <-- REGISTER WITH THE COMMISSION ANNUALLY AND PROVIDE AND MAINTAIN CURRENT CONTACT INFORMATION FOR A RESPONSIBLE POINT OF CONTACT AND LEGAL SERVICE AGENT IN EACH PUBLIC UTILITY POLE OWNER'S SERVICE TERRITORY AND IDENTIFY THE COUNTY, CITY, TOWNSHIP AND BOROUGH WHERE THE ATTACHED INFRASTRUCTURE OWNER HAS ATTACHED FACILITIES ON A PUBLIC UTILITY-OWNED POLE.

(3) A procedure to allow a PUBLIC UTILITY pole owner to <-- provide reasonable notice to an attached infrastructure owner of the requirement to migrate facilities to a newly installed replacement utility pole.

(4) The establishment of a presumptively reasonable period for an attached infrastructure owner to migrate facilities to a newly installed replacement utility pole.

(5) A procedure for a PUBLIC UTILITY pole owner and the <-- pole owner's contractor to be compensated or indemnified for time, material costs and lost opportunity costs, including enforcement procedures if a third party utility pole attacher <-- AN ATTACHED INFRASTRUCTURE OWNER fails to act or remit <-- payment in a timely manner, relating to removing and reattaching infrastructure not migrated:

(i) after the presumptively reasonable period has elapsed; or

(ii) in accordance with an order by a governing body that is outside the scope of, or in addition to, a contractual right of indemnification that the pole owner may have via license or joint use agreement.

1 (6) A procedure for a PUBLIC UTILITY pole owner to <--
2 determine that attached facilities have been abandoned and
3 provisions for compensation of the PUBLIC UTILITY pole owner <--
4 for the time, material costs and lost opportunity costs
5 relating to the transfer or removal of the abandoned
6 facilities of a third party utility pole attacher AN ATTACHED <--
7 INFRASTRUCTURE OWNER due to necessity or in accordance with
8 an order by a governing body.

9 (7) Authorizing a PUBLIC UTILITY pole owner to require a <--
10 surety bond from a third party utility pole attacher AN <--
11 ATTACHED INFRASTRUCTURE OWNER to reimburse the PUBLIC UTILITY <--
12 pole owner for expenses incurred due to any of the following:

13 (i) The relocation of the third party utility pole <--
14 attacher's ATTACHED INFRASTRUCTURE OWNER'S facilities. <--

15 (ii) The removal of the third party utility pole <--
16 attacher's ATTACHED INFRASTRUCTURE OWNER'S facilities. <--

17 (iii) The recertification of a pre-existing
18 violation caused by the third party utility pole attacher <--
19 ATTACHED INFRASTRUCTURE OWNER to accommodate a new <--
20 attachment.

21 (8) Supporting the expeditious removal of a double
22 utility pole after the removal of all attached
23 infrastructure.

24 (9) AUTHORIZING THE IMPOSITION OF CIVIL PENALTIES, IN <--
25 ACCORDANCE WITH 66 PA.C.S. § 3301(A) (RELATING TO CIVIL
26 PENALTIES FOR VIOLATIONS), AGAINST ATTACHED INFRASTRUCTURE
27 OWNERS THAT VIOLATE THE COMMISSION'S FINAL-FORM REGULATIONS
28 AMENDING 52 PA. CODE CH. 77 (RELATING TO POLE ATTACHMENTS) TO
29 IMPLEMENT THIS SECTION.

30 (c) Rulemaking procedures.--No later than 90 days from the

1 effective date of this subsection, the commission shall commence
2 an advanced notice of proposed rulemaking. No later than 180
3 days from the date of commencement of the advanced notice of
4 proposed rulemaking, the commission shall submit a notice of
5 proposed rulemaking to the Legislative Reference Bureau for
6 publication in the next available issue of the Pennsylvania
7 Bulletin in accordance with the act of July 31, 1968 (P.L.769,
8 No.240), referred to as the Commonwealth Documents Law. No later
9 than 18 months after publication of the notice of proposed
10 rulemaking, the commission shall seek approval of the final-form
11 regulations in accordance with the act of October 15, 1980
12 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and
13 the act of June 25, 1982 (P.L.633, No.181), known as the
14 Regulatory Review Act.

15 (d) Nonrecoverable costs.--Costs incurred by a utility under
16 this section shall not be recoverable from ratepayers.

17 ~~(e) Definitions. As used in this section, the term "double~~ <--
18 ~~utility pole" means an area where a full or remnant part of a~~
19 ~~damaged or outmoded utility pole remains present or in service~~
20 ~~after the installation of a newly installed replacement utility~~
21 ~~pole because the attached electric, telephone, cable or other~~
22 ~~infrastructure has not migrated from the damaged or outmoded~~
23 ~~utility pole to the newly installed replacement utility pole.~~

24 (E) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING <--
25 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
26 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

27 "ATTACHED INFRASTRUCTURE OWNER." EITHER A PUBLIC UTILITY
28 DEFINED IN SECTION 102 (RELATING TO DEFINITIONS) ATTACHING
29 INFRASTRUCTURE TO ANOTHER PUBLIC UTILITY'S POLE OR A NONUTILITY
30 ENTITY ATTACHING INFRASTRUCTURE TO THE POLES OF A PUBLIC

1 UTILITY.

2 "DOUBLE UTILITY POLE." AN AREA WHERE A FULL OR REMNANT PART
3 OF A DAMAGED OR OUTMODED UTILITY POLE REMAINS PRESENT OR IN
4 SERVICE AFTER THE INSTALLATION OF A NEWLY INSTALLED REPLACEMENT
5 UTILITY POLE BECAUSE THE ATTACHED ELECTRIC, TELEPHONE, CABLE OR
6 OTHER INFRASTRUCTURE HAS NOT MIGRATED FROM THE DAMAGED OR
7 OUTMODED UTILITY POLE TO THE NEWLY INSTALLED REPLACEMENT UTILITY
8 POLE. THE TERM INCLUDES THE SITUATION WHERE ATTACHED ELECTRIC,
9 TELEPHONE, CABLE OR OTHER INFRASTRUCTURE HAS BEEN MIGRATED, BUT
10 THE DAMAGED OR OUTMODED UTILITY POLE OR REMNANT THEREOF REMAINS
11 IN PLACE.

12 "PUBLIC UTILITY POLE OWNER." A PUBLIC UTILITY DEFINED IN
13 SECTION 102.

14 Section 2. This act shall take effect in 60 days.