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MEMORANDUM

To: Senate Committee on Utilities
From: Office of Revisor of Statutes
Date: March 5, 2025
Subject: House Bill 2109 – As Introduced

House Bill 2109 would enact a new section of law to require any public utility, including any municipal utility or electric cooperative public utility to enter into a pole attachment agreement with any law enforcement agency upon request of the law enforcement agency. Such pole attachment agreement shall allow the law enforcement agency to attach and operate law enforcement equipment on utility poles in the public right-of-way.

HB 2109 would require a pole attachment agreement to:

1. Identify the utility poles where the equipment may be attached;
2. Specify the nature of the law enforcement equipment to be attached, including the size and weight of the equipment, where such equipment will be installed on the utility pole, and the power supply needed for the equipment;
3. Establish safety specifications for attaching, accessing, operating, maintaining and removing the equipment;
4. Grant the utility the sole discretion to require that such attachment, access, operation, maintenance and removal be done by the public utility or a qualified contractor approved by the utility; and
5. Require the law enforcement agency to indemnify, defend and hold harmless the utility from and against all liability relating to the utility's actions to enter into a pole attachment agreement.

HB 2019 would authorize a utility to assess reasonable fees or charges to recover the actual costs incurred by the utility for work relating to such equipment and for electricity supplied to the equipment. The bill would prohibit the utility from charging a law enforcement agency for the use of the space required for such equipment.

HB 2109 would require the law enforcement agency to warrant and guarantee to the utility that the attachment complies with all applicable laws and regulations. Additionally, the law enforcement agency would be solely responsible for determining whether there is a need for a court order relating to such equipment and law enforcement activities. The bill provides that a utility shall not be held liable for any failure to obtain any such court order.

HB 2109 would establish that any public utility that enters into a pole attachment agreement shall be considered an instrumentality of a governmental entity for purposes of the Kansas tort claims act and entitled to all limitations on liability provided therein. Additionally, the law enforcement agency would be required to indemnify, defend and hold harmless the public utility for all: (1) Claims or court actions arising pursuant to the equipment and any associated law enforcement activities; and (2) damages to the utility's system or infrastructure caused by activities relating to such equipment unless such damages are caused by the utility.

HB 2109 defines the following terms:

- "Law enforcement agency" means any public agency that employs law enforcement personnel as defined in K.S.A. 60-473, and amendments thereto, or the federal bureau of investigation.
- "Public right-of-way" means only the area of real property in which a city, county or the state has a dedicated or acquired public right of-way interest in the real property. "Public right-of-way" includes the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. "Public right-of-way" does not include a public or private easement that has not been designated a public right-of-way.
- "Public utility" means any public utility as defined in K.S.A. 66-104, and amendments thereto, municipally owned or operated public utility or electric cooperative public utility.
- "Utility pole" means a structure owned or operated by a public utility that is designed and used to carry lines, cables or wires for telecommunications, electricity or cable or to provide lighting.

If enacted, HB 2109 would take effect on July 1, 2024.