

SECOND REGULAR SESSION

SENATE BILL NO. 891

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAGER.

Read 1st time March 1, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5919S.011

AN ACT

To amend chapter 392, RSMo, by adding thereto one new section relating to utilities.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 392, RSMo, is amended by adding thereto one new
2 section, to be known as section 392.602, to read as follows:

**392.602. 1. In order to promote, encourage, and facilitate the
2 deployment of electrical smart grid technologies, broadband
3 communications, and other similar advanced technologies to benefit
4 citizens in rural areas of the state of Missouri, telecommunications
5 service providers and rural electric cooperatives may attach, maintain,
6 and operate their equipment providing such services on a
7 telecommunications transmission or rural electric cooperative
8 distribution system owner's poles under the terms and conditions
9 specified in this section. No attachments shall be made without a
10 written agreement between the pole owner and the attaching
11 entity. For purposes of this section, "broadband" shall mean those types
12 of technologies capable of providing high speed internet access, as
13 defined by the Federal Communications Commission, and shall include
14 but not be limited to digital subscriber line, cable modem, fiber optics,
15 fixed wireless, mobile or cellular broadband, broadband over power
16 lines, and WiMax technologies. Unless otherwise defined herein, this
17 section shall be interpreted in a manner consistent with the applicable
18 Federal Communications Commission's rules for pole and conduit
19 attachments, and nothing in this section shall be construed as
20 conferring any jurisdiction or authority of the commission to either
21 regulate rates, terms, and conditions for attachments or assert any**

22 jurisdiction or regulation over pole attachments under Section 224 of
23 the Communications Act of 1934, as amended.

24 2. Attaching entities shall inform the pole owner on whose
25 system any equipment is to be attached of its intent to attach and the
26 specific location of the attachment prior to attaching any such
27 equipment. Unless otherwise agreed, the pole owner shall respond
28 within fifteen days of the attaching party's notice, except in cases
29 where the pole owner is engaged in large-scale, emergency repairs or
30 disaster recovery, as to whether the attachment may be made without
31 modifications to the pole, or whether additional requirements shall be
32 met before an attachment can be made. All attachments shall be made
33 in accordance with safety and reliability codes applicable to the pole
34 owner's telecommunications transmission or rural electric cooperative
35 distribution system as promulgated by any governmental agency of
36 appropriate jurisdiction. If an attaching entity causes damages to or
37 improperly attaches equipment, such that it causes a safety, reliability,
38 or pole replacement issue to the telecommunications transmission or
39 rural electric cooperative distribution system owner's pole or system,
40 the attaching entity shall, at a minimum, pay to the pole owner the
41 reasonable costs for any repairs or modifications that are necessary to
42 ensure the safe, reliable, and effective operation of the
43 telecommunications transmission or rural electric cooperative
44 distribution system and the attached equipment. In case of conflict, the
45 continued reliability and safety of the pole owner's telecommunications
46 transmission or rural electric cooperative distribution system shall
47 have priority over the attachments. If an attachment is made without
48 proper notice to the pole owner, the parties may determine the penalty
49 fee that shall be paid in addition to the past-due rates for each such
50 attachment. If the parties cannot agree on a reasonable penalty fee, the
51 penalty for unauthorized attachments made after August 28, 2012, shall
52 equal twenty-five percent of the pole rate for a maximum period of
53 twelve months. Notwithstanding any provision in this subsection, any
54 provisions for pole attachment penalties in an existing contract as of
55 August 28, 2012, shall remain in full force and effect until such contract
56 expires.

57 3. The telecommunications transmission or rural electric

58 cooperative distribution system pole owner shall be entitled to a
59 reasonable rate for permitting attachments to its telecommunications
60 transmission or rural electric cooperative distribution system
61 poles. Any rate charged by a pole owner shall be agreed to between the
62 parties and shall be assessed on a per-pole basis. Such rates shall not
63 exceed the reasonable costs to the pole owner's system based on the
64 current costs of such equipment calculated in a manner similar to the
65 Federal Communications Commission rules for pole and conduit
66 attachments. In addition, if the pole owner can provide competent
67 evidence of additional cost-based inefficiencies in the maintenance of
68 its system due solely to the presence of the attached equipment, the
69 pole owner may increase the rate by a corresponding reasonable
70 amount. Notwithstanding the forgoing, any contracts in existence as of
71 August 28, 2012, for pole attachments shall remain in full force and
72 effect until such contracts expire. At the expiration of the term of such
73 a contract, the rates in the new agreement shall not exceed a ten
74 percent increase per year over any previously established rate,
75 provided however, that if the pole owner can provide competent
76 evidence that the previously established rate was set at fifty percent or
77 more below the pole owner's cost, the rates in the new agreement then
78 shall not exceed a twenty percent increase per year over any previously
79 established rate. In either case, the rates in the new agreement shall
80 not exceed the pole owner's reasonable costs calculated in the manner
81 specified in this subsection.

82 4. If the parties cannot agree on a reasonable rate for pole
83 attachments, either party may demand nonbinding mediation. If
84 mediation is unsuccessful in producing an agreement, the pole owner
85 shall set the rate under the limits set forth in subsection 3 of this
86 section. If the attaching entity believes the rate exceeds the standards
87 provided in this section, it may file a petition in the circuit court of any
88 county in which the pole owner maintains an office for the conduct of
89 its business. The circuit court shall have the right to hear evidence
90 presented by the parties as to the use being made by the attaching
91 entity and as to the relevant costs and determine the rate to be paid for
92 such attachments under the limits set forth in subsection 3 of this
93 section.

94 5. If the pole owner files a suit to collect any moneys for pole
95 attachments that it believes is due and owing to the pole owner based
96 on the terms of an agreement between the pole owner and the attaching
97 entity and the court determines that an amount is due and owing to the
98 pole owner, the pole owner may recover the amount owed for the pole
99 attachments, any interest and penalties on such amount, and
100 reasonable attorney fees as determined by a court of competent
101 jurisdiction. Prior to filing any collection action, the pole owner shall
102 provide forty-five days notice to the attaching entity that an amount is
103 owed and that the pole owner will file a collection action if payment is
104 not made in full with the notice period. Nothing in this section
105 precludes the pole owner from pursuing any available legal remedy or
106 damages against an attaching entity that does not have a written
107 agreement for such attachments with the pole owner.

108 6. For all easements and right-of-way interests acquired prior to
109 August 28, 2006, provided the pole attachment or the replacement of
110 existing lines or operating equipment does not result in an additional
111 unreasonable burden on or a diminution in value of the property
112 owner's property, no pole owner shall be required to secure by
113 additional consent, contract, or agreement or by condemnation the
114 right to permit the attachment or the replacement of lines or operating
115 equipment of telecommunications service providers or rural electric
116 cooperatives upon the telecommunications transmission or rural
117 electric cooperative system owner's poles and related real property or
118 easements from an owner of property upon which a pole owner's
119 telecommunications transmission or rural electric cooperative system
120 is located. Unless otherwise expressly prohibited in a recorded
121 easement or other legally binding document, the pole owner's authority
122 to reasonably permit such an attachment or to replace existing lines or
123 operating equipment shall be deemed to be consistent with and not
124 beyond the scope of the principal, intended and authorized use of the
125 pole-owner's poles, related real property or easements.

126 7. Nothing in this section shall be construed to deny a property
127 owner reasonable compensation for any increased interference with or
128 a diminution in fair market value of the property owner's property
129 directly resulting from any pole attachment or the replacement of

130 existing lines or operating equipment authorized under this section. If
131 after good faith negotiations the parties cannot agree on the amount of
132 such reasonable compensation, a property owner may file a claim for
133 compensation for the use of lines, wires, cable, poles, or other
134 structures and for compensation related to the attachment or the
135 replacement of existing lines or operating equipment of
136 telecommunications service providers or rural electric cooperatives. In
137 any such proceeding the amount of damages, if any, shall be limited to
138 an amount sufficient to compensate the property owner for the
139 diminution in fair market value of the property or the increased
140 interference with the owner's use of the property, if any, caused by any
141 new or additional physical attachments to or the replacement of lines
142 or operating equipment of the telecommunications transmission or
143 rural electric cooperative system. Evidence of revenues or profits
144 derived by telecommunications service providers or rural electric
145 cooperatives from providing the services specified in subsection 1 of
146 this section is not admissible in any proceeding by the property owner
147 to recover damages.

148 8. Nothing in this section shall be construed to deny a property
149 owner reasonable compensation for physical damages to the property
150 owner's property directly resulting from any pole attachment or the
151 replacement of lines or operating equipment authorized under this
152 section. If after good faith negotiations the parties cannot agree on the
153 amount of such reasonable compensation, an owner of property upon
154 which a telecommunications transmission or rural electric cooperative
155 system owner's pole is located may file a petition in the circuit court
156 of the county in which the property is situated for the recovery for
157 physical property direct damages related to the attachment of the
158 operating equipment of an attaching entity and any other compensation
159 to which such owner may be entitled.

160 9. Section 523.283 shall continue to govern and apply to all
161 easements or right-of-way interests acquired after August 28,
162 2006. Nothing in this section shall be construed to abrogate or conflict
163 with the provisions of chapter 523, nor to otherwise confer the power
164 of eminent domain on any entity not granted such power prior to
165 August 28, 2012.

166 **10. Notwithstanding the provisions of section 1.140 to the**
167 **contrary, the provisions of this section are nonseverable, and if any**
168 **provision is for any reason held to be invalid, such decision shall**
169 **invalidate all of the remaining provisions of this section.**

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Bill

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