

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1880

AN ACT

To repeal section 394.080, RSMo, and to enact in lieu thereof two new sections relating to broadband communications services provided by rural electric cooperatives.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1           Section A. Section 394.080, RSMo, is repealed and two new  
2 sections enacted in lieu thereof, to be known as sections 394.080  
3 and 394.085, to read as follows:

4           394.080. 1. A cooperative shall have power:

5           (1) To sue and be sued, in its corporate name;

6           (2) To have succession by its corporate name for the period  
7 stated in its articles of incorporation or, if no period is  
8 stated in its articles of incorporation, to have such succession  
9 perpetually;

10          (3) To adopt a corporate seal and alter the same at  
11 pleasure;

12          (4) Except as provided in section 386.800, to generate,  
13 manufacture, purchase, acquire, accumulate and transmit electric  
14 energy, and to distribute, sell, supply, and dispose of electric  
15 energy in rural areas to its members, to governmental agencies  
16 and political subdivisions, and to other persons not in excess of

1 ten percent of the number of its members; provided, however, that  
2 where a cooperative has been transmitting, distributing, selling,  
3 supplying or disposing of electric energy in a rural area which,  
4 by reason of increase in its population, its inclusion in a city,  
5 town or village, or by reason of any other circumstance ceases to  
6 be a rural area, such cooperative shall have the power to  
7 continue to transmit, distribute, sell, supply or dispose of  
8 electric energy therein until such time as the municipality, or  
9 the holder of a franchise to furnish electric energy in such  
10 municipality, may purchase the physical property of such  
11 cooperative located within the boundaries of the municipality,  
12 pursuant to law, or until such time as the municipality may grant  
13 a franchise in the manner provided by law to a privately owned  
14 public utility to distribute electric power within the  
15 municipality and such privately owned public utility shall  
16 purchase the physical property of such cooperative located within  
17 the boundaries of the municipality. In case any of the parties  
18 to such purchase, as herein provided, cannot agree upon the fair  
19 and reasonable price to be paid for the physical property of such  
20 cooperative within the municipality, or if either party refuses  
21 to negotiate for the sale of such property upon the request of  
22 the other, the fair and reasonable value of such property for  
23 such purchase shall be fixed by the public service commission  
24 upon application of any one or more of the interested parties;

25 (5) To make loans to persons to whom electric energy is or  
26 will be supplied by the cooperative for the purpose of, and  
27 otherwise to assist such persons in, wiring their premises and  
28 installing therein electric and plumbing fixtures, appliances,

1 apparatus and equipment of any and all kinds and character, and  
2 in connection therewith, to purchase, acquire, lease, sell,  
3 distribute, install and repair such electric and plumbing  
4 fixtures, appliances, apparatus and equipment, and to accept or  
5 otherwise acquire, and to sell, assign, transfer, endorse,  
6 pledge, hypothecate and otherwise dispose of notes, bonds and  
7 other evidences of indebtedness and any and all types of security  
8 therefor;

9 (6) To make loans to persons to whom electric energy is or  
10 will be supplied by the cooperative for the purpose of, and  
11 otherwise to assist such persons in, constructing, maintaining  
12 and operating electric refrigeration plants;

13 (7) To construct, purchase, take, receive, lease as lessee,  
14 or otherwise acquire, and to own, hold, use, equip, maintain, and  
15 operate, and to sell, assign, transfer, convey, exchange, lease  
16 as lessor, mortgage, pledge, or otherwise dispose of or encumber,  
17 electric transmission and distribution lines or systems, electric  
18 generating plants, electric refrigeration plants, lands,  
19 buildings, structures, dams, plants and equipment, and any and  
20 all kinds and classes of real or personal property whatsoever,  
21 which shall be deemed necessary, convenient or appropriate to  
22 accomplish the purpose for which the cooperative is organized.

23 For the purposes of this section, "electric transmission and  
24 distribution lines or systems" includes, but is not limited to,  
25 cooperative-owned or cooperative subsidiary-owned copper and  
26 fiber optic cable, facilities and technology, or any combination  
27 thereof, that carries, or has the capacity to carry, light  
28 signals and data beyond or in addition to the light signals and

1 data necessary for the transmission and distribution of  
2 electricity;

3 (8) To purchase or otherwise acquire, and to own, hold, use  
4 and exercise and to sell, assign, transfer, convey, mortgage,  
5 pledge, hypothecate, or otherwise dispose of or encumber,  
6 franchises, rights, privileges, licenses, rights-of-way and  
7 easements;

8 (9) To borrow money and otherwise contract indebtedness,  
9 and to issue notes, bonds, and other evidences of indebtedness  
10 therefor, and to secure the payment thereof by mortgage, pledge,  
11 deed of trust, or any other encumbrance upon any or all of its  
12 then-owned or after-acquired real or personal property, assets,  
13 franchises, revenues or income;

14 (10) To construct, maintain and operate electric  
15 transmission and distribution lines along, upon, under and across  
16 all public thoroughfares, including without limitation, all  
17 roads, highways, streets, alleys, bridges and causeways, and  
18 upon, under and across all publicly owned lands, subject,  
19 however, to the requirements in respect of the use of such  
20 thoroughfares and lands that are imposed by the respective  
21 authorities having jurisdiction thereof upon corporations  
22 constructing or operating electric transmission and distribution  
23 lines or systems;

24 (11) To exercise the power of eminent domain in the manner  
25 provided by the laws of this state for the exercise of that power  
26 by corporations constructing or operating electric transmission  
27 and distribution lines or systems. If a property owner prevails  
28 against a rural electric cooperative or a cooperative subsidiary

1 in a suit in trespass or in inverse condemnation, the trespass  
2 shall be deemed permanent and the actual damages awarded shall be  
3 the "fair market value" as defined and calculated in subdivision  
4 (1) of section 523.001 and determined in accordance with section  
5 523.039. In no case may evidence of revenues or profits derived,  
6 nor the rental value of an assembled communications corridor, be  
7 admissible in determining "fair market value". Such actual  
8 damages shall be fixed at the time of the initial trespass, shall  
9 not be deemed to continue, accumulate, or accrue, and upon  
10 payment of damages the defendant shall be granted a permanent  
11 easement for the trespass litigated. If a property owner  
12 prevails in such suits, punitive damages shall not be assessed,  
13 however, the property owner may be awarded additional  
14 compensation for any physical damages to the property directly  
15 resulting from the trespass, if any, and reasonable attorney's  
16 fees, costs, and expenses consistent with subsection 4 of section  
17 523.283;

18 (12) To conduct its business and exercise any or all of its  
19 powers within or without this state;

20 (13) To adopt, amend and repeal bylaws; and

21 (14) To do and perform any and all other acts and things,  
22 and to have and exercise any and all other powers which may be  
23 necessary, convenient or appropriate to accomplish the purpose  
24 for which the cooperative is organized.

25 2. In addition to all other powers granted in this section,  
26 rural electric cooperatives shall have the power to supply  
27 electric energy at retail after August 28, 1989, in cities, towns  
28 and villages having a population in excess of fifteen hundred

1 inhabitants under the following conditions:

2 (1) The cooperative was the predominant supplier of retail  
3 electric energy within the city, town or village at the time any  
4 official United States Census Bureau "decennial census report"  
5 declares the population of such city, town or village to be in  
6 excess of fifteen hundred inhabitants;

7 (2) The city, town or village has granted to the  
8 cooperative a franchise to supply electric energy within the  
9 city, town or village.

10 3. In addition, the cooperative shall provide, concurrent  
11 with its application to the city, town or village for its initial  
12 franchise, written notice of its franchise application to all  
13 other providers of electric energy at retail operating within  
14 such city, town or village.

15 4. The provisions of subsections 2 and 3 of this section  
16 shall in no way affect or diminish the rights and duties of any  
17 city, town or village to grant franchises to electric suppliers  
18 in the manner provided by law or of any electrical corporation  
19 authorized by law to provide electric service at retail within  
20 such city, town or village.

21 5. Notwithstanding the provisions of subsection 2 of this  
22 section, after a public hearing upon a complaint, the public  
23 service commission may order that service be provided by another  
24 supplier if it finds that service from another supplier of  
25 electricity is in the public interest for a reason other than  
26 rate differential. Nothing in this section shall be construed as  
27 conferring upon the public service commission jurisdiction over  
28 the rates, financing, accounting or management of any electric

1 cooperative.

2 6. The powers conferred upon rural electric cooperatives  
3 under this section and section 394.085 shall be subject to the  
4 provisions of section 416.031.

5 394.085. 1. The general assembly declares that expanding  
6 and accelerating access to high speed broadband communications  
7 services throughout the entire state of Missouri is necessary,  
8 desirable, in the best interests of the citizens of this state,  
9 and that it is a public purpose of great importance.

10 2. In recognition that the high capital cost of deploying  
11 fiber optics technologies to provide broadband communications  
12 services impedes access to such services, and the rural electric  
13 cooperatives deploy fiber optics technologies for use in the  
14 operation of their electric system infrastructure, it is the  
15 intent of the general assembly to facilitate and to encourage  
16 rural electric cooperatives and their affiliates, either  
17 collectively, or individually, to continue to enter into and  
18 establish voluntary contracts or other forms of joint or  
19 cooperative agreements for the use of rural electric cooperative  
20 infrastructure in providing access to broadband services.

21 3. For purposes of this section, the term "rural electric  
22 cooperative" shall include an electrical corporation as defined  
23 in subsection 2 of section 393.110.

24 4. Nothing in this section shall be construed as conferring  
25 to the public service commission any regulatory jurisdiction not  
26 granted over any contract, or other form of joint or cooperative  
27 agreement, entered into under this section, or over the parties  
28 to such contract or agreement.

1           5. Nothing in this section shall be construed as  
2 diminishing the rights of property owners under the laws of this  
3 state.