

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1880

99TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protection, Energy and the Environment, April 5, 2018, with recommendation that the Senate Committee Substitute do pass.

5670S.03C

ADRIANE D. CROUSE, Secretary.

AN ACT

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

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

Section A. Section 394.080, RSMo, is repealed and three new sections
2 enacted in lieu thereof, to be known as sections 394.080, 394.085, and 394.125,
3 to read as follows:

394.080. 1. A cooperative shall have power:

- 2 (1) To sue and be sued, in its corporate name;
- 3 (2) To have succession by its corporate name for the period stated in its
4 articles of incorporation or, if no period is stated in its articles of incorporation,
5 to have such succession perpetually;
- 6 (3) To adopt a corporate seal and alter the same at pleasure;
- 7 (4) Except as provided in section 386.800, to generate, manufacture,
8 purchase, acquire, accumulate and transmit electric energy, and to distribute,
9 sell, supply, and dispose of electric energy in rural areas to its members, to
10 governmental agencies and political subdivisions, and to other persons not in
11 excess of ten percent of the number of its members; provided, however, that where
12 a cooperative has been transmitting, distributing, selling, supplying or disposing
13 of electric energy in a rural area which, by reason of increase in its population,
14 its inclusion in a city, town or village, or by reason of any other circumstance
15 ceases to be a rural area, such cooperative shall have the power to continue to
16 transmit, distribute, sell, supply or dispose of electric energy therein until such
17 time as the municipality, or the holder of a franchise to furnish electric energy
18 in such municipality, may purchase the physical property of such cooperative

19 located within the boundaries of the municipality, pursuant to law, or until such
20 time as the municipality may grant a franchise in the manner provided by law
21 to a privately owned public utility to distribute electric power within the
22 municipality and such privately owned public utility shall purchase the physical
23 property of such cooperative located within the boundaries of the municipality.
24 In case any of the parties to such purchase, as herein provided, cannot agree upon
25 the fair and reasonable price to be paid for the physical property of such
26 cooperative within the municipality, or if either party refuses to negotiate for the
27 sale of such property upon the request of the other, the fair and reasonable value
28 of such property for such purchase shall be fixed by the public service commission
29 upon application of any one or more of the interested parties;

30 (5) To make loans to persons to whom electric energy is or will be supplied
31 by the cooperative for the purpose of, and otherwise to assist such persons in,
32 wiring their premises and installing therein electric and plumbing fixtures,
33 appliances, apparatus and equipment of any and all kinds and character, and in
34 connection therewith, to purchase, acquire, lease, sell, distribute, install and
35 repair such electric and plumbing fixtures, appliances, apparatus and equipment,
36 and to accept or otherwise acquire, and to sell, assign, transfer, endorse, pledge,
37 hypothecate and otherwise dispose of notes, bonds and other evidences of
38 indebtedness and any and all types of security therefor;

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

42 (7) To construct, purchase, take, receive, lease as lessee, or otherwise
43 acquire, and to own, hold, use, equip, maintain, and operate, and to sell, assign,
44 transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose
45 of or encumber, electric transmission and distribution lines or systems, electric
46 generating plants, electric refrigeration plants, lands, buildings, structures, dams,
47 plants and equipment, and any and all kinds and classes of real or personal
48 property whatsoever, which shall be deemed necessary, convenient or appropriate
49 to accomplish the purpose for which the cooperative is organized. **For the**
50 **purposes of this section, "electric transmission and distribution lines**
51 **or systems" includes, but is not limited to, cooperative-owned or**
52 **cooperative subsidiary-owned copper and fiber optic cable, facilities**
53 **and technology, or any combination thereof, that carries, or has the**
54 **capacity to carry, light signals and data beyond or in addition to the**

55 **light signals and data necessary for the transmission and distribution**
56 **of electricity;**

57 (8) To purchase or otherwise acquire, and to own, hold, use and exercise
58 and to sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise
59 dispose of or encumber, franchises, rights, privileges, licenses, rights-of-way and
60 easements;

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

66 (10) To construct, maintain and operate electric transmission and
67 distribution lines along, upon, under and across all public thoroughfares,
68 including without limitation, all roads, highways, streets, alleys, bridges and
69 causeways, and upon, under and across all publicly owned lands, subject,
70 however, to the requirements in respect of the use of such thoroughfares and
71 lands that are imposed by the respective authorities having jurisdiction thereof
72 upon corporations constructing or operating electric transmission and distribution
73 lines or systems;

74 (11) To exercise the power of eminent domain in the manner provided by
75 the laws of this state for the exercise of that power by corporations constructing
76 or operating electric transmission and distribution lines or systems. **If a**
77 **property owner prevails against a rural electric cooperative or a**
78 **cooperative subsidiary in a suit in trespass or in inverse condemnation,**
79 **the trespass shall be deemed permanent and the actual damages**
80 **awarded shall be the "fair market value" as defined and calculated in**
81 **subdivision (1) of section 523.001 and determined in accordance with**
82 **section 523.039. In no case may evidence of revenues or profits derived,**
83 **nor the rental value of an assembled communications corridor, be**
84 **admissible in determining "fair market value". Such actual damages**
85 **shall be fixed at the time of the initial trespass, shall not be deemed to**
86 **continue, accumulate, or accrue, and upon payment of damages the**
87 **defendant shall be granted a permanent easement for the trespass**
88 **litigated. If a property owner prevails in such suits, punitive damages**
89 **shall not be assessed, however, the property owner may be awarded**
90 **additional compensation for any physical damages to the property**

91 **directly resulting from the trespass, if any, and reasonable attorney's**
92 **fees, costs, and expenses consistent with subsection 4 of section 523.283,**
93 **but in no event shall the attorney's fees exceed twenty-five percent of**
94 **the total amount of the damages awarded;**

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

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

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

101 2. In addition to all other powers granted in this section, rural electric
102 cooperatives shall have the power to supply electric energy at retail after August
103 28, 1989, in cities, towns and villages having a population in excess of fifteen
104 hundred inhabitants under the following conditions:

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

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

111 3. In addition, the cooperative shall provide, concurrent with its
112 application to the city, town or village for its initial franchise, written notice of
113 its franchise application to all other providers of electric energy at retail
114 operating within such city, town or village.

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

120 5. Notwithstanding the provisions of subsection 2 of this section, after a
121 public hearing upon a complaint, the public service commission may order that
122 service be provided by another supplier if it finds that service from another
123 supplier of electricity is in the public interest for a reason other than rate
124 differential. Nothing in this section shall be construed as conferring upon the
125 public service commission jurisdiction over the rates, financing, accounting or
126 management of any electric cooperative.

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

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

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

19 4. Nothing in this section shall be construed as conferring to the
20 public service commission any regulatory jurisdiction not granted over
21 any contract, or other form of joint or cooperative agreement, entered
22 into under this section, or over the parties to such contract or
23 agreement.

24 5. Nothing in this section shall be construed as diminishing the
25 rights of property owners under the laws of this state.

394.125. Consistent with the requirements of this chapter and
2 chapter 435, agreements for membership in the cooperative may
3 include provisions requiring binding arbitration of disputes as well as
4 prohibitions on class actions, class arbitrations, or representative
5 actions, or any combination thereof.

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