

2020 Regular Session

SENATE BILL NO. 406

BY SENATOR MIZELL

TELECOMMUNICATIONS. Provides for rural access to broadband high-speed Internet service. (8/1/20)

1 AN ACT

2 To amend and reenact R.S. 12:401, 403(4), 428, and 430, relative to rural access to
3 broadband high-speed Internet access; to grant authority to electric cooperatives and
4 electric utilities to provide broadband high-speed Internet services; to provide for
5 broadband operators; to provide for broadband service providers; to provide for
6 limitations on liability; to provide for servitudes; to provide for applications; to
7 provide for certain terms, conditions and procedures; to provide for powers; to
8 provide for definitions; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 12:401, 403(4), 428, and 430 are hereby amended and reenacted to
11 read as follows:

12 §401. Organization authorized; **short title**

13 **A.** Cooperative, nonprofit membership corporations may be organized under
14 this Part for the purpose of supplying electrical energy and promoting and extending
15 the use thereof.

16 **B. This Part shall be known and may be cited as: "The Electric**
17 **Cooperative and Rural Broadband Access Law."**

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§403. Powers

A cooperative may:

* * *

(4)**(a)** Generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and distribute, sell, supply, and dispose of electric energy to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum of the number of its members; provided, however, that should a cooperative acquire any electric facilities dedicated or devoted to the public use, it may, for the purpose of continuing service and avoiding hardship and to an extent which together with all other persons served by the cooperative on a non-member basis shall not exceed forty per centum of the total number of persons served by the cooperative, continue to serve the persons served directly from such facilities at the time of such acquisition without requiring that such persons become members. But such non-members shall have the right to become members upon such terms as are provided in the by-laws;

(b) Provide broadband services pursuant to this Part.

* * *

§428. Acquisition of servitudes

A. A cooperative shall acquire a servitude on an immovable, unless such immovable is owned by the federal or state government or any agency or subdivision thereof, for the operation and maintenance of its electric transmission and distribution lines, along, upon, under or across any such immovable by virtue of the uninterrupted maintenance of such lines without the written or other consent of the owner thereof, along, upon, under or across the immovable for a period of one year; provided such servitude and operation does not interfere with the use of said property by other public utilities; provided further that in all cases where the written consent of the owner for the establishment of a servitude has been obtained and a line has been constructed along, upon, under or across the property under said consent it is

1 not necessary that the written consent be recorded in the conveyance or other records
 2 of the parish where the property is located in order to make the servitude effective
 3 as to third parties.

4 **B.(1) An electric cooperative or electric utility may grant permission to**
 5 **an affiliate or other broadband operator to use the electric delivery system of**
 6 **the electric cooperative or electric utility to provide broadband services. The use**
 7 **of the electric cooperative's or electric utility's electric delivery system for the**
 8 **provision of broadband services by the affiliate or other broadband operator**
 9 **shall not be considered an additional burden on the property upon which the**
 10 **electric cooperative's or electric utility's electric delivery system is located and**
 11 **shall not require the affiliate or other broadband operator to obtain the**
 12 **additional consent from anyone having an interest in the property upon which**
 13 **the electric cooperative's or electric utility's electric delivery system is located.**

14 **(2) If a portion of an electric cooperative's or electric utility's electric**
 15 **delivery system is used by an affiliate or other broadband operator for the**
 16 **purpose of providing broadband services and the landowner of the property on**
 17 **which such portion is located believes his property has been damaged by such**
 18 **use, the landowner may petition the district court in which the property is**
 19 **situated for any damages to which the landowner may be entitled pursuant to**
 20 **this Subsection, subject to the provisions provided in R.S. 12:430(G).**

21 **(3) For the purposes of this Subsection, "electric utility" shall have the**
 22 **same meaning as provided in R.S. 12:430.**

23 * * *

24 §430. ~~Short title~~ **Broadband access for rural Louisiana**

25 This Part of this Chapter shall be known and may be referred to by the short
 26 title: "~~Electric Cooperative Law.~~"

27 **A. As used in this Section:**

28 **(1) "Cooperative" or "electric cooperative" means a corporation**
 29 **organized under this Part and a corporation which becomes subject to this Part**

1 in the manner hereinafter provided.

2 (2) "Broadband affiliate" or "affiliate" means any entity that meets all
3 of the following criteria:

4 (a) Is wholly or partially owned by an electric cooperative or electric
5 utility.

6 (b) Is formed to own or operate a broadband system or provide
7 broadband high-speed Internet services.

8 (3) "Broadband service provider" means an entity that provides
9 broadband services to others on a wholesale basis or to end-use customers on
10 a retail basis.

11 (4) "Broadband operator" means a broadband service provider that
12 owns or operates a broadband system on an electric cooperative's or electric
13 utility's electric delivery system with the electric cooperative's or electric
14 utility's consent.

15 (5) "Broadband services" means any service that consists of or includes
16 the provision of or connectivity to a high-speed, high-capacity transmission
17 medium that can carry signals from or to multiple sources and that does either
18 of the following:

19 (a) Is used to provide access to the Internet.

20 (b) Provides computer processing, information storage, information
21 content or protocol conversion, including any service applications or
22 information service provided over such high-speed access service. As used in
23 this Part, "broadband services" shall also include video services, voice over
24 Internet protocol services, any wireless services, and Internet protocol-enabled
25 services.

26 (6) "Broadband system" means the fiber, cables, materials, equipment,
27 and other facilities that are used or useful for the provision of broadband
28 services.

29 (7) "Electric delivery system" means the poles, lines, materials,

1 equipment, easements, and other facilities or properties used by an electric
2 cooperative or electric utility.

3 (8) "Electric utility" means a privately owned electric utility,
4 investor-owned utility, or public utility as defined in R.S. 45:1161.

5 (9) "Internet protocol-enabled services" means any service, capability,
6 functionality, or application provided using Internet protocol, or any successor
7 protocol, that enables an end-user to send or receive a communication in
8 Internet protocol format, or any successor format, regardless of whether the
9 communication is voice, data, or video.

10 (10) "Video services" means video programming services without regard
11 to delivery technology, including Internet protocol technology, Internet protocol
12 television, voice over Internet protocol services, and video programming
13 provided as a part of a service that enables users to access content, information,
14 email, or other services offered over the public Internet.

15 (11) "Video programming" means any programming generally
16 considered comparable to programming provided by a television broadcast
17 station or others.

18 (12) "Voice over Internet Protocol services" means any service that does
19 all of the following:

20 (a) Enables real-time, two-way voice communications that originate from
21 or terminate to the user's location in Internet protocol or any successor
22 protocol.

23 (b) Uses a broadband connection from the user's location.

24 (c) Permits users to access the technology.

25 B. Only in an area where broadband service is not available, an electric
26 cooperative or electric utility may allow a broadband affiliate or other
27 broadband operator to own, lease, construct, maintain, or operate a broadband
28 system on the electric cooperative's or electric utility's electric delivery system
29 or other parts of its electric delivery system.

1 C.(1) If an electric cooperative or electric utility chooses to provide
2 broadband services pursuant to this Section through an affiliate, the electric
3 cooperative or electric utility shall provide for an application process that is
4 open to all broadband service providers to use the electric delivery system.

5 (2) If the electric cooperative or electric utility chooses to provide for
6 broadband services through any other broadband operator pursuant to this
7 Section, the electric cooperative or electric utility shall provide for an
8 application process that is open to all other broadband operators to use the
9 electric delivery system.

10 (3) The electric cooperative or electric utility shall provide an
11 application form. The form shall include the criteria for consideration, permit
12 costs, and a deadline for submitting the application. Within sixty days of
13 receiving the application, the electric cooperative or electric utility shall notify
14 the applicant in writing whether his application has been approved or denied.

15 (4) Each electric cooperative and electric utility shall allow for location
16 usage by costs.

17 D. An electric cooperative or electric utility may charge an affiliate or
18 other broadband operator for the construction, installation, operation, use, and
19 maintenance of those parts of its electric delivery system that are used or may
20 be reserved for use by the affiliate or other broadband operator for the
21 provision of broadband services. Any lease of facilities by an electric
22 cooperative or electric utility to a broadband affiliate that includes the use of
23 the electric cooperative's or electric utility's poles shall include a pole
24 attachment fee to be paid by the affiliate to the electric cooperative or electric
25 utility. Any fee charged shall be the same as the pole attachment fee charged by
26 the electric cooperative or electric utility to any other broadband operator.

27 E. Neither an electric cooperative nor an electric utility shall do any of
28 the following:

29 (1) Use its electric energy sales revenues to subsidize the provision by an

1 affiliate or other broadband operator of broadband services to the public.

2 (2) Allow the installation or operation of a broadband system on its
3 electric delivery system by an affiliate or other broadband operator to diminish
4 the reliability of the electric delivery system.

5 (3) Require any person to purchase broadband services from an affiliate
6 or other broadband operator as a condition of receiving or continuing to receive
7 electric energy from the electric cooperative.

8 (4) Disconnect, or threaten to disconnect, electric service to any
9 customer due to the customer's failure to pay for broadband services provided
10 to the customer by an affiliate or other broadband operator.

11 F. An electric cooperative or electric utility may make capital
12 investments in an affiliate, issue bonds on behalf of an affiliate, make loans to
13 an affiliate at fair market rate, and enter into loan guarantees for the benefit of
14 an affiliate, all of which may be in such amounts and on such terms as the
15 electric cooperative or electric utility determines to be prudent, subject to the
16 requirements established by the Public Service Commission's General Orders
17 dated March 13, 1994, and November 11, 1996, as periodically amended.

18 G. An electric cooperative, its members, or an electric utility shall not
19 be liable for any recoverable damages to property awarded by a court pursuant
20 to the provisions of R.S. 12:428(B), and the damages shall be the sole
21 responsibility of the broadband operator.

The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle Ridge.

SB 406 Engrossed

DIGEST
2020 Regular Session

Mizell

Present law provides that a cooperative, nonprofit membership corporation may be organized for the purpose of supplying electrical energy and promoting and extending the use of electricity to members of the cooperative. Present law provides that an electric cooperative may generate, manufacture, purchase, acquire, accumulate, and transmit electric energy, and distribute, sell, supply, and dispose of electric energy to its members, to governmental agencies, political subdivisions, and also to other persons under certain circumstances.

Proposed law retains present law and authorizes electric cooperatives and electric utilities

to provide broadband high-speed Internet services in certain areas of the state.

Proposed law defines "cooperative" or "electric cooperative", "broadband affiliate", "broadband service provider", "broadband operator", "broadband services", "broadband system", "electric delivery system", "electric utility", "Internet protocol-enabled services", "video services", "video programming", and "Voice over Internet Protocol services".

Proposed law provides that only in an area where broadband service is not available, an electric cooperative or electric utility may allow a broadband affiliate or other broadband operator to own, lease, construct, maintain, or operate a broadband system on the electric cooperative's or electric utility's electric delivery system or other parts of its electric delivery system.

Proposed law provides that, if an electric cooperative or electric utility chooses to provide broadband services through an affiliate, the electric cooperative or electric utility shall provide for an application process that is open to all broadband service providers to use the electric delivery system.

Proposed law provides that, if the electric cooperative or electric utility chooses to provide for broadband services through any other broadband operator, the electric cooperative shall provide for an application process that is open to all other broadband operators to use the electric delivery system.

Proposed law provides the electric cooperative or electric utility shall provide an application form. Provides that within 60 days of receiving the application, the electric cooperative or electric utility shall notify the applicant in writing whether his application has been approved or denied.

Proposed law provides that each electric cooperative and electric utility shall allow for location usage by costs.

Proposed law provides that, an electric cooperative or electric utility may charge an affiliate or other broadband operator for the construction, installation, operation, use, and maintenance of those parts of its electric delivery system that are used or may be reserved for use by the affiliate or other broadband operator for the provision of broadband services.

Proposed law provides that any lease of facilities by an electric cooperative or electric utility to a broadband affiliate that includes the use of the electric cooperative's or electric utility's poles shall include a pole attachment fee to be paid by the affiliate to the electric cooperative or electric utility. Any fee charged shall be the same as the pole attachment fee charged by the electric cooperative or electric utility to any other broadband operator.

Proposed law provides for prohibited acts of an electric cooperative and electric utility.

Proposed law provides that an electric cooperative or electric utility may make capital investments in an affiliate, issue bonds on behalf of an affiliate, make loans to an affiliate at fair market rate, and enter into loan guarantees for the benefit of an affiliate, all of which may be in such amounts and on such terms as the electric cooperative or electric utility determines to be prudent, subject to certain orders of the Public Service Commission.

Present law provides that a cooperative shall acquire a servitude on an immovable, unless such immovable is owned by the federal or state government or any agency or subdivision thereof, for the operation and maintenance of its electric transmission and distribution lines, along, upon, under or across any such immovable by virtue of the uninterrupted maintenance of such lines without the written or other consent of the owner thereof, along, upon, under or across the immovable for a period of one year; provided such servitude and operation does not interfere with the use of said property by other public utilities; provided further that in all cases where the written consent of the owner for the establishment of a servitude has

been obtained and a line has been constructed along, upon, under or across the property under said consent it is not necessary that the written consent be recorded in the conveyance or other records of the parish where the property is located in order to make the servitude effective as to third parties.

Proposed law retains present law and adds that an electric cooperative or electric utility may grant permission to an affiliate or other broadband operator to use the electric delivery system of the electric cooperative or electric utility to provide broadband services.

Proposed law provides that the use of the electric cooperative's or electric utility's electric delivery system for the provision of broadband services by the affiliate or other broadband operator shall not be considered an additional burden on the property upon which the electric cooperative's or electric utility's electric delivery system is located and shall not require the affiliate or other broadband operator to obtain the additional consent from anyone having an interest in the property upon which the electric cooperative's or electric utility's electric delivery system is located.

Proposed law provides that, if a portion of an electric cooperative's or electric utility's electric delivery system is used by an affiliate or other broadband operator for the purpose of providing broadband services and the landowner of the property on which such portion is located believes his property has been damaged by such use, the landowner may petition the district court in which the property is situated for damages.

Proposed law provides that an electric cooperative, its members, or an electric utility shall not be liable for any recoverable damages to property awarded by a court as provided by proposed law, and such damages shall be the sole responsibility of the broadband operator.

Effective August 1, 2020.

(Amends R.S. 12:401,403(4), 428, and 430)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Defines the term "electric utility".
2. Removes the term "unaffiliated broadband operator".
3. Provides that an electric utility may allow for the provision of broadband on their electric delivery system.
4. Provides that only in an area where broadband service is not available, an electric cooperative or electric utility may allow an affiliate or other operator to own, lease, construct, maintain, or operate a broadband system on the electric utility's electric delivery system.
5. Requires the electric cooperative or electric utility to notify an applicant in writing within 60 day of submission of an application whether his application is approved or denied.
6. Provides that when electric cooperative or electric utility makes a capital investment in an affiliate, issues bonds on behalf of an affiliate, makes loans to an affiliate at fair market rate, and enters into loan agreements for the benefit of an affiliate, such actions are subject to certain orders of the Public Service Commission.