

2020 Regular Session

SENATE BILL NO. 406

BY SENATORS MIZELL, ABRAHAM, ALLAIN, BARROW, BERNARD, CATHEY, CLOUD, CONNICK, CORTEZ, FESI, FIELDS, FOIL, HARRIS, HENRY, HENSGENS, HEWITT, JACKSON, JOHNS, LUNEAU, MCMATH, FRED MILLS, ROBERT MILLS, MORRIS, PEACOCK, POPE, PRICE, REESE, SMITH, TALBOT, WARD AND WOMACK

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; to

4 provide broadband high-speed internet services; to provide for broadband operators;

5 to provide for broadband service providers; to provide for limitations on liability; to

6 provide for servitudes; to provide for applications; to provide for certain terms,

7 conditions and procedures; to provide for powers; to provide for definitions; and to

8 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".**

\* \* \*

§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~~ **percent** 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~~ **percent** 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~~ **the** consent

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

4 **B.(1) An electric cooperative may grant permission to an affiliate, other**  
5 **broadband operator, or a broadband service provider to use the electric**  
6 **delivery system of the electric cooperative to provide broadband services**  
7 **pursuant to this Part. The use of the electric cooperative's electric delivery**  
8 **system for the provision of broadband services by the affiliate or other**  
9 **broadband operator shall not be considered an additional burden on the**  
10 **property upon which the electric cooperative's electric delivery system is located**  
11 **and 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 electric delivery system is located.**

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

21 \* \* \*

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

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

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

26 **(1) "Broadband affiliate" or "affiliate" means any entity that meets all**  
27 **of the following criteria:**

28 **(a) Is wholly or partially owned by an electric cooperative.**

29 **(b) Is formed to own or operate a broadband system or provide**

1 broadband high-speed internet services.

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

5 (3) "Broadband operator" means a broadband service provider that  
6 owns or operates a broadband system on an electric cooperative's electric  
7 delivery system with the electric cooperative's consent.

8 (4) "Broadband services" means any service, using any equipment or  
9 technology, including wireline or fixed wireless broadband internet service, that  
10 consists of or includes the provision of or connectivity to a high-speed, high-  
11 capacity transmission medium meeting the Federal Communications  
12 Commission's benchmark of at least twenty-five megabits per second download  
13 and three megabits per second upload, or any subsequent benchmark  
14 determined by the Federal Communications Commission, that can carry signals  
15 from or to multiple sources and that does either of the following:

16 (a) Is used to provide access to the internet.

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

23 (5) "Broadband system" means broadband internet access service as  
24 defined in 47 C.F.R. §8.1.

25 (6) "Communication services" includes, whether a part of a bundle of  
26 services or offered separately, telecommunications service, broadband service,  
27 cable service, Voice over Internet Protocol service, ethernet transport service,  
28 business data service, and wireless backhaul service.

29 (7) "Cooperative" or "electric cooperative" means a corporation

1 organized under this Part and a corporation which becomes subject to this Part  
2 in the manner hereinafter provided.

3 (8) "Electric delivery system" means the poles, lines, materials,  
4 equipment, easements, and other facilities or properties used by an electric  
5 cooperative.

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

11 (10) "Unserved area" means an area lacking access to broadband service  
12 according to the Federal Communications Commission's Form 477 or any  
13 subsequent broadband data gathering tool implemented by the Federal  
14 Communications Commission.

15 (11) "Video services" means video programming services without regard  
16 to delivery technology, including internet protocol technology, internet protocol  
17 television, Voice over Internet Protocol services, and video programming  
18 provided as a part of a service that enables users to access content, information,  
19 email, or other services offered over the public internet.

20 (12) "Video programming" means any programming generally  
21 considered comparable to programming provided by a television broadcast  
22 station or others.

23 (13) "Voice over Internet Protocol services" means interconnected Voice  
24 over Internet Protocol service as defined in 47 C.F.R. §9.3.

25 B.(1) In an unserved area only, an electric cooperative may allow a  
26 broadband affiliate or other broadband operator to own, lease, construct,  
27 maintain, or operate a broadband system and provide services to the public  
28 utilizing the broadband system on the electric cooperative's electric delivery  
29 system or other parts of its electric delivery system.

1           **(2) Except as provided in the substantive rules of the Public Service**  
2           **Commission, an electric cooperative that elects to provide broadband services**  
3           **pursuant to this Section shall provide a broadband affiliate or other broadband**  
4           **operator with nondiscriminatory access to locate its equipment for the provision**  
5           **of broadband services within a servitude or on infrastructure or any pole owned**  
6           **or controlled by the electric cooperative on just, reasonable, and**  
7           **nondiscriminatory terms, conditions, and rates.**

8           **C.(1) If an electric cooperative chooses to provide or facilitate broadband**  
9           **services pursuant to this Section through an affiliate, the electric cooperative**  
10           **shall provide for an application process that is open to all broadband service**  
11           **providers to use the electric delivery system.**

12           **(2) If the electric cooperative chooses to provide for broadband services**  
13           **through any other broadband operator or broadband service provider pursuant**  
14           **to this Section, the electric cooperative shall provide for an application process**  
15           **that is open to all broadband service providers to use the electric delivery**  
16           **system.**

17           **(3) The electric cooperative shall provide an application form. The form**  
18           **shall include the criteria for consideration, costs, and a deadline for submitting**  
19           **the application. Within sixty days of receiving the application, the electric**  
20           **cooperative shall notify the applicant in writing whether his application has**  
21           **been approved or denied.**

22           **(4) Each electric cooperative shall allow for location usage by costs.**

23           **D. An electric cooperative shall charge an affiliate or other broadband**  
24           **operator for the construction, installation, operation, use, and maintenance of**  
25           **those parts of its electric delivery system that are used or may be reserved for**  
26           **use by the affiliate or other broadband operator for the provision of broadband**  
27           **services. Any lease of facilities by an electric cooperative to a broadband**  
28           **affiliate that includes the use of the electric cooperative's poles shall include a**  
29           **pole attachment fee to be paid by the affiliate to the electric cooperative. Any**

1 fee charged shall be the same as the pole attachment fee charged by the electric  
2 cooperative to any other broadband operator.

3 E. An electric cooperative shall not do any of the following:

4 (1) Use its electric energy sales revenues to subsidize the provision by an  
5 affiliate or other broadband operator of broadband services to the public.

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

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

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

15 F. An electric cooperative may make capital investments in an affiliate,  
16 issue bonds on behalf of an affiliate, make loans to an affiliate at fair market  
17 rate, and enter into loan guarantees for the benefit of an affiliate, all of which  
18 may be in such amounts and on such terms as the electric cooperative  
19 determines to be prudent, subject to the requirements established by the Public  
20 Service Commission's General Orders dated March 18, 1994, and November 13,  
21 1996, as periodically amended.

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

26 Section 2. This Act shall become effective upon signature by the governor or, if not  
27 signed by the governor, upon expiration of the time for bills to become law without signature  
28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
29 vetoed by the governor and subsequently approved by the legislature, this Act shall become

1 effective on the day following such approval.

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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.

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DIGEST

SB 406 Reengrossed

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 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", "communication services", "cooperative" or "electric cooperative", "electric delivery system", "internet protocol-enabled services", "unserved area", "video services", "video programming", and "Voice over Internet Protocol services".

Proposed law provides in an unserved area only, an electric cooperative may allow a broadband affiliate or other broadband operator to own, lease, construct, maintain, or operate a broadband system and provide services to the public utilizing the broadband system on the electric cooperative's electric delivery system.

Proposed law provides that except as provided in the substantive rules of the Public Service Commission, an electric cooperative that elects to provide broadband services shall provide a broadband affiliate or other broadband operator with nondiscriminatory access to locate its equipment for the provision of broadband services within a servitude or on infrastructure or any pole owned or controlled by the electric cooperative on just, reasonable, and nondiscriminatory rates.

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

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

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

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

Proposed law provides for prohibited acts of an electric cooperative.

Proposed law provides that an electric cooperative 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 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 the 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 may grant permission to an affiliate or other broadband operator to use the electric delivery system of the electric cooperative to provide broadband services.

Proposed law provides that the use of the electric cooperative'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 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 electric delivery system is located.

Proposed law provides that if a portion of an electric cooperative'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 or its members 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 upon signature of the governor or lapse of time for gubernatorial action.

(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.

#### Summary of Amendments Adopted by Senate

##### Senate Floor Amendments to engrossed bill

1. Removes the term "electric utility".
2. Defines "broadband services", "broadband system", "communication services", "cooperative" or "electric cooperative", "unserved area", and "Voice over Internet Protocol services".
3. Requires an electric cooperative that elects to provide broadband services to provide an affiliate or other broadband operator nondiscriminatory access to locate its equipment within a servitude or on infrastructure on any pole owned or controlled by the electric cooperative on just, reasonable, and nondiscriminatory terms, conditions, and rates.
4. Provides for an effective date upon signature of the governor.
5. Makes technical changes.