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2020 Regular Session

SENATE BILL NO. 406

BY SENATORS MIZE L, 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 W O Mack AND REPRESENTATIVES ADAMS, AMEDEE, BACALA, BAGLEY, BEAULLIEU, BRASS, BROWN, BRYANT, BUTLER, CARPENTER, GARY CARTER, ROBBY CARTER, WILFORD CARTER, CORMIER, COUSSAN, COX, CREWS, DAVIS, DESHOTEL, DEVILLIER, DUBUISSON, DUPLESSIS, ECHOLS, EDMONDS, EDMONSTON, EMERSON, FARNUM, FIRMENT, FONTENOT, FREEMAN, FREIBERG, FRIE MAN, GAD BERRY, GAROFALO, GOUDEAU, HARRIS, HILFERTY, HORTON, HUGHES, ILLY, IVEY, JEFFERSON, JENKINS, MIKE JOHNSON, TRAVIS JOHNSON, JONES, KERNER, LANDRY, LARVADAIN, LYONS, MAGEE, MARCELLE, MARINO, MCCORMICK, McFARLAND, MCKNIGHT, MCMAHEN, MIGUEZ, MINCEY, MOORE, NELSON, NEWELL, CHARLES OWEN, ROBERT OWEN, PIERRE, PRESSLY, RISER, SCHAMERHORN, SEABAUGH, SELDERS, STAGNI, STEFANSKI, THOMAS, THOMPSON, WHEAT, WHITE, WILLARD, WRIGHT AND ZERINGUE

AN ACT

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

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 12:401, 403(4), 428, and 430 are hereby amended and reenacted to read as follows:
§401. Organization authorized; short title

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

B. This Part shall be known and may be cited as "The Electric 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 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 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

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.

B.(1)(a) Except as provided for in Subparagraph (b) of this Paragraph,

an electric cooperative may grant permission to an affiliate, other broadband

operator, or a broadband service provider to use the electric delivery system of

the electric cooperative to provide broadband services pursuant to this Part.

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.

(b) The provisions of Subparagraph (a) of this Paragraph shall not

apply to any property owned or controlled by a railroad company operating in

this state.

(2) 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 any damages

to which the landowner may be entitled pursuant to this Subsection, subject to

the provisions provided in R.S. 12:430(G).

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Coding: Words which are struck through are deletions from existing law; words in **boldface type and underscored** are additions.
§430. Short title Broadband access for rural Louisiana

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

A. As used in this Section:

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

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

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

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

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

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

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

(b) Provides computer processing, information storage, information content or protocol conversion, including any service applications or information service provided over such high-speed access service. As used in this Part, "broadband services" shall also include video services, Voice over Internet Protocol services, wireless services, and internet protocol-enabled services.
(5) "Broadband system" means broadband internet access service as defined in 47 C.F.R. §8.1.

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

(7) "Cooperative" or "electric cooperative" means a corporation organized under this Part and a corporation which becomes subject to this Part in the manner hereinafter provided.

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

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

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

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

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

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

B.(1) 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 or other parts of its electric delivery system.

(2) Except as provided in the substantive rules of the Public Service Commission, an electric cooperative that elects to provide broadband services pursuant to this Section 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 terms, conditions, and rates.

C.(1) If an electric cooperative chooses to provide or facilitate broadband services pursuant to this Section 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.

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

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

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

D. 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. 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.

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

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

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

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

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

F. 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 the requirements established by the Public
Service Commission's General Orders dated March 18, 1994, and November 13,
1996, as periodically amended.

G. An electric cooperative or its members shall not be liable for any
recoverable damages to property awarded by a court pursuant to the provisions
of R.S. 12:428(B), and the damages shall be the sole responsibility of the
broadband operator.
Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: ____________

VETO MESSAGE

"Please be advised that I have vetoed Senate Bill 406 of the 2020 Regular Session. This bill, as originally drafted, authorized electric cooperatives to allow broadband service providers access to their electric delivery system without the necessity of obtaining additional consent from the property owner who consented to the electric cooperative's servitude on which the electric delivery system is located. The bill gave the electric cooperatives autonomy to decide not only whether to allow a broadband operator to access its electric delivery system, but also which broadband service providers they allow access. In its final form, however, rather than expand access to broadband, which was Senator Mizell's intent, the bill prohibits an electric cooperative from providing broadband in serviced areas and at the same time requires an electric cooperative that provides broadband service in an unserved area to give other broadband service providers nondiscriminatory access to its electric delivery system.

Senator Mizell has been a champion for the people of Louisiana when it comes to working to bring broadband to all parts of the state. From establishing a task force on rural broadband to filing this legislation, Senator Mizell has worked tirelessly to identify creative ways to tackle the lack of broadband access in rural Louisiana. There is no doubt that the prohibition on electric cooperatives provided for in the final version of SB 406 is contrary to the author's intent of expanding access to broadband. Furthermore, the Federal Telecommunications Act of 1996 specifically prohibits any state statute from prohibiting the ability of any entity to provide any telecommunication service. Should this bill become law, it will be ripe to be challenged as violative of the Federal Telecommunications Act of 1996.

I appreciate Senator Mizell's continued efforts on this issue. I support her approach in the enrolled version and SB 10 of the 2020 ES and look forward to continuing to work with her, and the entire legislative body, on truly expanding broadband access to all Louisianans.”

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