

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, 402, 403(4), 422, 428, and 430, relative to rural access
3 to broadband high-speed Internet access; to grant authority to electric cooperatives
4 to provide broadband high-speed Internet services; to provide for broadband
5 operators; to provide for broadband service providers; to provide for limitations on
6 liability; to provide for servitudes; to provide for applications; to provide for certain
7 terms, conditions and procedures; to provide for powers; to provide for definitions;
8 and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 12:401, 402, 403(4), 422, 428, and 430 are hereby amended and
11 reenacted to 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."**

1 §402. Terms defined

2 As used in this Part:

3 ~~A.~~(1) "Cooperative" or "electric cooperative" means a corporation
4 organized under this Part and a corporation which becomes subject to this Part in the
5 manner hereinafter provided.

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

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

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

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

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

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

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

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

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

1 services.

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

5 (8) "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 communications is voice, data, or video.

10 ~~B-(9)~~ "Member" means each incorporator of a cooperative and each person
11 admitted to and retaining membership therein, and shall include a husband and wife
12 admitted to joint membership.

13 ~~C-(10)~~ "Person" includes any natural person, firm, association, corporation,
14 business trust, partnership, federal agency, state or political subdivision or agency
15 thereof, or any body politic.

16 (11) "Unaffiliated broadband operator" means any operator other than
17 the operator who is a broadband affiliate.

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

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

26 (14) "Voice over Internet protocol services" means any service that does
27 all of the following:

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

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§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 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) 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. 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 over-and-above that which is already provided pursuant to Subsection A of this Section from anyone having an interest in the property upon which the electric cooperative's electric delivery system is located.

(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

1 may petition the district court in which the property is situated for any damages
2 to which the landowner may be entitled pursuant to this Subsection, subject to
3 the provisions provided in R.S. 12:422.

4 §430. ~~Short title~~ Broadband access for rural Louisiana

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

7 A. An electric cooperative may allow a broadband affiliate or an
8 unaffiliated broadband operator to own, lease, construct, maintain, or operate
9 a broadband system on the electric cooperative's electric delivery system and
10 to provide broadband services to the public utilizing the electric cooperative's
11 broadband system or other parts of its electric delivery system.

12 B. An electric cooperative shall not be required to implement a
13 broadband system or allow others to use broadband capacity on the electric
14 cooperative's electric delivery system to provide broadband services.

15 C.(1) Subject to the provisions of Subsection D of this Section, an electric
16 cooperative may determine, in its sole discretion, which broadband operators,
17 if any, may have access to broadband capacity on the electric cooperative's
18 broadband system.

19 (2) If an electric cooperative chooses to provide broadband services
20 pursuant to this Part, the electric cooperative is authorized to provide an
21 affiliate or unaffiliated broadband operator exclusive access to broadband
22 capacity on the electric cooperative's broadband system.

23 D.(1) If an electric cooperative chooses to provide broadband services
24 pursuant to this Part through an affiliate, the electric cooperative shall provide
25 for an application process that is open to all broadband service providers to use
26 the electric delivery system.

27 (2) If the electric cooperative chooses to provide for broadband services
28 through an unaffiliated broadband operator pursuant to this Part, the electric
29 cooperative shall provide for an application process that is open to all

1 unaffiliated broadband operators to use the electric delivery system.

2 (3) The electric cooperative's application process shall include a deadline
3 for receiving applications, the criteria for consideration, the application, and
4 permit costs.

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

6 E. An electric cooperative may charge an affiliate or an unaffiliated
7 broadband operator for the construction, installation, operation, use, and
8 maintenance of those parts of its electric delivery system that are used or may
9 be reserved for use by the affiliate or unaffiliated broadband operator for the
10 provision of broadband services. Any lease of facilities by an electric
11 cooperative to a broadband affiliate that includes the use of the electric
12 cooperative's poles shall specifically include pole attachment fees, if any, to be
13 paid by the broadband affiliate to the electric cooperative but such fees shall be
14 no more than the pole attachment fees charged by the electric cooperative to
15 other like unaffiliated, private entities.

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

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

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

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

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

28 G. An electric cooperative may make capital investments in an affiliate,
29 issue bonds on behalf of an affiliate, make loans to an affiliate at fair market

- 1 **rate, and enter loan guarantees for the benefit of an affiliate, all of which may**
 2 **be in such amounts and on such terms as the electric cooperative's board of**
 3 **directors determines to be prudent and authorizes to be done.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Carla S. Roberts.

DIGEST

SB 406 Original

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 further 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, and political subdivisions, and also to other persons under certain circumstances.

Proposed law retains present law and grants authority to electric cooperatives to provide broadband high-speed Internet services, if they choose to do so.

Proposed law provides for the following definitions:

- (1) "Electric cooperative" means a corporation organized under present law and a corporation which becomes subject to present law.
- (2) "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.
- (3) "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.
- (4) "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.
- (5) "Broadband services" means any service that consists of or includes the provision of or connectivity to a high-speed, high-capacity transmission medium 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. "Broadband services" shall also include video services, voice over Internet protocol services, any wireless services, and Internet protocol-enabled services.
- (6) "Broadband system" means the fiber, cables, materials, equipment, and other facilities that are used or useful for the provision of broadband services.

- (7) "Electric delivery system" means the poles, lines, materials, equipment, easements, and other facilities or properties used by an electric cooperative.
- (8) "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 communications is voice, data, or video.
- (9) "Unaffiliated broadband operator" means any operator other than the operator who is a broadband affiliate.
- (10) "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.
- (11) "Video programming" means any programming generally considered comparable to programming provided by a television broadcast station or others.
- (12) "Voice over Internet protocol services" means any service that does all of the following:
- (a) Enables real-time, two-way voice communications that originate from or terminate to the user's location in Internet protocol or any successor protocol.
 - (b) Uses a broadband connection from the user's location.
 - (c) Permits users to access the technology.

Proposed law provides that an electric cooperative may allow a broadband affiliate or an unaffiliated broadband operator to own, lease, construct, maintain, or operate a broadband system on the electric cooperative's electric delivery system and to provide broadband services to the public utilizing the electric cooperative's broadband system or other parts of its electric delivery system.

Proposed law provides that an electric cooperative will not be required to implement a broadband system or allow others to use broadband capacity on the electric cooperative's electric delivery system to provide broadband services.

Proposed law provides that, subject to certain provisions of proposed law, an electric cooperative may determine, in its sole discretion, which broadband operators, if any, may have access to broadband capacity on the electric cooperative's broadband system.

Proposed law provides that if an electric cooperative does choose to provide broadband services, it shall be lawful for an electric cooperative to provide an affiliate or unaffiliated broadband operator exclusive access to broadband capacity on the electric cooperative's broadband system.

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 further provides that, if the electric cooperative chooses to provide for broadband services through an unaffiliated broadband operator, the electric cooperative shall provide for an application process that is open to all unaffiliated broadband operators to use the electric delivery system.

Proposed law provides that the electric cooperative's application process shall include a

deadline for receiving applications, the criteria for consideration, the application, and permit costs.

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

Proposed law provides that, an electric cooperative may charge an affiliate or an unaffiliated 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 unaffiliated broadband operator for the provision of broadband services. Proposed law provides further that any lease of facilities by an electric cooperative to a broadband affiliate that includes the use of the electric cooperative's poles shall specifically include pole attachment fees, if any, to be paid by the broadband affiliate to the electric cooperative but shall be no more than the pole attachment fees charged by the electric cooperative to other like unaffiliated, private entities.

Proposed law provides that 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 unaffiliated 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.

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 loan guarantees for the benefit of an affiliate, all of which may be in such amounts and on such terms as the electric cooperative's board of directors determines to be prudent and authorizes.

Proposed 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 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 further 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 over-

and-above that which is already provided pursuant to present law 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.

Present law provides the private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative and no member shall be liable or responsible for any debts of the cooperative.

Proposed law retains present law and adds that neither the electric cooperative nor its members shall be liable for any recoverable damages related to any property damage incurred by the to property awarded by a court, pursuant to the proposed law, and any such damages shall be the sole responsibility of the broadband operator.

Effective August 1, 2020.

(Amends R.S. 12:401, 402, 403(4), 422, 428, and 430)