

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE NO. 2 FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1880
99TH GENERAL ASSEMBLY

5670S.05T

2018

AN ACT

To repeal section 394.080, RSMo, and to enact in lieu thereof two 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Section A. Section 394.080, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 394.080 and 394.085, to read as follows:

394.080. 1. A cooperative shall have power:

- (1) To sue and be sued, in its corporate name;
- (2) To have succession by its corporate name for the period stated in its articles of incorporation or, if no period is stated in its articles of incorporation, to have such succession perpetually;
- (3) To adopt a corporate seal and alter the same at pleasure;
- (4) Except as provided in section 386.800, to generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy in rural areas 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 where a cooperative has been transmitting, distributing, selling, supplying or disposing of electric energy in a rural area which, by reason of increase in its population, its inclusion in a city, town or village, or by reason of any other circumstance ceases to be a rural area, such cooperative shall have the power to continue to transmit, distribute, sell, supply or dispose of

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

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

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

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

62 (11) To exercise the power of eminent domain in the manner provided by the laws of this
63 state for the exercise of that power by corporations constructing or operating electric
64 transmission and distribution lines or systems. **If a property owner prevails against a rural
65 electric cooperative or a cooperative subsidiary in a suit in trespass or in inverse
66 condemnation filed after August 28, 2018, the trespass shall be deemed permanent and the
67 actual damages awarded shall be the "fair market value", which, notwithstanding any
68 other provision of law, shall always be greater than zero, as defined and calculated in
69 subdivision (1) of section 523.001 and determined in accordance with section 523.039. In
70 no case filed after August 28, 2018, may evidence of revenues or profits derived, nor the
71 rental value of an assembled communications corridor, be admissible in determining "fair
72 market value". Such actual damages shall be fixed at the time of the initial trespass, shall
73 not be deemed to continue, accumulate, or accrue, and upon payment of damages the
74 defendant shall be granted a permanent easement for the trespass litigated. If a property
75 owner prevails in such suits, punitive damages may be assessed and the property owner
76 may be awarded additional compensation for any physical damages to the property
77 directly resulting from the trespass, if any, and reasonable attorney's fees, costs, and
78 expenses consistent with subsection 4 of section 523.283;**

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

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

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

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

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

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

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

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

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

108 **6. The powers conferred upon rural electric cooperatives under this section and**
109 **section 394.085 shall be subject to the provisions of section 416.031.**

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

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

11 cooperative agreements for the use of rural electric cooperative infrastructure in providing
12 access to broadband services.

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

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

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

21 6. If a distribution cooperative provides broadband services to its members, such
22 cooperative shall offer the services to any property, which is traversed by the cooperative's
23 fiber which is utilized for the provision of broadband services to its members, within a
24 reasonable amount of time from the initiation of the provision of such services.

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