

2020 First Extraordinary Session

SENATE BILL NO. 10

BY SENATOR MIZELL

INTERNET. Provides relative to rural broadband high-speed internet access.  
(Item #31) (gov sig)

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AN ACT

To enact R.S. 12:430.1 and 430.2, relative to rural access to broadband high-speed internet access; to provide relative to servitudes; to provide for reporting by cooperatives regarding broadband high-speed internet access; to provide for reporting by certain telecommunications associations regarding broadband high-speed internet access; to provide for terms, conditions, and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section. 1. R.S. 12:430.1 and 430.2 are hereby enacted to read as follows:

**§430.1. Cooperatives; provision of broadband services; servitudes**

**A.(1)(a) Except as provided in 47 U.S.C. 224 and Subparagraph (b) of this Paragraph, a cooperative shall grant permission to a broadband affiliate or a broadband service provider to use the electric delivery system of the cooperative to provide broadband services. The use of the cooperative's electric delivery system for the provision of broadband services by the broadband affiliate or a broadband service provider shall not be considered an additional burden on the property upon which the cooperative's electric delivery system is located and shall not require the broadband affiliate or broadband service**

1 provider to obtain the additional consent from anyone having an interest in the  
2 property upon which the cooperative's electric delivery system is located.

3 (b) The provisions of Subparagraph (a) of this Paragraph shall not  
4 apply to any property owned or controlled by a railroad company operating in  
5 the state.

6 (2)(a) If a portion of a cooperative's electric delivery system is used by  
7 a broadband affiliate or broadband service provider for the purpose of  
8 providing broadband services and the landowner of the property on which such  
9 portion is located believes his property has been damaged by such use, the  
10 landowner may petition the district court in which the property is situated for  
11 any damages to which the landowner may be entitled pursuant to law, subject  
12 to the provisions of Subparagraph (b) of this Paragraph.

13 (b) A cooperative or its members shall not be liable for any recoverable  
14 damages to property awarded by a court pursuant to the provisions of this  
15 Subsection, and the damages shall be the sole responsibility of the broadband  
16 affiliate or broadband service provider.

17 B. A cooperative shall provide a broadband affiliate, broadband service  
18 provider, or broadband operator with nondiscriminatory access to locate its  
19 equipment for the provision of broadband services on the cooperative's electric  
20 delivery system on just, reasonable, and nondiscriminatory terms, conditions,  
21 and rates.

22 C. Any broadband affiliate, broadband service provider, or broadband  
23 operator wishing to attach to a cooperative's electric delivery system shall file  
24 written notice with the cooperative. The cooperative shall respond to the notice  
25 in accordance with the Public Service Commission's General Order dated  
26 September 4, 2014, or any subsequent related order.

27 D. A cooperative shall charge a broadband affiliate, broadband service  
28 provider, or broadband operator for the construction, installation, operation,  
29 use, and maintenance of those parts of its electric delivery system that are used

1 or may be reserved for use by the broadband affiliate, broadband service  
2 provider, or broadband operator for the provision of broadband services. Any  
3 lease of facilities by a cooperative to a broadband affiliate that includes the use  
4 of the cooperative's poles shall include a pole attachment fee to be paid by the  
5 broadband affiliate to the cooperative. The fee charged by the cooperative to the  
6 broadband affiliate shall be the same amount as the pole attachment fee  
7 charged by the cooperative to any other broadband operator.

8 E. A cooperative shall not do any of the following:

9 (1) Use its electric energy sales revenue to subsidize the provision of  
10 broadband services to the public by a broadband affiliate or other broadband  
11 operator.

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

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

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

21 F. A cooperative may make capital investments in a broadband affiliate,  
22 issue bonds on behalf of a broadband affiliate, make loans to a broadband  
23 affiliate at fair market rate, and enter into loan guarantees for the benefit of a  
24 broadband affiliate, all of which may be in such amounts and on such terms as  
25 the cooperative determines to be prudent, subject to the requirements  
26 established by the Public Service Commission's General Orders dated March  
27 18, 1994, and November 13, 1996, or any subsequent related orders.

28 G. As used in this Section:

29 (1) "Broadband affiliate" means any entity that meets all of the following

1           criteria:

2                   (a) Is wholly or partially owned by a cooperative.

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

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

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

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

26                   (5) "Broadband system" means a facility used to deliver broadband  
27 internet access service as defined in 47 C.F.R. §8.1 and other broadband  
28 services.

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

1 equipment, servitudes, and other facilities or properties used by a cooperative.

2 §430.2. Reporting on broadband high-speed internet access

3 On March 1, 2021, and every March thereafter, each cooperative, or the  
4 statewide or trade association of each cooperative, shall submit a written report  
5 to the Senate Committee on Commerce, Consumer Protection and International  
6 Affairs and the House Committee on Commerce regarding any impediments to  
7 providing broadband high-speed internet access to rural residents. The  
8 information in the report shall include, at a minimum, the number of  
9 broadband affiliates and broadband service providers who have requested to  
10 use a cooperative's electric delivery system and the number of broadband  
11 operators, including any broadband affiliate, who have accessed a cooperative's  
12 electric delivery system to deploy broadband to rural residents in the state.

13 Section 2. On March 1, 2021, and every March thereafter, the Louisiana Cable  
14 & Telecommunications Association and the Louisiana Telecommunications Association  
15 shall jointly submit a written report to the Senate Committee on Commerce, Consumer  
16 Protection and International Affairs and the House Committee on Commerce  
17 regarding any impediments to providing broadband high-speed internet access or any  
18 prohibitive requirements to access the cooperative's electric delivery system for the  
19 purpose of providing broadband in the state. The information in the written report  
20 shall include, at a minimum, broadband deployment data publicly available from the  
21 Federal Communications Commission Form 477. Nothing in this Section shall be  
22 construed to require the disclosure of proprietary or trade secret information by a  
23 broadband service provider.

24 Section 3. This Act shall become effective upon signature by the governor or, if not  
25 signed by the governor, upon expiration of the time for bills to become law without signature  
26 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
27 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
28 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 Nancy Vicknair.

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## DIGEST

SB 10 Reengrossed

2020 First Extraordinary Session

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Proposed law requires a cooperative to grant permission to a broadband affiliate or a broadband service provider to use the electric delivery system of the cooperative to provide broadband services.

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

Proposed law does not apply to property owned or controlled by a railroad company operating in the state.

Proposed law provides that if a portion of a cooperative's electric delivery system is used by a broadband affiliate or broadband service provider 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. A cooperative or its members shall not be liable for any recoverable damages to property awarded by a court and the damages shall be the sole responsibility of the broadband affiliate or broadband service provider.

Proposed law requires a cooperative to provide a broadband affiliate, broadband service provider, or broadband operator with nondiscriminatory access to locate its equipment for the provision of broadband services on a cooperative's electric delivery system on just, reasonable, and nondiscriminatory terms, conditions, and rates.

Proposed law provides that any broadband affiliate, broadband service provider, or broadband operator wishing to attach to the cooperative's electric delivery system shall file written notice with the cooperative and requires the cooperative to respond to the notice in accordance with the Public Service Commission's General Order dated September 4, 2014, or any subsequent related order.

Proposed law requires a cooperative to charge a broadband affiliate, broadband service provider, or 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 broadband affiliate, broadband service provider, or broadband operator for the provision of broadband services. Further requires any lease of facilities by a cooperative to a broadband affiliate that includes the use of the cooperative's poles to include a pole attachment fee to be paid by the broadband affiliate to the cooperative. The fee charged by the cooperative to the broadband affiliate shall be the same amount as the pole attachment fee charged by the cooperative to any other broadband operator.

Proposed law prohibits a cooperative from the following:

- (1) Using its electric energy sales revenue to subsidize the provision of broadband services to the public by a broadband affiliate or other broadband operator.
- (2) Allowing the installation or operation of a broadband system on its electric delivery system by a broadband affiliate or other broadband operator to diminish the

reliability of the electric delivery system.

- (3) Requiring any person to purchase broadband services from a broadband affiliate or other broadband operator, as a condition of receiving or continuing to receive electric energy from the cooperative.
- (4) Disconnecting, or threatening to disconnect, electric service to any customer due to the customer's failure to pay for broadband services provided to the customer by a broadband affiliate or other broadband operator.

Proposed law allows a cooperative to make capital investments in a broadband affiliate, issue bonds on behalf of a broadband affiliate, make loans to a broadband affiliate at fair market rate, and enter into loan guarantees for the benefit of a broadband affiliate, all of which may be in such amounts and on such terms as the 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, or any subsequent related orders.

Proposed law requires each cooperative, or the statewide or trade association of each cooperative, to report in writing to the Senate Committee on Commerce, Consumer Protection and International Affairs and the House Committee on Commerce on an annual basis, beginning March 1, 2021, any impediments to providing broadband high-speed internet access to rural residents. Requires such written report to include, at a minimum, the number of broadband affiliates and broadband service providers who have requested to use a cooperative's electric delivery system and the number of broadband operators, including any broadband affiliate, who have accessed a cooperative's electric delivery system to deploy broadband to rural residents in the state.

Proposed law defines "broadband affiliate", "broadband operator", "broadband service provider", "broadband services", "broadband system", and "electric delivery system".

Proposed law requires the Louisiana Cable & Telecommunications Association and the Louisiana Telecommunications Association to jointly submit a written report to the Senate Committee on Commerce, Consumer Protection and International Affairs and the House Committee on Commerce on March 1, 2021, and every March thereafter regarding any impediments to providing broadband high-speed internet access or any prohibitive requirements to access the cooperative's electric delivery system for the purpose of providing broadband in the state. Requires such report to include, at a minimum, broadband deployment data publicly available from the Federal Communications Commission.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 12:430.1 and 430.2)

#### Summary of Amendments Adopted by Senate

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

1. Allows a cooperative to grant permission to a broadband affiliate or a broadband service provider to use the cooperative's electric delivery system for the provision of broadband services and such use shall not be considered an additional burden on the property. Makes an exception for land owned or controlled by a railroad company operating in La.
2. Provides for a landowner's action for recovery of damages for property the landowner believes to have been damaged by the use of the broadband affiliate or broadband service provider for the purpose of providing

broadband services and provides that the damages shall be the sole responsibility of the broadband affiliate or the broadband service provider.

3. Removes certain reporting requirements for cooperatives and the La. Cable & Telecommunications Association and the Louisiana Telecommunications Association relating to applications submitted to and approved or denied by a cooperative.
4. Defines "broadband affiliate", "broadband service provider", and "broadband services" and removes the definition of "Louisiana rural electric cooperative".
5. Repeals Act. No. \_\_ of the 2020 R.S. of the La. Legislature, which originated as SB 406.

Senate Floor Amendments to engrossed bill

1. Requires rather than allows a cooperative to grant permission to a broadband affiliate or a broadband service provider to use the cooperative's electric delivery system for the provision of broadband services.
2. Requires a cooperative to provide certain entities access in locating equipment for provision of broadband services on such cooperative's delivery system based upon certain criteria.
3. Requires written notice to a cooperative from entities wishing to attach to the cooperative's delivery system and requires the cooperative to respond to the notice in accordance with certain PSC orders.
4. Requires a cooperative to charge certain entities for the construction, installation, operation, use, and maintenance of those parts of its delivery system that are used or reserved by such entities.
5. Requires a cooperative to charge a pole attachment fee to any broadband affiliate if the affiliate uses such poles and requires the fee to be the same amount charged by the cooperative to any other broadband operator.
6. Prohibits a cooperative from performing certain acts.
7. Authorizes a cooperative to make capital investments in a broadband affiliate, issue bonds on behalf of a broadband affiliate, make loans to a broadband affiliate at fair market rate, and enter into loan guarantees for the benefit of such affiliate.
8. Adds definitions for "broadband operator" and "broadband system".
9. Changes language regarding the information required in the annual written report submitted by a cooperative to certain Senate and House committees to include the number of broadband affiliates and broadband service providers who have requested to use a cooperative's electric delivery system and the number of broadband operators, including any broadband affiliate, who have accessed a cooperative's electric delivery system to deploy broadband to rural residents in the state.
10. Changes language regarding the annual written report to be submitted by the Louisiana Cable & Telecommunications Association and the Louisiana Telecommunications Association to certain Senate and House committees



from individual reports to a joint report regarding any impediments to providing broadband high-speed internet access or any prohibitive requirements to access the cooperative's electric delivery system for the purpose of providing broadband in the state and requires such report to include certain information.

11. Removes repeal language and effective date language.
12. Adds language making the legislation effective upon signature of the governor or lapse of time for gubernatorial action.
13. Makes technical changes.