

RÉSUMÉ DIGEST

SB 406

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 would retain present law and authorize electric cooperatives to provide broadband high-speed internet services in certain areas of the state.

Proposed law would define "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 would provide 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 would not apply to property owned or controlled by a railroad company operating in the state.

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

Proposed law would provide 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 would provide 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 would provide for prohibited acts of an electric cooperative.

Proposed law would provide 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 would retain 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 would provide 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 would provide 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 would provide 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.

Would have become effective upon signature of the governor or lapse of time for gubernatorial action.

(Proposed to amend R.S. 12:401, 403(4), 428, and 430)

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 1 ES and look forward to continuing to work with her, and the entire legislative body, on truly expanding broadband access to all Louisianans."