

FIRST REGULAR SESSION

HOUSE BILL NO. 680

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ALLEN.

1644H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 394, RSMo, by adding thereto one new section relating to rural electric cooperative utility poles.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 394, RSMo, is amended by adding thereto one new section, to be known as section 394.320, to read as follows:

394.320. 1. As used in this section, "pole attachment" means an attachment by an attaching entity, including a video service provider, a telecommunications provider, or other communications-related service provider to a pole owned or controlled by a rural electric cooperative. As used in this section, "pole" means a utility pole which is owned or controlled by a rural electric cooperative, but shall not include poles that are not associated with the transmission or distribution of electric power, communications, broadband, or video services. A rural electric cooperative shall only deny an attaching entity access to its poles on a nondiscriminatory basis if there is insufficient capacity or for reasons of safety and reliability and if the attaching entity will not resolve the issue. If a rural electric cooperative does not find any capacity, safety, or reliability issues, such rural electric cooperative shall allow the attaching entity to attach to the rural electric cooperative's poles. Nothing in this section shall be construed to prohibit a rural electric cooperative from requiring an attaching entity to enter into a pole attachment agreement consistent with this section.

2. Notwithstanding sections 67.1830 to 67.1846 to the contrary, any pole attachment fees, terms, and conditions, including those related to the granting or denial of access, demanded by a rural electric cooperative shall be nondiscriminatory, just, and reasonable

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.

18 and shall not be subject to any required franchise authority or government entity
19 permitting. A pole attachment rental fee shall be calculated on an annual, per-pole basis.
20 Such rental fee shall be considered nondiscriminatory, just, and reasonable if it is agreed
21 upon by the parties or, in the absence of such an agreement, based on cost, but in no such
22 case shall such fee so calculated be greater than the fee which would apply if it were
23 calculated in accordance with the cable service rate formula referenced in 47 U.S.C.
24 Section 224(d) as applied by the Federal Communications Commission. In the event of a
25 dispute between the parties, either party may bring an action for review in any court of
26 competent jurisdiction. The court shall rule on any such petition for review in an
27 expedited manner by moving the petition to the head of the docket. Nothing shall deny any
28 party the right to a hearing before the court.

29 3. If no pole attachment agreement exists between an attaching entity and the rural
30 electric cooperative, and a dispute between a rural electric cooperative and an attaching
31 entity exclusively concerns the per-pole fee or any requirement or issue not directly related
32 to pole attachments consistent with this section, or both, then the attaching entity may
33 proceed with its attachments during the pendency of the dispute under the agreed-upon
34 terms and conditions at a rental rate of no more than as set forth in subsection 2 of this
35 section. The attaching entity shall comply with applicable and reasonable engineering,
36 safety, and reliability standards and shall hold the rural electric cooperative harmless for
37 any liabilities or damages incurred that are caused by the attaching entity.

38 4. The provisions of this section shall not supersede existing pole attachment
39 agreements established prior to August 28, 2015.

40 5. Nothing in this section shall be construed as conferring any jurisdiction or
41 authority to the public service commission or any state agency to regulate either the fees,
42 terms, or conditions for pole attachments, or for any state agency to assert any jurisdiction
43 over attachments to poles regulated by 47 U.S.C. Section 224.

44 6. A rural electric cooperative may, after reasonable written notice and an
45 opportunity to cure, as provided in the applicable pole attachment agreement between a
46 rural electric cooperative and an attaching entity, revoke pole attachment permission
47 granted to an attaching entity and require removal of the attachment with or without fee
48 refund for breach of the pole attachment agreement until the breach is cured, but only in
49 the event of a substantial breach of material terms and conditions of the pole attachment
50 agreement. A substantial breach by an attaching entity shall be limited to:

51 (1) A material violation of a material provision of the applicable pole attachment
52 agreement;

53 **(2) An evasion or attempt to evade any material provision of the applicable pole**
54 **attachment agreement;**

55 **(3) A material misrepresentation of fact in the applicable pole attachment**
56 **agreement;**

57 **(4) A failure to complete work by the date and in accordance with the terms**
58 **specified in the applicable pole attachment agreement, unless an extension is obtained or**
59 **unless the failure to complete the work is due to reasons beyond the attaching entity's**
60 **control; or**

61 **(5) A failure to correct, within the time and in accordance with the terms specified**
62 **by the rural electric cooperative in the applicable pole attachment agreement, work by the**
63 **attaching entity that does not conform to applicable national safety codes, industry**
64 **construction standards, or local safety codes that are not more stringent than national**
65 **safety codes, upon inspection and notification by the rural electric cooperative of the faulty**
66 **condition. If the time for correction is not specified in the applicable pole attachment**
67 **agreement, the time for correction shall be reasonable under the particular circumstances,**
68 **and in no event less than thirty days.**

69 **7. Unless otherwise provided for in an applicable pole attachment agreement, in the**
70 **event of an imminent threat to public health, life, or safety, a rural electric cooperative**
71 **shall, upon notice to the attaching entity, request the attaching entity rearrange, relocate,**
72 **or remove a pole attachment from a pole or absent action from the attaching entity, have**
73 **the authority to rearrange, relocate, or remove a pole attachment consistent with industry**
74 **practices. The attaching entity shall be notified as soon as practicable upon the cessation**
75 **of the threat to public health, life, or safety, or upon restoration of the attachment by the**
76 **rural electric cooperative.**

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