

FIRST REGULAR SESSION

# SENATE BILL NO. 522

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEHOE.

Read 1st time February 25, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2331S.02I

## AN ACT

To repeal section 394.080, RSMo, and to enact in lieu thereof one new section relating to the payment of damages in a civil action against a rural electric cooperative.

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

Section A. Section 394.080, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 394.080, to read as follows:

394.080. 1. A cooperative shall have power:

- 2 (1) To sue and be sued, in its corporate name;
- 3 (2) To have succession by its corporate name for the period stated in its  
4 articles of incorporation or, if no period is stated in its articles of incorporation,  
5 to have such succession perpetually;
- 6 (3) To adopt a corporate seal and alter the same at pleasure;
- 7 (4) Except as provided in section 386.800, to generate, manufacture,  
8 purchase, acquire, accumulate and transmit electric energy, and to distribute,  
9 sell, supply, and dispose of electric energy in rural areas to its members, to  
10 governmental agencies and political subdivisions, and to other persons not in  
11 excess of ten percent of the number of its members; provided, however, that where  
12 a cooperative has been transmitting, distributing, selling, supplying or disposing  
13 of electric energy in a rural area which, by reason of increase in its population,  
14 its inclusion in a city, town or village, or by reason of any other circumstance  
15 ceases to be a rural area, such cooperative shall have the power to continue to  
16 transmit, distribute, sell, supply or dispose of electric energy therein until such  
17 time as the municipality, or the holder of a franchise to furnish electric energy  
18 in such municipality, may purchase the physical property of such cooperative  
19 located within the boundaries of the municipality, pursuant to law, or until such  
20 time as the municipality may grant a franchise in the manner provided by law

21 to a privately owned public utility to distribute electric power within the  
22 municipality and such privately owned public utility shall purchase the physical  
23 property of such cooperative located within the boundaries of the municipality.  
24 In case any of the parties to such purchase, as herein provided, cannot agree upon  
25 the fair and reasonable price to be paid for the physical property of such  
26 cooperative within the municipality, or if either party refuses to negotiate for the  
27 sale of such property upon the request of the other, the fair and reasonable value  
28 of such property for such purchase shall be fixed by the public service commission  
29 upon application of any one or more of the interested parties;

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

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

42 (7) To construct, purchase, take, receive, lease as lessee, or otherwise  
43 acquire, and to own, hold, use, equip, maintain, and operate, and to sell, assign,  
44 transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose  
45 of or encumber, electric transmission and distribution lines or systems, electric  
46 generating plants, electric refrigeration plants, lands, buildings, structures, dams,  
47 plants and equipment, and any and all kinds and classes of real or personal  
48 property whatsoever, which shall be deemed necessary, convenient or appropriate  
49 to accomplish the purpose for which the cooperative is organized;

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

54 (9) To borrow money and otherwise contract indebtedness, and to issue  
55 notes, bonds, and other evidences of indebtedness therefor, and to secure the  
56 payment thereof by mortgage, pledge, deed of trust, or any other encumbrance

57 upon any or all of its then-owned or after-acquired real or personal property,  
58 assets, franchises, revenues or income;

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

67 (11) To exercise the power of eminent domain in the manner provided by  
68 the laws of this state for the exercise of that power by corporations constructing  
69 or operating electric transmission and distribution lines or systems. **If a  
70 property owner prevails against a rural electric cooperative or its  
71 affiliate in an action for trespass or expanded use of an easement, the  
72 damages awarded shall be measured by the diminution in the  
73 property's fair market value caused by the trespass or expanded use of  
74 the easement, or if the trespass or expanded use is temporary, the  
75 diminution in the property's fair market value caused by the trespass  
76 or expanded use. Such prevailing property owner may also be awarded  
77 reasonable attorney's fees and court costs. Evidence of revenues or  
78 profits derived by a telecommunications or other communications-  
79 related service provider or by a rural electric cooperative for providing  
80 a service shall not be admissible in any action brought by a property  
81 owner to recover damages;**

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

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

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

88 2. In addition to all other powers granted in this section, rural electric  
89 cooperatives shall have the power to supply electric energy at retail after August  
90 28, 1989, in cities, towns and villages having a population in excess of fifteen  
91 hundred inhabitants under the following conditions:

92 (1) The cooperative was the predominant supplier of retail electric energy

93 within the city, town or village at the time any official United States Census  
94 Bureau "decennial census report" declares the population of such city, town or  
95 village to be in excess of fifteen hundred inhabitants;

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

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

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

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

✓

Copy