

FIRST REGULAR SESSION

# SENATE BILL NO. 6

97TH GENERAL ASSEMBLY

---

---

INTRODUCED BY SENATOR LAGER.

Pre-filed December 1, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

0154S.01I

---

---

## AN ACT

To amend chapter 392, RSMo, by adding thereto one new section relating to broadband.

---

---

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

Section A. Chapter 392, RSMo, is amended by adding thereto one new  
2 section, to be known as section 392.602, to read as follows:

**392.602. 1. In order to promote, encourage, and facilitate the  
2 deployment of electrical smart grid technologies, broadband  
3 communications and other similar advanced technologies to benefit  
4 citizens in rural areas of the state of Missouri, where a rural electric  
5 cooperative allows attachments on its distribution system poles, any  
6 telecommunications or broadband service provider shall have the right  
7 to attach, maintain, and operate its equipment on such poles in order  
8 to provide its services, provided that any such attachment complies  
9 with the provisions of this section. Unless otherwise agreed between  
10 the parties, no attachments shall be made before a written agreement  
11 exists between the rural electric cooperative pole owner and the  
12 attaching entity, where all the terms and conditions of such written  
13 agreement have been mutually agreed to by each party or, where not  
14 mutually agreed to, determined by a court under the provisions of  
15 subsection 4 of this section. For purposes of this section, "broadband"  
16 shall mean those types of technologies capable of providing high speed  
17 internet access, as defined by the Federal Communications Commission,  
18 and shall include but not be limited to digital subscriber line, cable  
19 modem, fiber optics, fixed wireless, mobile or cellular broadband,  
20 broadband over power lines, and WiMax technologies. Unless otherwise  
21 specifically set forth in this section, this section shall be interpreted in**

22 a manner consistent with the applicable Federal Communications  
23 Commission's rules for pole and conduit attachments, and nothing in  
24 this section shall be construed as conferring any jurisdiction or  
25 authority of the public service commission to regulate either the rates,  
26 terms, or conditions for attachments or to assert any jurisdiction or  
27 regulation over pole attachments under Section 224 of the  
28 Communications Act of 1934, as amended. The provisions of this  
29 section, except for subsections 6 and 8, shall apply to cable television  
30 providers and others transmitting information by wire, radio, optical  
31 cable, electronic impulses, wireless technology, or other means that are  
32 not capable of providing broadband, and in the case of such providers,  
33 the law in effect prior to August 28, 2013, governing easements shall  
34 continue to apply.

35         2. The written agreement shall require attaching entities to  
36 inform the rural electric cooperative pole owner on whose system any  
37 equipment is to be attached of its intent to attach and the specific  
38 location of the attachment prior to attaching any such  
39 equipment. Unless otherwise agreed, the rural electric cooperative  
40 pole owner shall respond within fifteen business days of the attaching  
41 party's notice, except when such response is not possible within such  
42 timeframe in cases where the rural electric cooperative pole owner or  
43 attaching entity is engaged in large-scale, emergency repairs or  
44 disaster response efforts, as to whether the attachment may be made  
45 without modifications to the pole, or whether additional requirements  
46 must be met prior to allowing the attachment in order to ensure system  
47 safety, reliability, and pole integrity. All attachments shall be made in  
48 accordance with safety and reliability codes applicable to the rural  
49 electric cooperative pole owner's distribution system as may be  
50 promulgated by any governmental agency or instrumentality of  
51 appropriate jurisdiction. If an attaching entity causes damages to, or  
52 improperly attaches equipment, such that it jeopardizes the safety,  
53 integrity, reliability of, or creates replacement issues with respect to  
54 the rural electric cooperative distribution system owner's pole or  
55 system, the attaching entity shall, at a minimum, pay to the rural  
56 electric cooperative pole owner the reasonable costs for any repairs or  
57 modification that are necessary to ensure the safe, reliable, and  
58 effective operation of the rural electric cooperative distribution system

59 and the attached equipment. In case of a conflict that cannot otherwise  
60 be addressed through necessary make ready work, repairs, or pole  
61 replacements, to be paid for by the attaching entity whose pole  
62 attachment or pole attachment request is responsible for same, the  
63 continued reliability and safety of the rural electric cooperative pole  
64 owner's distribution system shall have priority over the  
65 attachments. The parties shall provide in the written agreement, in  
66 addition to reasonable remedies for breach of the agreement,  
67 appropriate and reasonable remedies for the attaching party's  
68 unauthorized attachments, including any compensation amount that  
69 shall be paid in addition to the past-due pole attachment fee for each  
70 such attachment. Notwithstanding any provision in this subsection,  
71 any provisions in an existing contract as of August 28, 2013, that govern  
72 unauthorized pole attachments shall remain in full force and effect  
73 until such contract expires or is terminated in accordance with its  
74 terms.

75       3. The rural electric cooperative distribution system pole owner  
76 shall be entitled to a reasonable fee for permitting attachments to its  
77 rural electric cooperative distribution system poles. Any pole  
78 attachment fee charged by a rural electric cooperative pole owner shall  
79 be agreed to between the parties and shall be assessed on a per-pole  
80 basis. Such pole attachment fees shall not exceed the reasonable costs  
81 to the rural electric cooperative pole owner's system of accommodating  
82 the requested attachments based on the rural electric cooperative's  
83 current costs of such equipment calculated in a manner similar to the  
84 Federal Communications Commission rules for pole and conduit  
85 attachments. In addition, if the rural electric cooperative pole owner  
86 can provide competent evidence of additional cost-based inefficiencies  
87 in the maintenance of its system due solely to the presence of the  
88 attached equipment, the rural electric cooperative pole owner may  
89 increase the pole attachment fee by a corresponding reasonable amount  
90 in the event that such costs are not paid to the rural electric  
91 cooperative pole owner through the operation of some other provision  
92 of the agreement between the rural electric cooperative pole owner and  
93 the attaching party. Notwithstanding the forgoing, any contracts in  
94 existence as of August 28, 2013, for pole attachments shall remain in  
95 full force and effect until such contracts expire or are terminated in

96 accordance with their terms. At the expiration of the term of any such  
97 existing contract, the pole attachment fee in the new agreement shall  
98 not be subject to any increase greater than ten percent per year over  
99 the most recent previously established pole attachment fee, provided  
100 however, that if the rural electric cooperative pole owner can provide  
101 competent evidence that the previously established pole attachment fee  
102 was set at fifty percent or more below the rural electric cooperative  
103 pole owner's cost, using the cost determination requirements under this  
104 subsection, the pole attachment fee in the new agreement then shall not  
105 be subject to an increase greater than twenty percent per year over the  
106 most recent previously established pole attachment fee. In either case,  
107 the pole attachment fee in the new agreement shall not exceed the  
108 rural electric cooperative pole owner's reasonable costs calculated in  
109 the manner specified in this subsection and shall be calculated on a per  
110 pole basis.

111 4. If the parties cannot agree on any provision of the written  
112 agreement required under this section, including a reasonable pole  
113 attachment fee, either party may demand nonbinding mediation. If  
114 mediation is unsuccessful in producing agreement on the disputed  
115 issue, the rural electric cooperative pole owner shall decide the issue,  
116 provided that in the case of a disputed pole attachment fee, the fee  
117 shall comply with the limits set forth in subsection 3 of this section. If  
118 the attaching entity believes the pole attachment fee set by the rural  
119 electric cooperative pole owner exceeds the standards provided in this  
120 section or the attaching entity otherwise disputes the decision of the  
121 rural electric cooperative pole owner, it may file a petition in the  
122 circuit court of any county in which the rural electric cooperative pole  
123 owner maintains an office for the conduct of its business. The circuit  
124 court shall hear evidence presented by the parties as to the use being  
125 made by the attaching entity and as to the relevant costs and shall  
126 make a determination regarding the disputed issue or issues without  
127 deference to any previous determination or findings made by the rural  
128 electric cooperative on such issue or issues. If found to be reasonable,  
129 the court shall approve the rural electric cooperative pole owner's  
130 decision, provided that in cases involving a disputed pole attachment  
131 fee, the pole attachment fee to be paid for such attachments shall be  
132 determined in compliance with the limits set forth in subsection 3 of

133 this section.

134           **5. If the rural electric cooperative pole owner files a suit to**  
135 **collect any money for pole attachments that it believes is due and**  
136 **owing to the rural electric cooperative pole owner based on the terms**  
137 **of an agreement between the pole owner and the attaching entity and**  
138 **the court determines that an amount is due and owing to the rural**  
139 **electric cooperative pole owner, the rural electric cooperative pole**  
140 **owner may recover the amount owed for the pole attachments, any**  
141 **interest and additional compensation provided for under the**  
142 **agreement, and reasonable attorney fees as determined by a court of**  
143 **competent jurisdiction. If the rural electric cooperative pole owner**  
144 **fails to recover a substantial amount in such collection action, the**  
145 **attaching entity may recover reasonable attorney fees as determined**  
146 **by a court of competent jurisdiction. Prior to filing any collection**  
147 **action, the rural electric cooperative pole owner shall provide forty-**  
148 **five days' notice to the attaching entity that an amount is owed and**  
149 **that the rural electric cooperative pole owner will file a collection**  
150 **action if payment is not made in full within the notice period. Nothing**  
151 **in this section precludes the rural electric cooperative pole owner from**  
152 **also pursuing in a court of competent jurisdiction any available legal**  
153 **or equitable remedy, including but not limited to injunctive relief and**  
154 **monetary damages, against an attaching entity that does not have a**  
155 **valid written agreement for such attachments with the rural electric**  
156 **cooperative pole owner, or where a valid written agreement exists,**  
157 **nothing in this section precludes either party from pursuing any**  
158 **available legal or equitable remedy against the other party for**  
159 **violations of this section or of any of the terms of the written**  
160 **agreement.**

161           **6. For all easements and right-of-way interests acquired prior to**  
162 **August 28, 2006, provided the pole attachment or the replacement of**  
163 **existing lines or operating equipment does not result in an additional**  
164 **unreasonable burden on or a diminution in value of the property**  
165 **owner's property, no telecommunications transmission or rural electric**  
166 **cooperative system pole owner shall be required to secure by additional**  
167 **consent, contract, or agreement or by condemnation the right to permit**  
168 **the attachment or the replacement of lines or operating equipment of**  
169 **telecommunications and broadband service providers and rural electric**

170 cooperatives upon the telecommunications transmission or rural  
171 electric cooperative system owner's poles and related real property or  
172 easements from an owner of property upon which a pole owner's  
173 telecommunications transmission or rural electric cooperative system  
174 is located. Unless otherwise expressly prohibited in a recorded  
175 easement or other legally binding document, the telecommunications  
176 transmission or rural electric cooperative system pole owner's  
177 authority to reasonably permit such an attachment or to replace  
178 existing lines or operating equipment shall be deemed to be consistent  
179 with and not beyond the scope of the principal, intended and  
180 authorized use of the telecommunications transmission or rural electric  
181 cooperative system pole-owner's poles, related real property or  
182 easements.

183         7. Nothing in this section shall be construed to deny a property  
184 owner reasonable compensation for any increased interference with or  
185 a diminution in fair market value of the property owner's property  
186 directly resulting from any pole attachment or the replacement of  
187 existing lines or operating equipment authorized under this section. If  
188 after good faith negotiations the parties cannot agree on the amount of  
189 such reasonable compensation, a property owner may file a claim for  
190 compensation for the use of lines, wires, cable, poles, or other  
191 structures and for compensation related to the attachment or the  
192 replacement of existing lines or operating equipment of  
193 telecommunications service providers or rural electric cooperatives. In  
194 any such proceeding the amount of damages, if any, shall be limited to  
195 an amount sufficient to compensate the property owner for the  
196 diminution in fair market value of the property or the increased  
197 interference with the owner's use of the property, if any, caused by any  
198 new or additional physical attachments to or the replacement of lines  
199 or operating equipment of the telecommunications transmission or  
200 rural electric cooperative system. Evidence of revenues or profits  
201 derived by telecommunications service providers or rural electric  
202 cooperatives from providing the services specified in subsection 1 of  
203 this section is not admissible in any proceeding by the property owner  
204 to recover damages.

205         8. In addition to the compensation provided for in subsection 7  
206 of this section, a landowner may request to receive from a rural electric

207 cooperative pole owner a one-time payment of five hundred dollars per  
208 mile prorated for the distance the attached line crosses the landowner's  
209 property with a minimum payment of one hundred dollars per parcel  
210 under the following circumstances:

211 (1) The rural electric cooperative's easement or right-of-way  
212 interest was acquired prior to August 28, 2006 and does not expressly  
213 prohibit use of the rural electric cooperative's facilities for broadband  
214 or similar communications use; and

215 (2) The size of the rural electric cooperative's transmission line  
216 located on the landowner's property is 34.5 kilovolts or above and has  
217 broadband communications facilities that are a part thereof or attached  
218 thereto; and

219 (3) The parties agree, or a court of competent jurisdiction has  
220 determined, that the rural electric cooperative's then-existing easement  
221 or right-of-way interest does not permit the attachment of broadband  
222 communications facilities or the use of electric facilities on the  
223 easement or right-of-way interest for broadband communications  
224 purposes; and

225 (4) The landowner grants in writing an easement to the rural  
226 electric cooperative, fully binding on the landowner's successors and  
227 assigns until abandoned by the rural electric cooperative, that  
228 authorizes the use of the rural electric cooperative's electric facilities  
229 for broadband communications purposes; and

230 (5) The landowner makes application for payment in writing to  
231 the cooperative within one year of August 28, 2013, if the broadband  
232 communications facilities were installed on or before August 28, 2013,  
233 or if the broadband facilities were installed after August 28, 2013,  
234 within one year of the initial installation date of the broadband  
235 communications facilities.

236 The payment fixed under this subsection, combined with any amounts  
237 calculated under subsection 7 of this section, if any, shall be presumed  
238 to be the total amount owed for the use of the electric easements or  
239 right-of-way interests for broadband communications purposes. This  
240 presumption may only be rebutted by competent evidence that the  
241 broadband communications use has caused an additional diminution in  
242 fair market value of the landowner's property or additional  
243 interference with the owner's use of the property as provided for under

244 subsection 7 of this section.

245           9. Nothing in this section shall be construed to deny a property  
246 owner reasonable compensation for physical damages to the property  
247 owner's property directly resulting from any pole attachment or the  
248 replacement of lines or operating equipment authorized under this  
249 section. If after good faith negotiations the parties cannot agree on the  
250 amount of such reasonable compensation, an owner of property upon  
251 which a telecommunications transmission or rural electric cooperative  
252 system owner's pole is located may file a petition in the circuit court  
253 of the county in which the property is situated for the recovery for  
254 physical property direct damages related to the attachment of the  
255 operating equipment of an attaching entity and any other compensation  
256 to which such owner might be entitled.

257           10. Section 523.283 shall continue to govern and apply to all  
258 easements or right-of-way interests acquired after August 28,  
259 2006. Nothing in this section shall be construed to abrogate or conflict  
260 with the provisions of chapter 523, nor to otherwise confer the power  
261 of eminent domain on any entity not granted such power prior to  
262 August 28, 2013, nor to prevent a landowner from voluntarily entering  
263 into any agreement with any other entity for use of the landowner's  
264 property provided that such agreement is subordinate to and does not  
265 conflict with the property rights and uses authorized in any easement  
266 or right-of-way interest previously granted by the landowner or by the  
267 landowner's predecessors in interest.

268           11. Notwithstanding the provisions of section 1.140 to the  
269 contrary, the provisions of this section are nonseverable, and if any  
270 provision is for any reason held to be invalid, such decision shall  
271 invalidate all of the remaining provisions of this section.

272           12. Nothing in this section shall be deemed to apply to any land  
273 or property owned or operated by any railroad regulated by the  
274 Federal Railroad Administration.

✓