

Office of the Governor
State of Louisiana

JOHN BEL EDWARDS
GOVERNOR



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June 11, 2020

VIA HAND DELIVERY

Honorable Page Cortez
Louisiana Senate President
Louisiana State Senate
Post Office Box 94183
Baton Rouge, LA 70804

RE: Veto of Senate Bill 406 of the 2020 Regular Session

Dear President Cortez:

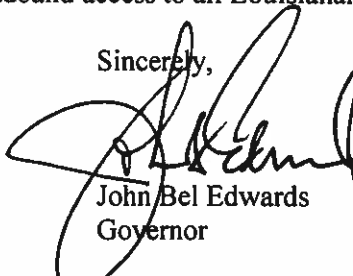
Please be advised that I have vetoed Senate Bill 406 of the 2020 Regular Session.

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

Sincerely,



John Bel Edwards
Governor

cc: Honorable Clay Schexnayder
Speaker of the House of Representatives

SENATE BILL NO. 406

BY SENATORS MIZELL, ABRAHAM, ALLAIN, BARROW, BERNARD, CATHEY, CLOUD, CONNICK, CORTEZ, FESI, FIELDS, FOIL, HARRIS, HENRY, HENSGENS, HEWITT, JACKSON, JOHNS, LUNEAU, MCMATH, FRED MILLS, ROBERT MILLS, MORRIS, PEACOCK, POPE, PRICE, REESE, SMITH, TALBOT, WARD AND WOMACK AND REPRESENTATIVES ADAMS, AMEDEE, BACALA, BAGLEY, BEAULLIEU, BRASS, BROWN, BRYANT, BUTLER, CARPENTER, GARY CARTER, ROBBY CARTER, WILFORD CARTER, CORMIER, COUSSAN, COX, CREWS, DAVIS, DESHOTEL, DEVILLIER, DUBUISSON, DUPLESSIS, ECHOLS, EDMONDS, EDMONSTON, EMERSON, FARNUM, FIRMENT, FONTENOT, FREEMAN, FREIBERG, FRIEMAN, GADBERRY, GAROFALO, GOUDEAU, HARRIS, HILFERTY, HORTON, HUGHES, ILLG, IVEY, JEFFERSON, JENKINS, MIKE JOHNSON, TRAVIS JOHNSON, JONES, KERNER, LANDRY, LARVADAIN, LYONS, MAGEE, MARCELLE, MARINO, MCCORMICK, MCFARLAND, MCKNIGHT, MCMAHEN, MIGUEZ, MINCEY, MOORE, NELSON, NEWELL, CHARLES OWEN, ROBERT OWEN, PIERRE, PRESSLY, RISER, SCHAMERHORN, SEABAUGH, SELDERS, STAGNI, STEFANSKI, THOMAS, THOMPSON, WHEAT, WHITE, WILLARD, WRIGHT AND ZERINGUE

AN ACT

To amend and reenact R.S. 12:401, 403(4), 428, and 430, relative to rural access to broadband high-speed internet access; to grant authority to electric cooperatives; to provide broadband high-speed internet services; to provide for broadband operators; to provide for broadband service providers; to provide for limitations on liability; to provide for servitudes; to provide for applications; to provide for certain terms, conditions and procedures; to provide for powers; to provide for definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 12:401, 403(4), 428, and 430 are hereby amended and reenacted to read as follows:

1 §401. Organization authorized; short title

2 A. Cooperative, nonprofit membership corporations may be organized under
3 this Part for the purpose of supplying electrical energy and promoting and extending
4 the use thereof.

5 B. This Part shall be known and may be cited as "The Electric
6 Cooperative and Rural Broadband Access Law".

7 * * *

8 §403. Powers

9 A cooperative may:

10 * * *

11 (4)(a) Generate, manufacture, purchase, acquire, accumulate and transmit
12 electric energy, and distribute, sell, supply, and dispose of electric energy to its
13 members, to governmental agencies and political subdivisions, and to other persons
14 not in excess of ten ~~per centum~~ percent of the number of its members; provided,
15 however, that should a cooperative acquire any electric facilities dedicated or
16 devoted to the public use, it may, for the purpose of continuing service and avoiding
17 hardship and to an extent which together with all other persons served by the
18 cooperative on a non-member basis shall not exceed forty ~~per centum~~ percent of the
19 total number of persons served by the cooperative, continue to serve the persons
20 served directly from such facilities at the time of such acquisition without requiring
21 that such persons become members. But such non-members shall have the right to
22 become members upon such terms as are provided in the by-laws;

23 (b) Provide broadband services pursuant to this Part;

24 * * *

25 §428. Acquisition of servitudes

26 A. A cooperative shall acquire a servitude on an immovable, unless such
27 immovable is owned by the federal or state government or any agency or subdivision
28 thereof, for the operation and maintenance of its electric transmission and
29 distribution lines, along, upon, under or across any such immovable by virtue of the
30 uninterrupted maintenance of such lines without the written or other consent of the

1 owner thereof, along, upon, under or across the immovable for a period of one year;
 2 provided such servitude and operation does not interfere with the use of said property
 3 by other public utilities; provided further that in all cases where the written consent
 4 of the owner for the establishment of a servitude has been obtained and a line has
 5 been constructed along, upon, under, or across the property under ~~said~~ the consent
 6 it is not necessary that the written consent be recorded in the conveyance or other
 7 records of the parish where the property is located in order to make the servitude
 8 effective as to third parties.

9 **B.(1)(a) Except as provided for in Subparagraph (b) of this Paragraph,**
 10 **an electric cooperative may grant permission to an affiliate, other broadband**
 11 **operator, or a broadband service provider to use the electric delivery system of**
 12 **the electric cooperative to provide broadband services pursuant to this Part.**
 13 **The use of the electric cooperative's electric delivery system for the provision**
 14 **of broadband services by the affiliate or other broadband operator shall not be**
 15 **considered an additional burden on the property upon which the electric**
 16 **cooperative's electric delivery system is located and shall not require the**
 17 **affiliate or other broadband operator to obtain the additional consent from**
 18 **anyone having an interest in the property upon which the electric cooperative's**
 19 **electric delivery system is located.**

20 **(b) The provisions of Subparagraph (a) of this Paragraph shall not**
 21 **apply to any property owned or controlled by a railroad company operating in**
 22 **this state.**

23 **(2) If a portion of an electric cooperative's electric delivery system is used**
 24 **by an affiliate or other broadband operator for the purpose of providing**
 25 **broadband services and the landowner of the property on which such portion**
 26 **is located believes his property has been damaged by such use, the landowner**
 27 **may petition the district court in which the property is situated for any damages**
 28 **to which the landowner may be entitled pursuant to this Subsection, subject to**
 29 **the provisions provided in R.S. 12:430(G).**

30 * * *

1 §430. Short title Broadband access for rural Louisiana

2 This Part of this Chapter shall be known and may be referred to by the short
3 title: "Electric Cooperative Law."

4 A. As used in this Section:

5 (1) "Broadband affiliate" or "affiliate" means any entity that meets all
6 of the following criteria:

7 (a) Is wholly or partially owned by an electric cooperative.

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

10 (2) "Broadband service provider" means an entity that provides
11 broadband services to others on a wholesale basis or to end-use customers on
12 a retail basis.

13 (3) "Broadband operator" means a broadband service provider that
14 owns or operates a broadband system on an electric cooperative's electric
15 delivery system with the electric cooperative's consent.

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

24 (a) Is used to provide access to the internet.

25 (b) Provides computer processing, information storage, information
26 content or protocol conversion, including any service applications or
27 information service provided over such high-speed access service. As used in
28 this Part, "broadband services" shall also include video services, Voice over
29 Internet Protocol services, wireless services, and internet protocol-enabled
30 services.

1 **(5) "Broadband system" means broadband internet access service as**
2 **defined in 47 C.F.R. §8.1.**

3 **(6) "Communication services" includes, whether a part of a bundle of**
4 **services or offered separately, telecommunications service, broadband service,**
5 **cable service, Voice over Internet Protocol service, ethernet transport service,**
6 **business data service, and wireless backhaul service.**

7 **(7) "Cooperative" or "electric cooperative" means a corporation**
8 **organized under this Part and a corporation which becomes subject to this Part**
9 **in the manner hereinafter provided.**

10 **(8) "Electric delivery system" means the poles, lines, materials,**
11 **equipment, easements, and other facilities or properties used by an electric**
12 **cooperative.**

13 **(9) "Internet protocol-enabled services" means any service, capability,**
14 **functionality, or application provided using internet protocol, or any successor**
15 **protocol, that enables an end-user to send or receive a communication in**
16 **internet protocol format, or any successor format, regardless of whether the**
17 **communication is voice, data, or video.**

18 **(10) "Unserved area" means an area lacking access to broadband service**
19 **according to the Federal Communications Commission's Form 477 or any**
20 **subsequent broadband data gathering tool implemented by the Federal**
21 **Communications Commission.**

22 **(11) "Video services" means video programming services without regard**
23 **to delivery technology, including internet protocol technology, internet protocol**
24 **television, Voice over Internet Protocol services, and video programming**
25 **provided as a part of a service that enables users to access content, information,**
26 **email, or other services offered over the public internet.**

27 **(12) "Video programming" means any programming generally**
28 **considered comparable to programming provided by a television broadcast**
29 **station or others.**

30 **(13) "Voice over Internet Protocol services" means interconnected Voice**

1 over Internet Protocol service as defined in 47 C.F.R. §9.3.

2 B.(1) In an unserved area only, an electric cooperative may allow a
3 broadband affiliate or other broadband operator to own, lease, construct,
4 maintain, or operate a broadband system and provide services to the public
5 utilizing the broadband system on the electric cooperative's electric delivery
6 system or other parts of its electric delivery system.

7 (2) Except as provided in the substantive rules of the Public Service
8 Commission, an electric cooperative that elects to provide broadband services
9 pursuant to this Section shall provide a broadband affiliate or other broadband
10 operator with nondiscriminatory access to locate its equipment for the provision
11 of broadband services within a servitude or on infrastructure or any pole owned
12 or controlled by the electric cooperative on just, reasonable, and
13 nondiscriminatory terms, conditions, and rates.

14 C.(1) If an electric cooperative chooses to provide or facilitate broadband
15 services pursuant to this Section through an affiliate, the electric cooperative
16 shall provide for an application process that is open to all broadband service
17 providers to use the electric delivery system.

18 (2) If the electric cooperative chooses to provide for broadband services
19 through any other broadband operator or broadband service provider pursuant
20 to this Section, the electric cooperative shall provide for an application process
21 that is open to all broadband service providers to use the electric delivery
22 system.

23 (3) The electric cooperative shall provide an application form. The form
24 shall include the criteria for consideration, costs, and a deadline for submitting
25 the application. Within sixty days of receiving the application, the electric
26 cooperative shall notify the applicant in writing whether his application has
27 been approved or denied.

28 (4) Each electric cooperative shall allow for location usage by costs.

29 D. An electric cooperative shall charge an affiliate or other broadband
30 operator for the construction, installation, operation, use, and maintenance of

1 those parts of its electric delivery system that are used or may be reserved for
2 use by the affiliate or other broadband operator for the provision of broadband
3 services. Any lease of facilities by an electric cooperative to a broadband
4 affiliate that includes the use of the electric cooperative's poles shall include a
5 pole attachment fee to be paid by the affiliate to the electric cooperative. Any
6 fee charged shall be the same as the pole attachment fee charged by the electric
7 cooperative to any other broadband operator.

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

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

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

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

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

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

27 G. An electric cooperative or its members shall not be liable for any
28 recoverable damages to property awarded by a court pursuant to the provisions
29 of R.S. 12:428(B), and the damages shall be the sole responsibility of the
30 broadband operator.

1 Section 2. This Act shall become effective upon signature by the governor or, if not
 2 signed by the governor, upon expiration of the time for bills to become law without signature
 3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 5 effective on the day following such approval.

Patrick Poye Corty

 PRESIDENT OF THE SENATE

Clay Schyler

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: *MFB*
10 June 2020

Vetoed
[Signature]