

SECOND REGULAR SESSION

HOUSE BILL NO. 1361

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES POLLOCK (Sponsor), SCHAD, ENTLICHER, DUGGER,
McNARY, RIDDLE, ROWLAND, CAUTHORN, WELLS AND FRANKLIN (Co-sponsors).

5285L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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 section, to be
2 known as section 392.602, to read as follows:

**392.602. 1. In order to promote, encourage, and facilitate the deployment of
2 electrical smart grid technologies, broadband communications and other similar advanced
3 technologies in rural areas of the state of Missouri, telecommunications service providers
4 and rural electric cooperatives may attach, maintain, and operate their equipment
5 providing such services on a telecommunications transmission or rural electric cooperative
6 distribution system owner's poles under the terms and conditions specified in this section.
7 No attachments shall be made without a written agreement between the pole owner and
8 the attaching entity. Unless otherwise defined herein, this section shall be interpreted in
9 a manner consistent with the applicable Federal Communications Commission's rules for
10 pole and conduit attachments, and nothing in this section shall be construed as conferring
11 any jurisdiction or authority of the commission to either regulate rates, terms, and
12 conditions for attachments or assert any jurisdiction or regulation over pole attachments
13 under Section 224 of the Communications Act of 1934, as amended.**

**14 2. Attaching entities shall inform the pole owner on whose system any equipment
15 is to be attached of its intent to attach and the specific location of the attachment prior to
16 attaching any such equipment. Unless otherwise agreed, the pole owner shall respond
17 within fifteen days of the attaching party's notice, except in cases where the pole owner is**

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 engaged in large-scale, emergency repairs or disaster, as to whether the attachment may
19 be made without modifications to the pole, or whether additional requirements shall be met
20 before an attachment can be made. All attachments shall be made in accordance with
21 safety and reliability codes applicable to the pole owner's telecommunications transmission
22 or rural electric cooperative distribution system as promulgated by any governmental
23 agency of appropriate jurisdiction. If an attaching entity causes damages to or improperly
24 attaches equipment, such that it causes a safety or reliability issue to the
25 telecommunications transmission or rural electric cooperative distribution system owner's
26 pole or system, the attaching entity shall, at a minimum, pay to the pole owner the
27 reasonable costs for any repairs or modification that are necessary to ensure the safe,
28 reliable, and effective operation of the telecommunications transmission or rural electric
29 cooperative distribution system and the attached equipment. In case of conflict, the
30 continued reliability and safety of the pole owner's telecommunications transmission or
31 rural electric cooperative distribution system shall have priority over the attachments. If
32 an attachment is made without proper notice to the pole owner, the parties may determine
33 the penalty fee that shall be paid in addition to the past-due rates for each such attachment.
34 If the parties cannot agree on a reasonable penalty fee, the penalty for unauthorized
35 attachments made after August 28, 2012, shall equal twenty-five percent of the pole rate
36 for a maximum period of twelve months. Notwithstanding any provision in this subsection,
37 any existing contract provisions for pole attachment penalties shall remain in full force and
38 effect until such contract expires.

39 3. The telecommunications transmission or rural electric cooperative distribution
40 system pole owner shall be entitled to a reasonable rate for permitting attachments to its
41 telecommunications transmission or rural electric cooperative distribution system poles.
42 Any rate charged by a pole owner shall be agreed to between the parties and shall be
43 assessed on a per-pole basis. Such rates shall not exceed the reasonable costs to the pole
44 owner's system based on the current costs of such equipment calculated in a manner
45 similar to the Federal Communications Commission rules for pole and conduit
46 attachments. In addition, if the pole owner can provide competent evidence of additional
47 costs based on inefficiencies in its maintenance of its system because of the presence of the
48 attached equipment, the pole owner may increase the rate by a corresponding reasonable
49 amount. Notwithstanding the forgoing, any existing contracts for pole attachments shall
50 remain in full force and effect until such contracts expire. At the expiration of the term of
51 an existing contract, the rates in the new agreement shall not exceed a ten percent increase
52 per year over any previously established rate, provided however, that if the pole owner can
53 provide competent evidence that the previously established rate was set at fifty percent or

54 more below the pole owner's cost, the rates in the new agreement then shall not exceed a
55 twenty percent increase per year over any previously established rate. In either case, the
56 rates in the new agreement shall not exceed the pole owner's reasonable costs calculated
57 in the manner specified in this subsection.

58 **4. If the parties cannot agree on a reasonable rate for pole attachments, either party**
59 **may demand nonbinding mediation. If mediation is unsuccessful in producing an**
60 **agreement, the pole owner shall set the rate under the limits set forth in subsection 3 of this**
61 **section. If the attaching entity believes the rate exceeds the standards provided in this**
62 **section, it may file a petition in the circuit court of any county in which the pole owner**
63 **maintains an office for the conduct of its business. The circuit court shall have the right**
64 **to hear evidence presented by the parties as to the use being made by the attaching entity**
65 **and as to the relevant costs and determine the rate to be paid for such attachments under**
66 **the limits set forth in subsection 3 of this section.**

67 **5. If the pole owner files a suit to collect any moneys for pole attachments that it**
68 **believes is due and owing to the pole owner based on the terms of an agreement between**
69 **the pole owner and the attaching entity and the court determines that an amount is due**
70 **and owing to the pole owner, the pole owner may recover the amount owed for the pole**
71 **attachments, any interest and penalties on such amount, and reasonable attorney fees as**
72 **determined by a court of competent jurisdiction. Prior to filing any collection action, the**
73 **pole owner shall provide forty-five days notice to the attaching entity that an amount is**
74 **owed and that the pole owner will file a collection action if payment is not made in full with**
75 **the notice period. Nothing in this section precludes the pole owner from pursuing any**
76 **available legal remedy or damages against an attaching entity that does not have a written**
77 **agreement for such attachments with the pole owner.**

78 **6. Provided the pole attachment or the replacement of existing lines or operating**
79 **equipment does not result in an additional unreasonable burden on or a diminution in**
80 **value of the property owner's property, no pole owner shall be required to secure by**
81 **additional consent, contract, or agreement or by condemnation the right to permit the**
82 **attachment or the replacement of lines or operating equipment of telecommunications**
83 **service providers or rural electric cooperatives upon the telecommunications transmission**
84 **or rural electric cooperative system owner's poles and related real property or easements**
85 **from an owner of property upon which a pole owner's telecommunications transmission**
86 **or rural electric cooperative system is located. Unless otherwise expressly stated to the**
87 **contrary in a recorded easement or other legally binding document, the pole owner's**
88 **authority to reasonably permit such an attachment or to replace existing lines or operating**

89 **equipment shall be deemed to be consistent with and not beyond the scope of the principal,**
90 **intended and authorized use of the pole-owner's poles, related real property or easements.**

91 **7. Nothing in this section shall be construed to deny a property owner reasonable**
92 **compensation for any increased interference with or a diminution in value of the property**
93 **owner's property directly resulting from any pole attachment or the replacement of**
94 **existing lines or operating equipment authorized under this section. If a property owner**
95 **files a petition in the circuit court for compensation for the use of lines, wires, cable, poles,**
96 **or other structures and for compensation related to the attachment or the replacement of**
97 **existing lines or operating equipment of telecommunications service providers or rural**
98 **electric cooperatives, the amount of damages, if any, shall be limited to an amount**
99 **sufficient to compensate the property owner for the diminution in value of the property or**
100 **the increased interference with the owner's use of the property, if any, caused by any new**
101 **or additional physical attachments to or the replacement of lines or operating equipment**
102 **of the telecommunications transmission or rural electric cooperative system. Evidence of**
103 **revenues or profits derived by telecommunications service providers or rural electric**
104 **cooperatives from providing such services is not admissible in any proceeding by the**
105 **property owner to recover damages.**

106 **8. Nothing in this section shall be construed to deny a property owner reasonable**
107 **compensation for physical damages to the property owner's property directly resulting**
108 **from any pole attachment or the replacement of lines or operating equipment authorized**
109 **under this section. An owner of property upon which telecommunications transmission**
110 **or rural electric cooperative system owner's pole is located may file a petition in the circuit**
111 **court of the county in which the property is situated for the recovery for physical property**
112 **direct damages related to the attachment of the operating equipment of an attaching entity**
113 **and any other compensation to which such owner might be entitled.**

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