

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 1361

96TH GENERAL ASSEMBLY

5285L.02P

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:

3 **392.602. 1. In order to promote, encourage, and facilitate the deployment of**  
4 **electrical smart grid technologies, broadband communications and other similar advanced**  
5 **technologies to benefit citizens in rural areas of the state of Missouri, telecommunications**  
6 **and broadband service providers and rural electric cooperatives may attach, maintain, and**  
7 **operate their equipment providing such services on a telecommunications transmission or**  
8 **rural electric cooperative distribution system owner's poles under the terms and conditions**  
9 **specified in this section. No attachments shall be made without a written agreement**  
10 **between the pole owner and the attaching entity. For purposes of this section,**  
11 **"broadband" shall mean those types of technologies capable of providing high speed**  
12 **internet access, as defined by the Federal Communications Commission, and shall include**  
13 **but not be limited to digital subscriber line, cable modem, fiber optics, fixed wireless,**  
14 **mobile or cellular broadband, broadband over power lines, and WiMax technologies.**  
15 **Unless otherwise defined herein, this section shall be interpreted in a manner consistent**  
16 **with the applicable Federal Communications Commission's rules for pole and conduit**  
17 **attachments, and nothing in this section shall be construed as conferring any jurisdiction**  
18 **or authority of the commission to regulate either the rates, terms, or conditions for**  
**attachments or assert any jurisdiction or regulation over pole attachments under Section**  
**224 of the Communications Act of 1934, as amended. The provisions of this section, except**

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.

19 for subsections 6 and 8, shall apply to cable television providers and others transmitting  
20 information by wire, radio, optical cable, electronic impulses, wireless technology, or other  
21 means that are not capable of providing broadband, and in the case of such providers, the  
22 law in effect prior to August 28, 2012, governing easements shall continue to apply.

23       **2. Attaching entities shall inform the pole owner on whose system any equipment**  
24 **is to be attached of its intent to attach and the specific location of the attachment prior to**  
25 **attaching any such equipment. Unless otherwise agreed, the pole owner shall respond**  
26 **within fifteen business days of the attaching party's notice, except in cases where the pole**  
27 **owner is engaged in large-scale, emergency repairs or disaster response efforts, as to**  
28 **whether the attachment may be made without modifications to the pole, or whether**  
29 **additional requirements must be met prior to allowing the attachment in order to ensure**  
30 **system safety, reliability, and pole integrity. All attachments shall be made in accordance**  
31 **with safety and reliability codes applicable to the pole owner's telecommunications**  
32 **transmission or rural electric cooperative distribution system as may be promulgated by**  
33 **any governmental agency or instrumentality of appropriate jurisdiction. If an attaching**  
34 **entity causes damages to, or improperly attaches equipment, such that it jeopardizes the**  
35 **safety, integrity, reliability, or creates replacement issues with respect to the**  
36 **telecommunications transmission or rural electric cooperative distribution system owner's**  
37 **pole or system, the attaching entity shall, at a minimum, pay to the pole owner the**  
38 **reasonable costs for any repairs or modification that are necessary to ensure the safe,**  
39 **reliable, and effective operation of the telecommunications transmission or rural electric**  
40 **cooperative distribution system and the attached equipment. In case of a conflict that**  
41 **cannot otherwise be addressed through necessary make ready work, repairs, or pole**  
42 **replacements, to be paid for by the attaching entity whose pole attachment or pole**  
43 **attachment request is responsible for same, the continued reliability and safety of the pole**  
44 **owner's telecommunications transmission or rural electric cooperative distribution system**  
45 **shall have priority over the attachments. If an attachment is made without proper notice**  
46 **to the pole owner, the parties may determine the penalty fee that shall be paid in addition**  
47 **to the past-due pole attachment fee for each such attachment. If the parties cannot agree**  
48 **on a reasonable penalty fee, the penalty for unauthorized attachments made after August**  
49 **28, 2012, shall equal twenty-five percent of the pole attachment fee for a maximum period**  
50 **of twelve months. Notwithstanding any provision in this subsection, any existing contract**  
51 **provisions for pole attachment penalties shall remain in full force and effect until such**  
52 **contract expires.**

53       **3. The telecommunications transmission or rural electric cooperative distribution**  
54 **system pole owner shall be entitled to a reasonable rate for permitting attachments to its**

55 telecommunications transmission or rural electric cooperative distribution system poles.  
56 Any pole attachment fee charged by a pole owner shall be agreed to between the parties  
57 and shall be assessed on a per-pole basis. Such pole attachment fees shall not exceed the  
58 reasonable costs to the pole owner's system attributable to the attachments based on the  
59 current costs of such equipment calculated in a manner similar to the Federal  
60 Communications Commission rules for pole and conduit attachments. In addition, if the  
61 pole owner can provide competent evidence of additional cost-based inefficiencies in the  
62 maintenance of its system due solely to the presence of the attached equipment, the pole  
63 owner may increase the pole attachment fee by a corresponding reasonable amount in the  
64 event that such costs are not paid to the pole owner through the operation of some other  
65 provision of the agreement between the pole owner and the attaching party.  
66 Notwithstanding the forgoing, any existing contracts for pole attachments shall remain in  
67 full force and effect until such contracts expire. At the expiration of the term of an existing  
68 contract, the pole attachment fee in the new agreement shall not be subject to any increase  
69 greater than ten percent per year over any previously established pole attachment fee,  
70 provided however, that if the pole owner can provide competent evidence that the  
71 previously established pole attachment fee was set at fifty percent or more below the pole  
72 owner's cost, the pole attachment fee in the new agreement then shall not be subject to an  
73 increase greater than twenty percent per year over any previously established pole  
74 attachment fee. In either case, the pole attachment fee in the new agreement shall not  
75 exceed the pole owner's reasonable costs calculated in the manner specified in this  
76 subsection.

77       4. If the parties cannot agree on a reasonable pole attachment fee, either party may  
78 demand nonbinding mediation. If mediation is unsuccessful in producing an agreement,  
79 the pole owner shall set the pole attachment fee under the limits set forth in subsection 3  
80 of this section. If the attaching entity believes the pole attachment fee exceeds the  
81 standards provided in this section, it may file a petition in the circuit court of any county  
82 in which the pole owner maintains an office for the conduct of its business. The circuit  
83 court shall have the right to hear evidence presented by the parties as to the use being  
84 made by the attaching entity and as to the relevant costs and determine the pole attachment  
85 fee to be paid for such attachments under the limits set forth in subsection 3 of this section.

86       5. If the pole owner files a suit to collect any moneys for pole attachments that it  
87 believes is due and owing to the pole owner based on the terms of an agreement between  
88 the pole owner and the attaching entity and the court determines that an amount is due  
89 and owing to the pole owner, the pole owner may recover the amount owed for the pole  
90 attachments, any interest and penalties on such amount, and reasonable attorney fees as

91 **determined by a court of competent jurisdiction. Prior to filing any collection action, the**  
92 **pole owner shall provide forty-five days notice to the attaching entity that an amount is**  
93 **owed and that the pole owner will file a collection action if payment is not made in full**  
94 **within the notice period. Nothing in this section precludes the pole owner from pursuing**  
95 **any available legal remedy or damages against an attaching entity that does not have a**  
96 **written agreement for such attachments with the pole owner.**

97 **6. For all easements and right-of-way interests acquired prior to August 28, 2006,**  
98 **provided the pole attachment or the replacement of existing lines or operating equipment**  
99 **does not result in an additional unreasonable burden on or a diminution in value of the**  
100 **property owner's property, no pole owner shall be required to secure by additional**  
101 **consent, contract, or agreement or by condemnation the right to permit the attachment or**  
102 **the replacement of lines or operating equipment of telecommunications and broadband**  
103 **service providers and rural electric cooperatives upon the telecommunications transmission**  
104 **or rural electric cooperative system owner's poles and related real property or easements**  
105 **from an owner of property upon which a pole owner's telecommunications transmission**  
106 **or rural electric cooperative system is located. Unless otherwise expressly prohibited in a**  
107 **recorded easement or other legally binding document, the pole owner's authority to**  
108 **reasonably permit such an attachment or to replace existing lines or operating equipment**  
109 **shall be deemed to be consistent with and not beyond the scope of the principal, intended**  
110 **and authorized use of the pole-owner's poles, related real property or easements.**

111 **7. Nothing in this section shall be construed to deny a property owner reasonable**  
112 **compensation for any increased interference with or a diminution in fair market value of**  
113 **the property owner's property directly resulting from any pole attachment or the**  
114 **replacement of existing lines or operating equipment authorized under this section. If after**  
115 **good faith negotiations the parties cannot agree on the amount of such reasonable**  
116 **compensation, a property owner may file a claim for compensation for the use of lines,**  
117 **wires, cable, poles, or other structures and for compensation related to the attachment or**  
118 **the replacement of existing lines or operating equipment of telecommunications service**  
119 **providers or rural electric cooperatives. In any such proceeding the amount of damages,**  
120 **if any, shall be limited to an amount sufficient to compensate the property owner for the**  
121 **diminution in fair market value of the property or the increased interference with the**  
122 **owner's use of the property, if any, caused by any new or additional physical attachments**  
123 **to or the replacement of lines or operating equipment of the telecommunications**  
124 **transmission or rural electric cooperative system. Evidence of revenues or profits derived**  
125 **by telecommunications service providers or rural electric cooperatives from providing the**

126 services specified in subsection 1 of this section is not admissible in any proceeding by the  
127 property owner to recover damages.

128 **8. In addition to the compensation provided for in subsection 7 of this section, a**  
129 **landowner may request to receive from a rural electric cooperative pole owner a one-time**  
130 **payment of five hundred dollars per mile prorated for the distance the attached line crosses**  
131 **the landowner's property with a minimum payment of one hundred dollars per parcel**  
132 **under the following circumstances:**

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

136 **(2) the size of the rural electric cooperative's transmission line located on the**  
137 **landowner's property is 34.5 kilovolts or above and has broadband communications**  
138 **facilities that are a part thereof or attached thereto; and**

139 **(3) the parties agree, or a court of competent jurisdiction has determined, that the**  
140 **rural electric cooperative's then-existing easement or right-of-way interest does not permit**  
141 **the attachment of broadband communications facilities or the use of electric facilities on**  
142 **the easement or right-of-way interest for broadband communications purposes; and**

143 **(4) the landowner grants in writing an easement to the rural electric cooperative,**  
144 **fully binding on the landowner's successors and assigns until abandoned by the rural**  
145 **electric cooperative, that authorizes the use of the rural electric cooperative's electric**  
146 **facilities for broadband communications purposes; and**

147 **(5) the landowner makes application for payment in writing to the cooperative**  
148 **within one year of the effective date of this section if the broadband communications**  
149 **facilities were installed prior thereto, or if the broadband facilities were installed after the**  
150 **effective date of this section, within one year of the initial installation of the broadband**  
151 **communications facilities.**

152

153 **The payment fixed hereunder, combined with any amounts calculated under subsection**  
154 **7 of this section if any, shall be presumed to be the total amount owed for the use of the**  
155 **electric easements or right-of-way interests for broadband communications purposes. This**  
156 **presumption may only be rebutted by competent evidence that the broadband**  
157 **communications use has caused an additional diminution in fair market value of the**  
158 **landowner's property or additional interference with the owner's use of the property as**  
159 **provided for under subsection 7 of this section.**

160 **9. Nothing in this section shall be construed to deny a property owner reasonable**  
161 **compensation for physical damages to the property owner's property directly resulting**

162 from any pole attachment or the replacement of lines or operating equipment authorized  
163 under this section. If after good faith negotiations the parties cannot agree on the amount  
164 of such reasonable compensation, an owner of property upon which telecommunications  
165 transmission or rural electric cooperative system owner's pole is located may file a petition  
166 in the circuit court of the county in which the property is situated for the recovery for  
167 physical property direct damages related to the attachment of the operating equipment of  
168 an attaching entity and any other compensation to which such owner might be entitled.

169       **10. Section 523.283 shall continue to govern and apply to all easements or**  
170 **right-of-way interests acquired after August 28, 2006. Nothing in this section shall be**  
171 **construed to abrogate or conflict with the provisions of chapter 523, nor to otherwise**  
172 **confer the power of eminent domain on any entity not granted such power prior to**  
173 **August 28, 2012, nor to prevent a landowner from voluntarily entering into any agreement**  
174 **with any other entity for use of the landowner's property provided that such agreement**  
175 **is subordinate to and does not conflict with the property rights and uses authorized in any**  
176 **easement or right-of-way interest previously granted by the landowner or by the**  
177 **landowner's predecessors in interest.**

178       **11. Notwithstanding the provisions of section 1.140 to the contrary, the provisions**  
179 **of this section are nonseverable, and if any provision is for any reason held to be invalid,**  
180 **such decision shall invalidate all of the remaining provisions of this section.**

✓