

FIRST REGULAR SESSION

HOUSE BILL NO. 1115

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RICHARDSON.

2388H.011

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Section 394.080, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 394.080, to read as follows:

394.080. 1. A cooperative shall have power:

(1) To sue and be sued, in its corporate name;

(2) To have succession by its corporate name for the period stated in its articles of incorporation or, if no period is stated in its articles of incorporation, to have such succession perpetually;

(3) To adopt a corporate seal and alter the same at pleasure;

(4) Except as provided in section 386.800, to generate, manufacture, purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten percent of the number of its members; provided, however, that where a cooperative has been transmitting, distributing, selling, supplying or disposing of electric energy in a rural area which, by reason of increase in its population, its inclusion in a city, town or village, or by reason of any other circumstance ceases to be a rural area, such cooperative shall have the power to continue to transmit, distribute, sell, supply or dispose of electric energy therein until such time as the municipality, or the holder of a franchise to furnish electric energy in such municipality, may purchase the physical property of such cooperative located within the boundaries of the municipality, pursuant to law, or until such time as the

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

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

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

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

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

47 (9) To borrow money and otherwise contract indebtedness, and to issue notes, bonds, and
48 other evidences of indebtedness therefor, and to secure the payment thereof by mortgage, pledge,
49 deed of trust, or any other encumbrance upon any or all of its then-owned or after-acquired real
50 or personal property, assets, franchises, revenues or income;

51 (10) To construct, maintain and operate electric transmission and distribution lines along,
52 upon, under and across all public thoroughfares, including without limitation, all roads,
53 highways, streets, alleys, bridges and causeways, and upon, under and across all publicly owned

54 lands, subject, however, to the requirements in respect of the use of such thoroughfares and lands
55 that are imposed by the respective authorities having jurisdiction thereof upon corporations
56 constructing or operating electric transmission and distribution lines or systems;

57 (11) To exercise the power of eminent domain in the manner provided by the laws of this
58 state for the exercise of that power by corporations constructing or operating electric
59 transmission and distribution lines or systems. **If a property owner prevails against a rural
60 electric cooperative or its affiliate in an action for trespass or expanded use of an easement,
61 the damages awarded shall be measured by the diminution in the property's fair market
62 value caused by the expanded use, or if the expanded use is temporary, the diminution in
63 the property's fair market value caused by the expanded use, and in addition, such
64 property owner may be awarded reasonable attorney's fees, costs, and expenses. Evidence
65 of revenues or profits derived by telecommunications or broadband service providers, or
66 by rural electric cooperatives, from providing the services is not admissible in any action
67 brought by the landowner to recover damages;**

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

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

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

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

78 (1) The cooperative was the predominant supplier of retail electric energy within the city,
79 town or village at the time any official United States Census Bureau "decennial census report"
80 declares the population of such city, town or village to be in excess of fifteen hundred
81 inhabitants;

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

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

87 4. The provisions of subsections 2 and 3 of this section shall in no way affect or diminish
88 the rights and duties of any city, town or village to grant franchises to electric suppliers in the

89 manner provided by law or of any electrical corporation authorized by law to provide electric
90 service at retail within such city, town or village.

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

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