

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for House Bill No. 1992, Page 5, Section 393.1015, Line  
2 100, by inserting after all of said section and line the following:

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4 "394.080. 1. A cooperative shall have power:

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

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

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

10 (4) Except as provided in section 386.800, to generate, manufacture, purchase, acquire,  
11 accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy  
12 in rural areas to its members, to governmental agencies and political subdivisions, and to other  
13 persons not in excess of ten percent of the number of its members; provided, however, that where a  
14 cooperative has been transmitting, distributing, selling, supplying or disposing of electric energy in a  
15 rural area which, by reason of increase in its population, its inclusion in a city, town or village, or by  
16 reason of any other circumstance ceases to be a rural area, such cooperative shall have the power to  
17 continue to transmit, distribute, sell, supply or dispose of electric energy therein until such time as  
18 the municipality, or the holder of a franchise to furnish electric energy in such municipality, may  
19 purchase the physical property of such cooperative located within the boundaries of the  
20 municipality, pursuant to law, or until such time as the municipality may grant a franchise in the  
21 manner provided by law to a privately owned public utility to distribute electric power within the  
22 municipality and such privately owned public utility shall purchase the physical property of such  
23 cooperative located within the boundaries of the municipality. In case any of the parties to such  
24 purchase, as herein provided, cannot agree upon the fair and reasonable price to be paid for the  
25 physical property of such cooperative within the municipality, or if either party refuses to negotiate  
26 for the sale of such property upon the request of the other, the fair and reasonable value of such  
27 property for such purchase shall be fixed by the public service commission upon application of any  
28 one or more of the interested parties;

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

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

4 (7) To construct, purchase, take, receive, lease as lessee, or otherwise acquire, and to own,  
5 hold, use, equip, maintain, and operate, and to sell, assign, transfer, convey, exchange, lease as  
6 lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution  
7 lines or systems, electric generating plants, electric refrigeration plants, lands, buildings, structures,  
8 dams, plants and equipment, and any and all kinds and classes of real or personal property  
9 whatsoever, which shall be deemed necessary, convenient or appropriate to accomplish the purpose  
10 for which the cooperative is organized. For the purposes of this section, "electric transmission and  
11 distribution lines or systems" includes, but is not limited to, cooperative-owned or cooperative  
12 subsidiary-owned copper and fiber optic cable, facilities and technology, or any combination  
13 thereof, that carries, or has the capacity to carry, light signals and data beyond or in addition to the  
14 light signals and data necessary for the transmission and distribution of electricity;

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

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

22 (10) To construct, maintain and operate electric transmission and distribution lines along,  
23 upon, under and across all public thoroughfares, including without limitation, all roads, highways,  
24 streets, alleys, bridges and causeways, and upon, under and across all publicly owned lands, subject,  
25 however, to the requirements in respect of the use of such thoroughfares and lands that are imposed  
26 by the respective authorities having jurisdiction thereof upon corporations constructing or operating  
27 electric transmission and distribution lines or systems;

28 (11) To exercise the power of eminent domain in the manner provided by the laws of this  
29 state for the exercise of that power by corporations constructing or operating electric transmission  
30 and distribution lines or systems. If a property owner prevails against a rural electric cooperative or  
31 a cooperative subsidiary in a suit in trespass or in inverse condemnation filed after August 28, 2018,  
32 the trespass shall be deemed permanent and the actual damages awarded shall be the fair market  
33 value, which, notwithstanding any other provision of law, shall always be greater than zero, as  
34 defined and calculated in subdivision (1) of section 523.001 and determined in accordance with  
35 section 523.039. In no case filed after August 28, 2018, may evidence of revenues or profits  
36 derived, nor the rental value of an assembled communications corridor, be admissible in determining  
37 fair market value. Such actual damages shall be fixed at the time of the initial trespass, shall not be  
38 deemed to continue, accumulate, or accrue, and upon payment of damages the defendant shall be  
39 granted a permanent easement for the trespass litigated. If a property owner prevails in such suits,  
40 punitive damages may be assessed and the property owner may be awarded additional compensation  
41 for any physical damages to the property directly resulting from the trespass, if any, and reasonable  
42 attorneys' fees, costs, and expenses consistent with subsection 4 of section 523.283;

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

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

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

49 2. In addition to all other powers granted in this section, rural electric cooperatives shall

1 have the power to supply electric energy at retail after August 28, 1989, in cities, towns and villages  
2 having a population in excess of fifteen hundred inhabitants under the following conditions:

3 (1) The cooperative was the predominant supplier of retail electric energy within the city,  
4 town or village at the time any official United States Census Bureau Decennial Census Report  
5 declares the population of such city, town or village to be in excess of fifteen hundred inhabitants;

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

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

11 4. The provisions of subsections 2 and 3 of this section shall in no way affect or diminish  
12 the rights and duties of any city, town or village to grant franchises to electric suppliers in the  
13 manner provided by law or of any electrical corporation authorized by law to provide electric  
14 service at retail within such city, town or village.

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

21 6. The powers conferred upon rural electric cooperatives under this section and section  
22 394.085 shall be subject to the provisions of section 416.031.

23 7. Notwithstanding the provisions of subsection 2 of this section, rural electric cooperatives  
24 shall have the power supply electric power at retail after August 28, 2020, to any municipality under  
25 the following conditions:

26 (1) The municipality, rural electric cooperative, and current electric provider have created a  
27 transition plan that provides for the purchase or lease of the transmission infrastructure already in  
28 place; and

29 (2) The residents of the city have voted at an election conducted under section 70.080 or  
30 79.030 to transition from their current electric provider to a rural electric cooperative.

31  
32 The provisions of subsection 5 of this section shall not apply to this subsection, except that the  
33 public service commission shall not have jurisdiction over the rates, financing, accounting, or  
34 management of any electric cooperative."; and

35  
36 Further amend said bill by amending the title, enacting clause, and intersectional references  
37 accordingly.