

REFERENCE TITLE: electric cooperatives; broadband service

State of Arizona
Senate
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2020

SB 1460

Introduced by
Senators Borrelli: Allen S, Bowie, Fann, Gonzales, Kerr, Leach, Mendez,
Otondo, Rios; Representatives Biasiucci, Cobb, Dunn, Finchem, Griffin,
Hernandez A, Hernandez D, Nutt, Petersen, Shope

AN ACT

AMENDING SECTIONS 10-2051, 10-2052 AND 10-2057, ARIZONA REVISED STATUTES;
AMENDING TITLE 10, CHAPTER 19, ARTICLE 2, ARIZONA REVISED STATUTES, BY
ADDING SECTION 10-2085; AMENDING SECTIONS 10-2121, 10-2122 AND 10-2127,
ARIZONA REVISED STATUTES; AMENDING TITLE 10, CHAPTER 19, ARTICLE 4,
ARIZONA REVISED STATUTES, BY ADDING SECTION 10-2151; RELATING TO ELECTRIC
COOPERATIVES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 10-2051, Arizona Revised Statutes, is amended to
3 read:

4 10-2051. Definitions

5 In this article, unless the context otherwise requires:

6 1. "AFFILIATE" MEANS A PERSON THAT DIRECTLY OR INDIRECTLY, THROUGH
7 ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY OR IS UNDER COMMON
8 CONTROL WITH ANOTHER PERSON.

9 2. "BROADBAND SERVICE" MEANS PROVIDING ACCESS AND TRANSPORT TO THE
10 INTERNET, COMPUTER PROCESSING, INFORMATION STORAGE OR PROTOCOL CONVERSION
11 AT A DOWNLOAD RATE OF AT LEAST TWENTY-FIVE MEGABITS PER SECOND AND AT AN
12 UPLOAD RATE OF AT LEAST THREE MEGABITS PER SECOND.

13 ~~1.~~ 3. "Cooperative" means a corporation that is organized under
14 this article or that becomes subject to this article in the manner
15 provided in this article.

16 ~~2.~~ 4. "Executed by the cooperative" means executed by manual or
17 facsimile signature on behalf of the cooperative by a duly authorized
18 officer or, if the corporation is under the control of a receiver or
19 trustee, by the receiver or trustee.

20 ~~3.~~ 5. "Person" means a natural person, firm, association,
21 corporation, business trust, partnership, federal agency, state or
22 political subdivision or agency of a state or any body politic.

23 Sec. 2. Section 10-2052, Arizona Revised Statutes, is amended to
24 read:

25 10-2052. Purpose

26 A. Cooperative nonprofit membership corporations may be organized
27 under this article for any of the following purposes:

28 1. Supplying, purchasing, marketing, selling, transmitting or
29 distributing electric energy to persons and promoting and extending the
30 use of electric energy.

31 2. Providing billing, metering, communications and other services
32 related or incidental to supplying, providing or transmitting electric
33 energy, whether or not the cooperative is itself supplying or transmitting
34 that energy.

35 3. Engaging in activities designed to promote economic development
36 of rural areas as described in section 10-2057.

37 4. Engaging in activities for any lawful purpose.

38 5. DIRECTLY OR THROUGH AN AFFILIATE, PROVIDING BROADBAND SERVICE TO
39 AREAS IN WHICH THE COOPERATIVE PROVIDES ELECTRIC ENERGY SERVICES.

40 B. In a rural area where there is no telephone service, a
41 cooperative ~~which~~ THAT is supplying electric energy in the area may enter
42 into a cooperative agreement with the existing holder of a certificate of
43 convenience and necessity for telephone service in the general area to
44 supply telephone service in the same area.

1 C. Generation and transmission cooperatives as defined in article 4
2 of this chapter are subject to article 4 of this chapter and not to this
3 article.

4 Sec. 3. Section 10-2057, Arizona Revised Statutes, is amended to
5 read:

6 10-2057. Powers of electric cooperative

7 A. A cooperative organized under this article may:

8 1. Sue and be sued in its corporate name.

9 2. Have perpetual existence.

10 3. Adopt and alter a corporate seal.

11 4. To compete more effectively with other entities in the electric
12 energy market, engage in the generation, manufacture, purchase,
13 acquisition, accumulation, transmission, marketing, sale, distribution,
14 supply and disposition of electric energy, either individually or jointly
15 in collaboration with other corporations that have loans made or
16 guaranteed by the United States through the administrator of the rural
17 utilities service or that are nonprofit members of the corporation.

18 5. Assist persons to whom electric energy is or will be supplied by
19 the cooperative in wiring their premises and in acquiring and installing
20 electrical and plumbing appliances, equipment, fixtures and apparatus by
21 means of financing.

22 6. Assist persons to whom electric energy is or will be supplied by
23 the cooperative in constructing, equipping, maintaining and operating
24 electric cold storage or processing plants by means of financing.

25 7. Construct, purchase, lease or otherwise acquire, and equip,
26 maintain and operate, and sell, assign, convey, lease, mortgage, pledge or
27 otherwise dispose of or encumber electric transmission and distribution
28 lines or systems, electric generating plants, lands, buildings,
29 structures, dams, plants and equipment, and any other real or personal
30 property, tangible or intangible, that is deemed necessary, convenient or
31 appropriate to accomplish any purpose for which the cooperative is
32 organized or that it elects to undertake.

33 8. Purchase, lease or otherwise acquire, and use, and exercise and
34 sell, assign, convey, mortgage, pledge or otherwise dispose of or
35 encumber, franchises, rights, privileges, licenses and easements.

36 9. Borrow money and otherwise contract indebtedness, and issue
37 notes, bonds and other evidences of indebtedness, and secure the payment
38 thereof by mortgage, pledge or deed of trust of, or any other encumbrance
39 ~~upon~~ ON, any or all of its presently owned or after-acquired real or
40 personal property, assets, franchises or revenues.

41 10. Construct, maintain and operate electric transmission and
42 distribution lines along, ~~upon~~ ON, under and across publicly owned lands
43 and public thoroughfares, including, ~~without limitation,~~ all roads,
44 highways, streets, alleys, bridges and causeways, and acquire for such

1 purposes franchises, licenses, permits, easements, rights-of-way and all
2 similar rights and privileges relating to such purposes.

3 11. Exercise the power of eminent domain in the manner and to the
4 extent provided by the laws of this state for the exercise of such power
5 by other corporations constructing or operating electric transmission and
6 distribution lines or systems.

7 12. Become a member of other cooperatives or corporations or own
8 stock in those cooperatives or corporations or otherwise financially
9 participate and invest in those cooperatives or corporations.

10 13. Conduct its business and exercise its powers within or ~~without~~
11 ~~OUTSIDE~~ this state.

12 14. Adopt, amend and repeal bylaws.

13 15. Do and perform other acts and things and have and exercise
14 other powers that may be necessary, convenient or appropriate to
15 accomplish the purpose for which the cooperative is organized or to carry
16 out its business and affairs.

17 16. Subject to any limitation imposed by federal law, invest its
18 own monies, make loans or guarantees or participate in rural community
19 infrastructure projects, in job creation activities and in other
20 activities to promote economic development in rural areas if the rural
21 development activities are approved by the rural utilities service.

22 17. ~~DIRECTLY OR THROUGH AN AFFILIATE, CONSTRUCT, OPERATE, MAINTAIN,~~
23 ~~LEASE AND LICENSE FIBER OPTIC CABLES AND OTHER FACILITIES TO PROVIDE~~
24 ~~BROADBAND SERVICE OVER, UNDER, ACROSS, ON OR ALONG REAL PROPERTY, PERSONAL~~
25 ~~PROPERTY, RIGHTS-OF-WAY, EASEMENTS AND LICENSES AND OTHER PROPERTY RIGHTS~~
26 ~~THAT ARE OWNED, HELD OR USED BY THE COOPERATIVE, INCLUDING EASEMENT OR~~
27 ~~OTHER PROPERTY RIGHTS OWNED, HELD OR USED BY THE COOPERATIVE TO PROVIDE~~
28 ~~ELECTRICITY OR OTHER SERVICES.~~

29 B. The authority granted in subsection A, paragraph 16 shall be
30 used only for economic development in rural areas, and the electric
31 cooperative shall not use monies intended for rural economic development
32 to purchase or acquire electrical works or electrical facilities, whether
33 real or personal property, or both, by the exercise of the right of
34 eminent domain or condemnation nor shall such monies be used to purchase,
35 construct, lease or acquire any electrical works or electrical facilities
36 or make any extensions or additions designed to serve areas or territories
37 already being lawfully served. In subsection A, paragraph 16 and this
38 subsection:

39 1. "Economic development" includes project feasibility studies,
40 start-up costs, incubator projects and other reasonable expenses for the
41 purpose of fostering rural economic development.

42 2. "Invest" means to commit monies ~~in order~~ to earn a financial
43 return on assets ~~which~~ ~~THAT~~ are not expected to be used or useful in
44 furnishing electric service. The total amount ~~which~~ ~~THAT~~ the electric

1 cooperative invests, loans or uses as a guarantee is limited to those
2 monies authorized under federal law for rural development programs.

3 3. "Job creation activities" includes ~~activities such as~~ providing
4 technical, financial and managerial assistance.

5 4. "Rural community infrastructure projects" includes ~~projects such~~
6 ~~as~~ water and waste systems and garbage collection services.

7 C. Beginning on January 1, 1999, the indemnification of members,
8 directors, officers, employees and agents of a cooperative shall be in
9 accordance with chapter 31, article 5 of this title.

10 Sec. 4. Title 10, chapter 19, article 2, Arizona Revised Statutes,
11 is amended by adding section 10-2085, to read:

12 10-2085. Expanded use for broadband service; just
13 compensation; notice

14 A. FOR THE PURPOSES OF PROVIDING BROADBAND SERVICE, IF A
15 COOPERATIVE, DIRECTLY OR THROUGH ITS AFFILIATE, EXPANDS THE USE OF AN
16 EXISTING EASEMENT OR OTHER PROPERTY RIGHT THAT IS OWNED, HELD OR USED BY
17 THE COOPERATIVE TO PROVIDE ELECTRICITY OR OTHER SERVICES AND THE EXPANDED
18 USE REDUCES THE FAIR MARKET VALUE OF THE PROPERTY OVER WHICH THE EASEMENT
19 OR OTHER PROPERTY RIGHT RUNS, THE PROPERTY OWNER IS ENTITLED TO JUST
20 COMPENSATION FROM THE COOPERATIVE.

21 B. THE PROPERTY OWNER MUST COMMENCE AN ACTION IN THE SUPERIOR COURT
22 FOR JUST COMPENSATION BASED ON DIMINUTION IN VALUE NOT LATER THAN EIGHTEEN
23 MONTHS AFTER THE DATE THAT THE COOPERATIVE PROVIDES NOTICE TO THE PROPERTY
24 OWNER OF THE EXPANDED USE FOR BROADBAND SERVICE. IF AN ACTION IS NOT
25 COMMENCED WITHIN THIS TIME, THE EXPANDED USE IS DEEMED FULLY VESTED IN THE
26 COOPERATIVE AND ITS AFFILIATE WITHOUT THE NEED TO PAY JUST COMPENSATION
27 AND THE EXPANDED USE RUNS WITH THE LAND.

28 C. NOTICE UNDER SUBSECTION B OF THIS SECTION IS EFFECTIVE IF SENT
29 BY FIRST CLASS MAIL TO THE LAST KNOWN ADDRESS OF THE PROPERTY OWNER, BY A
30 PRINTED INSERTION IN THE PROPERTY OWNER'S ELECTRIC BILL OR BY OTHER
31 COMMONLY USED PUBLICATION OR COMMUNICATION CHANNELS EMPLOYED BY THE
32 COOPERATIVE.

33 D. IN AN ACTION FOR JUST COMPENSATION BASED ON A CLAIM OF EXPANDED
34 USE FOR BROADBAND SERVICE ALL OF THE FOLLOWING APPLY:

35 1. THE COURT OR JURY SHALL ASCERTAIN AND ASSESS THE DIMINUTION IN
36 VALUE OF THE PROPERTY BASED ON THE DIFFERENCE BETWEEN THE FAIR MARKET
37 VALUE OF THE ENTIRE PARCEL IMMEDIATELY BEFORE THE EXPANDED USE AND THE
38 FAIR MARKET VALUE OF THE ENTIRE PARCEL IMMEDIATELY AFTER THE EXPANDED USE.

39 2. EVIDENCE OF REVENUES OR PROFITS DERIVED FROM OR THE RENTAL VALUE
40 OF AN ASSEMBLED COMMUNICATIONS CORRIDOR ARE NOT ADMISSIBLE IN DETERMINING
41 FAIR MARKET VALUE.

42 3. ON PAYMENT OF JUST COMPENSATION, THE EXPANDED USE FOR BROADBAND
43 SERVICE IS DEEMED FULLY VESTED IN THE COOPERATIVE AND ITS AFFILIATE AND
44 THE EXPANDED USE SHALL RUN WITH THE LAND.

1 E. A CLASS ACTION MAY NOT BE MAINTAINED AGAINST A COOPERATIVE OR
2 ITS AFFILIATE IN ANY ACTION FOR JUST COMPENSATION BASED ON A CLAIM OF
3 EXPANDED USE FOR BROADBAND SERVICE.

4 F. ACTIONS FOR JUST COMPENSATION AS DESCRIBED IN THIS SECTION
5 INCLUDE TRESPASS, INVERSE CONDEMNATION AND OTHER SIMILAR CAUSES OF ACTION.

6 G. THIS SECTION DOES NOT PROHIBIT A COOPERATIVE OR ITS AFFILIATE
7 FROM REACHING AN AGREEMENT WITH A PROPERTY OWNER TO WAIVE A CLAIM FOR JUST
8 COMPENSATION RELATED TO EXPANDED USE FOR BROADBAND SERVICE OR FROM
9 ACQUIRING THE RIGHT TO USE THE PROPERTY FOR BROADBAND SERVICE BY OTHER
10 LAWFUL MEANS.

11 H. IF EXCAVATION IS REQUIRED TO INSTALL FIBER OPTIC CABLE OR OTHER
12 UNDERGROUND FACILITIES TO PROVIDE BROADBAND SERVICE, THE COOPERATIVE OR
13 ITS AFFILIATE SHALL PROVIDE WRITTEN NOTICE TO THE PROPERTY OWNER OF THE
14 EXPANDED USE FOR BROADBAND SERVICE BEFORE EXCAVATION. THE COOPERATIVE OR
15 ITS AFFILIATE SHALL SEND THE NOTICE BY FIRST CLASS MAIL TO THE LAST KNOWN
16 ADDRESS OF THE PROPERTY OWNER, BY A PRINTED INSERTION IN THE PROPERTY
17 OWNER'S ELECTRIC BILL OR BY OTHER COMMONLY USED PUBLICATION OR
18 COMMUNICATION CHANNELS EMPLOYED BY THE COOPERATIVE OR ITS AFFILIATE. A
19 NOTICE SENT TO A PROPERTY OWNER ENTITLED TO NOTICE UNDER THIS SUBSECTION
20 MUST INCLUDE ALL OF THE FOLLOWING:

21 1. THE NAME AND MAILING ADDRESS OF THE COOPERATIVE OR ITS
22 AFFILIATE.

23 2. THE MAILING ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS FOR A
24 REPRESENTATIVE OF THE COOPERATIVE OR ITS AFFILIATE.

25 3. A SUMMARY STATEMENT DESCRIBING THE ACTIVITIES TO BE CONDUCTED
26 DURING THE EXCAVATION.

27 4. THE APPROXIMATE DATES WHEN THE EXCAVATION WILL START AND END.

28 I. THE NOTICE PRESCRIBED IN SUBSECTION H OF THIS SECTION IS NOT
29 REQUIRED BEFORE A COOPERATIVE'S OR ITS AFFILIATE'S USE OF AN EASEMENT OR
30 OTHER PROPERTY RIGHT THAT INCLUDES AN AUTHORIZATION FOR EXCAVATION FOR
31 PURPOSES OF PROVIDING BROADBAND SERVICE. FAILURE TO PROVIDE THE NOTICE
32 PRESCRIBED IN SUBSECTION H OF THIS SECTION:

33 1. PROHIBITS THE COOPERATIVE OR ITS AFFILIATE FROM PROCEEDING WITH
34 AN EXCAVATION UNTIL THE NOTICE IS PROVIDED.

35 2. DOES NOT INVALIDATE OR PREVENT THE COOPERATIVE OR ITS AFFILIATE
36 FROM EXPANDING THE USE OF THE EASEMENT OR PROPERTY RIGHT AS OTHERWISE
37 DESCRIBED IN THIS SECTION.

38 Sec. 5. Section 10-2121, Arizona Revised Statutes, is amended to
39 read:

40 10-2121. Definitions

41 In this article, unless the context otherwise requires:

42 1. "AFFILIATE" MEANS A PERSON THAT DIRECTLY OR INDIRECTLY, THROUGH
43 ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY OR IS UNDER COMMON
44 CONTROL WITH ANOTHER PERSON.

1 2. "BROADBAND SERVICE" MEANS PROVIDING ACCESS AND TRANSPORT TO THE
2 INTERNET, COMPUTER PROCESSING, INFORMATION STORAGE OR PROTOCOL CONVERSION
3 AT A DOWNLOAD RATE OF AT LEAST TWENTY-FIVE MEGABITS PER SECOND AND AT AN
4 UPLOAD RATE OF AT LEAST THREE MEGABITS PER SECOND.

5 ~~1.~~ 3. "Electric utility" means any corporation, governmental
6 agency, political subdivision or other entity or combination of such
7 entities ~~which~~ THAT produces, generates, purchases, sells, transmits or
8 distributes electricity to another electric utility or to a user of
9 electricity.

10 ~~2.~~ 4. "Executed by the cooperative" means executed by manual or
11 facsimile signature on behalf of the cooperative by a duly authorized
12 officer or, if the corporation is under the control of a receiver or
13 trustee, by the receiver or trustee.

14 ~~3.~~ 5. "Generation and transmission cooperative" means a
15 corporation that is organized under this article or that becomes subject
16 to this article as provided in this article.

17 ~~4.~~ 6. "Person" means a natural person, firm, association,
18 corporation, business trust or partnership or any agency or political
19 subdivision of the United States or of this state or any other political
20 body.

21 Sec. 6. Section 10-2122, Arizona Revised Statutes, is amended to
22 read:

23 10-2122. Purpose

24 Nonprofit electric generation and transmission cooperative
25 corporations may be organized under this article for the purpose of:

26 1. Producing and generating, purchasing, marketing or selling
27 electric energy or transmitting such energy to other electric utilities or
28 persons.

29 2. Providing services relating to producing and generating,
30 purchasing, marketing or selling electric energy or transmitting this
31 energy to other electric utilities or persons or services relating to any
32 other lawful purpose.

33 3. DIRECTLY OR THROUGH AN AFFILIATE, PROVIDING BROADBAND SERVICE TO
34 AREAS IN WHICH THE COOPERATIVE PROVIDES ELECTRIC ENERGY SERVICES.

35 Sec. 7. Section 10-2127, Arizona Revised Statutes, is amended to
36 read:

37 10-2127. Powers of a generation and transmission cooperative

38 A. A generation and transmission cooperative may:

39 1. Sue and be sued and complain and defend in its corporate name.

40 2. Have perpetual existence by its corporate name.

41 3. Adopt a corporate seal and alter the seal at its pleasure, and
42 use the seal by causing it, or a facsimile of it, to be impressed or
43 affixed or in any other manner reproduced, but failure to have or to affix
44 a corporate seal does not affect the validity of any instrument or any
45 action taken in pursuance of OR in reliance on the seal.

1 4. Own, operate, lease or control plants, property and facilities
2 for the generation or transmission, sale or furnishing of electricity for
3 light, heat or power or other uses, and generate, manufacture, purchase,
4 acquire, accumulate and transmit electric energy.

5 5. To compete more effectively with other entities in the electric
6 energy market, engage in, individually or jointly in collaboration with
7 other corporations that have loans made or guaranteed by the United States
8 through the administrator of the rural utilities service or that are
9 nonprofit members of the corporation, the acquisition, purchase,
10 marketing, sale, supply and disposition of electric energy to or for its
11 members and persons, entities, governmental agencies and political
12 subdivisions and other electric utilities.

13 6. Purchase, take, receive, subscribe for or otherwise acquire,
14 own, hold, vote, exercise rights arising out of the ownership or
15 possession, use, employ, sell, assign, transfer, convey, mortgage, lend,
16 pledge, hypothecate or otherwise use and deal in and with shares, rights,
17 memberships or other interests in, or notes, bonds, debentures, mortgages,
18 passbooks, certificates of deposit or other obligations of other domestic
19 or foreign corporations, associations, partnerships, limited partnerships
20 or individuals, or direct or indirect obligations or securities of
21 individuals, associations, cooperatives, partnerships, corporations or of
22 the United States or of any other government, state, territory,
23 governmental district or municipality or of any instrumentality thereof.

24 7. Construct, purchase, take, receive, lease as lessee or otherwise
25 acquire, and own, hold, improve, use, equip, maintain and operate, and
26 sell, assign, transfer, convey, exchange, lease as lessor, mortgage,
27 pledge or otherwise dispose of or encumber electric transmission lines and
28 systems, electric generating plants, lands, buildings, structures, dams,
29 plants and equipment, and any and all kinds and classes of real or
30 personal property, tangible or intangible, that are deemed necessary,
31 convenient or appropriate to accomplish the purpose for which the
32 generation and transmission cooperative is organized or that it elects to
33 undertake.

34 8. Purchase or otherwise acquire, and own, hold, use and exercise
35 and sell, assign, transfer, convey, mortgage, pledge, hypothecate or
36 otherwise dispose of or encumber franchises, rights, privileges, licenses,
37 rights-of-way and easements.

38 9. Make contracts and guarantees and incur liabilities, borrow
39 money and otherwise contract indebtedness, and issue its notes, bonds and
40 other evidence of indebtedness, and secure the payment of any indebtedness
41 by mortgage, pledge, deed of trust, assignment, security agreement or any
42 other hypothecation or encumbrance on any or all of its real or personal
43 property, assets, franchises, revenue or income.

44 10. Construct, maintain and operate electric transmission lines
45 along, on, under and across publicly owned lands and public thoroughfares,

1 including all roads, highways, streets, alleys, bridges and causeways, and
2 acquire for such purposes franchises, licenses, permits, easements,
3 rights-of-way, and all similar rights and privileges relating to such
4 purposes.

5 11. Exercise the power of eminent domain in the manner and to the
6 extent provided by the laws of this state for the exercise of such power
7 by other corporations constructing or operating electric transmission
8 lines or systems.

9 12. Become a member of other cooperative organizations or
10 corporations or own stock in or otherwise financially participate and
11 invest in those other organizations or corporations.

12 13. Conduct its business, carry on its operations, have offices and
13 exercise the powers granted ~~it~~ by this article in any state, territory,
14 district or possession of the United States or in any foreign country.

15 14. Adopt, amend and repeal bylaws consistent with this article.

16 15. Cease its corporate activities and surrender its corporate
17 franchise.

18 16. Do and perform other acts and things, and have and exercise
19 other powers, that may be necessary, convenient or appropriate to
20 accomplish the purpose for which the generation and transmission
21 cooperative is organized or to carry out its business and affairs.

22 17. DIRECTLY OR THROUGH AN AFFILIATE, CONSTRUCT, OPERATE, MAINTAIN,
23 LEASE AND LICENSE FIBER OPTIC CABLES AND OTHER FACILITIES TO PROVIDE
24 BROADBAND SERVICE OVER, UNDER, ACROSS, ON OR ALONG REAL PROPERTY, PERSONAL
25 PROPERTY, RIGHTS-OF-WAY, EASEMENTS AND LICENSES AND OTHER PROPERTY RIGHTS
26 OWNED, HELD OR USED BY THE GENERATION AND TRANSMISSION COOPERATIVE,
27 INCLUDING EASEMENT OR OTHER PROPERTY RIGHTS THAT ARE OWNED, HELD OR USED
28 BY THE COOPERATIVE TO PROVIDE ELECTRICITY OR OTHER SERVICES.

29 B. Beginning on January 1, 1999, the indemnification of members,
30 directors, officers, employees and agents of a cooperative shall be in
31 accordance with chapter 31, article 5 of this title.

32 Sec. 8. Title 10, chapter 19, article 4, Arizona Revised Statutes,
33 is amended by adding section 10-2151, to read:

34 10-2151. Expanded use for broadband service; notice; just
35 compensation actions

36 A. FOR THE PURPOSES OF PROVIDING BROADBAND SERVICE, IF A GENERATION
37 AND TRANSMISSION COOPERATIVE, DIRECTLY OR THROUGH ITS AFFILIATE, EXPANDS
38 THE USE OF AN EXISTING EASEMENT OR OTHER PROPERTY RIGHT THAT IS OWNED,
39 HELD OR USED BY THE COOPERATIVE TO PROVIDE ELECTRICITY OR OTHER SERVICES
40 AND THE EXPANDED USE REDUCES THE FAIR MARKET VALUE OF THE PROPERTY OVER
41 WHICH THE EASEMENT OR OTHER PROPERTY RIGHT RUNS, THE PROPERTY OWNER IS
42 ENTITLED TO JUST COMPENSATION FROM THE COOPERATIVE.

43 B. THE PROPERTY OWNER MUST COMMENCE AN ACTION IN THE SUPERIOR COURT
44 FOR JUST COMPENSATION BASED ON DIMINUTION IN VALUE NOT LATER THAN EIGHTEEN
45 MONTHS AFTER THE DATE THE GENERATION AND TRANSMISSION COOPERATIVE PROVIDES

1 NOTICE TO THE PROPERTY OWNER OF THE EXPANDED USE FOR BROADBAND SERVICE.
2 IF AN ACTION IS NOT COMMENCED WITHIN THIS TIME, THE EXPANDED USE IS DEEMED
3 FULLY VESTED IN THE GENERATION AND TRANSMISSION COOPERATIVE AND ITS
4 AFFILIATE WITHOUT THE NEED TO PAY JUST COMPENSATION AND THE EXPANDED USE
5 RUNS WITH THE LAND.

6 C. NOTICE UNDER SUBSECTION B OF THIS SECTION IS EFFECTIVE IF SENT
7 BY FIRST CLASS MAIL TO THE LAST KNOWN ADDRESS OF THE PROPERTY OWNER OR BY
8 OTHER COMMONLY USED PUBLICATION OR COMMUNICATION CHANNELS EMPLOYED BY THE
9 GENERATION AND TRANSMISSION COOPERATIVE.

10 D. IN AN ACTION FOR JUST COMPENSATION BASED ON A CLAIM OF EXPANDED
11 USE FOR BROADBAND SERVICE ALL OF THE FOLLOWING APPLY:

12 1. THE COURT OR JURY SHALL ASCERTAIN AND ASSESS THE DIMINUTION IN
13 VALUE OF THE PROPERTY BASED ON THE DIFFERENCE BETWEEN THE FAIR MARKET
14 VALUE OF THE ENTIRE PARCEL IMMEDIATELY BEFORE THE EXPANDED USE AND THE
15 FAIR MARKET VALUE OF THE ENTIRE PARCEL IMMEDIATELY AFTER THE EXPANDED USE.

16 2. EVIDENCE OF REVENUES OR PROFITS DERIVED FROM OR THE RENTAL VALUE
17 OF AN ASSEMBLED COMMUNICATIONS CORRIDOR ARE NOT ADMISSIBLE IN DETERMINING
18 FAIR MARKET VALUE.

19 3. ON PAYMENT OF JUST COMPENSATION, THE EXPANDED USE FOR BROADBAND
20 SERVICE SHALL BE DEEMED FULLY VESTED IN THE GENERATION AND TRANSMISSION
21 COOPERATIVE AND ITS AFFILIATE AND THE EXPANDED USE SHALL RUN WITH THE
22 LAND.

23 E. A CLASS ACTION MAY NOT BE MAINTAINED AGAINST A GENERATION AND
24 TRANSMISSION COOPERATIVE OR ITS AFFILIATE IN ANY ACTION FOR JUST
25 COMPENSATION BASED ON A CLAIM OF EXPANDED USE FOR BROADBAND SERVICE.

26 F. ACTIONS FOR JUST COMPENSATION AS DESCRIBED IN THIS SECTION
27 INCLUDE TRESPASS, INVERSE CONDEMNATION AND OTHER SIMILAR CAUSES OF ACTION.

28 G. THIS SECTION DOES NOT PROHIBIT A GENERATION AND TRANSMISSION
29 COOPERATIVE OR ITS AFFILIATE FROM REACHING AN AGREEMENT WITH A PROPERTY
30 OWNER TO WAIVE A CLAIM FOR JUST COMPENSATION RELATED TO EXPANDED USE FOR
31 BROADBAND SERVICE OR FROM ACQUIRING THE RIGHT TO USE THE PROPERTY FOR
32 BROADBAND SERVICE BY OTHER LAWFUL MEANS.