SENATE BILL 1460

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

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

10-2051. Definitions
In this article, unless the context otherwise requires:
1. "AFFILIATE" MEANS A PERSON THAT DIRECTLY OR INDIRECTLY, THROUGH ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH ANOTHER PERSON.
2. "BROADBAND SERVICE" MEANS PROVIDING ACCESS AND TRANSPORT TO THE INTERNET, COMPUTER PROCESSING, INFORMATION STORAGE OR PROTOCOL CONVERSION AT A DOWNLOAD RATE OF AT LEAST TWENTY-FIVE MEGABITS PER SECOND AND AT AN UPLOAD RATE OF AT LEAST THREE MEGABITS PER SECOND.
3. "Cooperative" means a corporation that is organized under this article or that becomes subject to this article in the manner provided in this article.
4. "Executed by the cooperative" means executed by manual or facsimile signature on behalf of the cooperative by a duly authorized officer or, if the corporation is under the control of a receiver or trustee, by the receiver or trustee.
5. "Person" means a natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency of a state or any body politic.

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

10-2052. Purpose
A. Cooperative nonprofit membership corporations may be organized under this article for any of the following purposes:
1. Supplying, purchasing, marketing, selling, transmitting or distributing electric energy to persons and promoting and extending the use of electric energy.
2. Providing billing, metering, communications and other services related or incidental to supplying, providing or transmitting electric energy, whether or not the cooperative is itself supplying or transmitting that energy.
3. Engaging in activities designed to promote economic development of rural areas as described in section 10-2057.
4. Engaging in activities for any lawful purpose.
5. DIRECTLY OR THROUGH AN AFFILIATE, PROVIDING BROADBAND SERVICE TO AREAS IN WHICH THE COOPERATIVE PROVIDES ELECTRIC ENERGY SERVICES.
B. In a rural area where there is no telephone service, a cooperative which THAT is supplying electric energy in the area may enter into a cooperative agreement with the existing holder of a certificate of convenience and necessity for telephone service in the general area to supply telephone service in the same area.
C. Generation and transmission cooperatives as defined in article 4 of this chapter are subject to article 4 of this chapter and not to this article.

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

10-2057. Powers of electric cooperative
A. A cooperative organized under this article may:
1. Sue and be sued in its corporate name.
2. Have perpetual existence.
3. Adopt and alter a corporate seal.
4. To compete more effectively with other entities in the electric energy market, engage in the generation, manufacture, purchase, acquisition, accumulation, transmission, marketing, sale, distribution, supply and disposition of electric energy, either individually or jointly in collaboration with other corporations that have loans made or guaranteed by the United States through the administrator of the rural utilities service or that are nonprofit members of the corporation.
5. Assist persons to whom electric energy is or will be supplied by the cooperative in wiring their premises and in acquiring and installing electrical and plumbing appliances, equipment, fixtures and apparatus by means of financing.
6. Assist persons to whom electric energy is or will be supplied by the cooperative in constructing, equipping, maintaining and operating electric cold storage or processing plants by means of financing.
7. Construct, purchase, lease or otherwise acquire, and equip, maintain and operate, and sell, assign, convey, lease, mortgage, pledge or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, lands, buildings, structures, dams, plants and equipment, and any other real or personal property, tangible or intangible, that is deemed necessary, convenient or appropriate to accomplish any purpose for which the cooperative is organized or that it elects to undertake.
8. Purchase, lease or otherwise acquire, and use, and exercise and sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber, franchises, rights, privileges, licenses and easements.
9. Borrow money and otherwise contract indebtedness, and issue notes, bonds and other evidences of indebtedness, and secure the payment thereof by mortgage, pledge or deed of trust of, or any other encumbrance upon ON, any or all of its presently owned or after-acquired real or personal property, assets, franchises or revenues.
10. Construct, maintain and operate electric transmission and distribution lines along, upon ON, under and across publicly owned lands and public thoroughfares, including without limitation, all roads, highways, streets, alleys, bridges and causeways, and acquire for such
purposes franchises, licenses, permits, easements, rights-of-way and all
similar rights and privileges relating to such purposes.

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

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

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


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

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

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

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

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

2. "Invest" means to commit monies in order to earn a financial
return on assets which are not expected to be used or useful in
furnishing electric service. The total amount which the electric
cooperative invests, loans or uses as a guarantee is limited to those monies authorized under federal law for rural development programs.

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

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

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

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

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

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

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

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

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


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

3. ON PAYMENT OF JUST COMPENSATION, THE EXPANDED USE FOR BROADBAND SERVICE IS DEEMED FULLY VESTED IN THE COOPERATIVE AND ITS AFFILIATE AND THE EXPANDED USE SHALL RUN WITH THE LAND.
E. A class action may not be maintained against a cooperative or its affiliate in any action for just compensation based on a claim of expanded use for broadband service.

F. Actions for just compensation as described in this section include trespass, inverse condemnation and other similar causes of action.

G. This section does not prohibit a cooperative or its affiliate from reaching an agreement with a property owner to waive a claim for just compensation related to expanded use for broadband service or from acquiring the right to use the property for broadband service by other lawful means.

H. If excavation is required to install fiber optic cable or other underground facilities to provide broadband service, the cooperative or its affiliate shall provide written notice to the property owner of the expanded use for broadband service before excavation. The cooperative or its affiliate shall send the notice by first class mail to the last known address of the property owner, by a printed insertion in the property owner’s electric bill or by other commonly used publication or communication channels employed by the cooperative or its affiliate. A notice sent to a property owner entitled to notice under this subsection must include all of the following:

1. The name and mailing address of the cooperative or its affiliate.
2. The mailing address, telephone number and email address for a representative of the cooperative or its affiliate.
3. A summary statement describing the activities to be conducted during the excavation.
4. The approximate dates when the excavation will start and end.

I. The notice prescribed in subsection H of this section is not required before a cooperative’s or its affiliate’s use of an easement or other property right that includes an authorization for excavation for purposes of providing broadband service. Failure to provide the notice prescribed in subsection H of this section:

1. Prohibits the cooperative or its affiliate from proceeding with an excavation until the notice is provided.
2. Does not invalidate or prevent the cooperative or its affiliate from expanding the use of the easement or property right as otherwise described in this section.

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

10-2121. Definitions
In this article, unless the context otherwise requires:
1. “Affiliate” means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with another person.
2. "BROADBAND SERVICE" MEANS PROVIDING ACCESS AND TRANSPORT TO THE
INTERNET, COMPUTER PROCESSING, INFORMATION STORAGE OR PROTOCOL CONVERSION
AT A DOWNLOAD RATE OF AT LEAST TWENTY-FIVE MEGABITS PER SECOND AND AT AN
UPLOAD RATE OF AT LEAST THREE MEGABITS PER SECOND.

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

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

5. "Generation and transmission cooperative" means a
cooperation that is organized under this article or that becomes subject
to this article as provided in this article.

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

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

10-2122. Purpose
Nonprofit electric generation and transmission cooperative
corporations may be organized under this article for the purpose of:
1. Producing and generating, purchasing, marketing or selling
electric energy or transmitting such energy to other electric utilities or
persons.
2. Providing services relating to producing and generating,
purchasing, marketing or selling electric energy or transmitting this
energy to other electric utilities or persons or services relating to any
other lawful purpose.
3. DIRECTLY OR THROUGH AN AFFILIATE, PROVIDING BROADBAND SERVICE TO
AREAS IN WHICH THE COOPERATIVE PROVIDES ELECTRIC ENERGY SERVICES.

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

10-2127. Powers of a generation and transmission cooperative
A. A generation and transmission cooperative may:
1. Sue and be sued and complain and defend in its corporate name.
2. Have perpetual existence by its corporate name.
3. Adopt a corporate seal and alter the seal at its pleasure, and
use the seal by causing it, or a facsimile of it, to be impressed or
affixed or in any other manner reproduced, but failure to have or to affix
a corporate seal does not affect the validity of any instrument or any
action taken in pursuance of OR in reliance on the seal.
4. Own, operate, lease or control plants, property and facilities for the generation or transmission, sale or furnishing of electricity for light, heat or power or other uses, and generate, manufacture, purchase, acquire, accumulate and transmit electric energy.

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

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

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

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

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

10. Construct, maintain and operate electric transmission lines along, on, under and across publicly owned lands and public thoroughfares,
including all roads, highways, streets, alleys, bridges and causeways, and
acquire for such purposes franchises, licenses, permits, easements,
rights-of-way—and all similar rights and privileges relating to such
purposes.

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

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

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

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

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

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

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

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

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

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

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

B. THE PROPERTY OWNER MUST COMMENCE AN ACTION IN THE SUPERIOR COURT
FOR JUST COMPENSATION BASED ON DIMINUTION IN VALUE NOT LATER THAN EIGHTEEN
MONTHS AFTER THE DATE THE GENERATION AND TRANSMISSION COOPERATIVE PROVIDES
NOTICE TO THE PROPERTY OWNER OF THE EXPANDED USE FOR BROADBAND SERVICE.

IF AN ACTION IS NOT COMMENCED WITHIN THIS TIME, THE EXPANDED USE IS DEEMED FULLY VESTED IN THE GENERATION AND TRANSMISSION COOPERATIVE AND ITS AFFILIATE WITHOUT THE NEED TO PAY JUST COMPENSATION AND THE EXPANDED USE RUNS WITH THE LAND.

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

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


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

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

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

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

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