

1 AN ACT relating to easements of electric cooperatives.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 279 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 6 of this Act:*

- 6 *(1) "Communications infrastructure" means wires, cable, and other similar facilities*
7 *used to provide communications service including fiber optic cable and any*
8 *requisite or ancillary equipment that is in use or may be used to provide*
9 *communications service;*
- 10 *(2) "Electric cooperative" has the same meaning as in KRS 278.010(10) and may*
11 *include generation and transmission cooperative as defined in KRS 278.010(9).*
12 *The term also includes third parties and affiliates with whom the electric*
13 *cooperative contracts, licenses, or otherwise enters into agreements with for the*
14 *installation, service, or maintenance of communications infrastructure;*
- 15 *(3) "Electric easement" means any recorded or unrecorded easement held by an*
16 *electric cooperative for the siting of electric facilities, regardless of whether the*
17 *easement is for the exclusive benefit of the electric cooperative or for use in*
18 *connection with other utility services, and regardless of whether the electric*
19 *cooperative or its affiliate provides the other utility services;*
- 20 *(4) "Notice" means a written letter sent by first-class mail by the electric cooperative*
21 *to the property owner that includes the company name, point of contact, address,*
22 *and telephone number of the electric cooperative and the name and address of*
23 *the property owner impacted by an action to install communications*
24 *infrastructure; and*
- 25 *(5) "Property owner" means a person with a recorded fee simple interest in land*
26 *upon which an electric easement is located.*

27 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 279 IS CREATED TO

1 READ AS FOLLOWS:

2 To the extent not contrary to law, an electric cooperative may modify an electric
 3 easement to install new communications infrastructure or make capacity available for
 4 communications service within an electric easement thirty (30) days after:

5 (1) The electric cooperative has provided notice to the property owner that conforms
 6 with Section 3 of this Act; and

7 (2) (a) The property owner has either accepted the electric cooperative's terms with
 8 respect to modifying the electric easement provided under subsections (1) and (2)
 9 of Section 4 of this Act;

10 (b) The property owner has not responded to notice provided under subsection
 11 (3) of Section 6 of this Act nor filed action in a court for compensation for
 12 property loss during the established time frame provided under subsection
 13 (1) of Section 5 of this Act;

14 (c) The property owner has signed a member agreement, customer agreement,
 15 master agreement or other similar agreement with the electric cooperative
 16 or its affiliate for communication service or broadband service to be
 17 provided by communications infrastructure installed on the property
 18 owner's property under subsection (2) of Section 4 of this Act;

19 (d) The property owner has been compensated for any loss of property value
 20 after a finding by a court of competent jurisdiction; or

21 (e) The property owner and the electric cooperative have reached an agreement
 22 for damages out of court.

23 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 279 IS CREATED TO
 24 READ AS FOLLOWS:

25 (1) Notice to a property owner shall include the following information:

26 (a) Name point of contact, address, and telephone number of the electric
 27 cooperative;

- 1 (b) Statutory citations that grant authority to modify and record the electric
2 easement to include communications infrastructure;
- 3 (c) Except as provided in subsection (2) of this section, name and address of the
4 property owner and impacted property, respectively;
- 5 (d) A statement indicating the electric cooperative's intent to install new
6 communications infrastructure or make capacity available for
7 communications service through existing communications infrastructure;
- 8 (e) An estimate of when installation of new communications infrastructure will
9 occur or communications service will be made available through existing
10 communications infrastructure;
- 11 (f) A summary of the property owner's rights, limitations, and applicable
12 timetable to obtain an appraisal and to bring an action in court against the
13 electric cooperative;
- 14 (g) A statement that the property owner is required to make reasonable
15 accommodations for the electric cooperative to perform an appraisal;
- 16 (h) A statement that failure to respond to the notice will result in authorization
17 to modify and record a new easement to include communications
18 infrastructure; and
- 19 (i) A written plan to expand broadband Internet service within the electric
20 cooperative's service territory that shall include:
- 21 1. A description and map of the proposed area where broadband Internet
22 service will be made available;
- 23 2. A timetable for making broadband Internet service available;
- 24 3. The name of the electric cooperative's affiliate, if applicable, that will
25 provide the broadband Internet service; and
- 26 4. Anticipated costs to the electric cooperative for the plan to make
27 broadband Internet service available in the service territory through

1 new communications infrastructure.

2 (2) If the name of the property owner is not known, notice shall be sent to the
3 address associated with the affected property.

4 (3) Delivery of notice under this section occurs on the date upon which the notice is
5 mailed by an electric cooperative to a property owner. An electric cooperative may
6 prove delivery of notice under this section by an official or generally accepted
7 time-stamped document, whether maintained in physical form or electronically
8 by the electric cooperative.

9 (4) If the electric cooperative does not, within one hundred eighty (180) days of
10 delivery of notice under this section, install new communications infrastructure
11 or make communications or broadband service available to existing
12 communications infrastructure, the electric cooperative shall resend notice to the
13 property owner. Resending notice to the property owner shall reset the time
14 period set forth in Section 2 of this Act for another thirty (30) days. Sending
15 notice as set forth in Section 2 of this Act shall be the property owner's exclusive
16 remedy for the electric cooperative's failure to provide notice.

17 (5) Notice to a property owner of a manufacturing facility for an electric easement
18 that is located outside of a public right-of-way and does not expressly allow for
19 installation of communications infrastructure shall be in accordance with this
20 section. The electric cooperative shall make reasonable, good-faith effort to notify
21 the property owner of the installation inspection or maintenance of the
22 communications infrastructure. This subsection shall not be construed to impose
23 any additional duty of care for the property owner with respect to the
24 communications infrastructure. Failure by the electric cooperative to provide
25 proper notice under this section shall not create any additional liability to the
26 electric cooperative.

27 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 279 IS CREATED TO

1 READ AS FOLLOWS:

- 2 (1) Acceptance by a property owner for the modification of the electric easement
3 shall be in writing by the property owner or the property owner's designated
4 agent. In the case of tenant-occupied property, the owner of the property that is
5 leased or rented or the owner's designated agent may sign an agreement that:
6 (a) Includes the statement described in subsection (2) of this section; and
7 (b) Gives consent to the electric cooperative to expand an electric easement on
8 the property owner's property to include communications infrastructure for
9 all units on the property owner's property.
- 10 (2) Any agreement between a property owner and an electric cooperative or its
11 affiliate for communications service or broadband Internet service made
12 available through communications infrastructure that is installed or will be
13 installed by the electric cooperative within an electric easement shall clearly state
14 that by signing the agreement for communications services the property owner
15 expressly consents to the expansion of the electric easement to include
16 communications infrastructure.
- 17 (3) The electric cooperative, when installing communications infrastructure under
18 Sections 1 to 6 of this Act, shall comply with all applicable rules and standards
19 included in the most recently adopted National Electric Safety Code.
- 20 (4) Electric cooperatives shall comply with all applicable requirements for
21 maintaining separate books and records, including cost allocation between the
22 regulated and unregulated services provided in KRS Chapter 278, except that the
23 electric cooperative shall maintain ownership of the communications
24 infrastructure associated with the electric easement. An electric cooperative shall
25 be prohibited from directly providing broadband Internet service, but shall be
26 allowed to use federal financing, grants, and loans to cover the cost of the project.
27 Cost of service for providing broadband Internet service shall be prohibited from

1 recovery through regulated rates under KRS Chapter 278. A separate legal entity
 2 may be established to provide broadband Internet service for the electric
 3 cooperative. The financial records associated with the provision of broadband
 4 Internet service provided by an electric cooperative or its affiliate shall be audited
 5 every two (2) years. The Kentucky Public Service Commission shall have the right
 6 to inspect books and records to ensure that separation is maintained between the
 7 regulated and unregulated services.

8 (5) Nothing contained in Sections 1 to 6 of this Act shall require an electric
 9 cooperative or its affiliate that provides broadband Internet service to disclose any
 10 confidential or proprietary information that is not otherwise available in the
 11 public domain.

12 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 279 IS CREATED TO
 13 READ AS FOLLOWS:

14 (1) A property owner may bring a cause of action against an electric cooperative for
 15 damages relating to a decrease in value of the property owner's real property
 16 caused by the attachment or installation of communications infrastructure within
 17 the electric easement, no later than two (2) years from the later of:

18 (a) The effective date of this Act; or

19 (b) The date upon which initial notice of intent to install communications
 20 infrastructure is delivered to the property owner of the affected electric
 21 easement as provided in Section 2 of this Act. A utility resending notice
 22 under subsection (4) of Section 3 of this Act does not reset the date of notice
 23 for the purposes of determining a limitation on bringing a cause of action
 24 against an electric cooperative.

25 (2) Damages for loss of property value shall be determined by an appraisal made by a
 26 licensed real estate appraiser at the property owner's expense. The appraisal shall
 27 be conducted within the period for making a claim under subsection (1) of this

1 section. The appraisal also shall include any increase in the value of the property
2 resulting from the availability of broadband Internet service that is afforded by
3 the installation of the communications infrastructure.

4 (3) The amount of damages payable to a property owner for the use of an electric
5 easement by an electric cooperative shall be limited to an amount sufficient to
6 compensate the property owner for the reduction in value of the property owner's
7 real property.

8 (4) The property owner shall not be entitled to any additional compensation for the
9 expansion of the electric easement to include communications infrastructure
10 other than the value of being provided access to any communications service that
11 the electric cooperative may offer and to which the property owner may elect to
12 subscribe. Nothing in this subsection shall be construed to limit a property
13 owner's compensation as a result of loss of property value as determined by a
14 court of law.

15 (5) In accordance with law, failure of an electric cooperative or its affiliate to
16 perform any of the following does not create any additional liability for the
17 electric cooperative or its affiliates:

18 (a) Make broadband Internet service available in any area identified in the
19 written plan;

20 (b) Meet the proposed timetable for making broadband Internet service
21 available;

22 (c) Estimate the cost to the electric cooperative's members of any infrastructure
23 necessitated by the plan; or

24 (d) Take any actions described in the plan or related to the plan.

25 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 279 IS CREATED TO
26 READ AS FOLLOWS:

27 (1) If after receipt of an appraisal from the property owner sent by certified mail, the

1 electric cooperative disputes the property owner's appraisal, the electric
2 cooperative shall:

3 (a) Notice the property owner, not later than ninety (90) days after the date the
4 appraisal was sent by certified mail, disputing the property owner's
5 appraisal; and

6 (b) Obtain a second appraisal performed by a licensed real estate appraiser, at
7 the electric cooperative's expense, and send a copy of the second appraisal
8 by certified mail to the property owner.

9 (2) A property owner may review and accept or reject, in writing, the electric
10 cooperative's appraisal no later than ninety (90) days after the date the appraisal
11 was sent by certified mail.

12 (3) If the electric cooperative does not receive a written response from the property
13 owner rejecting the electric cooperative's appraisal within the ninety (90) day
14 response period, the electric cooperative's appraisal shall be deemed to be
15 accepted.

16 (4) The electric cooperative shall remit to the property owner any payment required
17 in accordance with an accepted appraisal that was properly submitted not later
18 than thirty (30) days after:

19 (a) The expiration period for acting on the appraisal specified in this
20 subsection;

21 (b) The acceptance by the property owner of the electric cooperative's
22 appraisal;

23 (c) The acceptance by the electric cooperative of the property owner's
24 appraisal; or

25 (d) A final determination of a court of competent jurisdiction.

26 (5) A property owner shall make reasonable accommodation for the electric
27 cooperative to perform an appraisal. In accordance with law, if a property owner

1 *fails to make reasonable accommodation, the electric cooperative may not be*
2 *found liable for any asserted reduction in property value by the property owner as*
3 *a result of the installation of communications infrastructure.*