

SENATE

STATE OF MINNESOTA

NINETY-SECOND SESSION

S.F. No. 1304

(SENATE AUTHORS: WESTROM and Anderson)		
DATE	D-PG	OFFICIAL STATUS
02/22/2021	488	Introduction and first reading
		Referred to Energy and Utilities Finance and Policy
03/01/2021	627	Author added Anderson
03/15/2021	924a	Comm report: To pass as amended and re-refer to Civil Law and Data Practices Policy

1.1

A bill for an act

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relating to rural broadband; allowing existing easements held by rural electric

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cooperatives to be used to provide broadband service; amending Minnesota Statutes

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2020, section 308A.201, subdivision 12.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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Section 1. Minnesota Statutes 2020, section 308A.201, subdivision 12, is amended to

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read:

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Subd. 12. **Electric cooperative powers.** (a) An electric cooperative has the power and

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authority to:

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(1) make loans to its members;

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(2) prerefund debt;

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(3) obtain funds through negotiated financing or public sale;

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(4) borrow money and issue its bonds, debentures, notes, or other evidence of

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indebtedness;

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(5) mortgage, pledge, or otherwise hypothecate its assets as may be necessary;

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(6) invest its resources;

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(7) deposit money in state and national banks and trust companies authorized to receive

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deposits; and

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(8) exercise all other powers and authorities granted to cooperatives.

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(b) A cooperative organized to provide rural electric power may enter agreements and

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contracts with other electric power cooperatives or with a cooperative constituted of electric

power cooperatives to share losses and risk of losses to their transmission and distribution lines, transformers, substations, and related appurtenances from storm, sleet, hail, tornado, cyclone, hurricane, or windstorm. An agreement or contract or a cooperative formed to share losses under this paragraph is not subject to the laws of this state relating to insurance and insurance companies.

(c) An electric cooperative, an affiliate of the cooperative formed to provide broadband, or another entity pursuant to an agreement with the cooperative or the cooperative's affiliate may use the cooperative, affiliate, or entity's existing or subsequently acquired electric transmission or distribution easements for broadband infrastructure and to provide broadband service, which may include an agreement to lease fiber capacity. To exercise rights granted under this paragraph, the cooperative must provide to the property owner on which the easement is located written notice that the cooperative intends to use the easement for broadband purposes. The use of the easement for broadband services vests and runs with the land beginning six months after notice is provided under paragraph (d), unless a court action challenging the use of the easement for broadband purposes has been filed before that time by the property owner as provided under paragraph (e). The cooperative must also file evidence of the notice for recording with the county recorder.

(d) The cooperative's notice under paragraph (c) must be sent by first class mail to the last known address of the owner of the property on which the easement is located or by printed insertion in the property owner's utility bill. The notice must include the following:

- (1) the name and mailing address of the cooperative;
- (2) a narrative describing the nature and purpose of the intended easement use; and
- (3) a description of any trenching or other underground work expected to result from the intended use, including the anticipated time frame for the work.

(e) A property owner, within six months after receiving notice under paragraph (d), may commence an action seeking to recover damages for an electric cooperative's use of an electric transmission or distribution easement for broadband service purposes.

Notwithstanding any other law to the contrary, the procedures and substantive matters set forth in this subdivision govern an action under this paragraph and are the exclusive means to bring a claim for compensation with respect to a notice of intent to use a cooperative transmission or distribution easement for broadband purposes. To commence an action under this paragraph, the property owner must serve a complaint upon the electric cooperative as in a civil action and file the complaint with the district court for the county in which the easement is located. The complaint must state whether the property owner:

(1) is challenging the electric cooperative's right to use the easement for broadband services or infrastructure as authorized under paragraph (c);

(2) is seeking damages as provided under paragraph (f); or

(3) both.

(f) If the property owner is seeking damages, the electric cooperative may, at any time after answering the complaint:

(1) deposit with the court administrator an amount equal to the cooperative's estimate of damages or one dollar if damages are estimated to be not more than nominal; and

(2) after making the deposit, use the electric transmission or service line easements for broadband purposes, conditioned on an obligation to pay the amount of damages determined by the court.

If the property owner is challenging the electric cooperative's right to use the easement for broadband services or infrastructure as authorized under paragraph (c), after the electric cooperative answers the complaint the district court must promptly hold a hearing on the property owner's challenge. If the district court denies the property owner's challenge, the electric cooperative may proceed to make a deposit and make use of the easement for broadband service purposes, as provided under clause (2).

(g) In an action involving a property owner's claim for damages, the landowner has the burden to prove the existence and amount of any net reduction in the fair market value of the property, considering the existence, installation, construction, maintenance, modification, operation, repair, replacement, or removal of broadband infrastructure in the easement, as well as any benefit to the property from access to broadband service. Consequential or special damages must not be awarded. Evidence of revenue, profits, fees, income, or similar benefits to the electric cooperative, the cooperative's affiliate, or a third party is inadmissible. Any fees or costs incurred as a result of an action under this subdivision must be paid by the party that incurred the fees or costs.

(h) Nothing in this section limits in any way an electric cooperative's existing easement rights, including but not limited to rights an electric cooperative has or may acquire to transmit communications for electric system operations or otherwise.

(i) For purposes of this subdivision:

(1) "broadband service" means broadband infrastructure and any services provided over the infrastructure that offer advanced telecommunications capability and Internet access; and

4.1 (2) "broadband infrastructure" has the meaning given in section 116J.394.

4.2 (j) Placement of broadband infrastructure for use in providing broadband service under
4.3 paragraphs (c) to (i) of this subdivision, in any portion of an electric transmission or
4.4 distribution easement located in the public right-of-way, is subject to local government
4.5 permitting and right-of-way management authority under section 237.163, and the placement
4.6 shall be coordinated with the relevant local government unit to minimize potential future
4.7 relocations. The cooperative shall notify a local government unit prior to placing
4.8 infrastructure for broadband service in an easement that is in or adjacent to that local
4.9 government unit's public right-of-way.

4.10 **EFFECTIVE DATE.** This section is effective the day following final enactment.