

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 1123

By: Phillips of the House

and

Leewright of the Senate

7 [rural electric cooperative easements - providing for
8 use of certain easements for broadband service -
9 prohibiting class action lawsuits against certain
10 entities based on trespass or inverse condemnation -
11 authorizing rural electric cooperatives to assess
12 fees and charges with respect to facilities within
13 electric easement for support of broadband services]

16 AMENDMENT NO. 1. Page 1, strike the enacting clause

1 Passed the Senate the 28th day of April, 2022.

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4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2022.

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8 _____
9 Presiding Officer of the House
10 of Representatives

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12 fees and charges with respect to facilities within
13 electric easement for support of broadband services]
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17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 437.31 of Title 18, unless there
20 is created a duplication in numbering, reads as follows:

21 As used in this act:

22 1. "Approved broadband provider" shall mean a broadband
23 provider with a current pole attachment agreement with the rural
24 electric cooperative to which it is attaching; and

1 2. "Above ground easement" shall mean the ability to attach to
2 the above ground infrastructure of a rural electric cooperative.

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 437.32 of Title 18, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Any easement owned, held or otherwise used by a rural
7 electric cooperative for the purpose of electric services may also
8 be used by the cooperative or its wholly owned subsidiary or other
9 broadband provider, for the purpose of supplying high-speed
10 broadband service.

11 B. Notwithstanding the provisions of Section 2023 of Title 12
12 of the Oklahoma Statutes, a class action lawsuit may not be
13 maintained against a rural electric cooperative or its broadband
14 subsidiary in a suit in trespass or inverse condemnation based on a
15 claim of expanded use of an easement where the broadband facilities
16 are located on an easement owned, held or otherwise used by a rural
17 electric cooperative. In a suit of trespass or inverse condemnation
18 against a rural electric cooperative or its broadband subsidiary,
19 based on a claim of expanded use of an easement, any trespass found
20 to exist shall be deemed permanent and the actual damages awarded
21 shall be the fair market value which, notwithstanding any other
22 provision of law, shall always be greater than zero (0), but shall
23 not exceed the difference between the fair market value of the
24 property owner's entire property immediately before the taking and

1 the fair market value of the property owner's property immediately
2 after the taking. In such a suit, evidence of revenues or profits
3 derived, or the rental value of use of the attached broadband
4 facilities, shall not be admissible in determining fair market
5 value. A property owner's actual damages shall be fixed at the time
6 of the initial trespass and shall not be deemed to continue,
7 accumulate or accrue. Upon payment of damages, the rural electric
8 cooperative and/or its wholly owned broadband subsidiary and/or
9 other broadband provider shall be granted a permanent easement for
10 the trespass or condemnation that was the subject of the claim.

11 C. An approved broadband provider with a current pole
12 attachment agreement with the electric cooperative to which it is
13 attaching may use the cooperative's above ground easement for the
14 purpose of providing high-speed broadband service. Notwithstanding
15 the provisions of Section 2023 of Title 12 of the Oklahoma Statutes,
16 a class action lawsuit may not be maintained against an approved
17 broadband provider or the rural electric cooperative in a suit of
18 trespass or inverse condemnation based on a claim of expanded use of
19 an easement where the broadband facilities are located on an above
20 ground infrastructure owned, held or otherwise used by a rural
21 electric cooperative. In a suit of trespass or inverse condemnation
22 against an approved broadband provider or the rural electric
23 cooperative, based on a claim of expanded use of an above ground
24 easement by the cooperative or the approved broadband provider, any

1 trespass found to exist shall be deemed permanent and the actual
2 damages awarded shall be the fair market value which,
3 notwithstanding any other provision of law, shall always be greater
4 than zero (0), but shall not exceed the difference between the fair
5 market value of the property owner's entire property immediately
6 before the taking and the fair market value of the property owner's
7 property immediately after the taking. In such a suit, evidence of
8 revenues or profits derived, or the rental value of use of the
9 attached broadband facilities, shall not be admissible in
10 determining fair market value. A property owner's actual damages
11 shall be fixed at the time of the initial trespass and shall not be
12 deemed to continue, accumulate or accrue. Upon payment of damages,
13 the approved broadband provider and the electric cooperative shall
14 be granted a permanent easement for the trespass or condemnation
15 that was the subject of the claim.

16 SECTION 3. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 437.33 of Title 18, unless there
18 is created a duplication in numbering, reads as follows:

19 The Oklahoma Legislature finds that rural electric cooperatives
20 and/or their subsidiaries should be permitted to use existing
21 utility easements owned, held or otherwise used by rural electric
22 cooperatives to provide or expand access to broadband services.
23 Consequently, the installation and operation of broadband services
24 within their electric easements are merely changes in the manner or

1 degree of the granted use as appropriate to accommodate a new
2 technology and, absent any applicable express prohibition contained
3 in the instrument conveying or granting the electric easement, shall
4 be deemed as a matter of law to be a permitted use within the scope
5 of every electric cooperative easement. Subject to compliance with
6 any express prohibitions in an electric cooperative easement, and in
7 compliance with this act, the rural electric cooperative and/or an
8 approved broadband provider may use the electric easement to
9 install, maintain, lease and operate broadband services. Provided,
10 however, that any rural electric cooperative owning an electric
11 easement may assess fees and charges and impose reasonable
12 conditions on the use of its facilities within such electric
13 easement for the purpose of providing or supporting broadband
14 services.

15 Passed the House of Representatives the 24th day of March, 2022.

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18 Presiding Officer of the House
of Representatives

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20 Passed the Senate the ___ day of _____, 2022.

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23 Presiding Officer of the Senate

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