

1 **SENATE FLOOR VERSION**

2 April 14, 2022

3 ENGROSSED HOUSE  
4 BILL NO. 1123

By: Phillips of the House

and

Leewright of the Senate

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

15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

19 As used in this act:

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

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

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

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

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

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

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

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

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

17 The Oklahoma Legislature finds that rural electric cooperatives  
18 and/or their subsidiaries should be permitted to use existing  
19 utility easements owned, held or otherwise used by rural electric  
20 cooperatives to provide or expand access to broadband services.  
21 Consequently, the installation and operation of broadband services  
22 within their electric easements are merely changes in the manner or  
23 degree of the granted use as appropriate to accommodate a new  
24 technology and, absent any applicable express prohibition contained

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

13 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM  
14 April 14, 2022 - DO PASS  
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