

1 ENGROSSED SENATE AMENDMENTS
TO

2 ENGROSSED HOUSE
3 BILL NO. 1965

By: Newton and Fetgatter of the
House

4 and

5 Howard of the Senate

6
7
8 An Act relating to easements; defining terms;
9 providing for use of certain easements for broadband
10 service; prohibiting class action lawsuits against
11 certain entities based on trespass or inverse
12 condemnation; providing for permanent nature of
13 trespass, nuisance or inverse condemnation;
14 prescribing measure of damages; prohibiting admission
15 of certain evidence for purposes of determining fair
16 market value *** upon payment of damages; making
17 legislative findings regarding easements; providing
18 for permitted use as a matter of law; providing for
19 use of certain electric easements for broadband
20 services; providing for codification; and providing
21 an effective date.

22 AMENDMENT NO. 1. Page 2, line 15, insert after the word "state" and
23 before the period ".", the words "with a valid
24 pole attachment agreement with an Electric
Provider to which it is attaching"

AMENDMENT NO. 2. Page 4, line 3, insert after the word "Provider"
and before the word "with", the words "or a
Telecommunications Provider"

AMENDMENT NO. 3. Page 4, line 5, delete after the word "Provider's"
and before the word "easement", the words "above
ground"

AMENDMENT NO. 4. Page 4, line 12, delete after the word "on", the
words "above ground"

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

AMENDMENT NO. 5. Page 4, line 17, delete after the word "an" and before the word "easement", the words "above ground"

AMENDMENT NO. 6. Page 6, line 6, insert after the period ".", the words "An Approved Broadband Provider, an Electric Provider's broadband subsidiary, or Telecommunications Provider shall attempt to provide notice to the property owner."

and amend the title to conform

Passed the Senate the 18th day of April, 2023.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2023.

Presiding Officer of the House
of Representatives

1 ENGROSSED HOUSE
2 BILL NO. 1965

By: Newton and Fetgatter of the
House

3 and

4 Howard of the Senate
5
6

7 An Act relating to easements; defining terms;
8 providing for use of certain easements for broadband
9 service; prohibiting class action lawsuits against
10 certain entities based on trespass or inverse
11 condemnation; providing for permanent nature of
12 trespass, nuisance or inverse condemnation;
13 prescribing measure of damages; prohibiting admission
14 of certain evidence for purposes of determining fair
15 market value; providing for permanent easement based
16 upon payment of damages; authorizing Approved
17 Broadband Providers to use certain above ground
18 easements for certain purposes; prohibiting class
19 action lawsuit provisions with respect to certain
20 lawsuits; providing for determination of permanency
21 with respect to certain actions; providing method for
22 computation of damages; prohibiting admission of
23 certain evidence for determining fair market value;
24 providing for computation of damages; providing for
grant of permanent easement upon payment of damages;
making legislative findings regarding easements;
providing for permitted use as a matter of law;
providing for use of certain electric easements for
broadband services; providing for codification; and
providing an effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 139.301 of Title 17, unless
24 there is created a duplication in numbering, reads as follows:

1 As used in this act:

2 1. "Approved Broadband Provider" shall mean a provider of
3 Broadband Services, including subsidiaries or affiliates, with a
4 valid pole attachment agreement with an Electric Provider to which
5 it is attaching;

6 2. "Broadband Services" shall mean and include fiber, cable and
7 telecommunications networks, including wireless networks capable of
8 delivering broadband;

9 3. "Electric Provider", as used in Sections 2 and 3 of this
10 act, shall mean any corporation, association or cooperative
11 corporation engaged in the generation, transmission or distribution
12 of electric service in this state; and

13 4. "Telecommunications Provider" shall mean any corporation,
14 association or cooperative corporation engaged in the delivery of
15 telecommunications over wireline facilities in this state.

16 SECTION 2. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 139.302 of Title 17, unless
18 there is created a duplication in numbering, reads as follows:

19 A. Any easement owned, held or otherwise used by an Electric
20 Provider for the purpose of electric services may also be used by
21 that Electric Provider or its broadband subsidiary,
22 Telecommunications Provider or other Approved Broadband Provider,
23 for the purpose of supplying Broadband Services.
24

1 B. Notwithstanding the provisions of Section 2023 of Title 12
2 of the Oklahoma Statutes, a class action lawsuit may not be
3 maintained against an Electric Provider or its broadband subsidiary
4 in a suit for trespass, nuisance or inverse condemnation based on a
5 claim of expanded use of an easement where the broadband facilities
6 are located on an easement owned, held or otherwise used by an
7 Electric Provider. In a suit of trespass, nuisance or inverse
8 condemnation against an Electric Provider or its broadband
9 subsidiary, based on a claim of expanded use of an easement, any
10 trespass, nuisance or condemnation found to exist shall be deemed
11 permanent and the actual damages awarded shall be the fair market
12 value which, notwithstanding any other provision of law, shall
13 always be greater than zero (0), but shall not exceed the difference
14 between the fair market value of the property owner's entire
15 property immediately before the taking and the fair market value of
16 the property owner's property immediately after the taking. In such
17 a suit, evidence of revenues or profits derived, or the rental value
18 of use of the attached broadband facilities, shall not be admissible
19 in determining fair market value. A property owner's actual damages
20 shall be fixed at the time of the initial broadband installation and
21 shall not be deemed to continue, accumulate or accrue. Upon payment
22 of damages, the Electric Provider and/or its broadband subsidiary
23 and/or the Telecommunications Provider and/or Approved Broadband
24

1 Provider shall be granted a permanent easement for the use,
2 replacement, and maintenance of the facilities installed.

3 C. An Approved Broadband Provider with a valid pole attachment
4 agreement with the Electric Provider to which it is attaching may
5 use the Electric Provider's above ground easement for the purpose of
6 providing Broadband Services. Notwithstanding the provisions of
7 Section 2023 of Title 12 of the Oklahoma Statutes, a class action
8 lawsuit may not be maintained against an Approved Broadband
9 Provider, Electric Provider, its broadband subsidiary, or
10 Telecommunications Provider in a suit for trespass, nuisance or
11 inverse condemnation based on a claim of expanded use of an easement
12 where the broadband facilities are located on above ground
13 infrastructure owned, held or otherwise used by an Electric
14 Provider. In a suit for trespass, nuisance or inverse condemnation
15 against an Approved Broadband Provider, Electric Provider, its
16 broadband subsidiary, or Telecommunications Provider, based on a
17 claim of expanded use of an above ground easement by the Electric
18 Provider or Approved Broadband Provider, any trespass, nuisance or
19 condemnation found to exist shall be deemed permanent and the actual
20 damages awarded shall be the fair market value which,
21 notwithstanding any other provision of law, shall always be greater
22 than zero (0), but shall not exceed the difference between the fair
23 market value of the property owner's entire property immediately
24 before the taking and the fair market value of the property owner's

1 property immediately after the taking. In such a suit, evidence of
2 revenues or profits derived, or the rental value of use of the
3 attached broadband facilities, shall not be admissible in
4 determining fair market value. A property owner's actual damages
5 shall be fixed at the time of the initial broadband installation and
6 shall not be deemed to continue, accumulate or accrue. Upon payment
7 of damages, the Approved Broadband Provider, Electric Provider, its
8 broadband subsidiary, or Telecommunications Provider shall be
9 granted a permanent easement for the use, replacement and
10 maintenance of the facilities installed.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 139.303 of Title 17, unless
13 there is created a duplication in numbering, reads as follows:

14 The Oklahoma Legislature finds that Electric Providers, their
15 broadband subsidiaries, Telecommunications Providers and Approved
16 Broadband Providers shall be permitted to use existing electric
17 utility easements owned, held or otherwise used by that Electric
18 Provider to provide or expand access to Broadband Services. The
19 installation and operation of Broadband Services within the existing
20 electric utility easements are merely changes in the manner or
21 degree of the granted use as appropriate to accommodate a new
22 technology and, absent any applicable express prohibition contained
23 in the instrument conveying or granting such easements, shall be
24 deemed as a matter of law to be a permitted use within the scope of

