

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 1965

By: Newton and **Fetgatter** of the  
House

7 and

8 **Howard** of the Senate

9 COMMITTEE SUBSTITUTE

10 An Act relating to easements; defining terms;  
11 providing for use of certain easements for broadband  
12 service; prohibiting class action lawsuits against  
13 certain entities based on trespass or inverse  
14 condemnation; providing for permanent nature of  
15 trespass, nuisance or inverse condemnation;  
16 prescribing measure of damages; prohibiting admission  
17 of certain evidence for purposes of determining fair  
18 market value; providing for permanent easement based  
19 upon payment of damages; authorizing Approved  
20 Broadband Providers to use certain above ground  
21 easements for certain purposes; prohibiting class  
22 action lawsuit provisions with respect to certain  
23 lawsuits; providing for determination of permanency  
24 with respect to certain actions; providing method for  
computation of damages; prohibiting admission of  
certain evidence for determining fair market value;  
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.

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

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

4 As used in this act:

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

9 2. "Broadband Services" shall mean and include fiber, cable and  
10 telecommunications networks, including wireless networks capable of  
11 delivering broadband;

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

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

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

22 A. Any easement owned, held or otherwise used by an Electric  
23 Provider for the purpose of electric services may also be used by  
24 that Electric Provider or its broadband subsidiary,

1 Telecommunications Provider or other Approved Broadband Provider,  
2 for the purpose of supplying Broadband Services.

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

1 and/or the Telecommunications Provider and/or Approved Broadband  
2 Provider shall be granted a permanent easement for the use,  
3 replacement, and maintenance of the facilities installed.

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

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

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

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

1 deemed as a matter of law to be a permitted use within the scope of  
2 every Electric Provider's existing electric utility easement.  
3 Subject to compliance with any express prohibitions in an Electric  
4 Provider's easement, and in compliance with this act, the Electric  
5 Provider, its broadband subsidiary, Telecommunications Provider and  
6 an Approved Broadband Provider may use an existing electric utility  
7 easement to install, maintain, lease and operate Broadband Services.

8 SECTION 4. This act shall become effective November 1, 2023.

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10 COMMITTEE REPORT BY: COMMITTEE ON UTILITIES, dated 02/23/2023 - DO  
11 PASS, As Amended and Coauthored.

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