

1 **SENATE FLOOR VERSION**

2 April 13, 2023

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 1965

6 By: Newton and Fetgatter of the
7 House

8 and

9 Howard of the Senate

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 easements for
21 certain purposes; prohibiting class action lawsuit
22 provisions with respect to certain lawsuits;
23 providing for determination of permanency with
24 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.

25 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 **with a**
19 **valid pole attachment agreement with an Electric Provider to which**
20 **it is attaching.**

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

24

1 A. Any easement owned, held or otherwise used by an Electric
2 Provider for the purpose of electric services may also be used by
3 that Electric Provider or its broadband subsidiary,
4 Telecommunications Provider or other Approved Broadband Provider,
5 for the purpose of supplying Broadband Services.

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

1 shall be fixed at the time of the initial broadband installation and
2 shall not be deemed to continue, accumulate or accrue. Upon payment
3 of damages, the Electric Provider and/or its broadband subsidiary
4 and/or the Telecommunications Provider and/or Approved Broadband
5 Provider shall be granted a permanent easement for the use,
6 replacement, and maintenance of the facilities installed.

7 C. An Approved Broadband Provider **or a Telecommunications**
8 **Provider** with a valid pole attachment agreement with the Electric
9 Provider to which it is attaching may use the Electric Provider's
10 easement for the purpose of providing Broadband Services.
11 Notwithstanding the provisions of Section 2023 of Title 12 of the
12 Oklahoma Statutes, a class action lawsuit may not be maintained
13 against an Approved Broadband Provider, Electric Provider, its
14 broadband subsidiary, or Telecommunications Provider in a suit for
15 trespass, nuisance or inverse condemnation based on a claim of
16 expanded use of an easement where the broadband facilities are
17 located on infrastructure owned, held or otherwise used by an
18 Electric Provider. In a suit for trespass, nuisance or inverse
19 condemnation against an Approved Broadband Provider, Electric
20 Provider, its broadband subsidiary, or Telecommunications Provider,
21 based on a claim of expanded use of an easement by the Electric
22 Provider or Approved Broadband Provider, any trespass, nuisance or
23 condemnation 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 broadband installation and
10 shall not be deemed to continue, accumulate or accrue. Upon payment
11 of damages, the Approved Broadband Provider, Electric Provider, its
12 broadband subsidiary, or Telecommunications Provider shall be
13 granted a permanent easement for the use, replacement and
14 maintenance of the facilities installed.

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

18 The Oklahoma Legislature finds that Electric Providers, their
19 broadband subsidiaries, Telecommunications Providers and Approved
20 Broadband Providers shall be permitted to use existing electric
21 utility easements owned, held or otherwise used by that Electric
22 Provider to provide or expand access to Broadband Services. The
23 installation and operation of Broadband Services within the existing
24 electric utility 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 such easements, shall be
4 deemed as a matter of law to be a permitted use within the scope of
5 every Electric Provider's existing electric utility easement.

6 Subject to compliance with any express prohibitions in an Electric
7 Provider's easement, and in compliance with this act, the Electric
8 Provider, its broadband subsidiary, Telecommunications Provider and
9 an Approved Broadband Provider may use an existing electric utility
10 easement to install, maintain, lease and operate Broadband Services.

11 **An Approved Broadband Provider, an Electric Provider's broadband**
12 **subsidiary, or Telecommunications Provider shall attempt to provide**
13 **notice to the property owner.**

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

15 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND TELECOMMUNICATIONS
16 April 13, 2023 - DO PASS AS AMENDED
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