

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 1965

By: Newton

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5
6 AS INTRODUCED

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

23 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 Broadband
6 Provider with a current pole attachment agreement with an Electric
7 Provider to which it is attaching; and

8 2. "Electric Provider", as used in Section 2 and 3 of this act,
9 shall mean any corporation, association or cooperative corporation
10 engaged in the generation, transmission or furnishing of electric
11 service.

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

15 A. Any easement owned, held or otherwise used by an Electric
16 Provider for the purpose of electric services may also be used by
17 that Electric Provider or its wholly owned subsidiary or other
18 broadband provider, for the purpose of supplying high-speed
19 broadband service.

20 B. Notwithstanding the provisions of Section 2023 of Title 12
21 of the Oklahoma Statutes, a class action lawsuit may not be
22 maintained against an Electric Provider or its broadband subsidiary
23 in a suit in trespass, nuisance or inverse condemnation based on a
24 claim of expanded use of an easement where the broadband facilities

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

21 C. An Approved Broadband Provider with a current pole
22 attachment agreement with the Electric Provider to which it is
23 attaching may use the Electric Provider's above ground easement for
24 the purpose of providing high speed broadband service.

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

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

6 The Oklahoma Legislature finds that Electric Providers, their
7 subsidiaries and Approved Broadband Providers should be permitted to
8 use existing utility easements owned, held or otherwise used by
9 Electric Providers to provide or expand access to broadband
10 services. Consequently, the installation and operation of broadband
11 services within their electric easements are merely changes in the
12 manner or degree of the granted use as appropriate to accommodate a
13 new technology and, absent any applicable express prohibition
14 contained in the instrument conveying or granting the electric
15 easement, shall be deemed as a matter of law to be a permitted use
16 within the scope of every Electric Provider. Subject to compliance
17 with any express prohibitions in an Electric Provider's easement,
18 and in compliance with this act, the Electric Provider and/or an
19 Approved Broadband Provider may use the electric easement to
20 install, maintain, lease and operate broadband services. Provided,
21 however, that any Electric Provider owning an electric easement may
22 assess fees and charges and impose reasonable conditions on the use
23 of its facilities within such electric easement for the purpose of
24 providing or supporting broadband services.

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

59-1-6583 JBH 01/12/23