

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 1123

By: Phillips

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5  
6 AS INTRODUCED

7 An Act relating to rural electric cooperative  
8 easements; defining terms; providing for use of  
9 certain easements for broadband service; prohibiting  
10 class action lawsuits against certain entities based  
11 on trespass or inverse condemnation; providing for  
12 permanent nature of trespass 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 rural electric cooperative  
18 Above Ground Easements for certain purposes;  
19 prohibiting class action lawsuit provisions with  
20 respect to certain lawsuits; providing for  
21 determination of permanency with respect to certain  
22 trespass; providing method for computation of  
23 damages; prohibiting admission of certain evidence  
24 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 rural electric cooperatives 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.

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 437.31 of Title 18, unless there  
3 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 the Rural  
7 Electric Cooperative to which it is attaching; and

8 2. "Above Ground Easement" shall mean the ability to attach to  
9 the above ground infrastructure of a Rural Electric Cooperative.

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

13 A. Any easement owned, held or otherwise used by a rural  
14 electric cooperative for the purpose of electric services may also  
15 be used by the cooperative or its wholly owned subsidiary or other  
16 broadband provider, for the purpose of supplying high-speed  
17 broadband service.

18 B. Notwithstanding the provisions of Section 2023 of Title 12  
19 of the Oklahoma Statutes, a class action lawsuit may not be  
20 maintained against a rural electric cooperative or its broadband  
21 subsidiary in a suit in trespass or inverse condemnation based on a  
22 claim of expanded use of an easement where the broadband facilities  
23 are located on an easement owned, held or otherwise used by a rural  
24 electric cooperative. In a suit of trespass or inverse condemnation

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

18 C. An Approved Broadband Provider with a current pole  
19 attachment agreement with the electric cooperative to which it is  
20 attaching may use the cooperative's Above Ground Easement for the  
21 purpose of providing high speed broadband service. Notwithstanding  
22 the provisions of Section 2023 of Title 12 of the Oklahoma Statutes,  
23 a class action lawsuit may not be maintained against an Approved  
24 Broadband Provider or the rural electric cooperative in a suit of

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

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

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

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SECTION 4. This act shall become effective November 1, 2021.

58-1-6491 JBH 12/28/20