

1 **SENATE FLOOR VERSION**

2 March 25, 2021

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 2779

6 By: Pfeiffer of the House

7 and

8 Leewright of the Senate

9 [rural electric cooperative easements - providing
10 for use of certain easements for broadband service -
11 authorizing Approved Broadband Providers to use rural
12 electric cooperative Above Ground Easements for
13 certain purposes - effective date]

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

15 SECTION 1. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 437.31 of Title 18, unless there
17 is created a duplication in numbering, reads as follows:

18 As used in this act:

19 1. "Approved Broadband Provider" shall mean a Broadband
20 Provider with a current pole attachment agreement with the rural
21 electric cooperative to which it is attaching; and

22 2. "Above Ground Easement" shall mean the ability to attach to
23 the above ground infrastructure of a rural electric cooperative.
24

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

4 A. Any easement owned, held, or otherwise used by a rural
5 electric cooperative for the purpose of electric services may also
6 be used by the cooperative or its wholly owned subsidiary or other
7 broadband provider, for the purpose of supplying high-speed
8 broadband service.

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

1 rental value of use of the attached broadband facilities, shall not
2 be admissible in determining fair market value. A property owner's
3 actual damages shall be fixed at the time of the initial trespass
4 and shall not be deemed to continue, accumulate or accrue. Upon
5 payment of damages, the rural electric cooperative and/or its wholly
6 owned broadband subsidiary and/or other broadband provider shall be
7 granted a permanent easement for the trespass or condemnation that
8 was the subject of the claim.

9 C. An Approved Broadband Provider with a current pole
10 attachment agreement with the electric cooperative to which it is
11 attaching may use the cooperative's Above Ground Easement for the
12 purpose of providing high speed broadband service. **Any pole**
13 **attachments made pursuant to this section shall be at least fourteen**
14 **(14) feet above roadway or driveway.** Notwithstanding the provisions
15 of Section 2023 of Title 12 of the Oklahoma Statutes, a class action
16 may not be maintained against an Approved Broadband Provider or the
17 rural electric cooperative in a suit in trespass or inverse
18 condemnation based on a claim of expanded use of an easement where
19 the broadband facilities are located on above ground infrastructure
20 owned, held or used by a rural electric cooperative. In a suit in
21 trespass or inverse condemnation against an Approved Broadband
22 Provider or the rural electric cooperative, based on a claim of
23 expanded use of an Above Ground Easement by the cooperative or the
24 Approved Broadband Provider, any trespass found to exist shall be

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

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

18 The Oklahoma Legislature finds that rural electric cooperatives
19 and/or their subsidiaries should be permitted to use existing
20 utility easements owned, held or used by rural electric cooperatives
21 to provide or expand access to broadband services. Consequently,
22 the installation and operation of broadband services within their
23 electric easement are merely changes in the manner or degree of the
24 granted use as appropriate to accommodate a new technology and,

1 absent any applicable express prohibition contained in the
2 instrument conveying or granting the electric easement, shall be
3 deemed as a matter of law to be a permitted use within the scope of
4 every electric cooperative easement. Subject to compliance with any
5 express prohibitions in an electric cooperative easement, and in
6 compliance with this act, the rural electric cooperative and/or an
7 Approved Broadband Provider may use the electric easement to
8 install, maintain, lease and operate broadband services. Provided,
9 however, that any rural electric cooperative owning an electric
10 easement may assess fees and charges and impose reasonable
11 conditions on the use of its facilities within such electric
12 easement for the purpose of providing or supporting broadband
13 services.

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

15 COMMITTEE REPORT BY: COMMITTEE ON ENERGY
16 March 25, 2021 - DO PASS AS AMENDED
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