

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 457

By: Howard

AS INTRODUCED

An Act relating to electric provider easements; defining terms; providing for use of certain easements for broadband service; prohibiting class action lawsuits against certain entities based on trespass, nuisance, or inverse condemnation; providing for permanent nature of trespass, nuisance, or inverse condemnation; prescribing measure of damages; prohibiting admission of certain evidence for purposes of determining fair market value; providing for permanent easement based upon payment of damages; authorizing approved broadband providers to use electric providers' above ground easements for certain purposes; prohibiting class action lawsuit provisions with respect to certain lawsuits; providing for determination of permanency with respect to certain trespass; 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; 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.

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

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

6 As used in this act:

7 1. "Approved broadband provider" shall mean a broadband
8 provider with a current pole attachment agreement with an electric
9 provider to which it is attaching; and

10 2. "Electric provider" means any corporation, association, or
11 cooperative corporation engaged in the generation, transmission, or
12 furnishing of electric service.

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

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

21 B. Notwithstanding the provisions of Section 2023 of Title 12
22 of the Oklahoma Statutes, a class action lawsuit may not be
23 maintained against an electric provider or its approved broadband
24 provider in a suit in trespass or inverse condemnation based on a

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

22 C. An approved broadband provider with a current pole
23 attachment agreement with the electric provider to which it is
24 attaching may use the provider's above ground easement for the

1 purpose of providing high speed broadband service. Notwithstanding
2 the provisions of Section 2023 of Title 12 of the Oklahoma Statutes,
3 a class action lawsuit may not be maintained against an approved
4 broadband provider or the electric provider in a suit of trespass or
5 inverse condemnation based on a claim of expanded use of an easement
6 where the broadband facilities are located on above ground
7 infrastructure owned, held, or otherwise used by an electric
8 provider. In a suit of trespass or inverse condemnation against an
9 approved broadband provider or the electric provider, based on a
10 claim of expanded use of an above ground easement by the electric
11 provider or the approved broadband provider, any trespass found to
12 exist shall be deemed permanent and the actual damages awarded shall
13 be the fair market value which, notwithstanding any other provision
14 of 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 trespass
22 and shall not be deemed to continue, accumulate, or accrue. Upon
23 payment of damages, the approved broadband provider and the electric
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1 provider shall be granted a permanent easement for the trespass or
2 condemnation that was the subject of the claim.

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

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

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