HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

HOUSE BILL 1123

By: Phillips of the House

and

Leewright of the Senate

AS INTRODUCED

An Act relating to rural electric cooperative easements; defining terms; providing for use of certain easements for broadband service; prohibiting class action lawsuits against certain entities based on trespass or inverse condemnation; providing for permanent nature of trespass 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 rural electric cooperative 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 forgrant 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:

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

As used in this act:

1. "Approved Broadband Provider" shall mean a Broadband Provider with a current pole attachment agreement with the Rural Electric Cooperative to which it is attaching; and

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

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

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

B. Notwithstanding the provisions of Section 2023 of Title 12 of the Oklahoma Statutes, a class action lawsuit may not be
maintained against a rural electric cooperative or its broadband subsidiary in a suit in trespass or inverse condemnation based on a claim of expanded use of an easement where the broadband facilities are located on an easement owned, held or otherwise used by a rural electric cooperative. In a suit of trespass or inverse condemnation against a rural electric cooperative or its broadband subsidiary, based on a claim of expanded use of an easement, any trespass found to exist shall be deemed permanent and the actual damages awarded shall be the fair market value which, notwithstanding any other provision of law, shall always be greater than zero, but shall not exceed the difference between the fair market value of the property owner's entire property immediately before the taking and the fair market value of the property owner's property immediately after the taking. In such a suit, evidence of revenues or profits derived, or the rental value of use of the attached broadband facilities, shall not be admissible in determining fair market value. A property owner's actual damages shall be fixed at the time of the initial trespass and shall not be deemed to continue, accumulate or accrue. Upon payment of damages, the rural electric cooperative and/or its wholly owned broadband subsidiary and/or other broadband provider shall be granted a permanent easement for the trespass or condemnation that was the subject of the claim.

C. An Approved Broadband Provider with a current pole attachment agreement with the electric cooperative to which it is
attaching may use the cooperative’s Above Ground Easement for the purpose of providing high speed broadband service. Notwithstanding the provisions of Section 2023 of Title 12 of the Oklahoma Statutes, a class action lawsuit may not be maintained against an Approved Broadband Provider or the rural electric cooperative in a suit of trespass or inverse condemnation based on a claim of expanded use of an easement where the broadband facilities are located on above ground infrastructure owned, held or otherwise used by a rural electric cooperative. In a suit of trespass or inverse condemnation against an Approved Broadband Provider or the rural electric cooperative, based on a claim of expanded use of an Above Ground Easement by the cooperative or the Approved Broadband Provider, any trespass found to exist shall be deemed permanent and the actual damages awarded shall be the fair market value which, notwithstanding any other provision of law, shall always be greater than zero, but shall not exceed the difference between the fair market value of the property owner's entire property immediately before the taking and the fair market value of the property owner's property immediately after the taking. In such a suit, evidence of revenues or profits derived, or the rental value of use of the attached broadband facilities, shall not be admissible in determining fair market value. A property owner's actual damages shall be fixed at the time of the initial trespass and shall not be deemed to continue, accumulate or accrue. Upon payment of damages,
the Approved Broadband Provider and the electric cooperative shall be granted a permanent easement for the trespass or condemnation that was the subject of the claim.

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON UTILITIES, dated 02/23/2021 - DO PASS, As Coauthored.