

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 HOUSE BILL 1123

By: Phillips of the House

5 and

6 **Leewright** of the Senate

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10 AS INTRODUCED

11 An Act relating to rural electric cooperative
12 easements; defining terms; providing for use of
13 certain easements for broadband service; prohibiting
14 class action lawsuits against certain entities based
15 on trespass or inverse condemnation; providing for
16 permanent nature of trespass or inverse condemnation;
17 prescribing measure of damages; prohibiting admission
18 of certain evidence for purposes of determining fair
19 market value; providing for permanent easement based
20 upon payment of damages; authorizing Approved
21 Broadband Providers to use rural electric cooperative
22 Above Ground Easements for certain purposes;
23 prohibiting class action lawsuit provisions with
24 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 rural electric cooperatives to
assess fees and charges with respect to facilities
within electric easement for support of broadband

1 services; providing for codification; and providing
2 an effective date.

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

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

9 As used in this act:

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

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

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

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

23 B. Notwithstanding the provisions of Section 2023 of Title 12
24 of the Oklahoma Statutes, a class action lawsuit may not be

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

23 C. An Approved Broadband Provider with a current pole
24 attachment agreement with the electric cooperative to which it is

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

1 the Approved Broadband Provider and the electric cooperative shall
2 be granted a permanent easement for the trespass or condemnation
3 that was the subject of the claim.

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

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

1 easement for the purpose of providing or supporting broadband
2 services.

3 SECTION 4. This act shall become effective November 1, 2021.
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5 COMMITTEE REPORT BY: COMMITTEE ON UTILITIES, dated 02/23/2021 - DO
6 PASS, As Coauthored.
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