

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

HOUSE BILL 2779

By: Pfeiffer

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 fair market value determination; 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 fair market value determinations; 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.

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

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

5 As used in this act:

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

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

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

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

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

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

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

1 Provider or the rural electric cooperative in a suit in trespass or  
2 inverse condemnation based on a claim of expanded use of an easement  
3 where the broadband facilities are located on above ground  
4 infrastructure owned, held or used by a rural electric cooperative.  
5 In a suit in trespass or inverse condemnation against an Approved  
6 Broadband Provider or the rural electric cooperative, based on a  
7 claim of expanded use of an Above Ground Easement by the cooperative  
8 or the Approved Broadband Provider, any trespass found to exist  
9 shall be deemed permanent and the actual damages awarded shall be  
10 the fair market value which, notwithstanding any other provision of  
11 law, shall always be greater than zero but shall not exceed the  
12 difference between the fair market value of the property owner's  
13 entire property immediately before the taking and the fair market  
14 value of the property owner's property immediately after the taking.  
15 In such a suit, evidence of revenues or profits derived, or the  
16 rental value of use of the attached broadband facilities, shall not  
17 be admissible in determining fair market value. A property owner's  
18 actual damages shall be fixed at the time of the initial trespass  
19 and shall not be deemed to continue, accumulate or accrue. Upon  
20 payment of damages, the Approved Broadband Provider and the electric  
21 cooperative shall be granted a permanent easement for the trespass  
22 or condemnation 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 used by rural electric cooperatives  
7 to provide or expand access to broadband services. Consequently,  
8 the installation and operation of broadband services within their  
9 electric easement are merely changes in the manner or degree of the  
10 granted use as appropriate to accommodate a new technology and,  
11 absent any applicable express prohibition contained in the  
12 instrument conveying or granting the electric easement, shall be  
13 deemed as a matter of law to be a permitted use within the scope of  
14 every electric cooperative easement. Subject to compliance with any  
15 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.

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