

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
BILL NO. 2779

By: Pfeiffer of the House

and

Leewright of the Senate

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

14 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
entire bill and insert

15 "[rural electric cooperative easements - providing
16 for use of certain easements for broadband service -
17 authorizing Approved Broadband Providers to use rural
electric cooperative Above Ground Easements for
18 certain purposes - codification - effective date]

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

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

24 As used in this act:

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

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

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

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

14 B. Notwithstanding the provisions of Section 2023 of Title 12
15 of the Oklahoma Statutes, a class action may not be maintained
16 against a rural electric cooperative or its broadband subsidiary in
17 a suit in trespass, nuisance or inverse condemnation based on a
18 claim of expanded use of an easement where the broadband facilities
19 are located on an easement owned, held or used by a rural electric
20 cooperative. In a suit in trespass, nuisance or inverse
21 condemnation against a rural electric cooperative or its broadband
22 subsidiary, based on a claim of expanded use of an easement, any
23 trespass or nuisance found to exist shall be deemed permanent and
24 the actual damages awarded shall be the fair market value which,

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

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

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

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

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

21 SECTION 4. This act shall become effective November 1, 2021.”
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1 Passed the Senate the 22nd day of April, 2021.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2021.

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8 _____
9 Presiding Officer of the House
10 of Representatives

1 ENGROSSED HOUSE
2 BILL NO. 2779

By: Pfeiffer of the House

3 and

4 Leewright of the Senate

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

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

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SECTION 5. NEW LAW A new section of law to be codified

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in the Oklahoma Statutes as Section 437.31 of Title 18, unless there

19

is created a duplication in numbering, reads as follows:

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As used in this act:

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1. "Approved Broadband Provider" shall mean a Broadband

22

Provider with a current pole attachment agreement with the rural

23

electric cooperative to which it is attaching; and

24

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

3 SECTION 6. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 437.32 of Title 18, unless there
5 is created a duplication in numbering, reads as follows:

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

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

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

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

1 shall be deemed permanent and the actual damages awarded shall be
2 the fair market value which, notwithstanding any other provision of
3 law, 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 7. 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 8. This act shall become effective November 1, 2021.

15 Passed the House of Representatives the 11th day of March, 2021.

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Presiding Officer of the House
of Representatives

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Passed the Senate the ___ day of _____, 2021.

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Presiding Officer of the Senate

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