

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 CONFERENCE COMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 HOUSE BILL NO. 2779

By: Pfeiffer of the House

and

Leewright of the Senate

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10 CONFERENCE COMMITTEE SUBSTITUTE

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, nuisance or inverse condemnation;  
16 providing for permanent nature of trespass, nuisance  
17 or inverse condemnation; prescribing measure of  
18 damages; prohibiting admission of certain evidence  
19 for purposes of fair market value determination;  
20 providing for permanent easement based upon payment  
21 of damages; authorizing Approved Broadband Providers  
22 to use rural electric cooperative Above Ground  
23 Easements for certain purposes; requiring pole  
24 attachments to be certain height above roadway;  
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

1 within electric easement for support of broadband  
2 services; providing for codification; and providing  
3 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 may not be maintained

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

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1 C. An Approved Broadband Provider with a current pole  
2 attachment agreement with the electric cooperative to which it is  
3 attaching may use the cooperative's Above Ground Easement for the  
4 purpose of providing high speed broadband service. Any pole  
5 attachments made pursuant to this section shall be at least twenty  
6 (20) feet above roadway or driveway. Notwithstanding the provisions  
7 of Section 2023 of Title 12 of the Oklahoma Statutes, a class action  
8 may not be maintained against an Approved Broadband Provider or the  
9 rural electric cooperative in a suit in trespass, nuisance or  
10 inverse condemnation based on a claim of expanded use of an easement  
11 where the broadband facilities are located on above ground  
12 infrastructure owned, held or used by a rural electric cooperative.  
13 In a suit in trespass, nuisance or inverse condemnation against an  
14 Approved Broadband Provider or the rural electric cooperative, based  
15 on a claim of expanded use of an Above Ground Easement by the  
16 cooperative or the Approved Broadband Provider, any trespass or  
17 nuisance found to exist shall be deemed permanent and the actual  
18 damages awarded shall be the fair market value which,  
19 notwithstanding any other provision of law, shall always be greater  
20 than zero but shall not exceed the difference between the fair  
21 market value of the property owner's entire property immediately  
22 before the taking and the fair market value of the property owner's  
23 property immediately after the taking. In such a suit, evidence of  
24 revenues or profits derived, or the rental value of use of the

1 attached broadband facilities, shall not be admissible in  
2 determining fair market value. A property owner's actual damages  
3 shall be fixed at the time of the initial trespass and shall not be  
4 deemed to continue, accumulate or accrue. Upon payment of damages,  
5 the Approved Broadband Provider and the electric cooperative shall  
6 be granted a permanent easement for the trespass or condemnation  
7 that was the subject of the claim.

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

11 The Oklahoma Legislature finds that rural electric cooperatives  
12 and/or their subsidiaries should be permitted to use existing  
13 utility easements owned, held or used by rural electric cooperatives  
14 to provide or expand access to broadband services. Consequently,  
15 the installation and operation of broadband services within their  
16 electric easement are merely changes in the manner or degree of the  
17 granted use as appropriate to accommodate a new technology and,  
18 absent any applicable express prohibition contained in the  
19 instrument conveying or granting the electric easement, shall be  
20 deemed as a matter of law to be a permitted use within the scope of  
21 every electric cooperative easement. Subject to compliance with any  
22 express prohibitions in an electric cooperative easement, and in  
23 compliance with this act, the rural electric cooperative and/or an  
24 Approved Broadband Provider may use the electric easement to

1 install, maintain, lease and operate broadband services. Provided,  
2 however, that any rural electric cooperative owning an electric  
3 easement may assess fees and charges and impose reasonable  
4 conditions on the use of its facilities within such electric  
5 easement for the purpose of providing or supporting broadband  
6 services.

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

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