

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3196

By: Pfeiffer and **Phillips**

7
8 COMMITTEE SUBSTITUTE

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

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.

SECTION 4. This act shall become effective November 1, 2020.

COMMITTEE REPORT BY: COMMITTEE ON UTILITIES, dated 02/27/2020 - DO
PASS, As Amended and Coauthored.