

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

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

20 As used in this act:

21 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  
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1        2. "Above Ground Easement" shall mean the ability to attach to  
2 the above ground infrastructure of a rural electric cooperative.

3        SECTION 2.        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 3. 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 4. 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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