

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3835 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Carl Newton

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 FLOOR SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 3835

6 By: Martinez and Newton

7 FLOOR SUBSTITUTE

8 An Act relating to the Oklahoma Corporation
9 Commission; creating the Facilitating Internet
10 Broadband Rural Expansion (FIBRE) Act; prohibiting
11 certain cross-subsidization by rural electric
12 cooperatives; establishing duties of certain
13 cooperatives; requiring certain good-faith
14 negotiations for pole attachment rates; prescribing
15 formula for maximum pole attachment rate; requiring
16 certain rate not alter or eliminate certain
17 contracts; vesting authority in the Oklahoma district
18 courts to enforce certain provisions and settle
19 disputes; declaring certain business information to
20 be proprietary; requiring certain filed information
21 be treated in a confidential manner and subject to
22 confidentiality order; requiring certain information
23 to be filed under seal; allowing court to seek
24 certain information; providing for noncodification;
providing for codification; and providing an
effective date.

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

SECTION 1. NEW LAW A new section of law not to be
codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Facilitating
Internet Broadband Rural Expansion (FIBRE) Act".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 158.65 of Title 17, unless there
3 is created a duplication in numbering, reads as follows:

4 A. No cross-subsidization shall be permitted between a rural
5 electric cooperative's retail electricity services and the retail
6 broadband services by such rural electric cooperative or through an
7 affiliate of such rural electric cooperative.

8 B. Any rural electric cooperative or such cooperative which has
9 an affiliate or subsidiary that provides retail broadband services
10 shall:

11 1. Ensure that cross-subsidizations do not occur between the
12 retail electricity services of a rural electric cooperative and the
13 retail broadband services it provides;

14 2. Fully allocate all retail electric services costs or retail
15 broadband services costs, including costs for any shared services,
16 between the rural electric cooperative's retail electric services
17 and the retail broadband services of the rural electric cooperative,
18 in accordance with the applicable uniform system of accounts and
19 accounting principles that are applicable to rural electric
20 cooperatives under either federal or state laws, rules, or
21 regulations;

22 3. Not charge any costs of the retail electric service to the
23 retail broadband customers;

24

1 4. Not charge any costs of the retail broadband services of the
2 rural electric cooperative to the rural electric cooperative's
3 customers; and

4 5. Ensure that any rates and fees charged by such rural
5 electric cooperative for attachments to utility poles by
6 communications services providers shall be nondiscriminatory.

7 SECTION 3. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 158.66 of Title 17, unless there
9 is created a duplication in numbering, reads as follows:

10 A. Electric cooperatives and all communications services
11 providers shall engage in good-faith negotiations to determine a
12 fair pole attachment rate between the owners of the pole and those
13 who want to rent space upon the pole.

14 If a rate cannot be voluntarily agreed to by the parties, the
15 maximum pole attachment rate shall be governed by the following
16 formula:

17 Maximum Per Pole Rate = Space Factor x Net Cost of Bare Pole x
18 Carrying Charge Rate;

19 Space Factor = (Occupied Space + ((2/3 x Unusable Space)/No. of
20 Attaching Entities)) ÷ Pole Height;

21 Net Pole Investment = Gross Pole Investment (Account 364) -
22 Accumulated Depreciation (Poles);

23 Carrying Charges = Administrative + Maintenance + Depreciation +
24 Taxes + Return;

1 Administrative = Total Admin and General Expense ÷ Net Plant;

2 Maintenance = Account 593 Expense ÷ Net Distribution Pole

3 Investment;

4 Depreciation = Gross Pole Investment ÷ Net Pole Investment x

5 Depreciation;

6 Taxes = Account 408.1 (Gross Receipts Tax) ÷ Net Plant;

7 Presumptive Default Values;

8 Occupied Space = 1 ft.;

9 Unusable Space = 27.33 ft.;

10 No. of Attachers = at least 2.1;

11 Pole Height = at least 37.5 ft.;

12 Net Cost of Bare Pole = No more than eighty-five percent (85%)

13 of Net Pole Investment ÷ Total Number of Poles;

14 Return = No more than eight percent (8%).

15 B. This section and the establishment of the maximum pole
16 attachment rate shall not alter or eliminate the requirement of
17 communications services providers to contract with the cooperatives
18 on terms and conditions of attachments under pole attachment license
19 agreements.

20 C. The Oklahoma district court system shall be vested with
21 authority to enforce the provisions of this section and to settle
22 disputes which may arise regarding pole attachments relative to
23 electric cooperative facilities. The electric cooperative's
24 business information used to calculate the formula found in

1 subsection A of this section is sensitive and proprietary in nature
2 and is hereby declared proprietary business information which is to
3 be treated in a confidential manner by all parties to any legal
4 action brought under this section, and such information shall be
5 made subject to a confidentiality order as shall be prescribed by a
6 court. To the extent such information is filed with a court, it
7 shall be filed under seal, made available only to parties to the
8 action under confidentiality orders, and shall not be made public.

9 The court may seek information including, but not limited to:

10 1. Records that correlate to the following Federal Energy
11 Regulatory Commission and United States Department of Agriculture
12 Rural Utility Service Account Codes:

- 13 a. 108 - Accumulated Provision for Depreciation of
14 Electric Utility Plant,
- 15 b. 190 - Accumulated Deferred Income Taxes,
- 16 c. 281 - Accumulated Deferred Income Taxes - Accelerated
17 Amortization Property,
- 18 d. 282 - Accumulated Deferred Income Taxes - Other
19 Property,
- 20 e. 283 - Accumulated Deferred Income Taxes - Other,
- 21 f. 364 - Poles, Towers, and Fixtures,
- 22 g. 365 - Overhead Conductors and Devices,
- 23 h. 369 - Services,
- 24 i. 408.1 - Taxes - Property,

- 1 j. 409.1 - Income Taxes, Utility Operating Income,
- 2 k. 410.1 - Provision for Deferred Income Taxes, Utility
- 3 Operating Income,
- 4 l. 411.1 - Provision for Deferred Income Taxes - Credit,
- 5 Utility Operating Income,
- 6 m. 411.4 - Investment Tax Credit Adjustments, Utility
- 7 Operations, and
- 8 n. 593 - Maintenance of Overhead Lines;

9 2. Number of poles owned, leased, or operated by the electric
10 cooperative;

11 3. Number of attachments on poles owned, leased, or operated by
12 the electric cooperative;

13 4. Average height of poles owned, leased, or operated by the
14 electric cooperative;

15 5. Cooperative-defined percentage of usable space on poles
16 owned, leased, or operated by the electric cooperative; and

17 6. Cooperative's established rate of return.

18 SECTION 4. This act shall become effective November 1, 2022.

19
20 58-2-11161 JBH 03/22/22