

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

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

FLOOR SUBSTITUTE
FOR

HOUSE BILL NO. 3835

By: Martinez and Newton

FLOOR SUBSTITUTE

An Act relating to the Oklahoma Corporation Commission; creating the Facilitating Internet Broadband Rural Expansion (FIBRE) Act; prohibiting certain cross-subsidization by rural electric cooperatives; establishing duties of certain cooperatives; requiring certain good-faith negotiations for pole attachment rates; prescribing formula for maximum pole attachment rate; requiring certain rate not alter or eliminate certain contracts; vesting authority in the Oklahoma district courts to enforce certain provisions and settle disputes; declaring certain business information to be proprietary; requiring certain filed information be treated in a confidential manner and subject to confidentiality order; requiring certain information to be filed under seal; allowing court to seek 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".

SECTION 2. NEW LAW

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

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

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

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

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

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

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;

Administrative = Total Admin and General Expense ÷ Net Plant;

Maintenance = Account 593 Expense ÷ Net Distribution Pole

Investment;

Depreciation = Gross Pole Investment ÷ Net Pole Investment x

Depreciation;

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

Presumptive Default Values;

Occupied Space = 1 ft.;

Unusable Space = 27.33 ft.;

No. of Attachers = at least 2.1;

Pole Height = at least 37.5 ft.;

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

of Net Pole Investment ÷ Total Number of Poles;

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

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

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

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

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

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

- a. 108 - Accumulated Provision for Depreciation of Electric Utility Plant,
- b. 190 - Accumulated Deferred Income Taxes,
- c. 281 - Accumulated Deferred Income Taxes - Accelerated Amortization Property,
- d. 282 - Accumulated Deferred Income Taxes - Other Property,
- e. 283 - Accumulated Deferred Income Taxes - Other,
- f. 364 - Poles, Towers, and Fixtures,
- g. 365 - Overhead Conductors and Devices,
- h. 369 - Services,
- i. 408.1 - Taxes - Property,

- j. 409.1 - Income Taxes, Utility Operating Income,
- k. 410.1 - Provision for Deferred Income Taxes, Utility Operating Income,
- l. 411.1 - Provision for Deferred Income Taxes - Credit, Utility Operating Income,
- m. 411.4 - Investment Tax Credit Adjustments, Utility Operations, and
- n. 593 - Maintenance of Overhead Lines;

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

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

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

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

6. Cooperative's established rate of return.

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

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