

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend House Bill No. 2779, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Leewright

Leewright-NP-FS-Req#2078
4/21/2021 11:04 AM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

FLOOR SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 2779

By: Pfeiffer of the House

and

Leewright of the Senate

FLOOR SUBSTITUTE

[rural electric cooperative easements - providing
for use of certain easements for broadband service -
authorizing Approved Broadband Providers to use rural
electric cooperative Above Ground Easements for
certain purposes - codification - effective date]

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

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

As used in this act:

1. "Approved Broadband Provider" shall mean a Broadband
Provider with a current pole attachment agreement with the rural
electric cooperative to which it is attaching; and

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

1 SECTION 2. NEW LAW

2 A new section of law to be codified
3 in the Oklahoma Statutes as Section 437.32 of Title 18, unless there
4 is created a duplication in numbering, reads as follows:

5 A. Any easement owned, held or otherwise used by a rural
6 electric cooperative for the purpose of electric services may also
7 be used by the cooperative or its wholly owned subsidiary or other
8 broadband provider, for the purpose of supplying high-speed
9 broadband service.

10 B. Notwithstanding the provisions of Section 2023 of Title 12
11 of the Oklahoma Statutes, a class action may not be maintained
12 against a rural electric cooperative or its broadband subsidiary in
13 a suit in trespass, nuisance or inverse condemnation based on a
14 claim of expanded use of an easement where the broadband facilities
15 are located on an easement owned, held or used by a rural electric
16 cooperative. In a suit in trespass, nuisance or inverse
17 condemnation against a rural electric cooperative or its broadband
18 subsidiary, based on a claim of expanded use of an easement, any
19 trespass or nusiance found to exist shall be deemed permanent and
20 the actual damages awarded shall be the fair market value which,
21 notwithstanding any other provision of law, shall always be greater
22 than zero but shall not exceed the difference between the fair
23 market value of the property owner's entire property immediately
24 before the taking and the fair market value of the property owner's
25 property immediately after the taking. In such a suit, evidence of

1 revenues or profits derived, or the rental value of use of the
2 attached broadband facilities, shall not be admissible in
3 determining fair market value. A property owner's actual damages
4 shall be fixed at the time of the initial trespass and shall not be
5 deemed to continue, accumulate or accrue. Upon payment of damages,
6 the rural electric cooperative and/or its wholly owned broadband
7 subsidiary and/or other broadband provider shall be granted a
8 permanent easement for the trespass or condemnation that was the
9 subject of the claim.

10 C. An Approved Broadband Provider with a current pole
11 attachment agreement with the electric cooperative to which it is
12 attaching may use the cooperative's Above Ground Easement for the
13 purpose of providing high speed broadband service. Any pole
14 attachments made pursuant to this section shall be at least fourteen
15 (14) feet above roadway or driveway. Notwithstanding the provisions
16 of Section 2023 of Title 12 of the Oklahoma Statutes, a class action
17 may not be maintained against an Approved Broadband Provider or the
18 rural electric cooperative in a suit in trespass, nuisance or
19 inverse condemnation based on a claim of expanded use of an easement
20 where the broadband facilities are located on above ground
21 infrastructure owned, held or used by a rural electric cooperative.
22 In a suit in trespass, nuisance or inverse condemnation against an
23 Approved Broadband Provider or the rural electric cooperative, based
24 on a claim of expanded use of an Above Ground Easement by the

1 cooperative or the Approved Broadband Provider, any trespass or
2 nuisance found to exist shall be deemed permanent and the actual
3 damages awarded shall be the fair market value which,
4 notwithstanding any other provision of law, shall always be greater
5 than zero but shall not exceed the difference between the fair
6 market value of the property owner's entire property immediately
7 before the taking and the fair market value of the property owner's
8 property immediately after the taking. In such a suit, evidence of
9 revenues or profits derived, or the rental value of use of the
10 attached broadband facilities, shall not be admissible in
11 determining fair market value. A property owner's actual damages
12 shall be fixed at the time of the initial trespass and shall not be
13 deemed to continue, accumulate or accrue. Upon payment of damages,
14 the Approved Broadband Provider and the electric cooperative shall
15 be granted a permanent easement for the trespass or condemnation
16 that was the subject of the claim.

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

20 The Oklahoma Legislature finds that rural electric cooperatives
21 and/or their subsidiaries should be permitted to use existing
22 utility easements owned, held or used by rural electric cooperatives
23 to provide or expand access to broadband services. Consequently,
24 the installation and operation of broadband services within their

1 electric easement are merely changes in the manner or degree of the
2 granted use as appropriate to accommodate a new technology and,
3 absent any applicable express prohibition contained in the
4 instrument conveying or granting the electric easement, shall be
5 deemed as a matter of law to be a permitted use within the scope of
6 every electric cooperative easement. Subject to compliance with any
7 express prohibitions in an electric cooperative easement, and in
8 compliance with this act, the rural electric cooperative and/or an
9 Approved Broadband Provider may use the electric easement to
10 install, maintain, lease and operate broadband services. Provided,
11 however, that any rural electric cooperative owning an electric
12 easement may assess fees and charges and impose reasonable
13 conditions on the use of its facilities within such electric
14 easement for the purpose of providing or supporting broadband
15 services.

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

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18 58-1-2078 NP 4/21/2021 11:04:41 AM
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