ENGR. H. B. NO. 3196

By: Pfeiffer and Phillips of the House

and

Montgomery of the Senate

[ 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 - 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.
SECTION 2. NEW LAW  A new section of law to be codified in the Oklahoma Statutes as Section 437.32 of Title 18, unless there is created a duplication in numbering, reads as follows:

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

B. Notwithstanding the provisions of Section 2023 of Title 12 of the Oklahoma Statutes, a class action may not be maintained against a rural electric cooperative or its broadband subsidiary in a suit in trespass or inverse condemnation based on a claim of expanded use of an easement where the broadband facilities are located on an easement owned, held or used by a rural electric cooperative. In a suit in trespass or inverse condemnation against a rural electric cooperative or its broadband subsidiary, based on a claim of expanded use of an easement, any trespass found to exist shall be deemed permanent and the actual damages awarded shall be the fair market value which, notwithstanding any other provision of law, shall always be greater than zero but shall not exceed the difference between the fair market value of the property owner's entire property immediately before the taking and the fair market value of the property owner's property immediately after the taking. In such a suit, evidence of revenues or profits derived, or the
rental value of use of the attached broadband facilities, shall not
be admissible in determining fair market value. A property owner's
actual damages shall be fixed at the time of the initial trespass
and shall not be deemed to continue, accumulate or accrue. Upon
payment of damages, the rural electric cooperative and/or its wholly
owned broadband subsidiary and/or other broadband provider shall be
granted a permanent easement for the trespass or condemnation that
was the subject of the claim.

C. An Approved Broadband Provider with a current pole
attachment agreement with the electric cooperative to which it is
attaching may use the cooperative’s Above Ground Easement for the
purpose of providing high-speed broadband service. Notwithstanding
the provisions of Section 2023 of Title 12 of the Oklahoma Statutes,
a class action may not be maintained against an Approved Broadband
Provider or the rural electric cooperative in a suit in trespass or
inverse condemnation based on a claim of expanded use of an easement
where the broadband facilities are located on above ground
infrastructure owned, held or used by a rural electric cooperative.
In a suit in trespass or inverse condemnation against an Approved
Broadband Provider or the rural electric cooperative, based on a
claim of expanded use of an Above Ground Easement by the cooperative
or the Approved Broadband Provider, any trespass found to exist
shall be deemed permanent and the actual damages awarded shall be
the fair market value which, notwithstanding any other provision of
law, shall always be greater than zero but shall not exceed the
difference between the fair market value of the property owner's
entire property immediately before the taking and the fair market
value of the property owner's property immediately after the taking.
In such a suit, evidence of revenues or profits derived, or the
rental value of use of the attached broadband facilities, shall not
be admissible in determining fair market value. A property owner's
actual damages shall be fixed at the time of the initial trespass
and shall not be deemed to continue, accumulate or accrue. Upon
payment of damages, the Approved Broadband Provider and the electric
cooperative shall be granted a permanent easement for the trespass
or condemnation that was the subject of the claim.

SECTION 3. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 437.33 of Title 18, unless there
is created a duplication in numbering, reads as follows:
The Oklahoma Legislature finds that Rural Electric Cooperatives
and/or their subsidiaries should be permitted to use existing
utility easements owned, held or used by rural electric cooperatives
to provide or expand access to broadband services. Consequently,
the installation and operation of broadband services within their
electric easement are merely changes in the manner or degree of the
granted use as appropriate to accommodate a new technology and,
absent any applicable express prohibition contained in the
instrument conveying or granting the electric easement, shall be
deemed as a matter of law to be a permitted use within the scope of every electric cooperative easement. Subject to compliance with any express prohibitions in an electric cooperative easement, and in compliance with this act, the Rural Electric Cooperative and/or an Approved Broadband Provider may use the electric easement to install, maintain, lease and operate broadband services. Provided, however, that any rural electric cooperative owning an electric easement may assess fees and charges and impose reasonable conditions on the use of its facilities within such electric easement for the purpose of providing or supporting broadband services.

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

Passed the House of Representatives the 10th day of March, 2020.

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Presiding Officer of the House of Representatives

Passed the Senate the ___ day of __________, 2020.

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Presiding Officer of the Senate