An Act

ENROLLED HOUSE
BILL NO. 1965

By: Newton and Fetgatter of the House

and

Howard of the Senate

An Act relating to easements; defining terms; providing for use of certain easements for broadband service; prohibiting class action lawsuits against certain entities based on trespass or inverse condemnation; providing for permanent nature of trespass, nuisance or inverse condemnation; prescribing measure of damages; prohibiting admission of certain evidence for purposes of determining fair market value; providing for permanent easement based upon payment of damages; authorizing Approved Broadband Providers to use certain easements for certain purposes; prohibiting class action lawsuit provisions with respect to certain lawsuits; providing for determination of permanency with respect to certain actions; providing method for computation of damages; prohibiting admission of certain evidence for determining fair market value; providing for computation of damages; providing for grant of permanent easement upon payment of damages; making legislative findings regarding easements; providing for permitted use as a matter of law; providing for use of certain electric easements for broadband services; requiring attempt to notify certain owner; providing for codification; and providing an effective date.

SUBJECT: Easements

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 139.301 of Title 17, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Approved Broadband Provider" shall mean a provider of Broadband Services, including subsidiaries or affiliates, with a valid pole attachment agreement with an Electric Provider to which it is attaching;

2. "Broadband Services" shall mean and include fiber, cable and telecommunications networks, including wireless networks capable of delivering broadband;

3. "Electric Provider", as used in Sections 2 and 3 of this act, shall mean any corporation, association or cooperative corporation engaged in the generation, transmission or distribution of electric service in this state; and

4. "Telecommunications Provider" shall mean any corporation, association or cooperative corporation engaged in the delivery of telecommunications over wireline facilities in this state with a valid pole attachment agreement with an Electric Provider to which it is attaching.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.302 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. Any easement owned, held or otherwise used by an Electric Provider for the purpose of electric services may also be used by that Electric Provider or its broadband subsidiary, Telecommunications Provider or other Approved Broadband Provider, for the purpose of supplying Broadband Services.

B. Notwithstanding the provisions of Section 2023 of Title 12 of the Oklahoma Statutes, a class action lawsuit may not be maintained against an Electric Provider or its broadband subsidiary in a suit for trespass, nuisance 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 otherwise used by an Electric Provider. In a suit of trespass, nuisance or inverse condemnation against an Electric Provider or its broadband subsidiary, based on a claim of expanded use of an easement, any trespass, nuisance or condemnation 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 (0), 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 broadband installation and shall not be deemed to continue, accumulate or accrue. Upon payment of damages, the Electric Provider and/or its broadband subsidiary and/or the Telecommunications Provider and/or Approved Broadband Provider shall be granted a permanent easement for the use, replacement, and maintenance of the facilities installed.

C. An Approved Broadband Provider or a Telecommunications Provider with a valid pole attachment agreement with the Electric Provider to which it is attaching may use the Electric Provider's easement for the purpose of providing Broadband Services. Notwithstanding the provisions of Section 2023 of Title 12 of the Oklahoma Statutes, a class action lawsuit may not be maintained against an Approved Broadband Provider, Electric Provider, its broadband subsidiary, or Telecommunications Provider in a suit for trespass, nuisance or inverse condemnation based on a claim of expanded use of an easement where the broadband facilities are located on infrastructure owned, held or otherwise used by an Electric Provider. In a suit for trespass, nuisance or inverse condemnation against an Approved Broadband Provider, Electric Provider, its broadband subsidiary, or Telecommunications Provider, based on a claim of expanded use of an easement by the Electric Provider or Approved Broadband Provider, any trespass, nuisance or condemnation 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 (0), 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 broadband installation and shall not be deemed to continue, accumulate or accrue. Upon payment of damages, the Approved Broadband Provider, Electric Provider, its broadband subsidiary, or Telecommunications Provider shall be

granted a permanent easement for the use, replacement and maintenance of the facilities installed.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.303 of Title 17, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Legislature finds that Electric Providers, their broadband subsidiaries, Telecommunications Providers and Approved Broadband Providers shall be permitted to use existing electric utility easements owned, held or otherwise used by that Electric Provider to provide or expand access to Broadband Services. The installation and operation of Broadband Services within the existing electric utility easements 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 such easements, shall be deemed as a matter of law to be a permitted use within the scope of every Electric Provider's existing electric utility easement. Subject to compliance with any express prohibitions in an Electric Provider's easement, and in compliance with this act, the Electric Provider, its broadband subsidiary, Telecommunications Provider and an Approved Broadband Provider may use an existing electric utility easement to install, maintain, lease and operate Broadband Services. An Approved Broadband Provider, an Electric Provider's broadband subsidiary, or Telecommunications Provider shall attempt to provide notice to the property owner.

SECTION 4. This act shall become effective November 1, 2023.

Passed the House of Representatives the 9th day of May, 2023.

Presiding Officer of the House
of Representatives

Passed the Senate the 18th day of April, 2023.

Brent Howard
Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 10th
day of May, 20 23, at 2:49 o'clock p. M.
By: Summer Cunningham

Approved by the Governor of the State of Oklahoma this 11th
day of May, 20 23, at 4:13 o'clock p. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 11th
day of May, 20 23, at 5:30 o'clock P. M.
By: Brian Bingman