

SB19-107

## SENATE FLOOR AMENDMENT

Second Reading

BY SENATOR Donovan

1 Amend the Business, Labor, and Technology Committee Report, dated  
2 April 15, 2019, page 2, line 13, strike "MEAN" and substitute "INCLUDE".

3 Page 2, line 17, after "PROPERTY," insert "INCLUDING PRESCRIPTIVE  
4 RIGHTS,".

5 Page 3, after line 5 insert:

6 "(12) "REQUEST FOR NOTICE" MEANS A WRITTEN INSTRUMENT  
7 RECORDED BY AN INTEREST HOLDER IN COMPLIANCE WITH THE  
8 REQUIREMENTS SET FORTH IN SECTION 40-15-602 (2)(c)."

9 Page 3, line 12, before "WITHOUT" insert "SUBJECT TO SUBSECTION (4) OF  
10 THIS SECTION AND".

11 Page 3, strike line 32 and substitute "SUBJECT TO THE ELECTRIC EASEMENT  
12 AND ANY OTHER INTEREST HOLDER THAT HAS RECORDED A REQUEST FOR  
13 NOTICE AND MUST RECORD A MEMORANDUM IN".

14 Page 3, strike lines 35 through 41 and substitute "SUBSECTION (1) OF THIS  
15 SECTION."

16 Page 4, strike lines 1 through 13 and substitute "AN ELECTRIC UTILITY OR  
17 ITS DESIGNATED COMMERCIAL BROADBAND SUPPLIER MUST COMPLY WITH  
18 ANY NOTICE REQUIREMENTS CONTAINED IN A WRITTEN ELECTRIC  
19 EASEMENT BEFORE ENTERING THE REAL PROPERTY SUBJECT TO THE  
20 ELECTRIC EASEMENT OR COMMENCING ANY CONSTRUCTION OR  
21 INSTALLATION IN CONNECTION WITH THE EXERCISE OF RIGHTS UNDER  
22 SUBSECTION (1) OF THIS SECTION. AN ELECTRIC UTILITY OR ITS  
23 DESIGNATED COMMERCIAL BROADBAND SUPPLIER MAY ONLY COMMENCE  
24 EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION UPON  
25 DELIVERY OF SUFFICIENT NOTICE.

26 (b) A LETTER PROVIDING NOTICE PURSUANT TO THIS SUBSECTION  
27 (2) MUST:

28 (I) BE SENT BY CERTIFIED MAIL FROM OR ON BEHALF OF THE  
29 ELECTRIC UTILITY TO THE PROPERTY OWNER AND ANY INTEREST HOLDER  
30 THAT HAS RECORDED A REQUEST FOR NOTICE AT EACH OF THE FOLLOWING,  
31 AS APPLICABLE:

32 (A) THE LAST KNOWN ADDRESS FOR THE PROPERTY OWNER BASED  
33 ON THE ELECTRIC UTILITY'S RECORDS;

34 (B) THE ADDRESS LISTED FOR THE PROPERTY OWNER IN THE

1 RECORDS OF THE OFFICE OF THE COUNTY ASSESSOR; AND  
2 (C) THE ADDRESS SET FORTH IN A REQUEST FOR NOTICE;"

3 Page 4, line 19, strike "ADDRESS AND" and substitute "ADDRESS; THE  
4 RECORDED NUMBER, IF ANY, OF THE ELECTRIC EASEMENT OR RECORDED  
5 MEMORANDUM OF THE ELECTRIC EASEMENT; A GENERAL DESCRIPTION OF  
6 ANY EXISTING ELECTRIC SERVICE INFRASTRUCTURE CURRENTLY LOCATED  
7 IN THE ELECTRIC EASEMENT; AND THE".

8 Page 4, line 27, strike "MORE" and substitute "BOTH".

9 Page 4, after line 38 insert:

10 "(c) AN INTEREST HOLDER THAT DESIRES TO OBTAIN NOTICE  
11 UNDER THIS PART 6 AT A SPECIFIC ADDRESS MAY FILE IN THE OFFICE OF  
12 THE COUNTY CLERK AND RECORDER FOR THE COUNTY IN WHICH THE REAL  
13 PROPERTY IS SITUATED A REQUEST FOR NOTICE THAT IDENTIFIES THE  
14 INTEREST HOLDER'S NAME AND ADDRESS, THE INSTRUMENT GRANTING THE  
15 INTEREST HOLDER'S INTEREST IN THE PROPERTY, AND THE RECORDING  
16 NUMBER OF THE INSTRUMENT OR A RECORDED MEMORANDUM OF THE  
17 INSTRUMENT."

18 Page 5, strike lines 1 through 40.

19 Renumber succeeding subsections accordingly.

20 Page 6, strike lines 2 through 4 and substitute "EASEMENT SET FORTH IN  
21 SUBSECTION (1) OF THIS SECTION, EXCEPT THOSE TERMS AND CONDITIONS  
22 THAT WOULD PROHIBIT THE ELECTRIC".

23 Page 6, strike lines 8 through 12 and substitute "PROHIBITION ON  
24 ABOVEGROUND ATTACHED FACILITIES. IN CONNECTION WITH THE  
25 EXERCISE OF RIGHTS UNDER SUBSECTION (1) OF THIS SECTION, AN  
26 ELECTRIC UTILITY OR ITS DESIGNATED COMMERCIAL BROADBAND SUPPLIER  
27 MUST COMPLY WITH ANY NOTICE REQUIREMENTS CONTAINED IN A  
28 WRITTEN ELECTRIC EASEMENT HELD BY THE ELECTRIC UTILITY RELATED  
29 TO ENTERING THE REAL PROPERTY SUBJECT TO THE ELECTRIC EASEMENT  
30 OR COMMENCING ANY CONSTRUCTION OR INSTALLATION ON THE REAL  
31 PROPERTY.

32 (5) NOTHING IN THIS PART 6 REQUIRES AN ELECTRIC UTILITY TO  
33 COMPLY WITH SUBSECTION (2) OF THIS SECTION IN ORDER TO TAKE ANY  
34 ACTION OR EXERCISE ANY RIGHTS UNDER AN ELECTRIC EASEMENT THAT IS  
35 ALREADY PERMITTED WITHIN THE SCOPE OF THE ELECTRIC EASEMENT.

1 UNLESS EXPRESSLY PROHIBITED BY THE TERMS OF AN ELECTRIC  
2 EASEMENT, AN ELECTRIC EASEMENT WILL BE DEEMED TO ALLOW AN  
3 ELECTRIC UTILITY TO INSTALL, MAINTAIN, OR OWN, OR PERMIT A THIRD  
4 PARTY TO INSTALL, MAINTAIN, OR OWN FOR BENEFICIAL USE BY THE  
5 ELECTRIC UTILITY, AN ATTACHED FACILITY IN THE ELECTRIC EASEMENT  
6 FOR USE IN CONNECTION WITH THE ELECTRIC UTILITY'S PROVISION OF  
7 ELECTRICITY."

8 Page 6, strike lines 29 and 30 and substitute "CLAIM OR CAUSE OF ACTION  
9 BASED ON:

- 10 (I) PHYSICAL DAMAGE TO PROPERTY;
- 11 (II) INJURY TO NATURAL PERSONS; OR
- 12 (III) BREACH OF THE TERMS AND CONDITIONS OF A WRITTEN  
13 ELECTRIC".

14 Page 6, line 32, strike "(5)." and substitute "(4)."

15 Page 6, line 36, after "ACTION" insert "TO WHICH SUBSECTION (1)(a) OF  
16 THIS SECTION APPLIES".

17 Page 6, line 39, after "(2)" insert "ON BEHALF OF", and after the period add  
18 "NOTHING IN THIS SUBSECTION (2) PROHIBITS AN ELECTRIC UTILITY AND  
19 A COMMERCIAL BROADBAND SUPPLIER FROM CONTRACTING TO ALLOCATE  
20 LIABILITY FOR ACTIONS TAKEN UNDER SECTION 40-15-602 (2)."

21 Page 6, line 41, after "ACTION" insert "TO WHICH SUBSECTION (1)(a) OF  
22 THIS SECTION APPLIES".

23 Page 7, strike lines 2 and 3 and substitute "OF RIGHTS OR PERFORMANCE  
24 OF ACTIONS DESCRIBED IN SECTION 40-15-602 (1)(a) OR (1)(b), THE  
25 FOLLOWING APPLIES TO THE CLAIM OR CAUSE OF".

26 Page 7, line 5, strike "SUCH CLAIMS," and substitute "CLAIMS OR CAUSES  
27 OF ACTION TO WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES,".

28 Page 7, strike lines 29 through 41 and substitute "HOLDER. THE ELECTRIC  
29 UTILITY OR COMMERCIAL BROADBAND SUPPLIER SHALL PROMPTLY  
30 PROVIDE TO THE INTEREST HOLDER A COPY OF ANY APPRAISAL PERFORMED  
31 PURSUANT TO THIS SUBSECTION (3)(b).

32 (c) ANY DAMAGES FOR ANY CLAIMS OR CAUSES OF ACTION TO  
33 WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES:

- 34 (I) ARE LIMITED TO THOSE DAMAGES THAT EXISTED AT THE TIME  
35 THAT THE ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER FIRST

1 EXERCISED THE RIGHTS OR PERFORMED THE ACTIONS; AND  
2 (II) SHALL NOT BE DEEMED TO CONTINUE, ACCRUE, OR  
3 ACCUMULATE."

4 Page 8, strike lines 1 and 2 and substitute:

5 "(d) WITH REGARD TO A CLAIM OR CAUSE OF ACTION TO WHICH  
6 SUBSECTION (1)(a) OF THIS SECTION APPLIES:

7 (I) EXCEPT FOR AN ELECTRIC UTILITY'S OR COMMERCIAL  
8 BROADBAND SUPPLIER'S FAILURE TO COMPLY WITH SECTION 40-15-602 (2),  
9 NEGLIGENCE, OR WILLFUL MISCONDUCT, OR"

10 Page 8, line 5, strike "(5)," and substitute "(4),".

11 Page 8, line 14, strike "GROSS".

12 Page 8, strike lines 16 through 18 and substitute:

13 "(4) BY ACCEPTING A DAMAGE AWARD FOR ANY CLAIM OR CAUSE  
14 OF ACTION TO WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES, AN  
15 INTEREST HOLDER SHALL BE DEEMED TO HAVE GRANTED AN INCREASE IN  
16 THE SCOPE OF THE ELECTRIC".

17 Page 8, line 20, strike "(5)," and substitute "(4),".

18 Page 8, strike lines 25 through 41 and substitute "FOR THE PROVISION OF  
19 COMMERCIAL BROADBAND SERVICE SHALL:

20 (a) NOT DISCRIMINATE AMONG COMMERCIAL BROADBAND  
21 SUPPLIERS, INCLUDING BROADBAND AFFILIATES, IN OFFERING OR  
22 GRANTING RIGHTS TO INSTALL OR ATTACH ANY ATTACHED FACILITIES; OR

23 (b) CHARGE FEES THAT ARE NONDISCRIMINATORY AMONG  
24 COMMERCIAL BROADBAND SUPPLIERS FOR A SUBSTANTIALLY SIMILAR  
25 LEASE OR USE OF THE CAPACITY OF ATTACHED FACILITIES OWNED OR  
26 CONTROLLED BY THE ELECTRIC UTILITY, BUT ONLY TO THE EXTENT AN  
27 ELECTRIC UTILITY CHOOSES, IN ITS SOLE DISCRETION, TO OFFER THE LEASE  
28 OR USE TO A PARTICULAR COMMERCIAL BROADBAND SUPPLIER.

29 (2) AN ELECTRIC UTILITY THAT HAS A BROADBAND AFFILIATE AND,  
30 IF APPLICABLE, THE BROADBAND AFFILIATE SHALL:

31 (a) CHARGE JUST AND REASONABLE ATTACHMENT FEES,  
32 INCLUDING RECURRING FEES, THAT ARE RELATED TO THE COSTS  
33 ASSOCIATED WITH SUCH ATTACHMENTS, SUCH AS A JUST AND REASONABLE  
34 SHARE OF THE CARRYING COSTS OF THE PER POLE INVESTMENT, INCLUDING  
35 ONGOING MAINTENANCE OF THE POLE BASED ON THE PORTION OF THE

1    USABLE SPACE ON THE POLE OCCUPIED BY THE ATTACHMENT;"

2    Page 9, strike lines 1 through 6.

3    Page 9, line 8, strike "OR ELECTRIC SERVICE INFRASTRUCTURE" and  
4    substitute "AND SIMILAR SUPPORT STRUCTURES".

5    Page 9, strike lines 13 through 16 and substitute:

6            "(I) ON A JUST, REASONABLE, AND NONDISCRIMINATORY BASIS;  
7    AND".

8    Page 9, strike lines 23 through 28 and substitute:

9            "(c) CHARGE FEES THAT ARE NONDISCRIMINATORY AMONG  
10   COMMERCIAL BROADBAND SUPPLIERS FOR A SUBSTANTIALLY SIMILAR  
11   LEASE OR USE OF THE CAPACITY OF ATTACHED FACILITIES OWNED OR  
12   CONTROLLED BY THE ELECTRIC UTILITY OR BROADBAND AFFILIATE AND  
13   THAT ARE EQUAL TO OR LESS THAN THE FEES THAT THE ELECTRIC UTILITY  
14   CHARGES TO ITS BROADBAND AFFILIATES, BUT ONLY TO THE EXTENT AN  
15   ELECTRIC UTILITY OR BROADBAND AFFILIATE CHOOSES, IN ITS SOLE  
16   DISCRETION, TO OFFER THE LEASE OR USE TO A PARTICULAR COMMERCIAL  
17   BROADBAND SUPPLIER."

18   Page 9, line 40, after "USE" insert "THE COMMERCIAL BROADBAND  
19   SUPPLIER'S".

20   Page 10, after line 12 insert:

21            "(5) AN ELECTRIC UTILITY SHALL NOT DIRECTLY PROVIDE RETAIL  
22   COMMERCIAL BROADBAND SERVICE BUT MAY CAUSE OR ALLOW A  
23   BROADBAND AFFILIATE TO OFFER RETAIL COMMERCIAL BROADBAND  
24   SERVICE. AS LONG AS AN ELECTRIC UTILITY MAINTAINS ITS EXCLUSIVE  
25   RIGHT TO PROVIDE ELECTRIC SERVICE TO CUSTOMERS WITHIN ITS  
26   EXCLUSIVE SERVICE TERRITORY, BOTH THE ELECTRIC UTILITY THAT HAS  
27   A BROADBAND AFFILIATE AND THE BROADBAND AFFILIATE SHALL:

28            (a) MAINTAIN OR CAUSE TO BE MAINTAINED AN ACCOUNTING  
29   SYSTEM FOR THE BROADBAND AFFILIATE SEPARATE FROM THE ELECTRIC  
30   UTILITY'S ACCOUNTING SYSTEM, USING GENERALLY ACCEPTED  
31   ACCOUNTING PRINCIPLES OR ANOTHER REASONABLE AND CUSTOMARY  
32   ALLOCATION METHOD;

33            (b) CAUSE A FINANCIAL AUDIT TO BE PERFORMED BY AN  
34   INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, WITHIN TWO YEARS AFTER

1 COMMENCEMENT OF COMMERCIAL OPERATION OF RETAIL COMMERCIAL  
2 BROADBAND SERVICE AND AT LEAST ONCE EVERY TWO YEARS  
3 THEREAFTER, WITH RESPECT TO THE BROADBAND AFFILIATE'S PROVISION  
4 OF COMMERCIAL BROADBAND SERVICE, INCLUDING AN AUDIT OF THE  
5 ALLOCATION OF COSTS FOR PROPERTY AND SERVICES THAT ARE USED IN  
6 BOTH THE PROVISION OF COMMERCIAL BROADBAND SERVICE AND THE  
7 ELECTRIC UTILITY'S PROVISION OF ELECTRIC SERVICE; AND

8 (c) (I) NOT CAUSE OR ALLOW THE ELECTRIC UTILITY TO USE ITS  
9 EXCLUSIVE RIGHT TO PROVIDE ELECTRIC SERVICES WITHIN ITS EXCLUSIVE  
10 TERRITORY TO CROSS-SUBSIDIZE THE BROADBAND AFFILIATE OR ITS  
11 PROVISION OF COMMERCIAL BROADBAND SERVICE, WHETHER BY  
12 DISCRIMINATORY OR BELOW FAIR MARKET VALUE PRICING; PAYMENT OF  
13 CAPITAL OR OPERATING COSTS PROPERLY CHARGED TO THE BROADBAND  
14 AFFILIATE UNDER APPLICABLE ACCOUNTING RULES; OR USE OF ANY  
15 REVENUE FROM OR SUBSIDY FOR THE PROVISION OF ELECTRIC SERVICE TO  
16 PROVIDE COMMERCIAL BROADBAND SERVICE BELOW MARKET VALUE,  
17 EXCEPT IN CONNECTION WITH THE ELECTRIC UTILITY'S PROVISION OF  
18 ELECTRICITY.

19 (II) NOTHING IN THIS SUBSECTION (5)(c) PROHIBITS AN ELECTRIC  
20 UTILITY FROM:

21 (A) ENTERING INTO A TRANSACTION WITH A BROADBAND  
22 AFFILIATE ON TERMS AND CONDITIONS SUBSTANTIALLY SIMILAR TO THOSE  
23 THAT WOULD BE AGREED TO BETWEEN TWO SIMILARLY SITUATED PARTIES  
24 IN AN ARM'S LENGTH COMMERCIAL TRANSACTION;

25 (B) PROVIDING REDUCED-COST COMMERCIAL BROADBAND  
26 SERVICE TO LOW-INCOME RETAIL CUSTOMERS; OR

27 (C) CONDUCTING AND FUNDING DUE DILIGENCE, OPERATIONAL  
28 ANALYSIS, ENTITY SET-UP, AND ASSOCIATED NONCAPITAL EXPENDITURES  
29 RELATING TO AND PRIOR TO THE ESTABLISHMENT OF A BROADBAND  
30 AFFILIATE."

31 Renumber succeeding subsections accordingly.

32 Page 10, line 18, strike "THIS SECTION AND SECTION 40-15-602 (4)(b)."  
33 and substitute "THIS SECTION."

34 Page 10, line 29, strike "(5);" and substitute "(6);".

35 Page 10, strike line 35 and substitute "SUBSECTION (5) OF THIS SECTION."

36 Page 11, strike lines 30 through 32 and substitute:

37 **"38-5-103. Power of companies to contract. (1) Such AN**

1 electric, ~~light power~~, gas, or pipeline company or ~~such~~ A city, or town,  
2 ~~shall have power to~~ COUNTY, CITY AND COUNTY, SPECIAL DISTRICT, OR  
3 OTHER LOCAL GOVERNMENT MAY contract with any person or corporation,  
4 the owner of any".

5 Page 11, strike line 34 and substitute "over or under which ~~the~~ A line of  
6 electric light wire, power, or pipeline is".

7 Page 11, line 36, strike "its" and substitute "its".

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