**Broadband Using Electric Easements Accessibility Act**

**HB 400 – *Senate Floor Sub***

***Executive Summary***

* Facilitates the deployment of broadband access in rural and underserved areas by confirming that electric providers may use existing and future electric easements for broadband purposes. They may also work with affiliates and third parties under contract to do so.
* Authorizes electric providers, who often have infrastructure in place, to own and operate broadband systems and to use their electric easements to support broadband (to the extent that authority does not already exist).
* Uses existing easements and traditional infrastructure because it is the quickest path for expanding broadband deployment in rural and underserved communities and enhances their educational, economic development, and healthcare opportunities.
* Defines broadband services as minimum 25/25 Mbps – download and upload.
* To address legal issues that have slowed broadband deployment, provides exclusive cause of action, not class actions, for property owners who claim that the use or installation of these capabilities was not authorized by easement. Provides for actual damages after taking into account the true burden and effect on the property – not consequential or punitive damages. Also provides for three-year statute of limitations.
* Grants to electric utilities new condemnation authority to acquire easement rights needed to install and operate broadband systems.

***Detailed Summary***

* Authorization (§ 37-16-4). The bill authorizes (but does not require) electric providers to do any of the following:

1. Install, operate, and maintain broadband systems across the electric provider’s electric easements – both to support internal utility purposes as well as nonutility purposes;
2. Enter into agreements with an affiliate or third party broadband service provider to do the same;
3. Provide broadband services directly (for utility or nonutility purposes); and
4. Allow an affiliate or third party broadband service provider to provide broadband services across the electric provider’s electric delivery system.
   * The electric provider has the sole authority to determine who it may contract with and on what terms and conditions.
   * An electric provider is not required by this act to install and operate a broadband system or to provide broadband services.
   * An electric provider may not require the purchase of broadband services as a condition of electric service.
   * An electric provider must apply the same rate methodology, terms and conditions for access for pole attachments with affiliates and non-affiliates. It must also submit an annual report to the Legislature regarding pole attachment rates.
   * An electric provider is prohibited from disconnecting electric service if a customer fails to pay for broadband services.

* No Impacts on Electric Territorial Restrictions (§ 37-16-5).The bill does not affect or authorize electric providers to provide electric service outside of its service territory.
* Charges and Fees (§ 37-16-6). The bill allows an electric provider to charge the broadband service provider (whether affiliate or third party) for costs associated with the broadband system or those parts of its electric delivery system that the broadband operator or service provider is using. It also authorizes the broadband service provider to determine the rates it will charge for broadband services.
* Modifying Existing Easements, Condemnation Rights, and Remedies (§ 37-16-7). The bill provides for an exclusive statutory remedy if a property owner believes that his property has been taken or damaged by the construction or use of broadband systems within the electric easement on the owner’s property and the electric easement does not already expressly provide for it.
  + The measure of damages, if any are found, equals the difference in the fair market value of the property immediately before and after the construction or installation of the broadband systems. This is the exclusive remedy for these lawsuits. Class actions and consequential, compensatory, and punitive damages are not allowed, but costs and attorneys’ fees are. This limitation on damages does not apply to property damage or bodily injury claims.
  + The bill provides a three-year statute of limitations for landowners for bringing a lawsuit. The statute runs from the later of the date the law is enacted or the date the equipment is installed.
  + Condemnation rights are granted to electric providers to acquire easement rights needed to install and operate broadband systems for broadband purposes, which would be exercised in accordance with existing statutory procedures. This can be used for new easements and to obtain additional rights in existing easements, if needed.
  + The bill makes clear that an electric provider must still satisfy any maintenance obligations under the easement. It also provides for notice to landowners when new broadband equipment is installed.
  + If there is a judgment against an electric provider for use of the electric easement to provide broadband services, then payment of that judgment grants the electric provider an easement for broadband purposes that runs with the land.
  + The bill recognizes the ways in which a property owner or other authority may grant rights to an electric provider, affiliate, or third party broadband service provider apart from the condemnation procedures described above, such as through service agreements, membership agreements, etc.
* Other Provisions (§ 37-16-8).
  + The bill specifies that APSC jurisdiction is unaffected by the bill.
  + The electric provider must comply with applicable safety and permitting requirements on state agency, county, or railroad property.
  + Nothing affects existing pole attachment agreements or applicable requirements.
  + An electric provider must use its revenue and account for expenses for non-utility support services in accordance with applicable federal and state laws, regulations, and rules. Other specified broadband investments are allowed.
* Anti-Cross Subsidization (§37-16-9).
  + An electric provider must fully allocate and properly account for broadband service costs.
  + An electric provider may not use electric sales revenues to subsidize broadband services.
  + Electric providers are permitted to make certain investments, loans, and other types of leases or agreements with affiliates as may be prudent or appropriate under applicable law.