

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2438 Session of 2020

INTRODUCED BY OWLETT, CAUSER, PICKETT, RYAN, KULIK, SCHLEGEL, CULVER, DONATUCCI, CONKLIN, READSHAW, KAUFER, BOBACK, KEEFER, HERSHEY, PASHINSKI, NEILSON, MILLARD, BURGOS, STRUZZI, PYLE, BERNSTINE, IRVIN, LONGIETTI, KAUFFMAN, GLEIM, ZIMMERMAN, WHEELAND, SCHWEYER, DELOZIER AND DUSH, APRIL 27, 2020

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 26, 2020

AN ACT

1 Amending Title 68 (Real and Personal Property) of the  
2 Pennsylvania Consolidated Statutes, providing for broadband  
3 services.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 68 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 82

9 BROADBAND SERVICES

10 Sec.

11 8201. Definitions.

12 8202. Broadband services.

13 § 8201. Definitions.

14 The following words and phrases when used in this chapter  
15 shall have the meanings given to them in this section unless the  
16 context clearly indicates otherwise:

1 "AFFILIATE." A PERSON THAT DIRECTLY, OR INDIRECTLY THROUGH <--  
2 ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY OR IS  
3 UNDER COMMON CONTROL WITH A SPECIFIED PERSON. THE TERM INCLUDES  
4 SUBSIDIARIES, PARTNERSHIPS, JOINT VENTURES AND OTHER ENTITIES  
5 THAT HAVE SHARED RESOURCES, INTERESTS OR BUSINESS DEALINGS.

6 "Broadband facilities." Wires, cables, materials, equipment  
7 and other facilities, which are or can be used for the provision  
8 of broadband services.

9 "Broadband service supplier." An electricity,  
10 telecommunications, CABLE OPERATOR or Internet supplier or <--  
11 affiliate that constructs, owns or installs new broadband  
12 facilities to provide broadband services, at wholesale or  
13 retail, through USING existing electric infrastructure within an <--  
14 easement, INCLUDING, BUT NOT LIMITED TO, POLES AND CONDUIT, <--  
15 WITHIN AN EASEMENT. The term includes third parties with which  
16 the electricity supplier ELECTRIC COOPERATIVE CORPORATION <--  
17 contracts, licenses or otherwise enters into agreements with for  
18 the installation, service or maintenance of broadband  
19 infrastructure and provision of broadband services on behalf of  
20 the electricity supplier ELECTRIC COOPERATIVE CORPORATION or ITS <--  
21 affiliate.

22 "Broadband services." As follows:

23 (1) Service that consists of or includes the provision  
24 of broadband that:

25 (i) is used to provide access to the Internet; or

26 (ii) provides computer processing, information  
27 storage, information content or protocol conversion.

28 (2) The term includes the provision of video services,  
29 voice over Internet protocol services, wireless services and  
30 Internet protocol-enabled services.

1 "Easement." A recorded or unrecorded right-of-way, easement  
2 or similar property right acquired by eminent domain,  
3 prescription or conveyance that is used or may be used for  
4 transmitting, distributing or providing electric service by  
5 utilizing electric infrastructure.

6 "Electric cooperative corporation." As defined in 15 Pa.C.S.  
7 § 7302(a) (relating to application of chapter).

8 ~~"Electricity supplier." A person engaged in providing~~ <--  
9 ~~electricity, at wholesale or retail, including a public utility,~~  
10 ~~municipal corporation or authority or an electric cooperative~~  
11 ~~corporation.~~

12 § 8202. Broadband services.

13 (a) Broadband facilities.--The following apply:

14 (1) An electric cooperative corporation or an affiliate  
15 of an electric cooperative corporation may provide broadband  
16 services or construct, operate and maintain broadband  
17 facilities through an existing easement owned, held or used  
18 by the electric cooperative corporation. AN ELECTRIC <--  
19 COOPERATIVE CORPORATION MAY ONLY SUPPLY RETAIL BROADBAND  
20 SERVICES THROUGH ONE OR MORE AFFILIATES.

21 (2) Except as provided for under subsection (b), the  
22 attachment of broadband facilities shall not constitute a  
23 change to the physical use of the easement, interfere with or  
24 impair any vested rights of the property owner subject to the  
25 easement or place an additional burden on the property or  
26 interests of the owner.

27 (3) A broadband service supplier that is not an electric  
28 cooperative corporation may access and attach broadband  
29 facilities within an electric cooperative's COOPERATIVE <--  
30 CORPORATION'S easement:

1           (i) if an electric cooperative CORPORATION or its <--  
2           affiliates have attached broadband facilities to provide  
3           retail or wholesale broadband services OR IF AN ELECTRIC <--  
4           COOPERATIVE CORPORATION, IN ITS SOLE DISCRETION, GIVES  
5           EXPRESS WRITTEN PERMISSION TO A BROADBAND SERVICE  
6           PROVIDER TO UTILIZE AN EXISTING ELECTRIC EASEMENT; and  
7           (ii) subject to the terms of applicable safety  
8           standards, the structural integrity of the electric  
9           infrastructure and the electric cooperative corporation's  
10           rules and fees for the attachments.

11           (4) AN ELECTRIC COOPERATIVE CORPORATION THAT ELECTS TO <--  
12           PROVIDE BROADBAND SERVICES AS A BROADBAND SERVICE SUPPLIER  
13           SHALL PERMIT OTHER PROVIDERS OF SUCH SERVICES  
14           NONDISCRIMINATORY ACCESS TO ATTACH TO ELECTRIC  
15           INFRASTRUCTURE, OWNED OR CONTROLLED BY THE ELECTRIC  
16           COOPERATIVE CORPORATION, PURSUANT TO THE RATES, TERMS AND  
17           CONDITIONS COMPARABLE TO AND NO LESS FAVORABLE THAN THOSE  
18           OFFERED TO AN AFFILIATE OF AN ELECTRIC COOPERATIVE  
19           CORPORATION ENGAGED IN THE PROVISION OF RETAIL BROADBAND  
20           SERVICES.

21           (b) ~~Exception.~~ Subsection APPLICABILITY.--EXCEPT FOR THE <--  
22           REPLACEMENT OR RELOCATION OF EXISTING POLES OR AS OTHERWISE  
23           PROVIDED BY LAW, SUBSECTION (a) (2) shall not apply to the  
24           attachment of broadband facilities that are additional  
25           freestanding or ground-based structures within the easement.

26           (C) CONSTRUCTION.--EXCEPT AS OTHERWISE PROVIDED UNDER THIS <--  
27           CHAPTER, NOTHING IN THIS CHAPTER SHALL LIMIT ANY OF THE RIGHTS  
28           THAT EXIST UNDER THE LAWS OF THIS COMMONWEALTH OF ANY BROADBAND  
29           SERVICE SUPPLIER TO SECURE ITS OWN EASEMENTS FOR THE  
30           CONSTRUCTION OR INSTALLATION OF BROADBAND FACILITIES OR THE

1 PROVISION OF BROADBAND SERVICES.

2 Section 2. This act shall take effect in 60 days.