

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 387*
Committee Substitute Favorable 4/25/19

Short Title: Electric Co-Op Rural Broadband Services.

(Public)

Sponsors:

Referred to:

March 20, 2019

1 **A BILL TO BE ENTITLED**

2 AN ACT REMOVING RESTRICTIONS PROHIBITING ELECTRIC MEMBERSHIP
3 CORPORATIONS AND THEIR SUBSIDIARIES FROM SEEKING FEDERAL GRANT
4 FUNDS TO PROVIDE TELECOMMUNICATIONS AND BROADBAND SERVICES,
5 AUTHORIZING SUCH CORPORATIONS AND THEIR WHOLLY OWNED
6 SUBSIDIARIES TO USE EASEMENTS HELD BY THE CORPORATIONS TO SUPPLY
7 TELECOMMUNICATIONS AND BROADBAND SERVICES, AND PROVIDING FOR
8 THE MANNER IN WHICH CLAIMS RELATED TO THE EXPANDED USE OF
9 EASEMENTS BY SUCH CORPORATIONS SHALL BE RESOLVED.

10 Whereas, electric membership corporations were created for the purpose of extending
11 electric service to rural communities in the State, and they have effectively achieved this
12 necessary goal for many years; and

13 Whereas, telephone service is also a necessity for all North Carolinians and has been
14 successfully extended throughout the State; and

15 Whereas, broadband service has emerged as a necessity for all rural communities in
16 the State; and

17 Whereas, the General Assembly finds that electric membership corporations and their
18 wholly owned subsidiaries created by electric membership corporations as required by applicable
19 State law, where they so choose, are uniquely positioned to pursue federal broadband funds and
20 to leverage their right-of-way corridors and existing broadband fiber networks to provide,
21 individually or in partnership, broadband services which will enable more rural communities to
22 connect to broadband services; and

23 Whereas, existing or future communications infrastructure deployed by electric
24 membership corporations for electrification purposes can simultaneously be used by electric
25 membership corporations or their wholly owned subsidiaries for the ancillary purpose of
26 facilitating broadband extension into rural areas of North Carolina without need for additional
27 construction; and

28 Whereas, it has been recognized that in order for electric membership corporations to
29 effectively pursue federal funds and leverage their unique position, the General Assembly must
30 amend certain statutes regulating the operations and rights of electric membership corporations;
31 Now, therefore,

32 The General Assembly of North Carolina enacts:

33 **SECTION 1.** G.S. 117-18.1 reads as rewritten:

34 **"§ 117-18.1. Subsidiary business activities.**

35 (a) Electric membership corporations may form, organize, acquire, hold, dispose of, and
36 operate any interest up to and including full controlling interest in separate business entities that



provide energy services and products, telecommunications services and products, water, and wastewater collection and treatment, so long as those other business entities meet all of the following conditions:

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(d) The provisions of subdivisions (1) and (3) of subsection (a) of this section do not apply to the separate business activities of an electric membership corporation that forms, organizes, acquires, holds, disposes of, or operates any interest up to and including full controlling interest in a separate business entity that provides or supports high-speed broadband services to one or more households, businesses, or community anchor points in an unserved area. For purposes of this subsection, the following definitions shall apply:

For purposes of this subsection, the following definitions shall apply:

- (1) "Anchor points." – The term shall include schools, libraries, community colleges, community centers, and other similar places.
 - (2) "High-speed broadband services." – Internet transmission speeds of a minimum of 25 megabits per second (Mbps) downstream and 3 Mbps upstream.
 - (3) "Unserved area." – A location where inhabitants or businesses do not have access to high-speed broadband services."

SECTION 2. Article 3 of Chapter 117 of the General Statutes is amended by adding a new section to read as follows:

"§ 117-28.1. Electric membership corporations; easements.

(a) Any easement owned, held, or otherwise used by an electric membership corporation for the purpose of electrification, as stated in G.S. 117-10, may also be used by the corporation, or its wholly owned subsidiary, for the ancillary purpose of supplying high-speed broadband service, where such use does not require additional construction and is ancillary to the electrification purposes for which broadband fiber is or was installed.

(b) Notwithstanding G.S. 1A-1, Rule 23, a class action may not be maintained against an electric membership corporation or its wholly owned subsidiary in a suit in trespass or inverse condemnation based on a claim of expanded use of an easement. If, in a suit in trespass or inverse condemnation based on a claim of expanded use of an easement, an individual property owner prevails over a corporation or its wholly owned subsidiary, the trespass 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. Evidence of revenues or profits derived or the rental value of an assembled communications corridor 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 corporation or its wholly owned subsidiary shall be granted a permanent easement for the trespass that was the subject of the claim."

SECTION 3. This act is effective when it becomes law and applies to all claims filed on or after that date.