

House Study Bill 185 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
ECONOMIC GROWTH AND
TECHNOLOGY BILL BY
CHAIRPERSON SORENSEN)

A BILL FOR

1 An Act related to using electric transmission and distribution
2 easements held by electric cooperatives for broadband service,
3 and including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. **8.87A Electric cooperatives —**
2 **easements for broadband.**

3 1. For purposes of this section, "electric cooperative" means
4 the same as defined in section 390.1 and includes any affiliate.

5 2. An electric cooperative may authorize in an electric
6 transmission or distribution easement held by the electric
7 cooperative the placement of broadband infrastructure, which may
8 include the placement of fiberoptic cable facilities, in the
9 easement by a communications service provider. To exercise
10 rights granted under this subsection, the electric cooperative
11 must provide to the property owner on which the easement is
12 located written notice that the electric cooperative intends
13 to authorize the placement of broadband infrastructure in the
14 easement for the expansion of broadband services. The right to
15 use the easement for broadband services vests in the electric
16 cooperative and runs with the land beginning six months after
17 notice is received under subsection 3, paragraph "a", unless a
18 court action challenging the use of the easement for broadband
19 purposes has been filed by the property owner as provided under
20 subsection 4 before the right vests. The electric cooperative
21 must also record evidence of the notice with the county recorder.

22 3. a. The electric cooperative's notice under subsection 2
23 must be sent by first class mail to the last known address of
24 the owner of the property on which the easement is located or
25 by printed insertion in the property owner's utility bill. The
26 notice must include all the following:

27 (1) The name and mailing address of the electric cooperative
28 and the communications service provider that will provide
29 broadband service.

30 (2) A narrative describing the nature and purpose of the
31 intended easement use.

32 (3) A description of any trenching or other underground
33 work expected to result from the intended use, including the
34 anticipated time frame for the work.

35 b. After the right to use the easement for broadband services

1 vests in the electric cooperative, the electric cooperative must
2 send an additional notice to the owner of the property on which
3 the easement is located if the communications service provider
4 changes or additional work not described under paragraph "a",
5 subparagraph (3), is needed. The notice requirement does not
6 apply to general maintenance or minor repairs of the broadband
7 infrastructure. The notice must describe any changes from the
8 notice sent under paragraph "a". The notice must be sent not
9 less than thirty days before the communications service provider
10 changes or additional work occurs.

11 4. A property owner, within six months after receiving notice
12 under subsection 3, paragraph "a", may commence an action seeking
13 to recover damages for an electric cooperative's use of an
14 electric transmission or distribution easement for broadband
15 service purposes. Notwithstanding any other law to the contrary,
16 the procedures and substantive matters set forth in this section
17 govern an action under this subsection and are the exclusive
18 means to bring a claim for compensation with respect to a
19 notice of intent to use an electric cooperative's transmission
20 or distribution easement for broadband purposes. To commence an
21 action under this subsection, the property owner must serve a
22 complaint upon the electric cooperative in a civil action and
23 file the complaint with the district court for the county in
24 which the easement is located. The complaint must state one of
25 the following:

26 a. The property owner is challenging the electric
27 cooperative's right to use the easement for broadband services or
28 infrastructure as authorized under subsection 2.

29 b. The property owner is seeking damages as provided under
30 subsection 5.

31 c. The property owner is asserting claims under both
32 paragraphs "a" and "b".

33 5. If the property owner is seeking damages, the electric
34 cooperative may, at any time after answering the complaint,
35 deposit with the court administrator an amount equal to the

1 electric cooperative's estimate of damages or one dollar if
2 damages are estimated to be not more than nominal. After a
3 deposit has been made pursuant to this subsection, the electric
4 cooperative may use the electric transmission or distribution
5 easements for broadband service purposes, conditioned on an
6 obligation to pay the amount of damages determined by the court.

7 6. If the property owner is challenging the electric
8 cooperative's right to use the easement for broadband services
9 or infrastructure as authorized under subsection 2, after the
10 electric cooperative answers the complaint the district court
11 must promptly hold a hearing on the property owner's challenge.
12 If the district court denies the property owner's challenge, the
13 electric cooperative may proceed to make a deposit and make use
14 of the easement for broadband service purposes, as provided under
15 subsection 5.

16 7. In an action involving a property owner's claim for
17 damages, the property owner has the burden to prove the existence
18 and amount of any net reduction in the fair market value of the
19 property, considering the existence, installation, construction,
20 maintenance, modification, operation, repair, replacement, or
21 removal of broadband infrastructure in the easement, as well as
22 any benefit to the property from access to broadband service.
23 Consequential or special damages shall not be awarded. Evidence
24 of revenue, profits, fees, income, or similar benefits to the
25 electric cooperative or a third party is inadmissible. Any fees
26 or costs incurred as a result of an action under this section
27 must be paid by the party that incurred the fees or costs.

28 8. Nothing in this section limits in any way an electric
29 cooperative's existing easement rights, including but not limited
30 to rights an electric cooperative has or may acquire to transmit
31 communications for electric system operations or otherwise.

32 9. Placement of broadband infrastructure for use in providing
33 broadband service under this section in any portion of an
34 electric transmission or distribution easement located in the
35 public right-of-way is subject to the local government's existing

1 general police powers to control the use of its right-of-way
2 and the department of transportation's authority under section
3 318.9, and the placement shall be coordinated with the relevant
4 authority to minimize potential future relocations. The electric
5 cooperative shall notify the relevant authority prior to the
6 placement of broadband infrastructure in an easement that is in
7 or adjacent to that relevant authority's public right-of-way.

8 Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate
9 importance, takes effect upon enactment.

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EXPLANATION

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The inclusion of this explanation does not constitute agreement with

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the explanation's substance by the members of the general assembly.

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This bill relates to using easements held by electric
14 cooperatives for purposes of expanding broadband service.

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The bill allows an electric cooperative to authorize within
16 its electric transmission or distribution easements the placement
17 of broadband infrastructure, which may include fiberoptic cable
18 facilities, by a communications service provider.

19

The bill requires the electric cooperative to provide the
20 owner of the property on which the easement is located a written
21 notice when the electric cooperative intends to use the easement
22 for broadband purposes and provides the required procedure and
23 contents of the notice. The electric cooperative is allowed
24 to use the easement for broadband services six months after
25 notice is received by the property owner unless the property
26 owner has filed a challenge with the courts contesting the use
27 of the easement within six months of the initial notice. The
28 bill provides additional notice requirements in the event the
29 communications service provider changes or additional work not
30 included in the original notice is necessary after the right to
31 use the easement for broadband purposes vests with the electric
32 cooperative.

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The bill allows for the property owner to commence action
34 against the electric cooperative by either seeking to recover
35 damages or challenging the electric cooperative's right to use

1 the easement within six months of receiving the notice and
2 provides procedures.

3 If the property owner is seeking damages, the bill allows the
4 electric cooperative to deposit with the court administrator an
5 amount equal to the electric cooperative's estimate of damages or
6 \$1 if damages are estimated to be not more than nominal once the
7 complaint has been answered. After the deposit has been made
8 the electric cooperative may use the electric transmission or
9 distribution easements for broadband purposes, conditioned on an
10 obligation to pay the amount of damages determined by the court.

11 If the property owner is challenging the electric
12 cooperative's right to use the easement for broadband services or
13 infrastructure, the bill directs the district court to promptly
14 hold a hearing on the property owner's challenge once the
15 complaint has been answered by the electric cooperative. If
16 the district court denies the property owner's challenge, the
17 electric cooperative may proceed to make a deposit and make use
18 of the easement for broadband service purposes.

19 The bill requires that in an action involving a property
20 owner's claim for damages, the property owner has the burden
21 to prove the existence and amount of any net reduction in the
22 fair market value of the property, considering the existence,
23 installation, construction, maintenance, modification, operation,
24 repair, replacement, or removal of broadband infrastructure in
25 the easement, as well as any benefit to the property from access
26 to broadband service. The bill states that in these actions,
27 consequential or special damages will not be awarded and that
28 evidence of revenue, profits, fees, income, or similar benefits
29 to the electric cooperative, its affiliates, or a third party is
30 inadmissible. The bill directs any fees or costs incurred as a
31 result of an action to be paid by the party that incurred the
32 fees or costs.

33 The bill expounds that the bill does not limit in any way an
34 electric cooperative's existing easement rights.

35 The bill explains that the electric cooperative's placement

1 of broadband infrastructure in any portion of an electric
2 transmission or distribution easement located in the public
3 right-of-way is subject to the local government's existing
4 general police powers to control the use of its right-of-way
5 and the department of transportation's authority. The bill
6 directs the electric cooperative to coordinate placement with
7 the relevant authority to minimize potential future relocations
8 and to notify the authority prior to placing infrastructure for
9 broadband service in an easement that is in or adjacent to that
10 authority's public right-of-way.

11 The bill takes effect upon enactment.

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