

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

1

HOUSE BILL 387*

Short Title: Electric Co-Op Rural Broadband Services. (Public)

Sponsors: Representatives Arp, Szoka, Lewis, and Hunter (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Energy and Public Utilities, if favorable, Judiciary, if favorable, Rules, Calendar,
and Operations of the House

March 20, 2019

A BILL TO BE ENTITLED

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

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

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

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

Whereas, the General Assembly finds that electric membership corporations and their subsidiaries, where they so choose, are uniquely positioned to pursue federal broadband funds and to leverage their right-of-way corridors and existing broadband fiber networks to provide, individually or in partnership, broadband services which will enable more rural communities to connect to broadband services; and

Whereas, broadband infrastructure deployed by electric membership corporations and their subsidiaries can coexist with electric infrastructure in right-of-ways owned or held by electric membership corporations; and

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

The General Assembly of North Carolina enacts:

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

"§ 117-18.1. Subsidiary business activities.

(a) Electric membership corporations may form, organize, acquire, hold, dispose of, and 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



1 wastewater collection and treatment, so long as those other business entities meet all of the
2 following conditions:

3 ...
4 (d) The provisions of subdivisions (1) and (3) of subsection (a) of this section do not
5 apply to the separate business activities of an electric membership corporation that forms,
6 organizes, acquires, holds, disposes of, or operates any interest up to and including full
7 controlling interest in a separate business entity that provides or supports high-speed broadband
8 services to one or more households, businesses, or community anchor points. For purposes of
9 this subsection, the term "anchor points" includes schools, libraries, community colleges,
10 community centers, and other similar places, and the term "high-speed broadband services"
11 means Internet transmission speeds of a minimum of 25 megabits per second (Mbps) downstream
12 and 3 Mbps upstream."

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

15 **"§ 117-28.1. Electric membership corporations; easements.**

16 (a) Any easement owned, held, or otherwise used by an electric membership corporation
17 for the purpose stated in G.S. 117-10 may also be used by the corporation, or its subsidiary, for
18 the purpose of supplying telecommunications and broadband service.

19 (b) Notwithstanding G.S. 1A-1, Rule 23, a class action may not be maintained against an
20 electric membership corporation or its subsidiary in a suit in trespass or inverse condemnation
21 based on a claim of expanded use of an easement. If, in a suit in trespass or inverse condemnation
22 based on a claim of expanded use of an easement, an individual property owner prevails over a
23 corporation or its subsidiary, the trespass shall be deemed permanent and the actual damages
24 awarded shall be the fair market value which, notwithstanding any other provision of law, shall
25 always be greater than zero but shall not exceed the difference between the fair market value of
26 the property owner's entire property immediately before the taking and the fair market value of
27 the property owner's property immediately after the taking. Evidence of revenues or profits
28 derived or the rental value of an assembled communications corridor shall not be admissible in
29 determining fair market value. A property owner's actual damages shall be fixed at the time of
30 the initial trespass and shall not be deemed to continue, accumulate, or accrue. Upon payment of
31 damages, the corporation or its subsidiary shall be granted a permanent easement for the trespass
32 that was the subject of the claim."

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