

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0964.02 Jennifer Berman x3286

SENATE BILL 20-128

SENATE SPONSORSHIP

Coram, Hansen

HOUSE SPONSORSHIP

Arndt and Catlin,

Senate Committees
Local Government

House Committees

A BILL FOR AN ACT

101 CONCERNING THE PROVISION OF RURAL BROADBAND USING AN
102 ELECTRIC UTILITY EASEMENT HELD BY AN ELECTRIC
103 COOPERATIVE, AND, IN CONNECTION THEREWITH, AUTHORIZING
104 THE PROVISION OF RURAL BROADBAND USING AN ELECTRIC
105 UTILITY EASEMENT HELD BY AN ELECTRIC GENERATION AND
106 TRANSMISSION COOPERATIVE ASSOCIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under current law, a cooperative electric association with an

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

electric utility easement on real property is authorized to install or to allow a commercial broadband supplier to install broadband facilities on the real property, subject to notice and procedural requirements. The bill expands the authorization to also apply to an electric generation and transmission cooperative association with an electric utility easement on real property.

The bill also authorizes the installation of new underground broadband facilities within these easements, subject to the same notice and procedural requirements.



1 *Be it enacted by the General Assembly of the State of Colorado:*
2 **SECTION 1.** In Colorado Revised Statutes, 40-15-601, **amend**
3 (1), (2), (4)(b), (5) introductory portion, (5)(b), and (8); and **add** (5.7) and
4 (6.5) as follows:
5 **40-15-601. Definitions.** As used in this part 6, unless the context
6 otherwise requires:
7 (1) "Attached facility" means a broadband facility, as defined in
8 section 38-5.5-102 (2), or a broadband network or any portion of a
9 broadband network, in each case located substantially:
10 (a) Aboveground and attached to an electric utility's OR
11 GENERATION AND TRANSMISSION COOPERATIVE'S electric service
12 infrastructure; or
13 (b) Underground in an electric easement. ~~and existing before the~~
14 ~~delivery of notice pursuant to section 40-15-602 (2).~~
15 (2) "Broadband affiliate" means a commercial broadband supplier
16 that is a separate legal entity from any electric utility OR GENERATION AND
17 TRANSMISSION COOPERATIVE but is controlled by, controls, or is under
18 common control with an electric utility OR GENERATION AND
19 TRANSMISSION COOPERATIVE.
20 (4) (b) "Commercial broadband supplier" does not include an

1 electric utility OR GENERATION AND TRANSMISSION COOPERATIVE.

2 (5) "Electric easement" means a recorded or unrecorded easement;
3 right-of-way AUTHORIZED under ~~section 38-4-103~~ SECTION 38-4-103,
4 38-5-104, OR 38-5-105 or otherwise; or similar right in or to real property,
5 including prescriptive rights, no matter how acquired, held by an electric
6 utility OR GENERATION AND TRANSMISSION COOPERATIVE for the siting of
7 electric service infrastructure or for the purpose of delivering electric
8 service, regardless of whether:

9 (b) The electric utility, GENERATION AND TRANSMISSION
10 COOPERATIVE, or a commercial broadband supplier uses the easement or
11 other right to provide commercial broadband service.

12 (5.7) "ELECTRIC SERVICE" MEANS THE TRANSMISSION OR
13 DISTRIBUTION OF ELECTRICITY, WHETHER FOR RETAIL OR WHOLESALE
14 PURPOSES.

15 (6.5) "GENERATION AND TRANSMISSION COOPERATIVE" MEANS AN
16 ELECTRIC GENERATION AND TRANSMISSION COOPERATIVE ASSOCIATION.

17 (8) "Memorandum" means a written instrument that includes, at
18 a minimum, the name and address of the electric utility OR GENERATION
19 AND TRANSMISSION COOPERATIVE AND the date ~~on which the notice was~~
20 ~~mailed~~, OF MAILING and the information required to be included in a
21 notice under section 40-15-602 (2)(b)(III) and (2)(b)(IV).

22 **SECTION 2.** In Colorado Revised Statutes, 40-15-602, **amend**
23 (1) introductory portion, (2)(a), (2)(b)(I) introductory portion,
24 (2)(b)(I)(A), (2)(b)(II), (2)(b)(IV)(B), (2)(b)(VI), (2)(b)(VII), (3), (4), and
25 (5) as follows:

26 **40-15-602. Electric easements - commercial broadband service**
27 **- broadband affiliates - notice required.** (1) With regard to real

1 property subject to an electric easement, if an electric utility OR
2 GENERATION AND TRANSMISSION COOPERATIVE or any commercial
3 broadband supplier designated by the electric utility OR GENERATION AND
4 TRANSMISSION COOPERATIVE to act on ~~its~~ behalf OF THE ELECTRIC UTILITY
5 OR GENERATION AND TRANSMISSION COOPERATIVE complies with the
6 notice and filing requirements set forth in subsection (2) of this section,
7 the electric utility OR GENERATION AND TRANSMISSION COOPERATIVE
8 holding the electric easement may, subject to subsection (4) of this
9 section and without the consent of an interest holder in the real property
10 subject to the electric easement, take the following actions to the extent
11 not already permitted by the electric easement:

12 (2) (a) At least thirty days before first exercising its rights under
13 one or both of subsection (1)(a) or (1)(b) of this section with respect to an
14 electric easement or portion of an electric easement, an electric utility,
15 GENERATION AND TRANSMISSION COOPERATIVE, or ~~its~~ designated
16 commercial broadband supplier must send notice to each property owner
17 that holds an interest in the real property subject to the electric easement
18 and any other interest holder that has recorded a request for notice and
19 must record a memorandum in the office of the county clerk and recorder
20 in each county in which the electric utility OR GENERATION AND
21 TRANSMISSION COOPERATIVE is exercising its rights under subsection (1)
22 of this section. An electric utility, GENERATION AND TRANSMISSION
23 COOPERATIVE, or ~~its~~ designated commercial broadband supplier may only
24 commence exercising its rights under subsection (1) of this section upon
25 delivery of sufficient notice.

26 (b) A letter providing notice pursuant to this subsection (2) must:

27 (I) Be sent by certified mail from or on behalf of the electric

1 utility OR GENERATION AND TRANSMISSION COOPERATIVE to the property
2 owner and any interest holder that has recorded a request for notice at
3 each of the following, as applicable:

4 (A) The last-known address for the property owner based on the
5 electric utility's OR GENERATION AND TRANSMISSION COOPERATIVE'S
6 records;

7 (II) Include the name, address, telephone number, and named
8 point of contact for the electric utility OR GENERATION AND TRANSMISSION
9 COOPERATIVE and, if delivered by a commercial broadband supplier
10 designated by the electric utility OR GENERATION AND TRANSMISSION
11 COOPERATIVE, the name, address, telephone number, and named point of
12 contact for the designated commercial broadband supplier;

13 (IV) Include:

14 (B) A copy of the language of subsection (1) of this section with
15 an indication of whether the electric utility OR GENERATION AND
16 TRANSMISSION COOPERATIVE is exercising rights under one or both of
17 subsection (1)(a) or (1)(b) of this section;

18 (VI) Include a statement regarding the right and obligation of the
19 electric utility, GENERATION AND TRANSMISSION COOPERATIVE, or ~~its~~
20 designated commercial broadband supplier to record a memorandum; and

21 (VII) Include a statement regarding the statute of limitations for
22 the interest holder to file a claim with respect to the electric utility's OR
23 GENERATION AND TRANSMISSION COOPERATIVE'S exercise of rights.

24 (3) Upon exercise of the rights set forth in subsection (1) of this
25 section, the rights run with the land and are assignable by the electric
26 utility OR GENERATION AND TRANSMISSION COOPERATIVE.

27 (4) The terms and conditions of a written electric easement apply

1 to an electric utility's OR GENERATION AND TRANSMISSION COOPERATIVE'S
2 uses of the electric easement set forth in subsection (1) of this section,
3 except those terms and conditions that would prohibit the electric utility's
4 OR GENERATION AND TRANSMISSION COOPERATIVE'S exercise of rights
5 under subsection (1) of this section. A prohibition on aboveground
6 electric service infrastructure contained within a written electric easement
7 constitutes a prohibition on aboveground attached facilities. In connection
8 with the exercise of rights under subsection (1) of this section, an electric
9 utility, GENERATION AND TRANSMISSION COOPERATIVE, or ~~its~~ designated
10 commercial broadband supplier must comply with any notice
11 requirements contained in a written electric easement held by the electric
12 utility OR GENERATION AND TRANSMISSION COOPERATIVE related to
13 entering the real property subject to the electric easement or commencing
14 any construction or installation on the real property.

15 (5) Nothing in this part 6 requires an electric utility OR
16 GENERATION AND TRANSMISSION COOPERATIVE to comply with subsection
17 (2) of this section in order to take any action or exercise any rights under
18 an electric easement that are already permitted within the scope of the
19 electric easement. Unless expressly prohibited by the terms of an electric
20 easement, an electric easement will be deemed to allow an electric utility
21 OR GENERATION AND TRANSMISSION COOPERATIVE to install, maintain, or
22 own, or permit a third party to install, maintain, or own for beneficial use
23 by the electric utility OR GENERATION AND TRANSMISSION COOPERATIVE,
24 telecommunications facilities and equipment for use in connection with
25 the electric utility's OR GENERATION AND TRANSMISSION COOPERATIVE'S
26 provision of electricity.

27 **SECTION 3.** In Colorado Revised Statutes, 40-15-603, **amend**

1 (1)(a) introductory portion, (2), (3) introductory portion, (3)(b), (3)(c)(I),
2 and (3)(d) as follows:

3 **40-15-603. Statute of limitations - damages - limitations on**
4 **damages.** (1) (a) No claim or cause of action against an electric utility,
5 GENERATION AND TRANSMISSION COOPERATIVE, or a commercial
6 broadband supplier concerning the electric utility's, GENERATION AND
7 TRANSMISSION COOPERATIVE'S, or commercial broadband supplier's
8 exercise of rights under this part 6 or any actions that the electric utility,
9 GENERATION AND TRANSMISSION COOPERATIVE, or commercial broadband
10 supplier takes before August 2, 2019, that, if taken after August 2, 2019,
11 would be authorized under section 40-15-602 (1) may be brought by or
12 on behalf of an interest holder more than two years after the latest of:

13 (2) A claim or cause of action to which subsection (1)(a) of this
14 section applies shall not be brought by or on behalf of an interest holder
15 against a commercial broadband supplier for actions that the commercial
16 broadband supplier has taken under section 40-15-602 (2) on behalf of an
17 electric utility OR GENERATION AND TRANSMISSION COOPERATIVE.
18 Nothing in this subsection (2) prohibits an electric utility, ~~and a~~
19 GENERATION AND TRANSMISSION COOPERATIVE, OR commercial
20 broadband supplier from contracting to allocate liability for actions taken
21 under section 40-15-602 (2).

22 (3) If an interest holder brings a trespass claim, inverse
23 condemnation claim, or any other claim or cause of action to which
24 subsection (1)(a) of this section applies for an electric utility's,
25 GENERATION AND TRANSMISSION COOPERATIVE'S, or commercial
26 broadband supplier's exercise of rights or performance of actions
27 described in section 40-15-602 (1)(a) or (1)(b), the following applies to

1 the claim or cause of action:

2 (b) The interest holder must make reasonable accommodations for
3 the electric utility, GENERATION AND TRANSMISSION COOPERATIVE, or
4 commercial broadband supplier to perform an appraisal or inspection of
5 the real property within ninety days following any written request for an
6 appraisal or inspection. If an interest holder fails to make such
7 accommodations, the electric utility, GENERATION AND TRANSMISSION
8 COOPERATIVE, or commercial broadband supplier has no further liability
9 to the interest holder. The electric utility, GENERATION AND
10 TRANSMISSION COOPERATIVE, or commercial broadband supplier shall
11 promptly provide to the interest holder a copy of any appraisal performed
12 pursuant to this subsection (3)(b).

13 (c) Any damages for any claims or causes of action to which
14 subsection (1)(a) of this section applies:

15 (I) Are limited to those damages that existed at the time that the
16 electric utility, GENERATION AND TRANSMISSION COOPERATIVE, or
17 commercial broadband supplier first exercised the rights or performed the
18 actions; and

19 (d) With regard to a claim or cause of action to which subsection
20 (1)(a) of this section applies:

21 (I) Except for an electric utility's, GENERATION AND TRANSMISSION
22 COOPERATIVE'S, or commercial broadband supplier's failure to comply
23 with section 40-15-602 (2); negligence; ~~or~~ willful misconduct; or FAILURE
24 TO ACT in accordance with the terms and conditions of a written electric
25 easement as the terms and conditions apply in accordance with section
26 40-15-602 (4), AND, IN SUCH INSTANCES, ONLY TO THE EXTENT
27 OTHERWISE ALLOWED BY LAW OR SPECIFIED BY THE TERMS AND

1 CONDITIONS OF THE WRITTEN ELECTRIC EASEMENT, an interest holder is
2 not entitled to reimbursement from an electric utility, GENERATION AND
3 TRANSMISSION COOPERATIVE, or commercial broadband supplier for the
4 cost of any appraisal; attorney fees; or award for special, consequential,
5 indirect, or punitive damages.

6 (II) For purposes of this subsection (3)(d), any action or failure to
7 act by an electric utility, GENERATION AND TRANSMISSION COOPERATIVE,
8 or commercial broadband supplier in furtherance of the electric utility's,
9 GENERATION AND TRANSMISSION COOPERATIVE'S, or commercial
10 broadband supplier's exercise of rights set forth in section 40-15-602 (1)
11 shall not be deemed negligence or willful misconduct.

12 **SECTION 4.** In Colorado Revised Statutes, 38-4-103, **amend** (2)
13 as follows:

14 **38-4-103. Electric power companies.** (2) An electric utility OR
15 A GENERATION AND TRANSMISSION COOPERATIVE, as THOSE TERMS ARE
16 defined in section 40-15-601, ~~(6)~~; exercising its rights under subsection
17 (1) of this section may, in accordance with part 6 of article 15 of title 40:

18 (a) Install or allow the installation of any attached facility, as that
19 term is defined in section 40-15-601 (1); and

20 (b) Exercise any rights available to the electric utility OR
21 GENERATION AND TRANSMISSION COOPERATIVE under part 6 of article 15
22 of title 40 in connection with the installation.

23 **SECTION 5. Act subject to petition - effective date -**
24 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
25 the expiration of the ninety-day period after final adjournment of the
26 general assembly (August 5, 2020, if adjournment sine die is on May 6,
27 2020); except that, if a referendum petition is filed pursuant to section 1

1 (3) of article V of the state constitution against this act or an item, section,
2 or part of this act within such period, then the act, item, section, or part
3 will not take effect unless approved by the people at the general election
4 to be held in November 2020 and, in such case, will take effect on the
5 date of the official declaration of the vote thereon by the governor.

6 (2) This act applies to conduct occurring on or after the applicable
7 effective date of this act.