

HOUSE BILL NO. 2765

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RIGGS.

5322H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 620, RSMo, by adding thereto one new section relating to pole replacements for certain broadband facilities.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 620, RSMo, is amended by adding thereto one new section, to be
2 known as section 620.3400, to read as follows:

620.3400. 1. As used in this section the following terms mean:

2 (1) "Application", an application made under subsection 3 of this section for an
3 eligible pole replacement reimbursement;

4 (2) "Eligible pole replacement", the removal of an existing utility pole and
5 replacement with a new utility pole in order to accommodate the attachment to such
6 new utility pole of facilities used in whole or in part by a retail provider of qualifying
7 broadband service to provide qualifying broadband service access to residences or
8 businesses in an unserved area. Such term does not include the removal and
9 replacement of a utility pole in order to accommodate facilities used only for the
10 provision of wholesale service and not used by the owner of such facilities or its affiliate
11 to provide qualifying broadband services directly to residences or businesses;

12 (3) "Eligible pole replacement cost", the actual and reasonable costs paid or
13 incurred, by the person responsible for such costs, to perform an eligible pole
14 replacement, and not reimbursed through any other state or federal broadband grant
15 program. Such term shall include the amount of any expenditures to remove and
16 dispose of the existing utility pole, to purchase and install a replacement utility pole, and
17 to transfer any existing facilities to the new pole. Such term shall further include the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

18 costs of reimbursing another party for the costs of performing an eligible pole
19 replacement, when paid or incurred by the person responsible for such costs. Such term
20 shall not include costs paid or incurred to perform an eligible pole replacement by a
21 party who is not responsible for such costs, and which are charged or passed along to
22 the responsible party;

23 (4) "Pole", any pole used, wholly or partly, for any wire communications or
24 electric distribution, irrespective of who owns or operates the pole;

25 (5) "Pole in an unserved area", a pole in a location in which terrestrial, fixed
26 internet access providing speeds of at least twenty-five megabits per second download
27 and three megabits per second upload is unavailable according to the latest broadband
28 availability data made available by the Federal Communications Commission at the
29 time of a request by a retail broadband service provider to attach facilities to a pole in
30 such location. Notwithstanding the foregoing, for purposes of an application for
31 reimbursement under this section, an area is not considered unserved if a person other
32 than the applicant is subject to a binding commitment to deploy qualifying broadband
33 service to such area and has not defaulted on such commitment. With respect to an
34 application for reimbursement under this section by a recipient of a federal or state
35 grant to deploy broadband service, such term means a location in which the conditions
36 of such grant limit its availability to areas lacking access to internet access providing
37 speeds of at least twenty-five megabits per second download and three megabits per
38 second upload;

39 (6) "Pole owner", a person who owns or controls a pole;

40 (7) "Pole replacement fund", the broadband pole replacement fund established
41 under subsection 2 of this section;

42 (8) "Pole replacement program", the Missouri broadband pole replacement
43 program established under subsection 3 of this section;

44 (9) "Qualifying broadband service", a retail wireline or wireless broadband
45 service capable of delivering internet access at speeds of at least one hundred megabits
46 per second download and upload, and with latency at a level sufficient to permit real-
47 time, interactive applications;

48 (10) "Reimbursed through any other state or federal broadband grant
49 program", with respect to a pole replacement cost that a party incurring or paying
50 such cost has received or is entitled to receive reimbursement for such cost under the
51 terms of a state or federal grant program for the deployment of broadband facilities,
52 whether through a specific reimbursement for such cost or through support payments
53 that equal or exceed such party's actual deployment costs inclusive of any pole
54 replacement costs. Such term does not include the receipt of a grant that covers only a

55 portion of the grant recipient's actual deployment costs inclusive of pole replacement
56 costs where the grant recipient pays or incurs pole replacement costs using its own
57 funds.

58 2. (1) There is hereby created in the state treasury the "Broadband Pole
59 Replacement Fund", which shall consist of all moneys collected under this section. The
60 state treasurer shall be custodian of the fund. In accordance with sections 30.170 and
61 30.180, the state treasurer may approve disbursements. Notwithstanding the provisions
62 of section 33.080 to the contrary, any moneys remaining in the fund at the end of the
63 biennium shall not revert to the credit of the general revenue fund. The state treasurer
64 shall invest moneys in the fund in the same manner as the other funds are invested. Any
65 interest and moneys earned on such investments shall be credited to the fund. Moneys
66 in the fund shall only be used in a manner consistent with federal law.

67 (2) Subject to appropriation, the following moneys may be transferred into the
68 fund: any funds appropriated by the general assembly, including from federal funds,
69 and grants, gifts, and contributions made directly to the fund.

70 (3) Moneys in the fund shall be used solely by the department of economic
71 development to provide reimbursements to qualified applicants under this section, and
72 for administration of the provisions of this section.

73 3. (1) There is hereby established the Missouri broadband pole replacement
74 program within the department of economic development. The department shall
75 administer and provide staff assistance for the program. The department shall be
76 responsible for receiving and reviewing applications for pole reimbursements, for
77 conducting final review of completed applications, and for awarding program
78 reimbursements.

79 (2) The director of the department of economic development shall promulgate
80 rules that are reasonable and necessary to implement and administer the provisions of
81 this section. Any rule or portion of a rule, as that term is defined in section 536.010, that
82 is created under the authority delegated in this section shall become effective only if it
83 complies with and is subject to all of the provisions of chapter 536 and, if applicable,
84 section 536.028. This section and chapter 536 are nonseverable and if any of the powers
85 vested with the general assembly pursuant to chapter 536 to review, to delay the
86 effective date, or to disapprove and annul a rule are subsequently held unconstitutional,
87 then the grant of rulemaking authority and any rule proposed or adopted after August
88 28, 2022, shall be invalid and void.

89 (3) The general assembly shall appropriate, from payments received by the state
90 from the federal Coronavirus State Fiscal Recovery Fund established in 42 U.S.C. 802,

91 the sum of one hundred million dollars for the pole replacement program, subject to
92 subdivision (4) of this subsection.

93 (4) The department of economic development shall take all steps necessary to
94 include funding for the pole replacement program in any state application and grant
95 plan submitted for payments from the federal Coronavirus Capital Projects Fund
96 established in 42 U.S.C. 804. Any payments made to the state from the Coronavirus
97 Capital Projects Fund that are approved for the pole replacement program shall be
98 treated as an offsetting collection to the amount appropriated under subdivision (3) of
99 this subsection.

100 (5) The department of economic development shall award pole reimbursements
101 under the pole replacement program using funds available for this purpose in the
102 broadband pole replacement fund.

103 (6) A pole owner or a provider of qualifying broadband service who pays or
104 incurs the costs of removing and replacing an existing pole in an unserved area, for the
105 purpose of accommodating the attachment of an eligible broadband facility, may apply
106 to the department of economic development for a reimbursement award. Within sixty
107 days of receipt of a completed application establishing the eligibility of such costs for
108 reimbursement, and to the extent that funds are available in the broadband pole
109 replacement fund, the department of economic development shall issue a pole
110 reimbursement under the pole replacement program for up to:

111 (a) Fifty percent of the eligible pole replacement costs paid or incurred by the
112 applicant or four thousand dollars, whichever is less, for the pole replaced; and

113 (b) One hundred percent of the documented and reasonable administrative
114 expenses incurred by the applicant in preparing and submitting the reimbursement
115 application, including expenses charged by a pole owner under subdivision (11) of this
116 subsection, of an amount not to exceed five percent of the eligible pole replacement costs
117 in the application.

118 (7) A pole reimbursement awarded by the department of economic development
119 under the pole replacement program shall be paid not later than thirty days after the
120 date of issuance. The department of economic development shall provide notice of a
121 reimbursement award to the pole owner and the retail broadband service provider
122 attaching the eligible broadband facility.

123 (8) Not later than sixty days after the broadband pole replacement fund receives
124 funds for the purpose of providing pole replacement reimbursements to qualified
125 applicants, the department of economic development shall publish a form application
126 for pole replacement reimbursements that shall require each applicant for
127 reimbursement to provide:

128 (a) Information sufficient to establish the number, cost, and eligibility of pole
129 replacements and the identity of the retail broadband service provider attaching the
130 eligible broadband facilities;

131 (b) Documentation sufficient to establish that the pole replacements have been
132 completed or will be completed not later than the ninetieth day after the issuance of a
133 pole reimbursement;

134 (c) The amount of reimbursement requested and any grant funding or
135 accounting information required to justify the amount of the request;

136 (d) A statement that the costs for which reimbursement is requested have not
137 been reimbursed through any other state or federal broadband grant program;

138 (e) A notarized statement from an officer or agent of the applicant that the
139 contents of the application are true and accurate and that the applicant accepts the
140 requirements of paragraphs (a) and (b) of subdivision (9) of this subsection, and
141 subdivision (10) of this subsection as a condition of receiving an award of program
142 reimbursement; and

143 (f) Any other information the department of economic development considers
144 necessary for final review, award, and payment of program reimbursements.

145 (9) As a condition of receiving an award of program reimbursement:

146 (a) An applicant shall certify the applicant's compliance with the requirements
147 of this section; and

148 (b) An applicant that is a pole owner shall not include in any rates or fees
149 charged for the owner's services an eligible pole replacement cost:

150 a. Reimbursed by the program;

151 b. Paid for by a qualifying broadband service provider; or

152 c. Funded by another grant source.

153 (10) If the department of economic development finds on substantial evidence
154 after notice and opportunity to respond that a recipient of funds under this section has
155 materially violated the requirements of this section with respect to reimbursements or
156 portions of reimbursements, the state treasurer may direct the recipient to refund the
157 reimbursement or such portions of the reimbursement with interest at the applicable
158 federal funds rate, as specified by section 400.4A-506, to the broadband pole
159 replacement fund or the state general revenue fund.

160 (11) If a retail broadband service provider incurs eligible pole replacement costs
161 relating to a pole replacement performed by the pole owner, the owner shall coordinate
162 with the provider to supply all information necessary for the provider to promptly
163 complete and submit an application under this section. A pole owner may charge the
164 provider the documented and reasonable administrative expenses incurred by the pole

165 owner for assistance, in an amount not to exceed five percent of eligible pole
166 replacement costs. The provider may seek reimbursement of costs in accordance with
167 subdivision (6) of this subsection.

168 (12) The department of economic development shall award and shall fund pole
169 reimbursements until funds available for that purpose in the broadband pole
170 replacement fund are no longer available.

171 (13) Any application pending at the exhaustion of the moneys in the broadband
172 pole replacement fund shall be deemed denied. The application may be refiled if
173 sufficient funds are later made available in the fund.

174 (14) Not later than the sixtieth day after the date the broadband pole
175 replacement fund receives moneys for the pole replacement program, the department of
176 economic development shall maintain and publish on the department of economic
177 development's website:

178 (a) Statistics on the number of applications received, processed, and rejected by
179 the program;

180 (b) Statistics on the size, number, and status of reimbursements awarded by the
181 program, including the retail broadband service providers and pole owners receiving
182 reimbursements; and

183 (c) The estimated amount of moneys remaining in the broadband pole
184 replacement fund.

185 (15) Not later than the first anniversary after the broadband pole replacement
186 fund receives funds for the purpose of providing pole replacement reimbursements, the
187 state auditor shall audit the fund and the administration of the pole replacement
188 program.

189 (16) Not later than one year after the date that the amount transferred to the
190 broadband pole replacement fund is exhausted, the director of the department of
191 economic development shall identify, examine, and report on the deployment of
192 broadband infrastructure and technology facilitated by the pole reimbursements the
193 department of economic development has awarded.

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