

SENATE BILL NO. 990

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR CIERPIOT.

4859S.01I

ADRIANE D. CROUSE, Secretary

AN ACT

To amend chapters 67 and 620, RSMo, by adding thereto two new sections relating to pole replacements for certain broadband facilities.

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

Section A. Chapters 67 and 620, RSMo, are amended by
2 adding thereto two new sections, to be known as sections 67.5130
3 and 620.3400, to read as follows:

**67.5130. 1. As used in this section the following
2 terms mean:**

3 (1) "Attaching entity", any communications or
4 communications-related service provider and includes a video
5 service provider or cable operator as defined in section
6 67.2677, and any person providing a telecommunications
7 service as defined in section 386.020;

8 (2) "Broadband service", terrestrial internet access
9 service providing speeds of at least twenty-five megabits
10 per second download and three megabits per second upload;

11 (3) "Municipally owned electric utility", any person
12 or cooperative organized under chapter 91;

13 (4) "Rural electric cooperative", any person or
14 cooperative organized under chapter 394, and shall include
15 an electrical corporation as defined in subsection 2 of
16 section 393.110.

17 2. This section applies to a pole attachment that is
18 used wholly or partly to provide broadband service and

19 affixed by an attaching entity to a pole owned and
20 controlled by a rural electric cooperative or a municipally
21 owned electric utility. This section does not apply to a
22 pole attachment regulated by the Federal Communications
23 Commission under 47 U.S.C. Section 224.

24 3. Notwithstanding any other provision of law to the
25 contrary, where an attaching entity attaches facilities to
26 the pole of a municipally owned electric utility or rural
27 electric cooperative, such municipally owned electric
28 utility or rural electric cooperative shall in no event pass
29 on to the attaching entity the costs of removing and
30 replacing a pole:

31 (1) Designated for replacement based on the pole's
32 noncompliance with an applicable safety standard;

33 (2) Designated for replacement within two years of the
34 date of its actual replacement for any reason unrelated to
35 the attaching entity's request for attachment; or

36 (3) That the municipally owned electric utility or
37 rural electric cooperative would have needed to replace at
38 the time of replacement even if a new attachment were not
39 made.

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

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

6 (2) "Eligible pole replacement", the removal of an
7 existing utility pole and replacement with a new utility
8 pole in order to accommodate the attachment to such new
9 utility pole of facilities used in whole or in part by a
10 retail provider of qualifying broadband service to provide
11 qualifying broadband service access to residences or

12 businesses in an unserved area. Such term does not include
13 the removal and replacement of a utility pole in order to
14 accommodate facilities used only for the provision of
15 wholesale service and not used by the owner of such
16 facilities or its affiliate to provide qualifying broadband
17 services directly to residences or businesses;

18 (3) "Eligible pole replacement cost", the actual and
19 reasonable costs paid or incurred, by the person responsible
20 for such costs, to perform an eligible pole replacement, and
21 not reimbursed through any other state or federal broadband
22 grant program. Such term shall include the amount of any
23 expenditures to remove and dispose of the existing utility
24 pole, to purchase and install a replacement utility pole,
25 and to transfer any existing facilities to the new pole.
26 Such term shall further include the costs of reimbursing
27 another party for the costs of performing an eligible pole
28 replacement, when paid or incurred by the person responsible
29 for such costs. Such term shall not include costs paid or
30 incurred to perform an eligible pole replacement by a party
31 who is not responsible for such costs, and which are charged
32 or passed along to the responsible party;

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

36 (5) "Pole in an unserved area", a pole in a location
37 in which terrestrial, fixed internet access providing speeds
38 of at least twenty-five megabits per second download and
39 three megabits per second upload is unavailable according to
40 the latest broadband availability data made available by the
41 Federal Communications Commission at the time of a request
42 by a retail broadband service provider to attach facilities
43 to a pole in such location. Notwithstanding the foregoing,

44 for purposes of an application for reimbursement under this
45 section, an area is not considered unserved if a person
46 other than the applicant is subject to a binding commitment
47 to deploy qualifying broadband service to such area and has
48 not defaulted on such commitment. With respect to an
49 application for reimbursement under this section by a
50 recipient of a federal or state grant to deploy broadband
51 service, such term means a location in which the conditions
52 of such grant limit its availability to areas lacking access
53 to internet access providing speeds of at least twenty-five
54 megabits per second download and three megabits per second
55 upload;

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

57 (7) "Pole replacement fund", the broadband pole
58 replacement fund established under subsection 2 of this
59 section;

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

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

68 (10) "Reimbursed through any other state or federal
69 broadband grant program", with respect to a pole replacement
70 cost that a party incurring or paying such cost has received
71 or is entitled to receive reimbursement for such cost under
72 the terms of a state or federal grant program for the
73 deployment of broadband facilities, whether through a
74 specific reimbursement for such cost or through support
75 payments that equal or exceed such party's actual deployment

76 costs inclusive of any pole replacement costs. Such term
77 does not include the receipt of a grant that covers only a
78 portion of the grant recipient's actual deployment costs
79 inclusive of pole replacement costs where the grant
80 recipient pays or incurs pole replacement costs using its
81 own funds.

82 2. (1) There is hereby created in the state treasury
83 the "Broadband Pole Replacement Fund", which shall consist
84 of all moneys collected under this section. The state
85 treasurer shall be custodian of the fund. In accordance
86 with sections 30.170 and 30.180, the state treasurer may
87 approve disbursements. Notwithstanding the provisions of
88 section 33.080 to the contrary, any moneys remaining in the
89 fund at the end of the biennium shall not revert to the
90 credit of the general revenue fund. The state treasurer
91 shall invest moneys in the fund in the same manner as the
92 other funds are invested. Any interest and moneys earned on
93 such investments shall be credited to the fund. Moneys in
94 the fund may only be used in a manner consistent with
95 federal law.

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

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

104 3. (1) There is hereby established the Missouri
105 broadband pole replacement program within the department of
106 economic development. The department shall administer and
107 provide staff assistance for the program. The department

108 shall be responsible for receiving and reviewing
109 applications for pole reimbursements, for conducting final
110 review of completed applications, and for awarding program
111 reimbursements.

112 (2) The director of the department of economic
113 development shall promulgate rules that are reasonable and
114 necessary to implement and administer the provisions of this
115 section. Any rule or portion of a rule, as that term is
116 defined in section 536.010, that is created under the
117 authority delegated in this section shall become effective
118 only if it complies with and is subject to all of the
119 provisions of chapter 536 and, if applicable, section
120 536.028. This section and chapter 536 are nonseverable and
121 if any of the powers vested with the general assembly
122 pursuant to chapter 536 to review, to delay the effective
123 date, or to disapprove and annul a rule are subsequently
124 held unconstitutional, then the grant of rulemaking
125 authority and any rule proposed or adopted after August 28,
126 2022, shall be invalid and void.

127 (3) The general assembly shall appropriate, from
128 payments received by the state from the federal Coronavirus
129 State Fiscal Recovery Fund established in 42 U.S.C. 802, the
130 sum of one hundred million dollars for the pole replacement
131 program, subject to subdivision (4) of this subsection.

132 (4) The department of economic development shall take
133 all steps necessary to include funding for the pole
134 replacement program in any state application and grant plan
135 submitted for payments from the federal Coronavirus Capital
136 Projects Fund established in 42 U.S.C. 804. Any payments
137 made to the state from the Coronavirus Capital Projects Fund
138 that are approved for the pole replacement program shall be

139 treated as an offsetting collection to the amount
140 appropriated under subdivision (3) of this subsection.

141 (5) The department of economic development shall award
142 pole reimbursements under the pole replacement program using
143 funds available for this purpose in the broadband pole
144 replacement fund.

145 (6) A pole owner or a provider of qualifying broadband
146 service who pays or incurs the costs of removing and
147 replacing an existing pole in an unserved area, for the
148 purpose of accommodating the attachment of an eligible
149 broadband facility, may apply to the department of economic
150 development for a reimbursement award. Within sixty days of
151 receipt of a completed application establishing the
152 eligibility of such costs for reimbursement, and to the
153 extent that funds are available in the broadband pole
154 replacement fund, the department of economic development
155 shall issue a pole reimbursement under the pole replacement
156 program for up to:

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

160 (b) One hundred percent of the documented and
161 reasonable administrative expenses incurred by the applicant
162 in preparing and submitting the reimbursement application,
163 including expenses charged by a pole owner under subdivision
164 (11) of this subsection, of an amount not to exceed five
165 percent of the eligible pole replacement costs in the
166 application.

167 (7) A pole reimbursement awarded by the department of
168 economic development under the pole replacement program
169 shall be paid not later than thirty days after the date of
170 issuance. The department of economic development shall

171 provide notice of a reimbursement award to the pole owner
172 and the retail broadband service provider attaching the
173 eligible broadband facility.

174 (8) Not later than sixty days after the broadband pole
175 replacement fund receives funds for the purpose of providing
176 pole replacement reimbursements to qualified applicants, the
177 department of economic development shall publish a form
178 application for pole replacement reimbursements that shall
179 require each applicant for reimbursement to provide:

180 (a) Information sufficient to establish the number,
181 cost, and eligibility of pole replacements and the identity
182 of the retail broadband service provider attaching the
183 eligible broadband facilities;

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

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

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

194 (e) A notarized statement from an officer or agent of
195 the applicant that the contents of the application are true
196 and accurate and that the applicant accepts the requirements
197 of paragraphs (a) and (b) of subdivision (9) of this
198 subsection, and subdivision (10) of this subsection as a
199 condition of receiving an award of program reimbursement; and

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

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

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

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

210 a. Reimbursed by the program;

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

213 c. Funded by another grant source.

214 (10) If the department of economic development finds
215 on substantial evidence after notice and opportunity to
216 respond that a recipient of funds under this section has
217 materially violated the requirements of this section with
218 respect to reimbursements or portions of reimbursements, the
219 state treasurer may direct the recipient to refund the
220 reimbursement or such portions of the reimbursement with
221 interest at the applicable federal funds rate, as specified
222 by section 400.4A-506, to the broadband pole replacement
223 fund or the state general revenue fund.

224 (11) If a retail broadband service provider incurs
225 eligible pole replacement costs relating to a pole
226 replacement performed by the pole owner, the owner shall
227 coordinate with the provider to supply all information
228 necessary for the provider to promptly complete and submit
229 an application under this section. A pole owner may charge
230 the provider the documented and reasonable administrative
231 expenses incurred by the pole owner for assistance, in an
232 amount not to exceed five percent of eligible pole
233 replacement costs. The provider may seek reimbursement of
234 costs in accordance with subdivision (6) of this subsection.

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

239 (13) Any application pending at the exhaustion of the
240 money in the broadband pole replacement fund shall be deemed
241 denied. The application may be refiled if sufficient funds
242 are later made available in the fund.

243 (14) Not later than the sixtieth day after the date
244 the broadband pole replacement fund receives money for the
245 pole replacement program, the department of economic
246 development shall maintain and publish on the department of
247 economic development's internet website:

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

250 (b) Statistics on the size, number, and status of
251 reimbursements awarded by the program, including the retail
252 broadband service providers and pole owners receiving
253 reimbursements; and

254 (c) The estimated amount of money remaining in the
255 broadband pole replacement fund.

256 (15) Not later than the first anniversary after the
257 broadband pole replacement fund receives funds for the
258 purpose of providing pole replacement reimbursements, the
259 state auditor shall audit the fund and the administration of
260 the pole replacement program.

261 (16) Not later than one year after the date that the
262 amount transferred to the broadband pole replacement fund is
263 exhausted, the director of the department of economic
264 development shall identify, examine, and report on the
265 deployment of broadband infrastructure and technology

266 facilitated by the pole reimbursements the department of
267 economic development has awarded.

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