

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1208

Introduced by Friesen, 34.

Read first time January 20, 2022

Committee:

- 1 A BILL FOR AN ACT relating to telecommunications; to adopt the Broadband
- 2 Pole Replacement Fund Act; to create a fund; to state intent for
- 3 appropriation of federal funds; and to declare an emergency.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 5 of this act shall be known and may cited
2 as the Broadband Pole Replacement Fund Act.

3 Sec. 2. For purposes of the Broadband Pole Replacement Fund Act:

4 (1) Application means an application made under section 4 of this
5 act for an eligible pole replacement reimbursement;

6 (2) Commission means the Public Service Commission;

7 (3) Eligible pole replacement means the removal of an existing
8 utility pole and replacement with a new utility pole in order to
9 accommodate the attachment to such new utility pole of facilities used in
10 whole or in part by a retail provider of qualifying broadband service for
11 the purpose of providing qualifying broadband service access to
12 residences or businesses within an unserved area if either (a) the
13 utility pole to which the facilities are attached is located in an
14 unserved area and the facilities are used in the provision of service to
15 such unserved area or (b) the utility pole to which the facilities are
16 attached is located in an area other than an unserved area and the
17 predominant purpose of the attached facilities is to extend the
18 provider's network to enable such provider to offer broadband service in
19 an unserved area. Eligible pole replacement does not include the removal
20 and replacement of a utility pole in order to accommodate facilities used
21 only for the provision of wholesale broadband or other data transmission
22 service and not used by the owner of such facilities or its affiliate to
23 provide qualifying broadband services directly to residences or
24 businesses;

25 (4) Eligible pole replacement cost means the actual and reasonable
26 costs paid or incurred, by the person responsible for such costs, to
27 perform an eligible pole replacement, and not reimbursed through any
28 other state or federal broadband grant program. Eligible pole replacement
29 cost includes the amount of any expenditures to remove and dispose of the
30 existing utility pole, to purchase and install a replacement utility
31 pole, to transfer any existing facilities to the new pole, and to

1 reimburse another party for the costs of performing an eligible pole
2 replacement, when paid or incurred by the person responsible for such
3 costs. Eligible pole replacement does not include costs paid or incurred
4 to perform an eligible pole replacement by a party who is not responsible
5 for such costs, and which are charged or passed along to the responsible
6 party;

7 (5) Pole means any pole used, wholly or partly, for any wire
8 communications or electric distribution, regardless of who owns or
9 operates the pole;

10 (6) Pole owner means any person or entity that owns or controls a
11 pole;

12 (7) Pole replacement program or program means the broadband pole
13 replacement program established under section 4 of this act;

14 (8) Reimbursed through any other state or federal broadband grant
15 program means, with respect to a pole replacement cost, that a party
16 incurring or paying such cost has received or is entitled to receive
17 reimbursement for such cost under the terms of a state or federal grant
18 program for the deployment of broadband facilities, whether through a
19 specific reimbursement for such cost or through support payments that
20 equal or exceed such party's actual deployment costs inclusive of any
21 pole replacement costs. Such reimbursement does not include the receipt
22 of a grant that covers only a portion of the grant recipient's actual
23 deployment costs inclusive of pole replacement costs where the grant
24 recipient pays or incurs pole replacement costs using its own funds;

25 (9) Qualifying broadband service means a retail wireline broadband
26 service capable of delivering Internet access at speeds of at least one
27 hundred megabits per second in both the downstream and upstream
28 directions, and with latency at a level sufficient to permit real-time,
29 interactive applications; and

30 (10) Unserved area means a location in which terrestrial, fixed
31 Internet access providing speeds of at least twenty-five megabits per

1 second in the downstream direction and three megabits per second in the
2 upstream direction is unavailable according to the latest broadband
3 availability data made available by the Federal Communications Commission
4 at the time of a request by a retail broadband service provider to attach
5 facilities to a pole in such location. For purposes of an application for
6 reimbursement under the Broadband Pole Replacement Fund Act, an area is
7 not considered unserved if a person other than the applicant is subject
8 to a binding commitment to deploy qualifying broadband service to such
9 area and has not defaulted on such commitment. For an application for
10 reimbursement under the act by a recipient of a federal or state grant to
11 deploy broadband service, unserved area includes a location in which the
12 conditions of such grant limit its availability to areas lacking access
13 to Internet access providing speeds of at least twenty-five megabits per
14 second in the downstream direction and three megabits per second in the
15 upstream direction.

16 Sec. 3. The Broadband Pole Replacement Fund is created. The fund
17 shall consist of money appropriated or transferred by the Legislature,
18 including from available federal funds, and grants, gifts, and donations
19 made to the fund. Money in the fund shall be used by the commission to
20 provide reimbursements to qualified applicants under the broadband pole
21 replacement program and for the administration of such program. The fund
22 shall be used in a manner consistent with federal law. Any money in the
23 fund available for investment shall be invested by the state investment
24 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
25 State Funds Investment Act. Any interest earned on money credited to the
26 fund shall be retained in the fund.

27 Sec. 4. (1) The broadband pole replacement program is established.
28 The commission shall administer and provide staff assistance for the
29 program. The commission shall be responsible for receiving and reviewing
30 applications for pole reimbursements and for award of program
31 reimbursements. The commission may adopt and promulgate any rules and

1 regulations necessary for the administration of the program consistent
2 with the Broadband and Pole Replacement Fund Act and federal law.

3 (2) The commission shall award pole reimbursements under the
4 broadband pole replacement program using funds made available for such
5 purpose, including from the Broadband Pole Replacement Fund. Within sixty
6 days of receipt of a completed application establishing the eligibility
7 of costs for reimbursement, and to the extent that money is available,
8 the commission shall award pole reimbursements under the broadband pole
9 replacement program for up to:

10 (a) The lesser of five thousand dollars or fifty percent of the
11 total amount paid or incurred by the applicant for eligible pole
12 replacement costs; and

13 (b) One hundred percent of the documented and reasonable
14 administrative expenses incurred by such applicant in preparing and
15 submitting the reimbursement application, including expenses charged by a
16 pole owner pursuant to subsection (5) of this section, of an amount not
17 to exceed five percent of eligible pole replacement costs.

18 (3) The commission shall award and fund pole reimbursements until
19 money available for such purpose is no longer available. Any application
20 pending at the exhaustion of the money available shall be deemed denied
21 but may be refiled if sufficient money is later made available.

22 (4) Not later than sixty days after funds are available for the
23 purpose of providing pole replacement reimbursements to qualified
24 applicants, the commission shall prescribe and provide an application
25 form for pole replacement reimbursements that requires:

26 (a) Information sufficient to establish the number, cost, and
27 eligibility of eligible pole replacements that qualify for reimbursement;

28 (b) Documentation sufficient to establish that the claimed eligible
29 pole replacements either have been completed or will be completed within
30 ninety days of award of program reimbursement;

31 (c) The amount of program reimbursement requested in the application

1 and any grant funding or accounting information required to justify the
2 amount of the request;

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

6 (e) A notarized statement from an officer or agent of the applicant
7 that the contents of the application are true and accurate and that the
8 applicant accepts the requirements of this section as a condition of
9 receiving an award of program reimbursement; and

10 (f) Any other information the commission deems necessary for final
11 review, award, and payment of program reimbursements.

12 (5) Any person who pays or incurs eligible pole replacement costs
13 may submit an application for reimbursement for such costs in accordance
14 with the requirements of subsection (4) of this section. Any pole owner
15 performing an eligible pole replacement to accommodate broadband
16 facilities owned or operated by an entity providing qualifying Internet
17 service, if such pole replacement would result in such broadband provider
18 being responsible in whole or in part for any eligible pole replacement
19 costs, shall coordinate in good faith with such broadband provider to
20 provide any information and documentation necessary to enable such
21 broadband provider to submit an application for reimbursement in
22 accordance with the requirements of subsection (4) of this section. A
23 pole owner providing such assistance may require reimbursement from the
24 broadband provider of its actual and reasonable administrative expenses,
25 which shall not exceed five percent of the eligible pole replacement
26 costs.

27 (6) As a condition of receiving an award of program reimbursement,
28 an applicant shall:

29 (a) Certify compliance with the requirements of the Broadband Pole
30 Replacement Fund Act; and

31 (b) Agree to refund with interest at the applicable federal funds

1 rate, as specified in U.C.C. section 4A-506, any reimbursements or
2 portions of reimbursements received from the program if the commission
3 finds upon substantial evidence after notice and opportunity to respond
4 that any of the requirements agreed to under this section were materially
5 violated by the recipient with respect to such reimbursements or such
6 portions of reimbursements.

7 (7) As a condition of receiving an award of program reimbursement,
8 an applicant that is a pole owner shall:

9 (a) Agree to install a replacement pole with sufficient capacity to
10 accommodate no fewer than two additional wireline broadband or
11 telecommunications attachments in addition to the broadband facilities
12 being accommodated by the replacement;

13 (b) Agree not to include in any rates or fees charged for its
14 services any eligible pole replacement costs that were reimbursed by the
15 program, paid for by a broadband provider, or funded by another grant
16 source;

17 (c) Certify its compliance with all applicable pole attachment
18 regulations and requirements imposed by state or federal law;

19 (d) For not less than ten years after receiving an award of program
20 reimbursement, record and make available upon request by a broadband
21 provider or the commission any utility pole-related cost and accounting
22 data related to eligible pole replacements and pole plant, including:

23 (i) Separate fixed asset records of investment and accumulated
24 depreciation and units of investment for new poles installed in the
25 course of eligible pole replacements, showing the value of investments in
26 (A) all classes of bare poles by pole material and (B) in non-pole
27 appurtenances including crossarms, platforms, and brackets;

28 (ii) The depreciation rate or rates applicable to pole plant
29 installed in the course of eligible pole replacements and the
30 depreciation rate or rates applicable to other pole plant owned by the
31 pole owner, if different;

1 (iii) The total number of retirements, additions, and net change in
2 pole plant on a per-class and per-unit annual basis since receiving
3 program reimbursement; and

4 (iv) The lowest per-pole annual recurring pole attachment rate
5 charged by the pole owner to a broadband provider or other broadband-
6 providing entity each year since receiving program reimbursement; and

7 (e) For not less than ten years after receiving an award of program
8 reimbursement, agree to charge rates and offer terms and conditions for
9 access to all such pole owner's poles in the state consistent with
10 applicable regulations and requirements.

11 (8) Not later than sixty days after the commission receives funds
12 under the Broadband Pole Replacement Fund Act for the purpose of
13 providing pole replacement reimbursements to qualified applicants, and to
14 ensure the transparency of the broadband pole replacement program, the
15 commission shall maintain and publish on its website:

16 (a) Statistics on the number of program applications received,
17 processed, approved, and rejected;

18 (b) Statistics on the size, number, and status of reimbursements
19 awarded by the program, including the pole owners and broadband providers
20 receiving reimbursements; and

21 (c) The amount of money remaining to fund program reimbursements.

22 (9) Not later than one year after funds are received for the purpose
23 of providing pole replacement reimbursements to qualified applicants
24 under the Broadband Pole Replacement Fund Act, the Auditor of Public
25 Accounts shall audit the program, including the Broadband Pole
26 Replacement Fund and its administration to determine compliance with the
27 requirements of this section.

28 (10) Not later than one year after the exhaustion of the money
29 available for reimbursements under the broadband pole replacement
30 program, the commission shall issue a report on the deployment of
31 broadband infrastructure and technology facilitated by pole

1 reimbursements awarded by the commission under the program. The report
2 shall be submitted electronically to the Legislature.

3 Sec. 5. There is hereby appropriated \$15,000,000 from Federal Funds
4 for FY2022-23 to the Public Service Commission to be used for
5 reimbursements made under the broadband pole replacement program pursuant
6 to section 4 of this act. The Federal Funds appropriated in this section
7 are from the funds allocated to the State of Nebraska from the federal
8 Coronavirus State Fiscal Recovery Fund pursuant to the federal American
9 Rescue Plan Act of 2021, Public Law 117-2, Subtitle M, Sec. 9901.

10 Sec. 6. Since an emergency exists, this act takes effect when
11 passed and approved according to law.