LEGISLATIVE BILL 1208

Introduced by Friesen, 34.

Read first time January 20, 2022

Committee: Transportation and Telecommunications

A BILL FOR AN ACT relating to telecommunications; to adopt the Broadband Pole Replacement Fund Act; to create a fund; to state intent for appropriation of federal funds; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 5 of this act shall be known and may cited as the Broadband Pole Replacement Fund Act.

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

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

(2) Commission means the Public Service Commission;

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

(4) Eligible pole replacement cost means the actual and reasonable costs paid or incurred, by the person responsible for such costs, to perform an eligible pole replacement, and not reimbursed through any other state or federal broadband grant program. Eligible pole replacement cost includes the amount of any expenditures to remove and dispose of the existing utility pole, to purchase and install a replacement utility pole, to transfer any existing facilities to the new pole, and to
reimburse another party for the costs of performing an eligible pole replacement, when paid or incurred by the person responsible for such costs. Eligible pole replacement does not include costs paid or incurred to perform an eligible pole replacement by a party who is not responsible for such costs, and which are charged or passed along to the responsible party:

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

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

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

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

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

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

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

Sec. 4. (1) The broadband pole replacement program is established.
The commission shall administer and provide staff assistance for the
program. The commission shall be responsible for receiving and reviewing
applications for pole reimbursements and for award of program
reimbursements. The commission may adopt and promulgate any rules and
regulations necessary for the administration of the program consistent
with the Broadband and Pole Replacement Fund Act and federal law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Agree to refund with interest at the applicable federal funds
rate, as specified in U.C.C. section 4A-506, any reimbursements or portions of reimbursements received from the program if the commission finds upon substantial evidence after notice and opportunity to respond that any of the requirements agreed to under this section were materially violated by the recipient with respect to such reimbursements or such portions of reimbursements.

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

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

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

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

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

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

(ii) The depreciation rate or rates applicable to pole plant installed in the course of eligible pole replacements and the depreciation rate or rates applicable to other pole plant owned by the pole owner, if different;
(iii) The total number of retirements, additions, and net change in
pole plant on a per-class and per-unit annual basis since receiving
program reimbursement; and

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

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

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

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

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

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

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

(10) Not later than one year after the exhaustion of the money
available for reimbursements under the broadband pole replacement
program, the commission shall issue a report on the deployment of
broadband infrastructure and technology facilitated by pole
reimbursements awarded by the commission under the program. The report shall be submitted electronically to the Legislature.

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

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