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H.B. No. 1505

A BILL TO BE ENTITLED

AN ACT

relating to attachments for broadband service on utility poles owned by an electric cooperative and establishing and funding a pole replacement program for deployment of certain broadband facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 403, Government Code, is amended by adding Subchapter R to read as follows:

SUBCHAPTER R. INFRASTRUCTURE AND BROADBAND FUNDING

Sec. 403.501. DEFINITIONS. In this subchapter:

(1) "Pole replacement fund" means the broadband pole replacement fund established under Section 403.502.

(2) "Pole replacement program" means the Texas Broadband Pole Replacement Program established under Section 403.503.

Sec. 403.502. BROADBAND POLE REPLACEMENT FUND. (a) The broadband pole replacement fund is created as a fund in the state treasury outside the general revenue fund.

(b) Notwithstanding any other law and except as provided by federal law, the comptroller shall make a one-time transfer of \$75 million from money received by this state from the federal government from the Coronavirus Capital Projects Fund established under Section 9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) to the credit of the pole replacement fund. The

1 comptroller shall make the transfer described by this subsection as
2 soon as practicable following receipt by this state of a sufficient
3 amount to make the transfer.

4 (c) Money deposited to the credit of the pole replacement
5 fund may be used only for the purpose of supporting the pole
6 replacement program under Section 403.503, including the costs of
7 program administration and operation. Money in the pole replacement
8 fund must be used in a manner consistent with federal law.

9 (d) Interest earned on money deposited to the credit of the
10 pole replacement fund is exempt from Section 404.071. Interest
11 earned on money in the fund shall be retained in the pole
12 replacement fund.

13 (e) The comptroller may issue guidelines for state agencies
14 regarding the implementation of this section.

15 Sec. 403.503. TEXAS BROADBAND POLE REPLACEMENT PROGRAM.

16 (a) In this section:

17 (1) "Eligible broadband facility" means a facility
18 used by a retail broadband service provider to provide qualifying
19 broadband service to residences or businesses in an unserved area,
20 including a facility owned by an affiliate of the provider and used
21 in the provision of service. The term does not include a facility
22 used only for the provision of wholesale service and not used by the
23 owner of the facility or the owner's affiliate to provide retail
24 qualifying broadband service directly to residences or businesses.

25 (2) "Eligible pole replacement cost" means the actual
26 and reasonable costs paid or incurred by a party after August 31,
27 2021, to remove and replace a pole, including the amount of any

1 expenditures to remove and dispose of the existing pole, purchase
2 and install a replacement pole, and transfer any existing
3 facilities to the new pole. The term includes costs paid or incurred
4 by the party responsible for the costs of a pole replacement to
5 reimburse the party that performs the pole replacement. The term
6 does not include costs that the party incurs initially that have
7 been reimbursed to the party by another party ultimately
8 responsible for the costs.

9 (3) "Qualifying broadband service" means retail
10 wireline or wireless broadband service capable of providing:

11 (A) a download speed of 25 megabits per second or
12 faster; and

13 (B) an upload speed of 3 megabits per second or
14 faster.

15 (4) "Unserved area" means a location that lacks access
16 to a retail fixed, terrestrial, wireline, or wireless Internet
17 service capable of providing:

18 (A) a download speed of 25 megabits per second or
19 faster; and

20 (B) an upload speed of three megabits per second
21 or faster.

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

25 (6) "Pole owner" means a person who owns or controls a
26 pole.

27 (b) The Texas Broadband Pole Replacement Program is

1 established for the purpose of speeding the deployment of broadband
2 to individuals in rural areas by reimbursing a portion of eligible
3 pole replacement costs incurred by certain persons.

4 (c) The comptroller shall administer, prescribe rules for,
5 and provide administrative support for the pole replacement
6 program. The comptroller may take any action necessary or
7 convenient to implement the pole replacement program.

8 (d) A pole owner or a provider of qualifying broadband
9 service who pays or incurs the costs of removing and replacing an
10 existing pole in an unserved area for the purpose of accommodating
11 the attachment of an eligible broadband facility may apply to the
12 comptroller for a reimbursement award for an amount equal to:

13 (1) 50 percent of the eligible pole replacement costs
14 paid or incurred by the applicant or \$5,000, whichever is less, for
15 the pole replaced; and

16 (2) the documented and reasonable administrative
17 expenses incurred by the applicant in preparing and submitting the
18 reimbursement application, including expenses charged by a pole
19 owner under Subsection (m).

20 (e) The amount reimbursed under Subsection (d)(2) may not
21 exceed five percent of the eligible pole replacement costs in the
22 application.

23 (f) For purposes of Subsection (d), a pole is considered to
24 be located in an unserved area if:

25 (1) at the time of the request by a retail broadband
26 service provider to attach facilities to the pole, the pole is in a
27 location that, according to the latest broadband availability data

1 made available by the Federal Communications Commission, is in an
2 unserved area; or

3 (2) the pole is located in an area that is the subject
4 of a federal or state grant to deploy broadband service, the
5 conditions of which limit the availability of a grant to unserved
6 areas.

7 (g) The comptroller shall require each applicant for
8 reimbursement to provide:

9 (1) information sufficient to establish the number,
10 cost, and eligibility of pole replacements and the identity of the
11 retail broadband service provider attaching the eligible broadband
12 facilities;

13 (2) documentation sufficient to establish that the
14 pole replacements have been completed or will be completed not
15 later than the 90th day after the award of program reimbursement;

16 (3) the amount of reimbursement requested and any
17 grant funding or accounting information required to justify the
18 amount of the request;

19 (4) a notarized statement from an officer or agent of
20 the applicant that the contents of the application are true and
21 accurate and that the applicant accepts the requirements of
22 Subsections (j), (k), and (l) as a condition of receiving an award
23 of program reimbursement; and

24 (5) any other information the comptroller considers
25 necessary for final review, award, and payment of program
26 reimbursements.

27 (h) Not later than the 60th day after the date that the

1 comptroller receives a completed application for reimbursement,
2 the comptroller shall review the application and, if the pole
3 replacement fund includes enough money to pay the award amount,
4 shall issue a reimbursement award. The award must be paid not later
5 than 30 days after the date of issuance.

6 (i) The comptroller must provide notice of a reimbursement
7 award to the pole owner and the retail broadband service provider
8 attaching the eligible broadband facility.

9 (j) As a condition of receiving an award of program
10 reimbursement, an applicant must certify the applicant's
11 compliance with the requirements of this section.

12 (k) If a pole owner receives a reimbursement award under
13 this section, the owner may not include in any rates or fees charged
14 for the owner's services an eligible pole replacement cost:

- 15 (1) reimbursed by the program;
16 (2) paid for by a qualifying broadband provider; or
17 (3) funded by another grant source.

18 (l) If the comptroller finds on substantial evidence after
19 notice and opportunity to respond that a recipient of funds under
20 this section has materially violated the requirements of this
21 section with respect to reimbursements or portions of
22 reimbursements, the comptroller may direct the recipient to refund
23 the reimbursement or a portion of the reimbursement with interest
24 at the applicable federal funds rate as specified by Section
25 4A.506(b), Business & Commerce Code, to the pole replacement fund
26 or the state general fund.

27 (m) If a retail broadband service provider incurs eligible

1 pole replacement costs relating to a pole replacement performed by
2 the pole owner, the owner shall coordinate with the provider to
3 supply all information necessary for the provider to promptly
4 complete and submit an application under this section. A pole owner
5 may charge the provider the documented and reasonable
6 administrative expenses incurred by the pole owner for assistance,
7 in an amount not to exceed five percent of eligible pole replacement
8 costs. The provider may seek reimbursement of costs in accordance
9 with Subsection (d)(2).

10 (n) If the pole replacement fund does not have money
11 sufficient to pay an award, the application for the award is
12 considered denied. The application may be refiled if sufficient
13 funds are later made available in the pole replacement fund.

14 (o) Not later than the 60th day after the date the pole
15 replacement fund receives money for the pole replacement program,
16 the comptroller shall maintain and publish on the comptroller's
17 Internet website:

18 (1) statistics on the number of applications received,
19 processed, and rejected by the program;

20 (2) statistics on the size, number, and status of
21 reimbursements awarded by the program, including the retail
22 broadband service providers and pole owners receiving
23 reimbursements; and

24 (3) the estimated amount of money remaining in the
25 pole replacement fund.

26 (p) Not later than the first anniversary after the pole
27 replacement fund receives funds for the purpose of providing pole

1 replacement reimbursements, the state auditor shall audit the fund
2 and the administration of the pole replacement program.

3 (g) Not later than one year after the date that the amount
4 transferred to the pole replacement fund under Section 403.502(b)
5 is exhausted, the comptroller shall identify, examine, and report
6 on the deployment of broadband infrastructure and technology
7 facilitated by the pole reimbursements the comptroller has awarded.

8 SECTION 2. The heading to Chapter 252, Utilities Code, is
9 amended to read as follows:

10 CHAPTER 252. CABLE ATTACHMENTS TO ELECTRIC COOPERATIVE'S
11 DISTRIBUTION POLES

12 SECTION 3. Title 5, Utilities Code, is amended by adding
13 Chapter 253 to read as follows:

14 CHAPTER 253. BROADBAND ATTACHMENTS TO ELECTRIC COOPERATIVE'S
15 DISTRIBUTION POLES

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Sec. 253.0001. DEFINITIONS. In this chapter:

18 (1) "Broadband provider" means an entity that provides
19 broadband service either directly or through an affiliate that uses
20 the entity's communications facilities, regardless of whether the
21 entity:

22 (A) provides additional services in addition to
23 broadband service; or

24 (B) uses its facilities in whole or in part to
25 provide broadband service.

26 (2) "Broadband service" means Internet service with
27 the capability of providing:

1 (A) a download speed of 25 megabits per second or
2 faster; and

3 (B) an upload speed of three megabits per second
4 or faster.

5 (3) "Pole" has the meaning assigned by Section
6 252.001.

7 (4) "Pole attachment" means an affixture of cables,
8 strands, wires, and associated equipment used in the provision of a
9 broadband provider's services attached to a pole directly or
10 indirectly or placed in a right-of-way owned or controlled by an
11 electric cooperative.

12 Sec. 253.0002. APPLICABILITY. This chapter applies to a
13 pole attachment that is used wholly or partly to provide broadband
14 service and affixed by a broadband provider to a pole owned and
15 controlled by an electric cooperative. This chapter does not apply
16 to a pole attachment regulated by the Federal Communications
17 Commission under 47 U.S.C. Section 224.

18 Sec. 253.0003. CONSTRUCTION OF CHAPTER. (a) This chapter
19 does not abrogate or affect a right or obligation of a party to a
20 pole attachment contract entered into by a broadband provider and
21 an electric cooperative before September 1, 2021.

22 (b) This chapter does not limit a right of a party to a pole
23 attachment contract to request modification, amendment, or renewal
24 of such contract to conform it to the provisions of this chapter.

25 Sec. 253.0004. NO STATE CERTIFICATION; NO REGULATORY
26 AUTHORITY. (a) This chapter does not constitute state
27 certification under 47 U.S.C. Section 224. If a court determines

1 that this chapter constitutes certification under that section,
2 this chapter is not enforceable and has no effect.

3 (b) This chapter may not be construed to subject an electric
4 cooperative to regulation by the Federal Communications Commission
5 under 47 U.S.C. Section 224.

6 (c) This chapter does not authorize a department, agency, or
7 political subdivision of this state to exercise enforcement or
8 regulatory authority over attachments to electric cooperative
9 poles.

10 Sec. 253.0005. CONSTRUCTION OF TERMS AND PHRASES.
11 Technical terms and phrases in this chapter, other than those
12 defined by Section 253.0001, shall be construed using the term's or
13 phrase's usual and customary meanings in the electric and broadband
14 industries.

15 Sec. 253.0006. COST-BASED NONRECURRING CHARGES.
16 Nonrecurring charges authorized by this chapter must be cost-based.

17 SUBCHAPTER B. ACCESS TO POLES

18 Sec. 253.0101. APPLICATION FOR POLE ACCESS. A broadband
19 provider may not access a pole owned by an electric cooperative for
20 the purpose of placing a pole attachment unless the provider
21 applies for that access.

22 Sec. 253.0102. USE OF POLE ATTACHMENTS FOR MULTIPLE
23 SERVICES. A broadband provider that attaches a pole attachment
24 under this chapter may use the attachment for any service delivered
25 over the provider's facilities, including cable service.

26 Sec. 253.0103. NONDISCRIMINATORY ACCESS; MODIFICATION OR
27 REPLACEMENT TO ACCOMMODATE ATTACHMENT. (a) Except as provided by

1 this chapter, an electric cooperative shall provide a broadband
2 provider with nondiscriminatory access to a pole that the
3 cooperative owns or controls.

4 (b) Except as provided by Subsection (c), an electric
5 cooperative may deny a broadband provider access to a pole:

6 (1) if there is insufficient capacity; or

7 (2) for reasons of safety, reliability, and generally
8 applicable engineering purposes.

9 (c) An electric cooperative may not deny a broadband
10 provider access to a pole if the basis for denial may be remedied by
11 rearranging facilities on the pole through reasonable make-ready
12 activities.

13 (d) Except as provided by Subsection (e), if a pole must be
14 replaced to accommodate a new pole attachment applied for by a
15 broadband provider:

16 (1) the electric cooperative and broadband provider
17 shall determine, through good faith negotiations, a reasonable date
18 by which the pole replacement will occur; and

19 (2) the broadband provider shall pay the actual costs
20 of replacing the pole, including the cost to:

21 (A) remove and dispose of the existing pole;

22 (B) purchase and install a replacement pole; and

23 (C) transfer any existing facilities to the new
24 pole.

25 (e) An electric cooperative is responsible for the costs of
26 removing and replacing under Subsection (d) a pole:

27 (1) with recorded conditions or defects that would

1 reasonably be expected to endanger human life or property and which
2 should be promptly corrected; or

3 (2) that must be replaced for safety or reliability as
4 a result of normal wear and tear or other natural causes and not on
5 account of a pole attachment or the action of a broadband provider
6 or third party.

7 SUBCHAPTER C. POLE ATTACHMENT CONTRACTS

8 Sec. 253.0201. CONTRACTS FOR POLE ATTACHMENTS. (a) An
9 electric cooperative that owns a pole may require a broadband
10 provider that attaches a pole attachment to the pole under this
11 chapter to enter into a contract for access to the pole.

12 (b) The terms and conditions of a contract under Subsection
13 (a) must be consistent with this chapter.

14 Sec. 253.0202. RATES, TERMS, AND CONDITIONS FOR POLE
15 ATTACHMENT. (a) A broadband provider and an electric cooperative
16 shall establish the rates, terms, and conditions for pole
17 attachments by a written pole attachment contract executed by both
18 parties.

19 (b) The rates, terms, and conditions of a contract under
20 this chapter must:

21 (1) be just, reasonable, and nondiscriminatory; and

22 (2) comply with this chapter.

23 (c) In determining whether rates, terms, and conditions are
24 just and reasonable, the following factors must be considered:

25 (1) the interests of and benefits to the consumers and
26 potential consumers of the electric cooperative's services;

27 (2) the interests of and benefits to the subscribers

1 and potential subscribers to broadband services offered through the
2 pole attachments;

3 (3) the interests of and benefits to third parties
4 from the availability of electric services and broadband services
5 offered through the pole attachments;

6 (4) compliance with applicable safety standards; and

7 (5) the maintenance and reliability of both electric
8 distribution and broadband services.

9 (d) A broadband provider and an electric cooperative shall
10 negotiate a pole attachment contract and any amendment,
11 modification, or renewal thereof in good faith.

12 (e) A request to negotiate a new pole attachment contract or
13 to amend, modify, or renew a contract pertaining to pole
14 attachments by a broadband provider or an electric cooperative must
15 be made in writing.

16 Sec. 253.0203. CONTRACT NEGOTIATIONS AND MEDIATION. (a)
17 If a broadband provider and an electric cooperative are unable to
18 agree to a new pole attachment contract before the expiration date
19 of an existing contract, the rates, terms, and conditions of the
20 existing contract and the terms and conditions of the electric
21 cooperative's application and permitting processes remain in
22 force:

23 (1) during the 90-day negotiation period described by
24 Subsection (b) and during the period of any agreed extension;

25 (2) during the 60-day mediation period described by
26 Subsection (b) and during the period of any agreed extension; and

27 (3) pending final disposition of any litigation

1 commenced under Subsection (c).

2 (b) If a broadband provider and an electric cooperative are
3 unable to agree to a new pole attachment contract before the 91st
4 day after the expiration date of an existing contract, and are
5 unable to agree to an extension of the negotiation period for a
6 certain number of days, the broadband provider and electric
7 cooperative shall attempt to resolve any disagreement over the
8 rates, terms, or conditions by submitting the contract negotiations
9 to a mediation process. The mediation process may not extend later
10 than the 60th day after the end of the initial 90-day negotiation
11 period and any agreed extension of that period unless the broadband
12 provider and electric cooperative agree to an extension of the
13 mediation period for a certain number of days. The mediation
14 process must be conducted in a county in which the electric
15 cooperative has distribution poles. The broadband provider and
16 electric cooperative must share equally the expenses for the
17 mediator.

18 (c) If the mediation process under Subsection (b) does not
19 resolve the disagreement over the rates, terms, or conditions of a
20 new pole attachment agreement, the broadband provider or electric
21 cooperative may file suit in a district court to resolve the
22 disagreement or dispute.

23 SUBCHAPTER D. ADDITIONAL POLE ATTACHMENT REQUIREMENTS

24 Sec. 253.0401. TRANSFER OF ATTACHMENTS. (a) Before an
25 electric cooperative installs a new pole to replace an existing
26 pole due to the rerouting, maintenance, or upgrading of the
27 electric distribution system, the cooperative shall provide notice

1 of the replacement to each broadband provider with a pole
2 attachment on the existing pole.

3 (b) The notice required under Subsection (a) must specify a
4 date by which the broadband provider must remove the pole
5 attachment from the existing pole and transfer the attachment to
6 the new pole.

7 (c) If a broadband provider does not transfer a pole
8 attachment to the new pole before the 31st day after the date
9 specified in the notice, the electric cooperative may transfer the
10 pole attachment to the new pole at the broadband provider's
11 expense, including the cost for the electric cooperative to return
12 to the site.

13 (d) A broadband provider shall indemnify, defend, and hold
14 harmless an electric cooperative and the cooperative's members,
15 directors, officers, agents, and employees from and against all
16 liability for the removal and transfer of a pole attachment subject
17 to this section, except for personal injury or property damage
18 arising from the gross negligence or wilful misconduct of the
19 electric cooperative during the removal and transfer process.

20 Sec. 253.0402. ABANDONED POLE ATTACHMENTS; REMOVAL. (a) A
21 broadband provider that receives a written request from an electric
22 cooperative to remove an abandoned pole attachment owned by the
23 provider from a pole owned by the cooperative shall remove the
24 attachment not later than the 60th day after the date the provider
25 receives the request.

26 (b) Before the deadline under Subsection (a), a broadband
27 provider may request, and an electric cooperative may grant, a

1 reasonable extension of that deadline. A request for an extension
2 under this subsection must be in writing.

3 (c) If a broadband provider does not remove a pole
4 attachment by the deadline under Subsection (a) or an extended
5 deadline under Subsection (b), the electric cooperative may remove,
6 use, sell, or dispose of the pole attachment at the broadband
7 provider's expense.

8 (d) An electric cooperative may require that a broadband
9 provider post a security instrument in an amount reasonably
10 sufficient to cover the potential cost to the electric cooperative
11 of removal and disposal of abandoned pole attachments.

12 (e) A broadband provider shall indemnify, defend, and hold
13 harmless an electric cooperative and the cooperative's members,
14 directors, officers, agents, and employees from and against all
15 liability for the removal, use, sale, or disposal of abandoned pole
16 attachments, except for personal injury or property damage arising
17 from the gross negligence or wilful misconduct of the electric
18 cooperative during the removal and disposal process.

19 Sec. 253.0403. EASEMENTS; INDEMNITY. (a) A broadband
20 provider is responsible for obtaining all rights-of-way and
21 easements necessary for the installation, operation, and
22 maintenance of the provider's pole attachments.

23 (b) An electric cooperative is not required to obtain or
24 expand a right-of-way or easement to accommodate a pole attachment
25 requested by a broadband provider.

26 (c) An electric cooperative is not liable if a broadband
27 provider is prevented from placing or maintaining a pole attachment

1 because the broadband provider did not obtain a necessary
2 right-of-way or easement.

3 (d) A broadband provider shall indemnify, defend, and hold
4 harmless the electric cooperative and the cooperative's members,
5 directors, officers, agents, and employees from and against any
6 liability resulting from the broadband provider's failure to obtain
7 a necessary right-of-way or easement for a pole attachment.

8 SECTION 4. The comptroller of public accounts shall
9 establish rules for the Texas Broadband Pole Replacement Program,
10 as established by Section 403.503, Government Code, as added by
11 this Act, not later than March 1, 2022.

12 SECTION 5. This Act takes effect September 1, 2021.