

1-1 By: Paddie, et al. (Senate Sponsor - Hancock) H.B. No. 1505
 1-2 (In the Senate - Received from the House May 5, 2021;
 1-3 May 13, 2021, read first time and referred to Committee on
 1-4 Transportation; May 20, 2021, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
 1-6 May 20, 2021, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 1505 By: Hancock

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to attachments for broadband service on utility poles
 1-22 owned by an electric cooperative and establishing and funding a
 1-23 pole replacement program for deployment of certain broadband
 1-24 facilities.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Chapter 403, Government Code, is amended by
 1-27 adding Subchapter R to read as follows:

1-28 SUBCHAPTER R. INFRASTRUCTURE AND BROADBAND FUNDING

1-29 Sec. 403.501. DEFINITIONS. In this subchapter:

1-30 (1) "Pole replacement fund" means the broadband pole
 1-31 replacement fund established under Section 403.502.

1-32 (2) "Pole replacement program" means the Texas
 1-33 Broadband Pole Replacement Program established under Section
 1-34 403.503.

1-35 Sec. 403.502. BROADBAND POLE REPLACEMENT FUND. (a) The
 1-36 broadband pole replacement fund is created as a fund in the state
 1-37 treasury outside the general revenue fund.

1-38 (b) Notwithstanding any other law and except as provided by
 1-39 federal law, the comptroller shall make a one-time transfer from
 1-40 money received by this state from the federal government from the
 1-41 Coronavirus Capital Projects Fund established under Section 9901 of
 1-42 the American Rescue Plan Act of 2021 (Pub. L. No. 117-2) to the
 1-43 credit of the pole replacement fund. The comptroller shall make the
 1-44 transfer described by this subsection as soon as practicable
 1-45 following receipt by this state of money from the Coronavirus
 1-46 Capital Projects Fund.

1-47 (c) Money deposited to the credit of the pole replacement
 1-48 fund may be used only for the purpose of supporting the pole
 1-49 replacement program under Section 403.503, including the costs of
 1-50 program administration and operation. Money in the pole replacement
 1-51 fund must be used in a manner consistent with federal law.

1-52 (d) Interest earned on money deposited to the credit of the
 1-53 pole replacement fund is exempt from Section 404.071. Interest
 1-54 earned on money in the fund shall be retained in the pole
 1-55 replacement fund.

1-56 (e) The comptroller may issue guidelines for state agencies
 1-57 regarding the implementation of this section.

1-58 Sec. 403.503. TEXAS BROADBAND POLE REPLACEMENT PROGRAM.

1-59 (a) In this section:

1-60 (1) "Eligible broadband facility" means a facility

2-1 used by a retail broadband service provider to provide qualifying
 2-2 broadband service to residences or businesses in an unserved area,
 2-3 including a facility owned by an affiliate of the provider and used
 2-4 in the provision of service. The term does not include a facility
 2-5 used only for the provision of wholesale service and not used by the
 2-6 owner of the facility or the owner's affiliate to provide retail
 2-7 qualifying broadband service directly to residences or businesses.
 2-8 (2) "Eligible pole replacement cost" means the actual
 2-9 and reasonable costs paid or incurred by a party after August 31,
 2-10 2021, to remove and replace a pole, including the amount of any
 2-11 expenditures to remove and dispose of the existing pole, purchase
 2-12 and install a replacement pole, and transfer any existing
 2-13 facilities to the new pole. The term includes costs paid or incurred
 2-14 by the party responsible for the costs of a pole replacement to
 2-15 reimburse the party that performs the pole replacement. The term
 2-16 does not include costs that the party incurs initially that have
 2-17 been reimbursed to the party by another party ultimately
 2-18 responsible for the costs.
 2-19 (3) "Qualifying broadband service" means retail
 2-20 wireline or wireless broadband service capable of providing:
 2-21 (A) a download speed of 25 megabits per second or
 2-22 faster; and
 2-23 (B) an upload speed of 3 megabits per second or
 2-24 faster.
 2-25 (4) "Unserved area" means a location that lacks access
 2-26 to a retail fixed, terrestrial, wireline, or wireless Internet
 2-27 service capable of providing:
 2-28 (A) a download speed of 25 megabits per second or
 2-29 faster; and
 2-30 (B) an upload speed of 3 megabits per second or
 2-31 faster.
 2-32 (5) "Pole" means any pole used, wholly or partly, for
 2-33 any wire communications or electric distribution, irrespective of
 2-34 who owns or operates the pole.
 2-35 (6) "Pole owner" means a person who owns or controls a
 2-36 pole.
 2-37 (b) The Texas Broadband Pole Replacement Program is
 2-38 established for the purpose of speeding the deployment of broadband
 2-39 to individuals in rural areas by reimbursing a portion of eligible
 2-40 pole replacement costs incurred by certain persons.
 2-41 (c) The comptroller shall administer, prescribe rules for,
 2-42 and provide administrative support for the pole replacement
 2-43 program. The comptroller may take any action necessary or
 2-44 convenient to implement the pole replacement program.
 2-45 (d) A pole owner or a provider of qualifying broadband
 2-46 service who pays or incurs the costs of removing and replacing an
 2-47 existing pole in an unserved area for the purpose of accommodating
 2-48 the attachment of an eligible broadband facility may apply to the
 2-49 comptroller for a reimbursement award for an amount equal to:
 2-50 (1) 50 percent of the eligible pole replacement costs
 2-51 paid or incurred by the applicant or \$5,000, whichever is less, for
 2-52 the pole replaced; and
 2-53 (2) the documented and reasonable administrative
 2-54 expenses incurred by the applicant in preparing and submitting the
 2-55 reimbursement application, including expenses charged by a pole
 2-56 owner under Subsection (m).
 2-57 (e) The amount reimbursed under Subsection (d)(2) may not
 2-58 exceed five percent of the eligible pole replacement costs in the
 2-59 application.
 2-60 (f) For purposes of Subsection (d), a pole is considered to
 2-61 be located in an unserved area if:
 2-62 (1) at the time of the request by a retail broadband
 2-63 service provider to attach facilities to the pole, the pole is in a
 2-64 location that, according to the latest broadband availability data
 2-65 made available by the Federal Communications Commission, is in an
 2-66 unserved area; or
 2-67 (2) the pole is located in an area that is the subject
 2-68 of a federal or state grant to deploy broadband service, the
 2-69 conditions of which limit the availability of a grant to unserved

3-1 areas.

3-2 (g) The comptroller shall require each applicant for
3-3 reimbursement to provide:

3-4 (1) information sufficient to establish the number,
3-5 cost, and eligibility of pole replacements and the identity of the
3-6 retail broadband service provider attaching the eligible broadband
3-7 facilities;

3-8 (2) documentation sufficient to establish that the
3-9 pole replacements have been completed or will be completed not
3-10 later than the 90th day after the award of program reimbursement;

3-11 (3) the amount of reimbursement requested and any
3-12 grant funding or accounting information required to justify the
3-13 amount of the request;

3-14 (4) a notarized statement from an officer or agent of
3-15 the applicant that the contents of the application are true and
3-16 accurate and that the applicant accepts the requirements of
3-17 Subsections (j), (k), and (l) as a condition of receiving an award
3-18 of program reimbursement; and

3-19 (5) any other information the comptroller considers
3-20 necessary for final review, award, and payment of program
3-21 reimbursements.

3-22 (h) Not later than the 60th day after the date that the
3-23 comptroller receives a completed application for reimbursement,
3-24 the comptroller shall review the application and, if the pole
3-25 replacement fund includes enough money to pay the award amount,
3-26 shall issue a reimbursement award. The award must be paid not later
3-27 than 30 days after the date of issuance.

3-28 (i) The comptroller must provide notice of a reimbursement
3-29 award to the pole owner and the retail broadband service provider
3-30 attaching the eligible broadband facility.

3-31 (j) As a condition of receiving an award of program
3-32 reimbursement, an applicant must certify the applicant's
3-33 compliance with the requirements of this section.

3-34 (k) If a pole owner receives a reimbursement award under
3-35 this section, the owner may not include in any rates or fees charged
3-36 for the owner's services an eligible pole replacement cost:

3-37 (1) reimbursed by the program;
3-38 (2) paid for by a qualifying broadband service
3-39 provider; or

3-40 (3) funded by another grant source.

3-41 (l) If the comptroller finds on substantial evidence after
3-42 notice and opportunity to respond that a recipient of funds under
3-43 this section has materially violated the requirements of this
3-44 section with respect to reimbursements or portions of
3-45 reimbursements, the comptroller may direct the recipient to refund
3-46 the reimbursement or a portion of the reimbursement with interest
3-47 at the applicable federal funds rate as specified by Section
3-48 4A.506(b), Business & Commerce Code, to the pole replacement fund
3-49 or the state general fund.

3-50 (m) If a retail broadband service provider incurs eligible
3-51 pole replacement costs relating to a pole replacement performed by
3-52 the pole owner, the owner shall coordinate with the provider to
3-53 supply all information necessary for the provider to promptly
3-54 complete and submit an application under this section. A pole owner
3-55 may charge the provider the documented and reasonable
3-56 administrative expenses incurred by the pole owner for assistance,
3-57 in an amount not to exceed five percent of eligible pole replacement
3-58 costs. The provider may seek reimbursement of costs in accordance
3-59 with Subsection (d)(2).

3-60 (n) If the pole replacement fund does not have money
3-61 sufficient to pay an award, the application for the award is
3-62 considered denied. The application may be refiled if sufficient
3-63 funds are later made available in the pole replacement fund.

3-64 (o) Not later than the 60th day after the date the pole
3-65 replacement fund receives money for the pole replacement program,
3-66 the comptroller shall maintain and publish on the comptroller's
3-67 Internet website:

3-68 (1) statistics on the number of applications received,
3-69 processed, and rejected by the program;

4-1 (2) statistics on the size, number, and status of
4-2 reimbursements awarded by the program, including the retail
4-3 broadband service providers and pole owners receiving
4-4 reimbursements; and

4-5 (3) the estimated amount of money remaining in the
4-6 pole replacement fund.

4-7 (p) Not later than the first anniversary after the pole
4-8 replacement fund receives funds for the purpose of providing pole
4-9 replacement reimbursements, the state auditor shall audit the fund
4-10 and the administration of the pole replacement program.

4-11 (q) Not later than one year after the date that the amount
4-12 transferred to the pole replacement fund under Section 403.502(b)
4-13 is exhausted, the comptroller shall identify, examine, and report
4-14 on the deployment of broadband infrastructure and technology
4-15 facilitated by the pole reimbursements the comptroller has awarded.

4-16 SECTION 2. The heading to Chapter 252, Utilities Code, is
4-17 amended to read as follows:

4-18 CHAPTER 252. CABLE ATTACHMENTS TO ELECTRIC COOPERATIVE'S
4-19 DISTRIBUTION POLES

4-20 SECTION 3. Title 5, Utilities Code, is amended by adding
4-21 Chapter 253 to read as follows:

4-22 CHAPTER 253. BROADBAND ATTACHMENTS TO ELECTRIC COOPERATIVE'S
4-23 DISTRIBUTION POLES

4-24 SUBCHAPTER A. GENERAL PROVISIONS

4-25 Sec. 253.0001. DEFINITIONS. In this chapter:

4-26 (1) "Broadband provider" means an entity that provides
4-27 broadband service either directly or through an affiliate that uses
4-28 the entity's communications facilities, regardless of whether the
4-29 entity:

4-30 (A) provides additional services in addition to
4-31 broadband service; or

4-32 (B) uses its facilities in whole or in part to
4-33 provide broadband service.

4-34 (2) "Broadband service" means Internet service with
4-35 the capability of providing:

4-36 (A) a download speed of 25 megabits per second or
4-37 faster; and

4-38 (B) an upload speed of 3 megabits per second or
4-39 faster.

4-40 (3) "Pole" has the meaning assigned by Section
4-41 252.001.

4-42 (4) "Pole attachment" means an affixture of cables,
4-43 strands, wires, and associated equipment used in the provision of a
4-44 broadband provider's services attached to a pole directly or
4-45 indirectly or placed in a right-of-way owned or controlled by an
4-46 electric cooperative.

4-47 Sec. 253.0002. APPLICABILITY. This chapter applies to a
4-48 pole attachment that is used wholly or partly to provide broadband
4-49 service and affixed by a broadband provider to a pole owned and
4-50 controlled by an electric cooperative. This chapter does not apply
4-51 to a pole attachment regulated by the Federal Communications
4-52 Commission under 47 U.S.C. Section 224.

4-53 Sec. 253.0003. CONSTRUCTION OF CHAPTER. (a) This chapter
4-54 does not abrogate or affect a right or obligation of a party to a
4-55 pole attachment contract entered into by a broadband provider and
4-56 an electric cooperative before September 1, 2021.

4-57 (b) This chapter does not limit a right of a party to a pole
4-58 attachment contract to request modification, amendment, or renewal
4-59 of such contract to conform it to the provisions of this chapter.

4-60 Sec. 253.0004. NO STATE CERTIFICATION; NO REGULATORY
4-61 AUTHORITY. (a) This chapter does not constitute state
4-62 certification under 47 U.S.C. Section 224. If a court determines
4-63 that this chapter constitutes certification under that section,
4-64 this chapter is not enforceable and has no effect.

4-65 (b) This chapter may not be construed to subject an electric
4-66 cooperative to regulation by the Federal Communications Commission
4-67 under 47 U.S.C. Section 224.

4-68 (c) This chapter does not authorize a department, agency, or
4-69 political subdivision of this state to exercise enforcement or

5-1 regulatory authority over attachments to electric cooperative
5-2 poles.

5-3 Sec. 253.0005. CONSTRUCTION OF TERMS AND PHRASES.
5-4 Technical terms and phrases in this chapter, other than those
5-5 defined by Section 253.0001, shall be construed using the term's or
5-6 phrase's usual and customary meanings in the electric and broadband
5-7 industries.

5-8 Sec. 253.0006. COST-BASED NONRECURRING CHARGES.
5-9 Nonrecurring charges authorized by this chapter must be cost-based.

5-10 SUBCHAPTER B. ACCESS TO POLES

5-11 Sec. 253.0101. APPLICATION FOR POLE ACCESS. A broadband
5-12 provider may not access a pole owned by an electric cooperative for
5-13 the purpose of placing a pole attachment unless the provider
5-14 applies for that access.

5-15 Sec. 253.0102. USE OF POLE ATTACHMENTS FOR MULTIPLE
5-16 SERVICES. A broadband provider that attaches a pole attachment
5-17 under this chapter may use the attachment for any service delivered
5-18 over the provider's facilities, including cable service.

5-19 Sec. 253.0103. NONDISCRIMINATORY ACCESS; MODIFICATION OR
5-20 REPLACEMENT TO ACCOMMODATE ATTACHMENT. (a) Except as provided by
5-21 this chapter, an electric cooperative shall provide a broadband
5-22 provider with nondiscriminatory access to a pole that the
5-23 cooperative owns or controls.

5-24 (b) Except as provided by Subsection (c), an electric
5-25 cooperative may deny a broadband provider access to a pole:

- 5-26 (1) if there is insufficient capacity; or
- 5-27 (2) for reasons of safety, reliability, and generally
5-28 applicable engineering purposes.

5-29 (c) An electric cooperative may not deny a broadband
5-30 provider access to a pole if the basis for denial may be remedied by
5-31 rearranging facilities on the pole through reasonable make-ready
5-32 activities.

5-33 (d) Except as provided by Subsection (e), if a pole must be
5-34 replaced to accommodate a new pole attachment applied for by a
5-35 broadband provider:

5-36 (1) the electric cooperative and broadband provider
5-37 shall determine, through good faith negotiations, a reasonable date
5-38 by which the pole replacement will occur; and

5-39 (2) the broadband provider shall pay the actual costs
5-40 of replacing the pole, including the cost to:

- 5-41 (A) remove and dispose of the existing pole;
- 5-42 (B) purchase and install a replacement pole; and
- 5-43 (C) transfer any existing facilities to the new
5-44 pole.

5-45 (e) An electric cooperative is responsible for the costs of
5-46 removing and replacing under Subsection (d) a pole:

5-47 (1) with recorded conditions or defects that would
5-48 reasonably be expected to endanger human life or property and which
5-49 should be promptly corrected; or

5-50 (2) that must be replaced for safety or reliability as
5-51 a result of normal wear and tear or other natural causes and not on
5-52 account of a pole attachment or the action of a broadband provider
5-53 or third party.

5-54 SUBCHAPTER C. POLE ATTACHMENT CONTRACTS

5-55 Sec. 253.0201. CONTRACTS FOR POLE ATTACHMENTS. (a) An
5-56 electric cooperative that owns a pole may require a broadband
5-57 provider that attaches a pole attachment to the pole under this
5-58 chapter to enter into a contract for access to the pole.

5-59 (b) The terms and conditions of a contract under Subsection
5-60 (a) must be consistent with this chapter.

5-61 Sec. 253.0202. RATES, TERMS, AND CONDITIONS FOR POLE
5-62 ATTACHMENT. (a) A broadband provider and an electric cooperative
5-63 shall establish the rates, terms, and conditions for pole
5-64 attachments by a written pole attachment contract executed by both
5-65 parties.

5-66 (b) The rates, terms, and conditions of a contract under
5-67 this chapter must:

- 5-68 (1) be just, reasonable, and nondiscriminatory; and
- 5-69 (2) comply with this chapter.

6-1 (c) In determining whether rates, terms, and conditions are
6-2 just and reasonable, the following factors must be considered:

6-3 (1) the interests of and benefits to the consumers and
6-4 potential consumers of the electric cooperative's services;

6-5 (2) the interests of and benefits to the subscribers
6-6 and potential subscribers to broadband services offered through the
6-7 pole attachments;

6-8 (3) the interests of and benefits to third parties
6-9 from the availability of electric services and broadband services
6-10 offered through the pole attachments;

6-11 (4) compliance with applicable safety standards; and

6-12 (5) the maintenance and reliability of both electric
6-13 distribution and broadband services.

6-14 (d) A broadband provider and an electric cooperative shall
6-15 negotiate a pole attachment contract and any amendment,
6-16 modification, or renewal thereof in good faith.

6-17 (e) A request to negotiate a new pole attachment contract or
6-18 to amend, modify, or renew a contract pertaining to pole
6-19 attachments by a broadband provider or an electric cooperative must
6-20 be made in writing.

6-21 Sec. 253.0203. CONTRACT NEGOTIATIONS AND MEDIATION. (a)
6-22 If a broadband provider and an electric cooperative are unable to
6-23 agree to a new pole attachment contract before the expiration date
6-24 of an existing contract, the rates, terms, and conditions of the
6-25 existing contract and the terms and conditions of the electric
6-26 cooperative's application and permitting processes remain in
6-27 force:

6-28 (1) during the 90-day negotiation period described by
6-29 Subsection (b) and during the period of any agreed extension;

6-30 (2) during the 60-day mediation period described by
6-31 Subsection (b) and during the period of any agreed extension; and

6-32 (3) pending final disposition of any litigation
6-33 commenced under Subsection (c).

6-34 (b) If a broadband provider and an electric cooperative are
6-35 unable to agree to a new pole attachment contract before the 91st
6-36 day after the expiration date of an existing contract, and are
6-37 unable to agree to an extension of the negotiation period for a
6-38 certain number of days, the broadband provider and electric
6-39 cooperative shall attempt to resolve any disagreement over the
6-40 rates, terms, or conditions by submitting the contract negotiations
6-41 to a mediation process. The mediation process may not extend later
6-42 than the 60th day after the end of the initial 90-day negotiation
6-43 period and any agreed extension of that period unless the broadband
6-44 provider and electric cooperative agree to an extension of the
6-45 mediation period for a certain number of days. The mediation
6-46 process must be conducted in a county in which the electric
6-47 cooperative has distribution poles. The broadband provider and
6-48 electric cooperative must share equally the expenses for the
6-49 mediator.

6-50 (c) If the mediation process under Subsection (b) does not
6-51 resolve the disagreement over the rates, terms, or conditions of a
6-52 new pole attachment agreement, the broadband provider or electric
6-53 cooperative may file suit in a district court to resolve the
6-54 disagreement or dispute.

6-55 SUBCHAPTER D. ADDITIONAL POLE ATTACHMENT REQUIREMENTS

6-56 Sec. 253.0401. TRANSFER OF ATTACHMENTS. (a) Before an
6-57 electric cooperative installs a new pole to replace an existing
6-58 pole due to the rerouting, maintenance, or upgrading of the
6-59 electric distribution system, the cooperative shall provide notice
6-60 of the replacement to each broadband provider with a pole
6-61 attachment on the existing pole.

6-62 (b) The notice required under Subsection (a) must specify a
6-63 date by which the broadband provider must remove the pole
6-64 attachment from the existing pole and transfer the attachment to
6-65 the new pole.

6-66 (c) If a broadband provider does not transfer a pole
6-67 attachment to the new pole before the 31st day after the date
6-68 specified in the notice, the electric cooperative may transfer the
6-69 pole attachment to the new pole at the broadband provider's

7-1 expense, including the cost for the electric cooperative to return
7-2 to the site.

7-3 (d) A broadband provider shall indemnify, defend, and hold
7-4 harmless an electric cooperative and the cooperative's members,
7-5 directors, officers, agents, and employees from and against all
7-6 liability for the removal and transfer of a pole attachment subject
7-7 to this section, except for personal injury or property damage
7-8 arising from the gross negligence or wilful misconduct of the
7-9 electric cooperative during the removal and transfer process.

7-10 Sec. 253.0402. ABANDONED POLE ATTACHMENTS; REMOVAL. (a) A
7-11 broadband provider that receives a written request from an electric
7-12 cooperative to remove an abandoned pole attachment owned by the
7-13 provider from a pole owned by the cooperative shall remove the
7-14 attachment not later than the 60th day after the date the provider
7-15 receives the request.

7-16 (b) Before the deadline under Subsection (a), a broadband
7-17 provider may request, and an electric cooperative may grant, a
7-18 reasonable extension of that deadline. A request for an extension
7-19 under this subsection must be in writing.

7-20 (c) If a broadband provider does not remove a pole
7-21 attachment by the deadline under Subsection (a) or an extended
7-22 deadline under Subsection (b), the electric cooperative may remove,
7-23 use, sell, or dispose of the pole attachment at the broadband
7-24 provider's expense.

7-25 (d) An electric cooperative may require that a broadband
7-26 provider post a security instrument in an amount reasonably
7-27 sufficient to cover the potential cost to the electric cooperative
7-28 of removal and disposal of abandoned pole attachments.

7-29 (e) A broadband provider shall indemnify, defend, and hold
7-30 harmless an electric cooperative and the cooperative's members,
7-31 directors, officers, agents, and employees from and against all
7-32 liability for the removal, use, sale, or disposal of abandoned pole
7-33 attachments, except for personal injury or property damage arising
7-34 from the gross negligence or wilful misconduct of the electric
7-35 cooperative during the removal and disposal process.

7-36 Sec. 253.0403. EASEMENTS; INDEMNITY. (a) A broadband
7-37 provider is responsible for obtaining all rights-of-way and
7-38 easements necessary for the installation, operation, and
7-39 maintenance of the provider's pole attachments.

7-40 (b) An electric cooperative is not required to obtain or
7-41 expand a right-of-way or easement to accommodate a pole attachment
7-42 requested by a broadband provider.

7-43 (c) An electric cooperative is not liable if a broadband
7-44 provider is prevented from placing or maintaining a pole attachment
7-45 because the broadband provider did not obtain a necessary
7-46 right-of-way or easement.

7-47 (d) A broadband provider shall indemnify, defend, and hold
7-48 harmless the electric cooperative and the cooperative's members,
7-49 directors, officers, agents, and employees from and against any
7-50 liability resulting from the broadband provider's failure to obtain
7-51 a necessary right-of-way or easement for a pole attachment.

7-52 SECTION 4. The comptroller of public accounts shall
7-53 establish rules for the Texas Broadband Pole Replacement Program,
7-54 as established by Section 403.503, Government Code, as added by
7-55 this Act, not later than March 1, 2022.

7-56 SECTION 5. This Act takes effect September 1, 2021.

7-57 * * * * *