

Amend CSHB 1505 (house committee printing) as follows:

(1) On page 2, line 13, between "attachment" and "affixed", insert "that is used wholly or partly to provide broadband service and".

(2) Strike page 3, line 25, through page 4, line 13, and substitute the following:

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

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

(1) if there is insufficient capacity; or

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

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

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

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

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

(A) remove and dispose of the existing pole;

(B) purchase and install a replacement pole; and

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

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

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

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

(3) On page 5, strike lines 9 and 10, and substitute the following:

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

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

(2) comply with this chapter.

(4) On page 5, strike lines 11 through 13 and substitute the following:

(c) In determining whether rates, terms, and conditions are just and

(5) On page 5, line 21, between "of" and "broadband", insert "electric services and".

(6) On page 5, strike lines 23 through 27, and substitute the following:

(4) compliance with applicable safety standards; and

(7) On page 7, strike lines 12 through 18 and substitute the following:

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

(8) Strike page 7, line 19, through page 9, line 3.

(9) On page 9, line 4, strike "SUBCHAPTER E" and substitute with "SUBCHAPTER D".

(10) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. 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) "Capital fund" means the Texas broadband capital projects fund established under Section 403.502.

(2) "Pole replacement fund" means the broadband pole replacement fund established under Section 403.503.

(3) "Pole replacement program" means the Texas Broadband Pole Replacement Program established under Section 403.504.

Sec. 403.502. TEXAS BROADBAND CAPITAL PROJECTS FUND. (a) In this section, "American Rescue Plan Act" means the American Rescue Plan Act of 2021 (Pub. L. No. 117-2).

(b) The Texas broadband capital projects fund is created as a fund in the state treasury outside the general revenue fund.

(c) Notwithstanding any other state law and except as otherwise provided by federal law, a state agency that receives money from the federal government from the Coronavirus Capital Projects Fund established under Section 9901 of the American Rescue Plan Act shall deposit the money to the credit of the capital fund as the comptroller determines is necessary to hold and account for money received under the American Rescue Plan Act.

(d) Other money may be deposited to the credit of the capital fund if that deposit is:

(1) required by an appropriation made by the legislature;

(2) required by federal law; or

(3) necessary to account for money related to the American Rescue Plan Act.

(e) Money deposited to the credit of the capital fund may be used only for:

(1) the purposes identified in the American Rescue Plan Act to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options; and

(2) a transfer to the pole replacement fund for use in the pole replacement program.

(f) State agencies shall transfer amounts between the capital fund and other accounts and funds in the treasury as necessary to properly account for money received under the American Rescue Plan Act as directed by the comptroller. This section does not affect the authority of the comptroller to establish and use

accounts necessary to manage and account for revenues and expenditures.

(g) Interest earned on money deposited to the credit of the capital fund is exempt from Section 404.071 and shall be retained in the capital fund.

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

Sec. 403.503. 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) The pole replacement fund consists of a one-time transfer of \$75 million by the comptroller from the capital fund to the credit of the pole replacement fund.

(c) Money deposited to the credit of the pole replacement fund may be used only for the purpose of supporting the pole replacement program under Section 403.504.

Sec. 403.504. TEXAS BROADBAND POLE REPLACEMENT PROGRAM.

(a) In this section:

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

(2) "Eligible pole replacement cost" means the actual and reasonable costs incurred by a party after August 31, 2021, to remove and replace a pole, including the amount of any expenditures to remove and dispose of the existing pole, purchase and install a replacement pole, and transfer any existing facilities to the new pole. The term does not include costs that the party incurs initially that have been reimbursed to the party by another party ultimately responsible for the costs.

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

(A) a download speed of 25 megabits per second or

faster; and

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

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

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

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

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

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

(b) The Texas Broadband Pole Replacement Program is established for the purpose of speeding the deployment of broadband to individuals in rural areas by reimbursing a portion of eligible pole replacement costs incurred by certain persons.

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

(d) A pole owner or a provider of qualifying broadband service who removes and replaces an existing pole in an unserved area for the purpose of accommodating the attachment of an eligible broadband facility may apply to the comptroller for a reimbursement award for an amount equal to:

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

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

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

application.

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

(1) at the time of the request by a retail broadband service provider to attach facilities to the pole, the pole is in a location that, according to the latest broadband availability data made available by the Federal Communications Commission, is in an unserved area; or

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

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

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

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

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

(4) 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 Subsections (j), (k), and (l) as a condition of receiving an award of program reimbursement; and

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

(h) Not later than the 60th day after the date that the comptroller receives a completed application for reimbursement, the comptroller shall review the application and, if the pole replacement fund includes enough money to pay the award amount, may issue a reimbursement award. The award must be paid not later than

30 days after the date of issuance.

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

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

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

(1) reimbursed by the program;

(2) paid for by a qualifying broadband provider; or

(3) funded by another grant source.

(l) If the comptroller finds on substantial evidence after notice and opportunity to respond that a pole owner or broadband service provider has materially violated the requirements of this section with respect to reimbursements or portions of reimbursements, the comptroller may direct the owner or provider to refund the reimbursement or a portion of the reimbursement with interest at the applicable federal funds rate as specified by Section 4A.506(b), Business and Commerce Code, to the pole replacement fund or the state general fund.

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

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

(o) Not later than the 60th day after the date the pole

replacement fund receives money for the pole replacement program, the comptroller shall maintain and publish on the comptroller's Internet website:

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

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

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

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

(q) Not later than one year after the date that the amount transferred from the capital fund to the pole replacement fund under Section 403.503(b) is exhausted, the comptroller shall identify, examine, and report on the deployment of broadband infrastructure and technology facilitated by the pole reimbursements the comptroller has awarded.

SECTION \_\_\_\_\_. The comptroller of public accounts shall establish rules for the Texas Broadband Pole Replacement Program, as established by Section 403.504, Government Code, as added by this Act, not later than December 1, 2021.