

1 AN ACT relating to utility pole replacement.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 224A.1123 is amended to read as follows:

4 (1) The General Assembly hereby finds and declares that:

5 (a) A rural infrastructure improvement fund, and a program to administer the
6 fund, is necessary to further the Commonwealth's goal to expand and
7 accelerate access to broadband service throughout the entire Commonwealth;
8 and

9 (b) Supporting the replacement of utility poles will provide benefits to Kentucky
10 residents by:

- 11 1. Facilitating the construction of broadband networks;
- 12 2. Minimizing the potential for disputes between broadband providers and
13 utility pole owners that could otherwise delay deployment;
- 14 3. Improving the resiliency and longevity of broadband infrastructure; and
- 15 4. Addressing needs for broadband investment not yet fully met by existing
16 programs.

17 (2) As used in this section:

18 (a) "Application" means an application made under subsection (4) of this section
19 for eligible pole replacement costs;

20 (b) "Eligible pole replacement":

21 1. Means the removal of an existing utility pole and replacement with a
22 new utility pole~~[in an unserved area]~~ in order to accommodate the
23 attachment of facilities to be used, in whole or in part, by a retail
24 provider to provide qualifying broadband service access to residences or
25 businesses within an unserved ***or underserved*** area; and

26 2. Does not include the removal and replacement of a utility pole in order
27 to accommodate facilities used only for the provision of wholesale

1 broadband or data transport service, where the owner of the facilities, or
2 its affiliate, does not use the facilities to provide qualifying broadband
3 services directly to residences or businesses;

4 (c) "Eligible pole replacement costs":

5 1. Means:

- 6 a. The actual and reasonable costs paid or incurred to perform an
7 eligible pole replacement;
- 8 b. The amounts of any expenditures to remove and dispose of the
9 existing utility pole, to purchase and install a replacement utility
10 pole, or to transfer any existing facilities to the new pole; and
- 11 c. The costs of reimbursing another party for the costs of performing
12 an eligible pole replacement, when paid or incurred by the person
13 responsible for the costs; and

14 2. Does not include:

- 15 a. Costs paid or incurred to perform an eligible pole replacement by a
16 party who is not responsible for those costs, and which are charged
17 or passed along to the responsible party;
- 18 b. Costs for which the party incurring or paying the costs separately
19 has received or is entitled to receive reimbursement under the
20 terms of a state or federal grant program for the deployment of
21 broadband facilities; and
- 22 c. The receipt of a state or federal grant where the pole replacement
23 costs, for which reimbursement is requested, exceed the pole
24 replacement costs that were reasonably anticipated at the time of,
25 or on which the amount of, the other support funding was
26 predicated.

27 Costs are considered separately reimbursed for purposes of this paragraph if

1 the amount of an award under another state or federal broadband program
2 included consideration, by the awarding entity, of the pole replacement costs
3 by the applicant;

4 (d) "Fund" means the rural infrastructure improvement fund established by
5 subsection (3) of this section;

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

7 (f) "Program" means the Kentucky Rural Infrastructure Improvement Program
8 established by subsection (4) of this section;

9 (g) "Qualifying broadband service" means a retail wireline broadband service
10 capable of delivering Internet access at speeds of at least one hundred (100)
11 megabits per second in both the downstream and upstream directions, and
12 with latency at a level sufficient to permit real-time, interactive applications;
13 and

14 (h) "Utility pole" means any pole used, in whole or in part, for any wire
15 communications or electric distribution, regardless of the owner or operator
16 of the pole.

17 (3) (a) There is created within the State Treasury a trust and agency account to be
18 known as the rural infrastructure improvement fund, consisting of moneys
19 appropriated by the General Assembly, federal funds, grants, and gifts.

20 (b) The fund shall be administered by the Office of Broadband Development and
21 all money deposited in the fund shall be used:

22 1. By the office to provide reimbursements to qualified applicants under
23 the Rural Infrastructure Improvement Program established under
24 subsection (4) of this section;

25 2. For the purposes of covering the costs of program administration and
26 operation; and

27 3. In a manner consistent with federal law.

- 1 (c) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close
2 of the fiscal year shall not lapse but shall be carried forward into the
3 succeeding fiscal year to be used for the purposes set forth in this section.
- 4 (d) Interest earned on money deposited to the credit of the fund shall be retained
5 in the fund and shall not lapse.
- 6 (e) Moneys deposited in the fund are hereby appropriated for the purposes in this
7 section.
- 8 (4) (a) There is hereby established the Kentucky Rural Infrastructure Improvement
9 Program for the purpose of expediting and facilitating the deployment of
10 broadband service to individuals, businesses, agricultural operations, and
11 community access points in unserved or underserved areas by reimbursing a
12 portion of eligible pole replacement costs incurred by eligible applicants.
- 13 (b) The office shall administer and provide staff assistance for the program and
14 shall be responsible for receiving, reviewing, and approving applications for
15 pole reimbursements.
- 16 (c) The office shall award pole reimbursements from moneys in the fund created
17 by subsection (3) of this section until all moneys in the fund are exhausted.
- 18 (d) No later than September 1, 2022, the office shall:
- 19 1. Promulgate administrative regulations under KRS Chapter 13A
20 necessary for the administration of this section;
- 21 2. Publish an application for pole replacement reimbursements that shall
22 require:
- 23 a. Information sufficient to establish the number, cost, and eligibility
24 of eligible pole replacements that qualify for reimbursement;
- 25 b. Documentation sufficient to establish that the claimed eligible pole
26 replacements have been completed, including receipts verifying
27 the amount of eligible pole replacement costs paid by the

- 1 applicant;
- 2 c. The amount of program reimbursement requested in the
- 3 application and any grant funding or accounting information
- 4 required to justify the amount of the request;
- 5 d. i. A statement that the costs for which reimbursement is
- 6 requested have not been reimbursed through any other state
- 7 or federal broadband grant program.
- 8 ii. If the applicant is a recipient of funding from another
- 9 program, the statement shall include an explanation of how
- 10 the costs for which reimbursement is requested exceed the
- 11 pole replacement costs on which the original award was
- 12 predicated or that were reasonably anticipated at the time of
- 13 the original award;
- 14 e. A notarized statement from an officer or agent of the applicant that
- 15 the contents of the application are true and accurate and that the
- 16 applicant accepts the requirements of this section and any
- 17 promulgated administrative regulations as a condition of receiving
- 18 an award of program reimbursement; and
- 19 f. Any other information necessary for the office to comply with any
- 20 conditions on federal funding used in connection with the
- 21 program; and
- 22 3. Publish and maintain on its website~~[Web site]~~:
- 23 a. Statistics on the number of applications received, processed, and
- 24 rejected by the office under the pole replacement program;
- 25 b. Statistics on the size, number, and status of reimbursements
- 26 awarded by the office under the pole replacement program,
- 27 including the pole owners and broadband providers receiving

1 reimbursement; and

2 c. The amount of money remaining in the fund.

3 (e) **1.** An applicant who incurs or pays the costs of an eligible pole
4 replacement to accommodate broadband facilities consistent with this
5 section may apply to the office for reimbursement, **including but not**
6 **limited to a pole owner who:**

7 **a. Has received written notification from a retail provider of**
8 **qualifying broadband service of the provider's planned route for**
9 **the deployment of qualifying broadband service to an unserved**
10 **or underserved area; and**

11 **b. Replaces a utility pole along the planned route that would not**
12 **otherwise need to be replaced except to accommodate the**
13 **attachment of facilities to be used, in whole or in part, by a retail**
14 **provider to provide qualifying broadband service access to**
15 **residences or businesses within the unserved or underserved**
16 **area.**

17 **2. If a retail provider of qualifying broadband service changes its**
18 **planned deployment route so that a replaced utility pole is not on the**
19 **provider's actual deployment route after the utility pole owner has**
20 **received reimbursement from the fund for replacing the utility pole,**
21 **the retail provider shall reimburse the fund for the amount that was**
22 **paid to the utility pole owner.**

23 (f) As a condition of receiving reimbursement under this subsection, an applicant
24 shall:

25 1. Certify its compliance with the requirements of this section;

26 2. Agree to comply with any requirements that the office determines to be
27 necessary conditions on federal funding used in connection with the

1 program;

2 3. Agree to refund, with interest at the applicable federal funds rate as
3 specified by KRS 355.4A-506, to the fund, any reimbursements or
4 portions of reimbursements received from the fund under this
5 subsection, if the office finds, upon substantial evidence and after notice
6 and opportunity to respond, that the recipient materially violated any of
7 the requirements agreed to under this section;

8 4. Agree that no funds awarded by the program will be used to meet any
9 cash match requirement under any other broadband program
10 administered by the Commonwealth or one (1) of its subdivisions;

11 5. Agree to submit reports as the office may require regarding broadband
12 deployment facilitated by the program, which may include reports
13 demonstrating that an application that has received a federally funded
14 award is meeting or exceeding buildout requirements contained in that
15 award; and

16 6. Agree to not include in any rates or fees charged for its services any
17 eligible pole replacement costs that were reimbursed by the program,
18 paid for by a broadband provider, or funded by another grant source.

19 (g) 1. If the necessary information is not otherwise reasonably available to the
20 applicant, the applicant may request a pole owner performing an eligible
21 pole replacement to provide the number and costs of the pole
22 replacements, receipts verifying the amount of pole replacement costs
23 paid by the applicant, and confirmation that the pole replacement costs
24 were incurred to accommodate the applicant's attachment and not due to
25 some other reason.

26 2. In the event the office requires additional information from an applicant
27 following the submission of an application to confirm the eligibility of

- 1 costs in an application that is in the possession of the pole owner and not
2 otherwise reasonably available to the applicant, the applicant may also
3 request that the pole owner assist with providing the information as
4 requested by the office.
- 5 3. A pole owner shall coordinate in good faith to provide the information
6 to the applicant, and may require reimbursement from the broadband
7 provider of its actual and reasonable administrative expenses in
8 connection with the coordination, which shall not exceed five percent
9 (5%) of the eligible pole replacement costs.
- 10 4. Administrative costs that a broadband provider reimburses to a pole
11 owner under this subsection are not eligible for reimbursement from the
12 fund as eligible pole replacement costs.
- 13 (h) Within sixty (60) days of receipt of a completed application establishing the
14 eligibility of costs for reimbursement, and to the extent that moneys are
15 available in the fund, the office shall award the lesser of:
- 16 1. Five thousand dollars (\$5,000) for each pole replaced; or
17 2. Fifty percent (50%) of the total amount incurred or paid by the applicant
18 for eligible pole replacement costs.
- 19 (i) Any application pending at the exhaustion of the moneys in the fund shall be
20 deemed denied but may be refiled if sufficient moneys are later made
21 available in the fund.
- 22 (j) No later than one (1) year after the fund receives moneys for the purpose of
23 providing pole replacement reimbursements to qualified applicants, the
24 authority shall, on an annual basis, cause to be conducted an independent
25 audit of the office's administration of the fund for compliance with the
26 requirements of this section. This audit may be performed by either the
27 Auditor of Public Accounts or a certified public accountant in conjunction

1 with the annual audit of the authority. The authority shall comply with the
2 provisions of KRS 45.149 before entering into a contract for audit services
3 with a certified public accountant.

4 (5) A broadband provider's use of funds reimbursed under this subsection to pay
5 eligible pole replacement costs shall have no effect on the subsequent ownership of
6 any replacement pole purchases and installed by a pole owner using the funds.