AN ACT

To amend chapters 67 and 620, RSMo, by adding thereto two new sections relating to pole replacements for certain broadband facilities.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapters 67 and 620, RSMo, are amended by adding thereto two new sections, to be known as sections 67.5130 and 620.3400, to read as follows:

67.5130. 1. As used in this section the following terms mean:

(1) "Attaching entity", any communications or communications-related service provider and includes a video service provider or cable operator as defined in section 67.2677, and any person providing a telecommunications service as defined in section 386.020;

(2) "Broadband service", terrestrial internet access service providing speeds of at least twenty-five megabits per second download and three megabits per second upload;

(3) "Municipally owned electric utility", any person or cooperative organized under chapter 91;

(4) "Rural electric cooperative", any person or cooperative organized under chapter 394, and shall include an electrical corporation as defined in subsection 2 of section 393.110.

2. This section applies to a pole attachment that is used wholly or partly to provide broadband service and
affixed by an attaching entity to a pole owned and
controlled by a rural electric cooperative or a municipally
owned electric utility. This section does not apply to a
pole attachment regulated by the Federal Communications

3. Notwithstanding any other provision of law to the
contrary, where an attaching entity attaches facilities to
the pole of a municipally owned electric utility or rural
electric cooperative, such municipally owned electric
utility or rural electric cooperative shall in no event pass
on to the attaching entity the costs of removing and
replacing a pole:

   (1) Designated for replacement based on the pole's
       noncompliance with an applicable safety standard;
   (2) Designated for replacement within two years of the
       date of its actual replacement for any reason unrelated to
       the attaching entity's request for attachment; or
   (3) That the municipally owned electric utility or
       rural electric cooperative would have needed to replace at
       the time of replacement even if a new attachment were not
       made.

620.3400. 1. As used in this section the following
terms mean:

   (1) "Application", an application made under
       subsection 3 of this section for an eligible pole
       replacement reimbursement;
   (2) "Eligible pole replacement", 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 to provide
       qualifying broadband service access to residences or
businesses in an unserved area. Such term does not include
the removal and replacement of a utility pole in order to
accommodate facilities used only for the provision of
wholesale service and not used by the owner of such
facilities or its affiliate to provide qualifying broadband
services directly to residences or businesses;

(3) "Eligible pole replacement cost", 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. Such term shall include the amount of any
expenditures to remove and dispose of the existing utility
pole, to purchase and install a replacement utility pole,
and to transfer any existing facilities to the new pole.
Such term shall further include the costs of reimbursing
another party for the costs of performing an eligible pole
replacement, when paid or incurred by the person responsible
for such costs. Such term shall 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;

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

(5) "Pole in an unserved area", a pole in a location
in which terrestrial, fixed internet access providing speeds
of at least twenty-five megabits per second download and
three megabits per second upload 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. Notwithstanding the foregoing,
for purposes of an application for reimbursement under this section, 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. With respect to an application for reimbursement under this section by a recipient of a federal or state grant to deploy broadband service, such term means 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 download and three megabits per second upload;

(6) "Pole owner", a person who owns or controls a pole;
(7) "Pole replacement fund", the broadband pole replacement fund established under subsection 2 of this section;
(8) "Pole replacement program", the Missouri broadband pole replacement program established under subsection 3 of this section;
(9) "Qualifying broadband service", a retail wireline or wireless broadband service capable of delivering internet access at speeds of at least one hundred megabits per second download and upload, and with latency at a level sufficient to permit real-time, interactive applications;
(10) "Reimbursed through any other state or federal broadband grant program", 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 term 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.

2. (1) There is hereby created in the state treasury the "Broadband Pole Replacement Fund", which shall consist of all moneys collected under this section. The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180, the state treasurer may approve disbursements. Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as the other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund. Moneys in the fund may only be used in a manner consistent with federal law.

(2) Subject to appropriation, the following moneys may be transferred into the fund: any funds appropriated by the general assembly, including from federal funds, and grants, gifts, and contributions made directly to the fund.

(3) Moneys in the fund shall be solely used by the department of economic development to provide reimbursements to qualified applicants under this section, and for administration of the provisions of this section.

3. (1) There is hereby established the Missouri broadband pole replacement program within the department of economic development. The department shall administer and provide staff assistance for the program. The department
shall be responsible for receiving and reviewing applications for pole reimbursements, for conducting final review of completed applications, and for awarding program reimbursements.

(2) The director of the department of economic development shall promulgate rules that are reasonable and necessary to implement and administer the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2022, shall be invalid and void.

(3) The general assembly shall appropriate, from payments received by the state from the federal Coronavirus State Fiscal Recovery Fund established in 42 U.S.C. 802, the sum of one hundred million dollars for the pole replacement program, subject to subdivision (4) of this subsection.

(4) The department of economic development shall take all steps necessary to include funding for the pole replacement program in any state application and grant plan submitted for payments from the federal Coronavirus Capital Projects Fund established in 42 U.S.C. 804. Any payments made to the state from the Coronavirus Capital Projects Fund that are approved for the pole replacement program shall be
treated as an offsetting collection to the amount appropriated under subdivision (3) of this subsection.

(5) The department of economic development shall award pole reimbursements under the pole replacement program using funds available for this purpose in the broadband pole replacement fund.

(6) A pole owner or a provider of qualifying broadband service who pays or incurs the costs of removing and replacing an existing pole in an unserved area, for the purpose of accommodating the attachment of an eligible broadband facility, may apply to the department of economic development for a reimbursement award. Within sixty days of receipt of a completed application establishing the eligibility of such costs for reimbursement, and to the extent that funds are available in the broadband pole replacement fund, the department of economic development shall issue a pole reimbursement under the pole replacement program for up to:

(a) Fifty percent of the eligible pole replacement costs paid or incurred by the applicant or four thousand dollars, whichever is less, for the pole replaced; and

(b) One hundred percent of 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 subdivision (11) of this subsection, of an amount not to exceed five percent of the eligible pole replacement costs in the application.

(7) A pole reimbursement awarded by the department of economic development under the pole replacement program shall be paid not later than thirty days after the date of issuance. The department of economic development shall
provide notice of a reimbursement award to the pole owner and the retail broadband service provider attaching the eligible broadband facility.

(8) Not later than sixty days after the broadband pole replacement fund receives funds for the purpose of providing pole replacement reimbursements to qualified applicants, the department of economic development shall publish a form application for pole replacement reimbursements that shall require each applicant for reimbursement to provide:

(a) 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;

(b) Documentation sufficient to establish that the pole replacements have been completed or will be completed not later than the ninetieth day after the issuance of a pole reimbursement;

(c) The amount of reimbursement requested 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 paragraphs (a) and (b) of subdivision (9) of this subsection, and subdivision (10) of this subsection as a condition of receiving an award of program reimbursement; and

(f) Any other information the department of economic development considers necessary for final review, award, and payment of program reimbursements.
(9) As a condition of receiving an award of program reimbursement:
   (a) An applicant shall certify the applicant's compliance with the requirements of this section; and
   (b) An applicant that is a pole owner may not include in any rates or fees charged for the owner's services an eligible pole replacement cost:
      a. Reimbursed by the program;
      b. Paid for by a qualifying broadband service provider; or
      c. Funded by another grant source.

(10) If the department of economic development finds on substantial evidence after notice and opportunity to respond that a recipient of funds under this section has materially violated the requirements of this section with respect to reimbursements or portions of reimbursements, the state treasurer may direct the recipient to refund the reimbursement or such portions of the reimbursement with interest at the applicable federal funds rate, as specified by section 400.4A-506, to the broadband pole replacement fund or the state general revenue fund.

(11) 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 subdivision (6) of this subsection.
(12) The department of economic development shall award and shall fund pole reimbursements until funds available for that purpose in the broadband pole replacement fund are no longer available.

(13) Any application pending at the exhaustion of the money in the broadband pole replacement fund shall be deemed denied. The application may be refiled if sufficient funds are later made available in the fund.

(14) Not later than the sixtieth day after the date the broadband pole replacement fund receives money for the pole replacement program, the department of economic development shall maintain and publish on the department of economic development's internet website:

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

(b) 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

(c) The estimated amount of money remaining in the broadband pole replacement fund.

(15) Not later than the first anniversary after the broadband 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.

(16) Not later than one year after the date that the amount transferred to the broadband pole replacement fund is exhausted, the director of the department of economic development shall identify, examine, and report on the deployment of broadband infrastructure and technology
facilitated by the pole reimbursements the department of economic development has awarded.