

ONE HUNDRED SEVENTH LEGISLATURE - SECOND SESSION - 2022
COMMITTEE STATEMENT
LB1144

Hearing Date: Tuesday February 08, 2022
Committee On: Transportation and Telecommunications
Introducer: Friesen
One Liner: Change provisions relating to the Nebraska Telecommunications Regulation Act and the Nebraska Broadband Bridge Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 8 Senators Albrecht, Bostelman, Cavanaugh, M., DeBoer, Friesen, Geist, Hughes, Moser
Nay:
Absent:
Present Not Voting:

Oral Testimony:

Proponents:

Senator Curt Friesen
Tip O'Neill
John Idoux
Burke Brown
Brian Thompson
Andrew Dunkley
Jon Cannon

Representing:

Introducer
NTA
Lumen / CenturyLink
NSEA, OR-1 Palmyra
Consolidated Companies & NE Advocacy Group
NE Farm Bureau
NACO

Opponents:

Representing:

Neutral:

Mary Ridder

Representing:

NE PSC

Summary of purpose and/or changes:

Amends section 86-134; Abandonment of service by an interexchange carrier or basic local exchange service provider.

The section is amended to apply its provisions to communications providers as well telecommunications companies. The requirement for a hearing by the Commission is made optional at the Commission's discretion.

A new subsection (2) is added to the section that provides that the obligations created by this section will not be required for any telecommunications company retiring copper facilities when such retirement and transfer of impacted subscribers has been granted by the Federal Communications Commission.

The bill also amends section 86-1304; Broadband Bridge Act, applications for projects.

Currently the section provides that an applicant for a grant must provide a match of 50% of the proposed project's cost. The bill modifies this requirement to provide that if a project is targeted to a high-cost area the match requirement is reduced to 25% of the project cost. Also, language is added that the match requirement established by this section shall not apply to any portion of a grant composed of federal funds.

Finally, the section currently provides that commencing in 2022 the deadline for filing Broadband Bridge Act grant applications shall be July 1. The section is amended to provide that annual grant applications shall be filed by October 1 and the Commission shall make grant awards no later than the following January 31.

Explanation of amendments:

The Committee considered and adopted an amendment which accomplishes the following:

The standing committee amendment in addition to revising LB 1144 as introduced added provisions from the following bills: LB 761, LB 914, LB 1021, LB 1214 and LB 1234.

Section 1-This section is a revised version of LB 914. A new provision of law is enacted which provides that the Nebraska Public Service Commission (NPSC) may create and maintain an official Nebraska location fabric broadband service access map showing broadband availability and quality of service for all serviceable locations in Nebraska. If the NPSC elects to create a map, it shall annually review and evaluate the need to continue to maintain the map. Funding for the administration of the map shall utilize any federal Broadband, Equity, Access and Deployment Program support that is available for state mapping purposes.

Section 2-This section is an amended version of Section 1 of LB 1144. Section 86-134 relates to the abandonment or discontinuation of telephone service. The section is being amended to update processes for a carrier who is retiring copper telecommunications facilities and replacing copper with fiber. The section is amended to provide that a hearing will be conducted only if the NPSC determines one is required. Subsection (2) of the section as introduced is stricken, it would have provided that this section would not apply to any telecommunications company retiring copper facilities and transferring customers to fiber facilities when the carrier has received Federal Communications Commission approval.

Section 3-This section is a revised version on LB 1234. LB 1234 provides for an expedited process for telecommunications companies to obtain a permit to place telecommunications facilities across railroad tracks. The current process is revised to provide that when a telecommunications company files a completed rail-crossing agreement with a railroad, and if the railroad fails to respond within 30 days of receipt of the completed application, the telecommunications company may directly petition the NPSC for an expedited order to issue the crossing permit. The NPSC shall enter an order within 15 days of the application. The order shall allow placement of the telecommunications facility in a manner that is not unreasonable, or against the public interest and must account for safety, engineering and access requirements of the railroad as such requirements are prescribed by the Federal Railroad Administration and established by rail industry standards. LB 1234 was amended to provide that the expedited wire-crossing permit shall require placement of the telecommunications facility within the railroad right-of-way within a public road crossing.

Section 4-Adds a new section to LB 1144. Provides that Sections 9 and 10 of the amendment shall be codified as a part of the Broadband Bridge Act.

Section 5-This section was originally Section 3 of LB 1144 and amends Section 86-1304 of the Broadband Bridge Act. The amendment retains from the bill as introduced the change that for high-cost of service areas the match requirement for grant applicants is reduced from 50% of the proposed project cost to 25%. The amendment also retains language that allows the NPSC to allow longer extensions to complete approved projects from the current limitation of one 6-month extension. The amendment did remove language from LB 1144 that changed the grant application deadline from July 1 to October 1 of

each fiscal year. The application deadline remains as July 1.

Section 6-This section is an amended version from LB 1214, Section 86-1306, Broadband Bridge Act, application scoring, evaluation, and ranking of grant applications. Section 86-1306 of the Broadband Bridge Act prescribes the minimum requirements the NPSC shall rely upon in developing a weighted scoring system for grant applications.

The scoring process in regard to rates is amended to require the NPSC to consider the ability of an applicant to offer rates in the proposed project area for currently offered speed tiers that are comparable to rates offered outside of the project area by the applicant for the same currently offered speed tiers.

Section 7-This section adds new language to Section 86-1307, Broadband Bridge Act, challenge process. Language is added as a new subsection (4) which provides that as a part of the challenge process the NPSC may require a provider challenging a grant application to provide speed test data in the portion of the project being challenged. The NPSC shall develop the speed test method to be used by the challenging entity.

Section 8-The section incorporates language from LB 1214 and amends the Broadband Bridge Act as follows: Currently the section provides that any entity receiving a grant under the program shall, as a condition of the grant, agree to provide broadband service in the project area until released from such commitment by the NPSC. The section is amended to provide that a successful applicant shall agree, as a condition of the grant, to provide Internet service for 15 years following the receipt of funding. Additionally, the section currently provides that the NPSC shall not add to the obligations required of a grant applicant after the awarding of the grant without the consent of the grant recipient. The section is amended to provide that the NPSC shall not add to the obligations of a grant recipient unless specifically authorized under the Broad Band Bridge Act or as required by federal law to distribute broadband support.

Section 9-Enacts a new provision of law within the Broadband Bridge Act. Any provider receiving support from the Nebraska Telecommunications Universal Service Fund, the Broadband Bridge Fund, or and federal funds administered by the NPSC for the provision of broadband service shall be subject to service quality, customer service, and billing regulations established by the NPSC as a condition of support. Service quality requirements shall only apply to those locations for which a provider has received NPSC support. The NPSC shall not add to the obligations of a provider after the support has been awarded.

Section 10-Adds a new provision of law within the Broad Band Bridge Act. Provides that the Act shall not be construed to authorize the NPSC regulate Internet services as prohibited by Section 86-124(1)(d). Provides that the NPSC shall not deny an application based on prices or terms and conditions offered, or regulate any term of service. The weighted scoring system may take into consideration an applicant's terms and conditions of service.

Sections 11-16 amends a revised version of LB 761, the Precision Agriculture Infrastructure Act into LB 1144.

The act is to be administered by the NPSC. The term adequate precision agricultural connectivity means a download speed of at least 100 megabits per second and an upload speed of at least 20 megabits per second.

The Precision Agriculture Infrastructure Grant Program is established with the purpose to provide precision agriculture connectivity to accelerate rural economic development and provide high-speed Internet connectivity to farm sites in unserved areas of the state.

The NPSC shall utilize funding available through the Broadband, Equity, Access and Deployment Program. Funding under the program shall not exceed \$2 million per year.

Grant applications may be made by a provider, agricultural cooperative, agronomist, or agricultural producer. Grant funding may be utilized to provide: adequate precision agriculture connectivity; on-farm traceability solutions; products that improve

soil health, water management tools, and seeds that lower water, carbon, and nitrate footprint; and products using autonomous solutions in agricultural equipment.

One-half of available grant funds shall be utilized for precision agriculture connectivity purposes and one-half of funding shall be utilized on-farm traceability solutions, soil health, water and seed technologies solutions, and autonomous equipment solutions. Successful grant applicants must complete a project within 12 months of an award with one 6 month extension allowed upon a showing of good cause. If an applicant fails to provide adequate precision agriculture connectivity, the grant application shall be repaid.

The committee amendment adds the Emergency Clause. The following sections become operative with the Emergency Clause-sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 17, 19, and 20.

LB 761 Summary:

The bill establishes the Precision Agriculture Infrastructure Act.

Section 1- Title

Section 2- Definitions

"Adequate Broadband Speed" symmetrical speed of at least 50 Mbps.

"Department"- the Department of Economic Development.

"Provider" - any broadband Internet service provider

Section 3- Creates the Act, declared purposes are:

Lead Nebraska agricultural producers to lead the nation in precision agriculture;

Provide high speed internet to remote and high-cost areas of the state;

States legislative intent to allocate \$10 million from the American Rescue Plan Act for FY 2022-23 to the Department of Economic Development to carry out the Act.

Section 4- Grants

Eligible applicants for grant funding are providers, an agricultural cooperative, an agronomist, or an agricultural producer may apply for a grant.

One-half of funding shall be committed to providing broadband service to on-farm structures, and devices.

One-half of funding shall be provided for on-farm traceability solutions, products that improve soil health and water management tools, and products that improve autonomous solutions in agricultural machinery.

Section 5- Grant requirements

An applicant that receives funding to provide broadband services shall complete any project within 12 months after the award date and submit the project to speed tests.

Section 6-Administration

Authorizes the DED to adopt rules to carry out the purposes of the Act.

LB 914 Summary:

The bill creates a new provision of law that requires the Public Service Commission to create and maintain a Nebraska fabric location broadband access map. The map shall show broadband availability and quality of service for all locations in Nebraska.

The Commission may contract with 3rd parties to create and maintain the map. Any information provided by broadband providers that is confidential or proprietary shall be maintained as such by the Commission.

The following entities are required to provide information to the Commission:

Entities receiving support from the Nebraska Universal Service Fund;

Any grant recipient or participant from the Broadband Bridge Act;

Any grant recipient of federal funding that is administered by the Commission.

When the Federal Communications Commission completes the national Broadband Serviceable Location Fabric and National Broadband Availability Map the Commission shall annually determine the need to maintain the state map created

by the Act.

LB 1021 Summary:

Amends Section 86-324; Nebraska Universal Service Fund, Purpose, Authority of the Public Service Commission.

Currently the Commission has the authority to subject recipients of funding from the Universal Service Fund to service quality, customer service, and billing requirements to the extent of telecommunications services provided by a receiving company are eligible for support from the Universal Service Fund.

LB 1021 amends the section to add affordability to the requirements the Commission may regulate and also provides that the quality of service obligations will also apply to broadband service offerings made by recipient companies who receive broadband support from the fund.

LB1214 Summary:

Amends Section 86-1306; Broadband Bridge Act, grant application scoring system.

Modifies rate comparability of an application shall be based upon comparable speed tiers offered by applicants.

Amends Section 86-1308; project awards by the Commission.

Currently this section states that once a project award is made the applicant shall provide service in the application area until released from the obligation by the Commission. The section is amended to provide that the applicant shall be obligated to provide service for 5 years from the date of the award.

Adds a new provision of law to the Broadband Bridge Act.

States that nothing in the Act shall authorize the regulation of terms, conditions, speed tier offerings, or prices of internet services offered in a project area.

LB 1234 Summary:

Amends Section 86-1234; Telecommunications facilities crossing railroad rights-of-way.

This section currently provides the following process for the crossing of railroad track right-of-way by telecommunications carriers:

A telecommunications company must request permission and apply to the railroad to place telecommunications facilities in the railroad right-of way.

The telecommunications carrier and railroad may enter into a wireline crossing agreement.

If an agreement is not reached within 60 days of application either party may petition the Public Service Commission (PSC) for a hearing on disputed terms of the agreement.

The PSC must hold a hearing within 60 days of receipt of the petition, and release a decision within 30 days of the hearing.

Within 15 days of the decision by the PSC the parties must file a conforming wireline agreement. The PSC has an additional 15 days to approve or reject the agreement. If the PSC does not act within the 15 days, the agreement shall be deemed approved. If the PSC rejects the agreement the parties shall file an agreement that conforms to the PSC's decision.

The telecommunications company must pay a one-time standard crossing fee of \$1,250. Additionally the telecommunications carrier shall reimburse the railroad for actual flagging expenses involved in the placement of the telecommunications facility.

LB 1234 would amend the current telecommunications facility placement process as follows:

In the event a railroad carrier fails to respond in writing to an initial crossing application, within 30 days of the application's filing by a telecommunications carrier, the telecommunications carrier may petition the PSC for an expedited wire-crossing permit.

The PSC shall enter the order within 15 days of the filing issuing a permit. The permit shall authorize the permit for the placement of the facility in the right-of-way in a manner that is not unreasonable or against the public interest.

LB 761 Dorn, Adopt the Precision Agriculture Infrastructure Grant Act and state intent regarding appropriation of federal funds. Hearing 02/15/22

Mtn to include LB 761, as amended, to the committee amendment. Vote 8-0-0-0. Voting Aye: Sens Albrecht, Bostelman, Cavanaugh, DeBoer, Friesen, Geist, Hughes, and Moser. Adopted 02/28/2022.

Testifiers at public hearing on 02/15/22:
Support: Senator Myron Dorn, Introducer
Support: Julie Bushell, Paige Wireless
Support: Brandon Hunnicut, Ag Leaders Working Group
Oppose: Tip O'Neill, NTA

LB 914 Bostelman, Require the Public Service Commission to create and maintain a broadband map and data repository.
Hearing 02/08/22.

Mtn to include LB 914, as amended, to the committee amendment. Vote 8-0-0-0. Voting Aye: Sens Albrecht, Bostelman, Cavanaugh, DeBoer, Friesen, Geist, Hughes, and Moser. Adopted 02/22/2022.

Testifiers at public hearing on 02/08/22:

Support: Senator Bruce Bostelman, Introducer
Support: Tim Schram, NE Public Service Commission
Support: Burke Brown, NSEA
Support: Al Juhnke, NE Pork Producers, Etal
Support: John Hansen, NE Farmers Union
Support: Danny DeLong, AARP NE
Oppose: Tip O'Neill, NTA,
Oppose: John Idoux, Lumen / CenturyLink
Oppose: Brian Thompson, Consolidated Companies & NE Advocacy Group
Neutral: Cullen Robbins, NE PSC Director

LB1021 Friesen, Provide for regulation of certain telecommunications companies by the Public Service Commission.
Hearing 02/08/22.

Mtn to include LB 1021, as amended, to the committee amendment. Vote 8-0-0-0. Voting Aye: Sens Albrecht, Bostelman, Cavanaugh, DeBoer, Friesen, Geist, Hughes, and Moser. Adopted 02/28/2022.

Testifiers at public hearing on 02/08/22:

Support: Senator Curt Friesen, Introducer
Support: Mary Ridder, NE PSC
Oppose: Tip O'Neill, NTA
Oppose: John Idoux, Lumen / CenturyLink

LB 1214 Geist, Change provisions of the Nebraska Broadband Bridge Act. Hearing 02/08/22.

Mtn to include LB 1214, as amended, to the committee amendment. Vote 8-0-0-0. Voting Aye: Sens Albrecht, Bostelman, Cavanaugh, DeBoer, Friesen, Geist, Hughes, and Moser. Adopted 02/28/2022.

Testifiers at public hearing on 02/08/22:

Support: Senator Suzanne Geist, Introducer
Support: Julia Plucker, NE Internet & Television Assoc
Oppose: Andy Pollock, NE Rural Broadband Alliance
Neutral: Tim Schram, NE PSC

LB 1234 Friesen, Provide for an expedited method of authorizing telecommunications wires to cross railroad rights-of-way.
Hearing 02/15/22.

Mtn to include LB 1234, as amended, to the committee amendment. Vote 8-0-0-0. Voting Aye: Sens Albrecht, Bostelman, Cavanaugh, DeBoer, Friesen, Geist, Hughes, and Moser. Adopted 02/22/2022.

Testifiers at public hearing on 02/15/22:

Support: Senator Curt Friesen, Introducer
Support: Tip O'Neill, NTA
Support: Dan Watermeier, NE PSC

Neutral: Jim Hild, Union Pacific Railroad

Neutral: Jeff Davis, BNSF

Curt Friesen, Chairperson