

## LEGISLATIVE BILL 388

Approved by the Governor May 26, 2021

Introduced by Friesen, 34; Hilgers, 21; Sanders, 45; Brewer, 43; Brandt, 32; Briese, 41; Albrecht, 17; Hansen, B., 16; at the request of the Governor.

A BILL FOR AN ACT relating to telecommunications; to adopt the Nebraska Broadband Bridge Act; to create a fund; and to declare an emergency.  
Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 10 of this act shall be known and may be cited as the Nebraska Broadband Bridge Act.

Sec. 2. For purposes of the Nebraska Broadband Bridge Act:

(1) Commission means the Public Service Commission;

(2) Development costs means the amount paid for project planning, obtaining construction permits, construction of facilities including both middle-mile and last-mile infrastructure, equipment, and installation and testing of the broadband Internet service;

(3) Digital inclusion means access to and use of information and communication technologies by all individuals and communities, including the most disadvantaged individuals and communities;

(4) Eligible telecommunications carrier means an eligible telecommunications carrier as designated under 47 U.S.C. 214(e), as such section existed on January 1, 2021;

(5) Grant means money provided to an applicant for purposes of a project under the act;

(6) Program means the Broadband Bridge Program created under the act;

(7) Project means the development of a broadband network in an unserved or underserved area;

(8) Project area means the geographical area in which a broadband network is to be developed pursuant to a grant;

(9) Provider means a broadband Internet service provider, including any telecommunications company, cable television company, or wireless network provider that provides broadband Internet service;

(10) Speed test means a measurement of download and upload speeds for access to broadband Internet service between a specific consumer location and a specific remote server location that meets the specifications of the commission;

(11) Underserved area means a geographical area of the state which lacks broadband Internet service providing access to the Internet at speeds of at least one hundred megabits per second for downloading and twenty megabits per second for uploading; and

(12) Unserved area means a geographical area of the state which lacks broadband Internet service providing access to the Internet at speeds of at least twenty-five megabits per second for downloading and three megabits per second for uploading.

Sec. 3. The Broadband Bridge Program is created. The purpose of the program is to facilitate and fund the development of broadband networks in unserved and underserved areas in addition to the reverse auction program available pursuant to section 86-330. The commission shall administer the program. It is the intent of the Legislature to appropriate twenty million dollars annually from the General Fund beginning with fiscal year 2021-22 to the commission to be distributed as grants through the program and to pay for administrative costs associated with the program.

Sec. 4. (1)(a) A provider, a cooperative, a political subdivision, or an Indian tribe may apply to the commission for a grant on forms provided by the commission. The grant shall only be used for development costs for a qualifying project. The application shall indicate the project area. The applicant shall provide matching funds equal to fifty percent of the total development costs of the project. In order to qualify, the project is required to provide broadband Internet service scalable to one hundred megabits per second for downloading and one hundred megabits per second for uploading, or greater. Applications shall be submitted on or before October 1, 2021, for fiscal year 2021-22, and on or before July 1 for each fiscal year thereafter.

(b) An application from a political subdivision or an Indian tribe shall be made as part of a public-private partnership with a provider.

(2)(a) As part of the application, the applicant shall agree to complete the project within eighteen months after the date the grant is awarded. The commission may permit one extension of up to six months upon request and for good cause shown.

(b) If a grant recipient fails to complete the project by the agreed or extended deadline, as the case may be, the recipient shall repay the grant as provided in this subdivision. If no extension is permitted, ten percent of the grant shall be repaid for each month that the project is not complete after the eighteen-month period, up to one hundred percent of the grant. If an extension is permitted, twenty percent of the grant shall be repaid for each month that the project is not complete after the twenty-four-month period, up to one

hundred percent of the grant.

(3)(a) As part of the application, the applicant shall agree to submit the broadband network completed as a result of the grant to speed tests as determined by the commission. The grant recipient shall conduct the speed tests and submit the results to the commission. The speed tests shall be conducted for one week using a random sample of locations of consumers who subscribe to the network completed as a result of the grant.

(b) If the broadband network does not provide service at the speeds required pursuant to subdivision (1)(a) of this section according to the speed tests under subdivision (3)(a) of this section, the grant recipient shall be allowed a reasonable time to address the speed deficiencies and conduct a second set of speed tests as described in subdivision (3)(a) of this section. If the broadband network does not provide service at the speeds required pursuant to subdivision (1)(a) of this section according to the second set of speed tests, the grant recipient shall repay the grant.

Sec. 5. The commission shall distribute grants based on priority as follows:

(1) The first priority is a project in a project area that is an unserved area which the commission has determined pursuant to section 75-160 or 86-166 needs further support but has not received public assistance for development of a broadband network;

(2) The second priority is a project that is in an unserved area, that has received federal support for development of a broadband network, and that will not be completed within twenty-four months after the grant application deadline if the commission determines that a grant under the program will accelerate the deployment of the broadband network; and

(3) The third priority is a project in a project area that is an underserved area and that the commission determines has a digital inclusion plan.

Sec. 6. (1) The commission shall establish a weighted scoring system to evaluate and rank the applications received each fiscal year.

(2) In each fiscal year, at least thirty days prior to the first day that applications may be submitted, the commission shall publish on the commission's web site the specific criteria and the quantitative weighted scoring system the commission will use to evaluate and rank applications and award grants pursuant to the program. Such weighted scoring system shall consider, at a minimum:

(a) The financial, technical, and legal capability of the applicant to deploy and operate broadband Internet service;

(b) Whether the provider is designated as an eligible telecommunications carrier or will be so designated prior to the project completion date;

(c) The ability of an applicant to offer rates in the project area that are comparable to the rates offered by the applicant outside the project area;

(d) The available minimum broadband speeds, with higher scores for faster speeds, except that no grant shall be awarded based on speeds less than those scalable to one hundred megabits per second for downloading and one hundred megabits per second for uploading, or greater;

(e) The ability of the broadband infrastructure to be scalable to higher broadband Internet speeds in the future; and

(f) Whether the applicant has committed to fund more than fifty percent of the total development costs of the project from sources other than grants under the program, with higher scores for higher amounts of matching funds.

Sec. 7. (1) Within three business days after the application deadline described in subdivision (1)(a) of section 4 of this act, the commission shall publish on its web site the proposed projects, project areas, and broadband Internet service speeds for each application submitted.

(2) Any provider may, within thirty days after the publication under subsection (1) of this section, submit to the commission, on forms provided by the commission, a challenge to an application. Such challenge shall contain information demonstrating that, at the time of submitting the challenge, (a) the provider provides or has begun construction to provide a broadband network in the proposed project area with access to the Internet at speeds equal to or greater than one hundred megabits per second for downloading and twenty megabits per second for uploading or (b) the provider provides broadband service through a broadband network in or proximate to the proposed project area and the provider commits to complete construction of broadband infrastructure and provide a broadband network to the proposed project area with access to the Internet at speeds equal to or greater than one hundred megabits per second for downloading and twenty megabits per second for uploading, no later than eighteen months after the date grant awards are made under the program.

(3) Within three business days after the submission of a challenge as provided in subsection (2) of this section, the commission shall notify the applicant of such challenge. The applicant shall have ten business days after receipt of such notification to provide any supplemental information regarding the challenged application to the commission.

(4) The commission shall evaluate the information submitted in a challenge and shall not award a grant if the information submitted under subsection (2) of this section is credible and if the provider submitting the challenge agrees to submit documentation no later than eighteen months after the date grant awards are made for the then-current fiscal year under the program substantiating that the provider submitting the challenge has fulfilled its commitment to deploy broadband Internet service with access to the Internet at the stated speeds in the proposed project area.

(5) If the commission denies an application for a grant based on a challenge and the provider which submitted the challenge does not provide broadband Internet service to the proposed project area within eighteen months, the provider shall not challenge any grant for the following two fiscal years unless the failure is due to factors beyond the provider's control.

Sec. 8. (1) For each fiscal year, the commission shall approve grant funding for all qualified applicants within the limits of available appropriations.

(2) As a condition of accepting a grant under the program, the applicant shall agree to provide broadband Internet service in the project area until released from the applicant's commitment by the commission.

(3) The commission shall not add to the obligations required of a grant recipient after the grant is awarded without the consent of the grant recipient.

(4) The maximum grant amount awarded under the program with respect to any single project shall be five million dollars.

Sec. 9. (1) The Nebraska Broadband Bridge Fund is created. The fund shall consist of money appropriated by the Legislature and federal funds received for broadband enhancement purposes. The commission shall administer the fund and use the fund to finance grants for qualifying projects under the Nebraska Broadband Bridge Act and for expenses of the commission as appropriated by the Legislature for administering the fund. Any federal funds which are used for purposes of the act shall be in addition to the state General Funds appropriated for purposes of the act. Such federal funds shall not be used as a substitution for any such state General Funds.

(2) Any money in the Nebraska Broadband Bridge Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 10. The commission may adopt and promulgate rules and regulations to carry out the Nebraska Broadband Bridge Act.

Sec. 11. Since an emergency exists, this act takes effect when passed and approved according to law.