

AMENDMENTS TO LB1144

Introduced by Transportation and Telecommunications.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. (1) The Public Service Commission may create and
4 Maintain an official Nebraska location fabric broadband access map
5 showing broadband availability and quality of service for all serviceable
6 locations in Nebraska utilizing any federal funding that is made
7 available for such purpose. For purposes of this section, serviceable
8 location means any residence, dwelling, business, or building where an
9 entity provides or may provide broadband services.

10 (2) The Public Service Commission may contract with private parties
11 to create, improve, and maintain the map. When contracting with private
12 parties, the Public Service Commission shall give preference to
13 contractors providing mapping services to the Federal Communications
14 Commission. The Public Service Commission may collect from providers of
15 broadband services any information necessary to establish and update the
16 map. Any information provided to the Public Service Commission by a
17 provider of broadband services pursuant to this section that is
18 confidential, proprietary, or a trade secret as defined in section 87-502
19 shall be treated as such by the Public Service Commission.

20 (3) Any recipient of support from the Nebraska Telecommunications
21 Universal Service Fund shall comply with the provisions of this section.
22 Any grant recipient under the Nebraska Broadband Bridge Act, including
23 any entity that operates as an eligible telecommunications carrier in
24 Nebraska as defined in section 86-1302 that wishes to participate in the
25 Broadband Bridge Program created under section 86-1303, either directly
26 or as a challenging party under section 86-1307, shall comply with the
27 provisions of this section. Any grant recipient of federal broadband

1 funding administered by the Public Service Commission shall comply with
2 the provisions of this section.

3 (4) After the Federal Communications Commission completes the
4 national Broadband Serviceable Location Fabric and accompanying National
5 Broadband Availability Map, the Public Service Commission shall annually
6 evaluate whether the continued maintenance of any annually updated
7 Nebraska location fabric broadband access map created and maintained in
8 accordance with this section is necessary. The Public Service Commission
9 shall report its annual findings pursuant to this subsection to the
10 Transportation and Telecommunications Committee of the Legislature.

11 (5) The Public Service Commission shall utilize funding provided by
12 the federal Broadband Equity, Access, and Deployment Program authorized
13 under the federal Infrastructure Investment and Jobs Act, Public Law
14 117-58, to carry out this section.

15 Sec. 2. Section 86-134, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 86-134 (1) No telecommunications company which provides intrastate
18 interexchange service or basic local exchange service may abandon or
19 otherwise discontinue such service in or to a local exchange area which
20 it serves unless:

21 (a) (1) The commission finds upon application and hearing, if such
22 hearing is deemed necessary by the commission, that one or more other
23 telecommunications companies or communications providers (i) are
24 furnishing comparable wireline telecommunications service, including
25 voice over Internet protocol service, to the subscribers in such local
26 exchange area or (ii) have been designated as eligible telecommunications
27 carriers in such local exchange area at the time of discontinuance or
28 abandonment; and

29 (b) (2) The telecommunications company discontinuing
30 telecommunications service to such local exchange area:

31 (i) (a) Notifies its subscribers in the local exchange area in

1 writing of the abandonment, which notice shall be sent at least thirty
2 days prior to the effective date of such abandonment;

3 (ii) ~~(b)~~ Refunds any unused prepaid subscription charges or other
4 unused prepaid charges to each customer in the local exchange area prior
5 to the effective date of the abandonment; and

6 (iii) ~~(c)~~ Prior to the effective date of the abandonment, reimburses
7 its customers in the local exchange area for service charges which its
8 customers incur in obtaining substitute service from another
9 telecommunications company or communications provider or, in lieu
10 thereof, pays other telecommunications companies or communications
11 providers directly for such service charges on behalf of its customers
12 making changes in their telecommunications service as a result of the
13 abandonment.

14 (2) For purposes of this section:

15 (a) Communications provider has the same meaning as in section
16 86-125; and

17 (b) Eligible telecommunications carrier means an eligible
18 telecommunications carrier as designated under 47 U.S.C. 214(e), as such
19 section existed on January 1, 2022.

20 Sec. 3. Section 86-164, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 86-164 (1)(a) (1) Any telecommunications carrier that intends to
23 place a line, wire, or cable across a railroad right-of-way shall request
24 permission for such placement from the railroad carrier. The request
25 shall be in the form of a completed crossing application, including
26 engineering specifications. Upon receipt of such application, the
27 railroad carrier and the telecommunications carrier may enter into a
28 binding wire-crossing agreement. If the railroad carrier and the
29 telecommunications carrier are unable to negotiate a binding wire-
30 crossing agreement within sixty days after receipt of the crossing
31 application by the railroad carrier, either party may submit a petition

1 to the commission for a hearing on the disputed terms and conditions of
2 the purported wire-crossing agreement.

3 (b) Except as provided in subdivision (a) of this subsection in the
4 case of good faith negotiation or hearing, if a railroad carrier does not
5 respond to a completed crossing application by a telecommunications
6 carrier in writing within thirty days after receipt of such application,
7 the telecommunications carrier may petition the commission to enter an
8 order for an expedited wire-crossing permit. The commission shall enter
9 such order within fifteen days after the petition is filed, with notice
10 of such order issued to the railroad carrier and telecommunications
11 carrier. The expedited wire-crossing permit shall allow a
12 telecommunications carrier to place a line, wire, or cable across the
13 railroad right-of-way within a public road crossing in a manner that is
14 not unreasonable or against the public interest, taking into account
15 safety, engineering, and access requirements of the railroad carrier as
16 such requirements are prescribed by the Federal Railroad Administration
17 and established by rail industry standards.

18 (2)(a) Unless otherwise agreed to by all parties, the commission
19 shall, after providing proper notice, hold and complete the such hearing
20 provided for under subdivision (1)(a) of this section within sixty days
21 after receipt of the petition. The commission shall issue an order of its
22 decision within thirty days after the hearing. In rendering its decision,
23 the commission shall consider whether the terms and conditions at issue
24 are unreasonable or against the public interest, taking into account
25 safety, engineering, and access requirements of the railroad carrier as
26 such requirements are prescribed by the Federal Railroad Administration
27 and established rail industry standards.

28 (b) Upon issuance of an order by the commission under subdivision
29 (a) of this subsection, the railroad carrier and the telecommunications
30 carrier shall have fifteen days after the date of issuance to file a
31 conforming wire-crossing agreement with the commission. The commission

1 shall have fifteen days after the date of such filing to approve or
2 reject the agreement. If the commission does not issue an approval or
3 rejection of such agreement within the fifteen-day requirement, the
4 agreement shall be deemed approved. The commission may reject a wire-
5 crossing agreement if it finds that the agreement does not conform to the
6 order issued by the commission. If the commission enters such a finding,
7 the parties shall revise the agreement to comply with the commission's
8 order and shall refile the agreement to the commission for further
9 review. If the commission does not approve or reject the revised
10 agreement within fifteen days after the date of refiling, the agreement
11 shall be deemed approved.

12 (3)(a) Except as provided in subsection (4) of this section or as
13 otherwise agreed to by all parties, if a telecommunications carrier
14 places a line, wire, or cable across a railroad right-of-way pursuant to
15 this section, it shall pay the railroad carrier, owner, manager, agent,
16 or representative of the railroad carrier a one-time standard crossing
17 fee of one thousand two hundred fifty dollars for each applicable
18 crossing. In addition to the standard crossing fee, the
19 telecommunications carrier shall reimburse the railroad carrier for any
20 actual flagging expenses associated with the placement of the line, wire,
21 or cable.

22 (b) The standard crossing fee shall be in lieu of any license fee or
23 any other fees or charges to reimburse the railroad carrier for any
24 direct expense incurred as a result of the placement of the line, wire,
25 or cable.

26 (4) If a railroad carrier or telecommunications carrier believes a
27 special circumstance exists for the placement of a line, wire, or cable
28 across a railroad right-of-way, the railroad carrier or
29 telecommunications carrier may petition the commission for additional
30 requirements or for modification of the standard crossing fee in its
31 initial petition to the commission pursuant to subsection (1) of this

1 section. If the petition is filed with the request for additional
2 requirements or modification, the commission shall determine if a special
3 circumstance exists that necessitates additional requirements for such
4 placement or a modification of the standard crossing fee.

5 (5) This section applies to any telecommunications carrier certified
6 by the commission pursuant to section 86-128. This section does not apply
7 to any longitudinal encumbrance or any line, wire, or cable within any
8 public right-of-way and does not change, modify, or supersede any rights
9 or obligations created pursuant to sections 86-701 to 86-707.

10 (6)(a) A wire-crossing agreement between a railroad carrier and a
11 telecommunications carrier that includes a provision, clause, covenant,
12 or agreement contained in, collateral to, or affecting such wire-crossing
13 agreement that purports to indemnify, defend, or hold harmless the
14 railroad carrier from any liability for loss or damage resulting from the
15 negligence or willful and wanton misconduct of the carrier or its agents,
16 employees, or independent contractors who are directly responsible to
17 such carrier or has the effect of indemnifying, defending, or holding
18 harmless such carrier from the negligence or willful and wanton
19 misconduct of the carrier or its agents, employees, or independent
20 contractors who are directly responsible to the carrier is against the
21 public policy of this state and is unenforceable.

22 (b) Nothing in this section shall affect a provision, clause,
23 covenant, or agreement in which the telecommunications carrier
24 indemnifies, defends, or holds harmless a railroad carrier against
25 liability for loss or damage to the extent that the loss or damage
26 results from the negligence or willful and wanton misconduct of the
27 telecommunications carrier or its agents, employees, or independent
28 contractors who are directly responsible to the telecommunications
29 carrier.

30 (7) For purposes of this section:

31 (a) Railroad carrier has the same meaning as in section 75-402; and

1 (b) Telecommunications carrier means a telecommunications common
2 carrier as defined in section 86-118 or a telecommunications contract
3 carrier as defined in section 86-120.

4 Sec. 4. Section 86-1301, Revised Statutes Supplement, 2021, is
5 amended to read:

6 86-1301 Sections 86-1301 to 86-1310 and sections 9 and 10 of this
7 act shall be known and may be cited as the Nebraska Broadband Bridge Act.

8 Sec. 5. Section 86-1304, Revised Statutes Supplement, 2021, is
9 amended to read:

10 86-1304 (1)(a) A provider, a cooperative, a political subdivision,
11 or an Indian tribe may apply to the commission for a grant on forms
12 provided by the commission. The grant shall only be used for development
13 costs for a qualifying project. The application shall indicate the
14 project area. The applicant shall provide matching funds equal to fifty
15 percent of the total development costs of the project if located outside
16 a high-cost area, or twenty-five percent of the total development costs
17 of the project if located inside a high-cost area, as such areas are
18 determined by the commission. The matching funds requirement in this
19 subdivision shall not apply to any portion of a grant comprised of
20 federal funds. In order to qualify, the project is required to provide
21 broadband Internet service scalable to one hundred megabits per second
22 for downloading and one hundred megabits per second for uploading, or
23 greater. Applications shall be submitted on or before October 1, 2021,
24 for fiscal year 2021-22, and on or before July 1 for each fiscal year
25 thereafter.

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

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

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

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

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

26 Sec. 6. Section 86-1306, Revised Statutes Supplement, 2021, is
27 amended to read:

28 86-1306 (1) The commission shall establish a weighted scoring system
29 to evaluate and rank the applications received each fiscal year.

30 (2) In each fiscal year, at least thirty days prior to the first day
31 that applications may be submitted, the commission shall publish on the

1 commission's website the specific criteria and the quantitative weighted
2 scoring system the commission will use to evaluate and rank applications
3 and award grants pursuant to the program. Such weighted scoring system
4 shall consider, at a minimum:

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

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

10 (c) The ability of an applicant to offer rates in the project area
11 for the applicant's currently offered speed tiers that are comparable to
12 the rates offered by the applicant outside the project area for the same
13 currently offered speed tiers;

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

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

20 (f) Whether the applicant has committed to fund more than fifty
21 percent of the total development costs of the project if located outside
22 a high-cost area, or more than twenty-five percent of the total
23 development costs of the project if located inside a high-cost area, as
24 such areas are determined by the commission, from sources other than
25 grants under the program, with higher scores for higher amounts of
26 matching funds.

27 Sec. 7. Section 86-1307, Revised Statutes Supplement, 2021, is
28 amended to read:

29 86-1307 (1) Within three business days after the application
30 deadline described in subdivision (1)(a) of section 86-1304, the
31 commission shall publish on its website the proposed projects, project

1 areas, and broadband Internet service speeds for each application
2 submitted.

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

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

24 (4) The commission may require a provider submitting a challenge
25 under subsection (2) of this section to provide speed test results in the
26 challenged portion of the proposed project area. Such speed test results
27 shall be provided in a manner prescribed by the commission.

28 (5) (4) The commission shall evaluate the information submitted in a
29 challenge and shall not award a grant if the information submitted under
30 subsection (2) of this section is credible and if the provider submitting
31 the challenge agrees to submit documentation no later than eighteen

1 months after the date grant awards are made for the then-current fiscal
2 year under the program substantiating that the provider submitting the
3 challenge has fulfilled its commitment to deploy broadband Internet
4 service with access to the Internet at the stated speeds in the proposed
5 project area.

6 (6) (5) If the commission denies an application for a grant based on
7 a challenge and the provider which submitted the challenge does not
8 provide broadband Internet service to the proposed project area within
9 eighteen months, the provider shall not challenge any grant for the
10 following two fiscal years unless the failure is due to factors beyond
11 the provider's control.

12 Sec. 8. Section 86-1308, Revised Statutes Supplement, 2021, is
13 amended to read:

14 86-1308 (1) For each fiscal year, the commission shall approve grant
15 funding for all qualified applicants within the limits of available
16 appropriations.

17 (2) As a condition of accepting a grant under the program, the
18 applicant, and its successors and affiliates, shall agree to offer
19 provide broadband Internet service in the project area for fifteen years
20 after receipt of grant funding until released from the applicant's
21 commitment by the commission.

22 (3) The commission shall not add to the obligations required of a
23 grant recipient except as specifically authorized under the Nebraska
24 Broadband Bridge Act or as required by federal law to access and
25 distribute federal funds appropriated for the purpose of broadband
26 expansion after the grant is awarded without the consent of the grant
27 recipient.

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

30 Sec. 9. Any provider receiving support from the Nebraska
31 Telecommunications Universal Service Fund, the Nebraska Broadband Bridge

1 Fund, or any federal funds administered by the commission for the
2 provision of broadband service shall be subject to service quality,
3 customer service, and billing rules and regulations adopted and
4 promulgated by the commission as a condition of receiving such support.
5 The authority conferred by this section is limited by application solely
6 to those locations for which the provider has received such support from
7 the commission to deploy broadband service. The commission shall not add
8 to the requirements of a provider in relation to broadband service
9 support received after such support has been awarded.

10 Sec. 10. (1) Nothing in the Nebraska Broadband Bridge Act shall be
11 construed to authorize the commission to regulate Internet services as
12 prohibited by subdivision (1)(d) of section 86-124.

13 (2) The commission shall take reasonable steps to ensure that an
14 applicant meets the obligations described in subsections (2) and (3) of
15 section 86-1308. The commission shall not deny an application based on
16 prices or terms and conditions offered, or regulate any term of service.
17 The commission's weighted scoring system under subdivision (2)(c) of
18 section 86-1306 may take into consideration an applicant's terms and
19 conditions of service.

20 Sec. 11. Sections 11 to 16 of this act shall be known and may be
21 cited as the Precision Agriculture Infrastructure Grant Act.

22 Sec. 12. For purposes of the Precision Agriculture Infrastructure
23 Grant Act:

24 (1) Adequate precision agriculture connectivity means a download
25 speed of at least one hundred megabits per second and an upload speed of
26 at least twenty megabits per second;

27 (2) Commission means the Public Service Commission;

28 (3) Program means the Precision Agriculture Infrastructure Grant
29 Program created in section 13 of this act; and

30 (4) Provider means a wireless network provider that provides
31 adequate precision agriculture connectivity.

1 Sec. 13. (1) The Precision Agriculture Infrastructure Grant Program
2 is created. The commission shall administer the program. The purposes of
3 the program are to:

4 (a) Propel Nebraska agricultural producers to lead the nation in
5 precision agriculture connectivity, sustainability, traceability, and
6 autonomy to accelerate rural economic development; and

7 (b) Provide high-speed Internet service to farm sites as defined in
8 section 77-1359 in unserved areas of the state as defined in section
9 86-1302.

10 (2) For the purpose of carrying out the program, the commission may
11 utilize funds provided to the state through the federal Broadband Equity,
12 Access, and Deployment Program, not to exceed two million dollars per
13 year.

14 Sec. 14. (1) A provider, an agricultural cooperative, an
15 agronomist, or an agricultural producer may apply to the commission for a
16 grant under the program. The application shall be made on forms
17 prescribed by the commission.

18 (2) Grants shall only be used to provide:

19 (a) Adequate precision agriculture connectivity to on-farm
20 structures and devices, including, but not limited to, tractors,
21 combines, irrigation systems, livestock facilities, and farm offices;

22 (b) On-farm traceability solutions that satisfy food supply
23 stakeholder demand, including blockchain;

24 (c) Products that improve soil health, water management tools and
25 sensors that facilitate judicious use of water resources, and products
26 that promote the use of water efficiency seed technologies that lower
27 agriculture's water, carbon, and nitrate footprint; and

28 (d) Products that use autonomous solutions in agricultural
29 machinery, including, but not limited to, grain carts, spreaders,
30 precision drone scouting, and scouting robots.

31 (3) The commission shall award up to one-half of the available grant

1 funds for the purpose described in subdivision (2)(a) of this section and
2 up to one-half of the available grant funds for the purposes described in
3 subdivisions (2)(b), (c), and (d) of this section.

4 Sec. 15. If the grant application is to provide adequate precision
5 agriculture connectivity as described in subdivision (2)(a) of section 14
6 of this act, the applicant shall agree to:

7 (1) Complete the project within twelve months after the date on
8 which the grant is awarded. The commission may permit one extension of up
9 to six months upon request and for good cause shown; and

10 (2) Submit the connectivity to speed tests. If the speed tests show
11 that the connectivity is not adequate precision agriculture connectivity,
12 the applicant shall be allowed a reasonable time to correct the
13 deficiencies. If the applicant fails to provide adequate precision
14 agriculture connectivity after the second set of speed tests, the
15 applicant shall repay the grant.

16 Sec. 16. The commission may adopt and promulgate rules and
17 regulations to carry out the Precision Agriculture Infrastructure Grant
18 Act.

19 Sec. 17. Sections 3, 11, 12, 13, 14, 15, 16, and 18 of this act
20 become operative three calendar months after the adjournment of this
21 legislative session. The other sections of this act become operative on
22 their effective date.

23 Sec. 18. Original section 86-164, Reissue Revised Statutes of
24 Nebraska, is repealed.

25 Sec. 19. Original section 86-134, Reissue Revised Statutes of
26 Nebraska, and sections 86-1301, 86-1304, 86-1306, 86-1307, and 86-1308,
27 Revised Statutes Supplement, 2021, are repealed.

28 Sec. 20. Since an emergency exists, this act takes effect when
29 passed and approved according to law.