

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 338**

FINAL READING

Introduced by Bostelman, 23; Kolterman, 24.

Read first time January 13, 2021

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to telecommunications and technology; to amend  
2 section 86-135, Reissue Revised Statutes of Nebraska, and sections  
3 86-103, 86-316, 86-330, and 86-1102, Revised Statutes Cumulative  
4 Supplement, 2020; to redefine a term under the Nebraska  
5 Telecommunications Regulation Act; to provide powers and duties to  
6 the Public Service Commission relating to broadband infrastructure  
7 and speed testing under the Nebraska Telecommunications Universal  
8 Service Fund Act; to change provisions relating to the withholding  
9 of funding from the Nebraska Telecommunications Universal Service  
10 Fund and provide for rural-based plans as prescribed; to change a  
11 duty of the Rural Broadband Task Force; to state intent relating to  
12 broadband service; to harmonize provisions; to repeal the original  
13 sections; to outright repeal section 86-103.01, Reissue Revised  
14 Statutes of Nebraska; and to declare an emergency.  
15 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 86-103, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3 86-103 For purposes of the Nebraska Telecommunications Regulation  
4 Act, unless the context otherwise requires, the definitions found in  
5 sections ~~86-104 86-103.01~~ to 86-121.01 apply.

6 Sec. 2. Section 86-135, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 86-135 (1) For purposes of sections 86-135 to 86-138, advanced  
9 telecommunications capability service means high-speed, broadband service  
10 at a minimum download speed of one hundred megabits per second and a  
11 minimum upload speed of twenty megabits per second provided by a local  
12 exchange carrier that enables users to originate and receive high-quality  
13 voice, data, graphics, and video communications using any technology.

14 (2) (1) Any person may file an application with the commission to  
15 obtain advanced telecommunications capability service furnished by a  
16 telecommunications company in the local exchange area adjacent to the  
17 local exchange area in which the applicant resides.

18 (3) (2) The commission shall serve upon each telecommunications  
19 company directly affected a copy of the application and notice of the  
20 hearing at least thirty days prior to the hearing on the application,  
21 which shall be held if all of the telecommunications companies involved  
22 do not consent to the application.

23 (4) (3) If an application for the revision of an exchange service  
24 area includes more than one customer in a particular exchange, the  
25 commission shall consider the circumstances of each customer and the  
26 impact to the obligations of any affected telecommunications company  
27 which has not consented to the application.

28 Sec. 3. Section 86-316, Revised Statutes Cumulative Supplement,  
29 2020, is amended to read:

30 86-316 Sections 86-316 to 86-329 and sections 4 and 5 of this act  
31 shall be known and may be cited as the Nebraska Telecommunications

1 Universal Service Fund Act.

2       Sec. 4. Beginning on January 1, 2022, the commission shall ensure  
3 that funds distributed from the Nebraska Telecommunications Universal  
4 Service Fund for construction of new broadband infrastructure shall go to  
5 projects that provide broadband service scalable to one hundred megabits  
6 per second or greater for downloading and one hundred megabits per second  
7 or greater for uploading. This section shall not apply to any  
8 disbursements from any Nebraska Telecommunications Universal Service Fund  
9 wireless infrastructure grant program, the purpose of which is to improve  
10 wireless telecommunications service coverage through grants for the  
11 construction of wireless telecommunications service facilities.

12       Sec. 5. Any recipient of ongoing high-cost support from the  
13 Nebraska Telecommunications Universal Service Fund shall agree to submit  
14 to speed tests as determined by the commission. Upon the commission's  
15 request, such recipient shall conduct the speed tests and submit the  
16 results to the commission. The speed tests shall be conducted for one  
17 week using a random sample of locations of consumers who subscribe to  
18 services provided over infrastructure for which ongoing high-cost support  
19 is received.

20       Sec. 6. Section 86-330, Revised Statutes Cumulative Supplement,  
21 2020, is amended to read:

22       86-330 (1) Based on consumer complaints or upon its own motion, the  
23 Public Service Commission may open a docket to consider the  
24 implementation and operation of a ~~funding redirection reverse auction~~  
25 program that awards funding to broadband Internet service providers to  
26 support high-speed Internet infrastructure deployment projects in  
27 unserved or underserved exchanges within the State of Nebraska. The  
28 commission may, in its discretion, withhold funding from the Nebraska  
29 Telecommunications Universal Service Fund to any telecommunications  
30 company that has not served, to the commission's satisfaction, those  
31 areas with service that meets the criteria for successful investment of

1 funding from the Nebraska Telecommunications Universal Service Fund.

2 (2) The commission shall adopt and promulgate rules and regulations  
3 that establish standards governing the withholding of funding from the  
4 Nebraska Telecommunications Universal Service Fund from any recipient,  
5 including the provision of notice and the right to a hearing prior to the  
6 issuance of an order withdrawing such funding. If the commission  
7 withdraws funding from the Nebraska Telecommunications Universal Service  
8 Fund from any telecommunications company, the commission may redirect the  
9 withdrawn funding through a reverse auction or rural-based plan to  
10 another eligible telecommunications company use the funding that is  
11 withdrawn to implement and operate a reverse auction program, except that  
12 any funding that is withdrawn shall be utilized in the exchange area for  
13 which the funding was originally granted. The commission shall have wide  
14 discretion in the design, implementation, and operation of a funding  
15 redirection reverse auction program but may use as a guide the reverse  
16 auction program designed by the Federal Communications Commission in its  
17 Connect America Fund Phase II Auction process.

18 (3)(a) In redirecting funding that has been withheld from an  
19 eligible telecommunications company, the commission may consider rural-  
20 based plans. To qualify for commission consideration, a rural-based plan  
21 shall include an eligible telecommunications company.

22 (b) The commission shall consider rural-based plans based on the  
23 following scoring criteria:

24 (i) The history of the participating eligible telecommunications  
25 company in providing quality and affordable telecommunications and  
26 broadband services in rural areas;

27 (ii) The capability of the eligible telecommunications company to  
28 use the proposed technology to provide broadband services to every  
29 location in the exchange area on a reasonably comparable basis;

30 (iii) The support of local businesses, hospitals, schools, colleges,  
31 agricultural producers, and residents;

1           (iv) Other sources of funding;

2           (v) Partnerships and other cooperative arrangements with local  
3 public power providers;

4           (vi) Partnerships and other cooperative arrangements with local  
5 wireless Internet service providers; and

6           (vii) Cooperation by the incumbent local exchange carrier from which  
7 funding has been withheld.

8           (c) In entering an order redirecting funding, the commission shall  
9 establish a timeline for deployment that includes periodic milestones for  
10 ensuring timely deployment and shall require the eligible  
11 telecommunications company to file reports sufficient to assess  
12 compliance with deployment milestones.

13           (d) The commission shall adopt and promulgate rules and regulations  
14 to carry out this subsection.

15           (4) Funding support shall not be withheld from an eligible  
16 telecommunications company for infrastructure found by the commission to  
17 be capable of reliably providing broadband service at a minimum download  
18 speed of one hundred megabits per second and a minimum upload speed of  
19 twenty megabits per second that enables users to originate and receive  
20 high-quality voice, data, graphics, and video communications using any  
21 technology.

22           (5) For purposes of this section, rural-based plan means a proposal  
23 for redirecting funding as described in this section which is made by  
24 rural residential and business users of telecommunications and broadband  
25 services in high-cost areas of the exchange.

26           Sec. 7. Section 86-1102, Revised Statutes Cumulative Supplement,  
27 2020, is amended to read:

28           86-1102 (1) The Rural Broadband Task Force is hereby created. Task  
29 force members shall include the chairperson of the Transportation and  
30 Telecommunications Committee of the Legislature and a member of the  
31 Legislature selected by the Executive Board of the Legislative Council

1 who shall both serve as nonvoting, ex officio members, a member of the  
2 Public Service Commission who shall be selected by the chairperson of  
3 such commission, the chairperson of the Nebraska Information Technology  
4 Commission or his or her designee who shall act as chairperson of the  
5 task force, the Director of Economic Development or his or her designee,  
6 the Director of Agriculture or his or her designee, and the following  
7 members to be appointed by the Governor: A representative of the  
8 agribusiness community, a representative of the Nebraska business  
9 community, a representative of the regulated wireline telecommunications  
10 industry, a representative of the wireless telecommunications industry, a  
11 representative of the public power industry, a representative of health  
12 care providers, a representative of Nebraska postsecondary educational  
13 institutions, and a representative of rural schools offering kindergarten  
14 through grade twelve. The members appointed by the Governor shall serve  
15 for a term of two years and may be reappointed.

16 (2) The task force may appoint advisory groups to assist the task  
17 force in providing technical expertise and advice on any issue. The  
18 advisory groups may be composed of representatives of stakeholder groups  
19 which may include, but not necessarily be limited to, representatives  
20 from small and large wireline companies, wireless companies, public power  
21 districts, electric cooperative corporations, cable television companies,  
22 Internet service providers, low-income telecommunications and electric  
23 utility customers, health care providers, and representatives of  
24 educational sectors. No compensation or expense reimbursement shall be  
25 provided to any member of any advisory group appointed by the task force.

26 (3) The Nebraska Information Technology Commission shall provide  
27 staff assistance to the task force in consultation with staff from the  
28 Public Service Commission and other interested parties. The task force  
29 may hire consultants to assist in carrying out its duties. The task force  
30 shall review issues relating to availability, adoption, and affordability  
31 of broadband services in rural areas of Nebraska. In particular, the task

1 force shall:

2 (a) Determine how Nebraska rural areas compare to neighboring states  
3 and the rest of the nation in average download and upload speeds and in  
4 subscription rates to higher speed tiers, when available;

5 (b) Examine the role of the Nebraska Telecommunications Universal  
6 Service Fund in bringing comparable and affordable broadband services to  
7 rural residents and any effect of the fund in deterring or delaying  
8 capital formation, broadband competition, and broadband deployment;

9 (c) Review the feasibility of alternative technologies and providers  
10 in accelerating access to faster and more reliable broadband service for  
11 rural residents;

12 (d) Examine alternatives for deployment of broadband services to  
13 areas that remain unserved or underserved, such as funding redirection  
14 ~~reverse-auction~~ programs described in section 86-330, public-private  
15 partnerships, funding for competitive deployment, and other measures, and  
16 make recommendations to the Public Service Commission to encourage  
17 deployment in such areas;

18 (e) Recommend state policies to effectively utilize state universal  
19 service fund dollars to leverage federal universal service fund support  
20 and other federal funding;

21 (f) Make recommendations to the Governor and Legislature as to the  
22 most effective and efficient ways that federal broadband rural  
23 infrastructure funds received after July 1, 2018, should be expended if  
24 such funds become available; and

25 (g) Determine other issues that may be pertinent to the purpose of  
26 the task force.

27 (4) Task force members shall serve on the task force without  
28 compensation but shall be entitled to receive reimbursement for expenses  
29 incurred for such service as provided in sections 81-1174 to 81-1177.

30 (5) The task force shall meet at the call of the chairperson and  
31 shall present its findings in a report to the Executive Board of the

1 Legislative Council no later than November 1, 2019, and by November 1  
2 every odd-numbered year thereafter. The report shall be submitted  
3 electronically.

4 (6) For purposes of this section, broadband services means high-  
5 speed telecommunications capability at a minimum download speed of  
6 twenty-five megabits per second and a minimum upload speed of three  
7 megabits per second, and that enables users to originate and receive  
8 high-quality voice, data, and video telecommunications using any  
9 technology.

10 Sec. 8. The Legislature declares that it is in the public interest  
11 for the state, cities of all classes, villages, and counties to expend  
12 federal funds received for the creation and expansion of high-speed  
13 broadband services throughout the state. Any political subdivision that  
14 directly receives federal funds used for broadband service enhancement  
15 purposes shall ensure that the construction of any new infrastructure to  
16 provide broadband service is scalable to one hundred megabits per second  
17 or greater for downloading and one hundred megabits per second or greater  
18 for uploading. Such federal funds shall not be used to serve locations  
19 currently capable of receiving broadband service at a minimum download  
20 speed of one hundred megabits per second and a minimum upload speed of  
21 twenty megabits per second that enables users to originate and receive  
22 high-quality voice, data, graphics, and video communications using any  
23 technology. Any broadband infrastructure built with federal funds is  
24 subject to section 86-594.

25 Sec. 9. Original section 86-135, Reissue Revised Statutes of  
26 Nebraska, and sections 86-103, 86-316, 86-330, and 86-1102, Revised  
27 Statutes Cumulative Supplement, 2020, are repealed.

28 Sec. 10. The following section is outright repealed: Section  
29 86-103.01, Reissue Revised Statutes of Nebraska.

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