A BILL FOR AN ACT relating to telecommunications and technology; to adopt
the Nebraska Enhancing Broadband Act; and to state intent for an
appropriation.

Be it enacted by the people of the State of Nebraska,
Section 1. Sections 1 to 8 of this act shall be known and may be cited as the Nebraska Enhancing Broadband Act.

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

(1) Department means the Department of Economic Development;

(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;

(4) Program means the Nebraska Enhancing Broadband Program created under the Nebraska Enhancing Broadband Act;

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

(6) Project area means the geographical area in which a broadband network is to be developed pursuant to a grant, a loan, or any combination thereof;

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

(8) 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 department;

(9) Underserved area means a project area within 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

(10) Unserved area means a project area within 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 Nebraska Enhancing Broadband Program is created. The
purpose of the program is to facilitate and fund the development of
broadband networks in unserved areas and underserved areas. The
department shall administer the program.

Sec. 4. (1)(a) A provider, a cooperative, a political subdivision,
or an Indian tribe may apply to the department for a grant, a loan, or
any combination of grants and loans, on forms provided by the department.
The grant or loan shall only be used for development costs for a
qualifying project. The application shall indicate the project area. 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 to the department 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.

(c) For each application, matching funds equal to fifty percent of
the grant or twenty-five percent of the loan shall be required.

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

(b) If a grant or loan recipient fails to complete the project by
the agreed or extended deadline, as applicable, the recipient shall repay
the grant or loan as provided in this subsection. If no extension is
granted, ten percent of the grant or loan 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 or loan. If an extension is granted, twenty percent of the grant or loan 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 or loan.

(3)(a) As part of the application, the applicant shall agree to submit the broadband network completed and funded as a result of the grant or loan to speed tests as determined by the department. The grant or loan recipient shall conduct the speed tests and submit the results to the department, which may request assistance of the Public Service Commission in verifying the results. The speed tests shall be conducted for one week using a random sample of locations of consumers who subscribe to the network completed and funded as a result of the grant or loan.

(b) If any applicant fails to meet the speed test requirements as provided in this subsection, such applicant shall repay any grant or loan received.

(4) The Attorney General may, at the request of the department, bring an action against an applicant for recovery of any grant or loan received and not used in accordance with subsection (1) of this section or not repaid as required by subsection (2) or (3) or this section, and for recovery of any other damages.

Sec. 5. The department shall distribute grants or loans based on priority as follows:

(1) The first priority is a project in a project area that is an unserved area which the department has determined pursuant to section 75-160 or 86-166 needs further support but has not received state or federal 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 application deadline unless the department determines that a grant or
loan under the program will accelerate the deployment of the network; and

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

Sec. 6. (1) Within three days after the application deadline described in subdivision (1)(a) of section 4 of this act, the department shall publish on its web site the proposed projects, project areas, and proposed broadband Internet service speeds for each application submitted.

(2) Any provider may, within thirty days after the publication made under subsection (1) of this section, file with the department, on forms provided by the department, a challenge to an application. Such challenge shall contain information demonstrating that, at the time of filing 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 provision of 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 the challenged application was submitted.

(3) The department shall evaluate the information submitted in a challenge filing and shall not award a grant or loan if the information is credible and if the provider filing the challenge agrees to submit documentation to the department no later than eighteen months after the date the challenged application was submitted substantiating that the provider filing 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.

(4) The department may request assistance from the Public Service Commission in its review of the provider's filed challenge and shall adopt and promulgate rules and regulations to carry out the Nebraska Enhancing Broadband Act, including any necessary rules of procedure for filing a challenge and notice and hearing requirements. Any appeal of a challenge ruling by the department shall be pursuant to the Administrative Procedure Act.

(5) If the department denies an application based on a filed challenge and the provider that filed the challenge does not provide broadband Internet service to the proposed project area within eighteen months after the date the challenged application was submitted, the provider shall not challenge any other application for the following two fiscal years unless the department determines such failure was due to factors beyond the provider's control.

Sec. 7. The Auditor of Public Accounts may audit any program grant or loan recipient to ensure that the grant or loan received is spent according to the terms and conditions of such grant or loan and in conformance with the Nebraska Enhancing Broadband Act.

Sec. 8. (1) The Nebraska Enhancing Broadband Fund is created. The fund shall consist of money appropriated by the Legislature and federal funds received for broadband enhancement purposes. The department shall administer the fund and use the fund to finance grants and loans for qualifying projects under the Nebraska Enhancing Broadband Program and for expenses of the department as appropriated by the Legislature for administering the fund. Any money in the 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.

(2) It is the intent of the Legislature to appropriate ten million
dollars annually beginning with fiscal year 2021-22 to the fund to be distributed as grants and loans for the Nebraska Enhancing Broadband Program.