

LEGISLATIVE BILL 1144

Approved by the Governor April 19, 2022

Introduced by Friesen, 34.

A BILL FOR AN ACT relating to telecommunications; to amend sections 86-134 and 86-164, Reissue Revised Statutes of Nebraska, section 75-109.01, Revised Statutes Cumulative Supplement, 2020, and sections 86-1301, 86-1304, 86-1306, 86-1307, and 86-1308, Revised Statutes Supplement, 2021; to provide certain jurisdiction for the Public Service Commission; to provide for an official Nebraska location fabric broadband access map; to change discontinuance of service provisions under the Nebraska Telecommunications Regulation Act; to provide for an expedited wire crossing permit; to define terms; to change provisions of the Nebraska Broadband Bridge Act; to adopt the Precision Agriculture Infrastructure Grant Act; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 75-109.01, Revised Statutes Cumulative Supplement, 2020, is amended to read:

75-109.01 Except as otherwise specifically provided by law, the Public Service Commission shall have jurisdiction, as prescribed, over the following subjects:

- (1) Common carriers, generally, pursuant to sections 75-101 to 75-158;
- (2) Grain pursuant to the Grain Dealer Act and the Grain Warehouse Act and sections 89-1,104 to 89-1,108;
- (3) Manufactured homes and recreational vehicles pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles;
- (4) Modular housing units pursuant to the Nebraska Uniform Standards for Modular Housing Units Act;
- (5) Motor carrier registration, licensure, and safety pursuant to sections 75-301 to 75-343, 75-369.03, 75-370, and 75-371;
- (6) Pipeline carriers and rights-of-way pursuant to the Major Oil Pipeline Siting Act, the State Natural Gas Regulation Act, and sections 75-501 to 75-503. If the provisions of Chapter 75 are inconsistent with the provisions of the Major Oil Pipeline Siting Act, the provisions of the Major Oil Pipeline Siting Act control;
- (7) Railroad carrier safety pursuant to sections 74-918, 74-919, 74-1323, and 75-401 to 75-430;
- (8) Telecommunications carriers pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, the Telephone Consumer Slamming Prevention Act, and sections 86-574 to 86-579 and sections 86-1307 and 86-1308;
- (9) Transmission lines and rights-of-way pursuant to sections 70-301 and 75-702 to 75-724;
- (10) Water service pursuant to the Water Service Regulation Act; and
- (11) Jurisdictional utilities governed by the State Natural Gas Regulation Act. If the provisions of Chapter 75 are inconsistent with the provisions of the State Natural Gas Regulation Act, the provisions of the State Natural Gas Regulation Act control.

Sec. 2. (1) The Public Service Commission may create and maintain an official Nebraska location fabric broadband access map showing broadband availability and quality of service for all serviceable locations in Nebraska utilizing any federal funding that is made available for such purpose. For purposes of this section, serviceable location means any residence, dwelling, business, or building where an entity provides or may provide broadband services.

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

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

Commission shall comply with the provisions of this section.

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

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

Sec. 3. Section 86-134, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

(i) (a) Notifies its subscribers in the local exchange area in writing of the abandonment, which notice shall be sent at least thirty days prior to the effective date of such abandonment;

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

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

(2) For purposes of this section:

(a) Communications provider has the same meaning as in section 86-125; and
(b) Eligible telecommunications carrier means an eligible telecommunications carrier as designated under 47 U.S.C. 214(e), as such section existed on January 1, 2022.

Sec. 4. Section 86-164, Reissue Revised Statutes of Nebraska, is amended to read:

86-164 (1)(a) (1) Any telecommunications carrier that intends to place a line, wire, or cable across a railroad right-of-way shall request permission for such placement from the railroad carrier. The request shall be in the form of a completed crossing application, including engineering specifications. Upon receipt of such application, the railroad carrier and the telecommunications carrier may enter into a binding wire-crossing agreement. If the railroad carrier and the telecommunications carrier are unable to negotiate a binding wire-crossing agreement within sixty days after receipt of the crossing application by the railroad carrier, either party may submit a petition to the commission for a hearing on the disputed terms and conditions of the purported wire-crossing agreement.

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

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

(b) Upon issuance of an order by the commission under subdivision (a) of this subsection, the railroad carrier and the telecommunications carrier shall

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

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

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

(4) If a railroad carrier or telecommunications carrier believes a special circumstance exists for the placement of a line, wire, or cable across a railroad right-of-way, the railroad carrier or telecommunications carrier may petition the commission for additional requirements or for modification of the standard crossing fee in its initial petition to the commission pursuant to subsection (1) of this section. If the petition is filed with the request for additional requirements or modification, the commission shall determine if a special circumstance exists that necessitates additional requirements for such placement or a modification of the standard crossing fee.

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

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

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

(7) For purposes of this section:

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

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

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

86-1301 Sections 86-1301 to 86-1310 and sections 10 and 11 of this act shall be known and may be cited as the Nebraska Broadband Bridge Act.

Sec. 6. Section 86-1304, Revised Statutes Supplement, 2021, is amended to read:

86-1304 (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 if located outside a high-cost area, or twenty-five percent of the total development costs of the project if located inside a high-cost area, as such areas are determined by the commission. The matching funds requirement in this subdivision shall not apply to any portion of a grant comprised of federal funds. 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 ~~extensions 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 ~~extension 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. 7. Section 86-1306, Revised Statutes Supplement, 2021, is amended to read:

86-1306 (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 website 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 for the applicant's currently offered speed tiers that are comparable to the rates offered by the applicant outside the project area for the same currently offered speed tiers;

(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 if located outside a high-cost area, or more than twenty-five percent of the total development costs of the project if located inside a high-cost area, as such areas are determined by the commission, from sources other than grants under the program, with higher scores for higher amounts of matching funds.

Sec. 8. Section 86-1307, Revised Statutes Supplement, 2021, is amended to read:

86-1307 (1) Within three business days after the application deadline described in subdivision (1)(a) of section 86-1304, the commission shall publish on its website 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, except that the commission may, upon good cause shown, allow a provider up to ninety days to submit 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 require a provider submitting a challenge under subsection (2) of this section to provide speed test results in the challenged

portion of the proposed project area in which the provider submitting the challenge states that broadband service is currently available at minimum speeds of one hundred megabits per second for downloading and twenty megabits per second for uploading. Such speed test results shall be provided in a manner prescribed by the commission.

(5) (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.

(6) (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 commission shall impose a civil penalty for each day such provider fails to provide service after the expiration of such eighteen-month period, and such provider shall not challenge any grant application or make any application for a grant under the Nebraska Broadband Bridge Act for the provider shall not challenge any grant for the following two fiscal years unless the failure to provide such service is due to factors beyond the provider's control.

Sec. 9. Section 86-1308, Revised Statutes Supplement, 2021, is amended to read:

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

(2)(a) As conditions for accepting a grant under the program, the applicant and its successors and affiliates shall agree to:

(i) Offer broadband Internet service in the project area for fifteen years after receipt of grant funding; and

(ii) Commit to maintaining minimum speed capability of one hundred megabits per second for downloading and one hundred megabits per second for uploading in all locations for which the applicant will receive support for the period of time prescribed in subdivision (2)(a)(i) of this section.

(b) Any applicant that declines to accept the conditions described in subdivision (2)(a) of this section shall not be eligible to receive a grant. For any grant recipient, the commission shall have the authority to enforce the performance of such agreed-upon conditions, including the authority to impose civil penalties pursuant to section 75-156.

(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 except as specifically authorized under the Nebraska Broadband Bridge Act or as required by federal law to access and distribute federal funds appropriated for the purpose of broadband expansion 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. 10. (1) Nothing in the Nebraska Broadband Bridge Act shall be construed to authorize the commission to regulate Internet services as prohibited by subdivision (1)(d) of section 86-124.

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

Sec. 11. Any political subdivision of the state that allocates funds received under the federal American Rescue Plan Act of 2021 for eligible broadband infrastructure projects may coordinate with the commission by mutual consent to administer such federal funds in a manner consistent with the Nebraska Broadband Bridge Act.

Sec. 12. Sections 12 to 17 of this act shall be known and may be cited as the Precision Agriculture Infrastructure Grant Act.

Sec. 13. For purposes of the Precision Agriculture Infrastructure Grant Act:

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

(2) Commission means the Public Service Commission;

(3) Program means the Precision Agriculture Infrastructure Grant Program created in section 14 of this act; and

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

Sec. 14. (1) The Precision Agriculture Infrastructure Grant Program is created. The commission shall administer the program. The purposes of the program are to:

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

(b) Provide high-speed Internet service to farm sites as defined in

section 77-1359 in unserved areas of the state as defined in section 86-1302.

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

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

(2) Grants shall only be used to provide:

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

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

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

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

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

Sec. 16. If the grant application is to provide adequate precision agriculture connectivity as described in subdivision (2)(a) of section 15 of this act, the applicant shall agree to:

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

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

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

Sec. 18. Sections 4, 12, 13, 14, 15, 16, 17, and 19 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 19. Original section 86-164, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 20. Original section 86-134, Reissue Revised Statutes of Nebraska, section 75-109.01, Revised Statutes Cumulative Supplement, 2020, and sections 86-1301, 86-1304, 86-1306, 86-1307, and 86-1308, Revised Statutes Supplement, 2021, are repealed.

Sec. 21. Since an emergency exists, this act takes effect when passed and approved according to law.