

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 61

Introduced by Brandt, 32; DeKay, 40; Dorn, 30; Wayne, 13.

Read first time January 05, 2023

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to dark fiber; to amend sections 18-419,
2 70-704, 70-1409, 75-132.01, 86-416, 86-574, and 86-575, Reissue
3 Revised Statutes of Nebraska, and sections 70-625 and 86-577,
4 Revised Statutes Cumulative Supplement, 2022; to authorize the
5 licensing of dark fiber by any agency or political subdivision of
6 the state as prescribed; to eliminate Public Service Commission
7 jurisdiction relating to certain violations and appeals; to
8 harmonize provisions; to repeal the original sections; and to
9 outright repeal section 86-578, Reissue Revised Statutes of
10 Nebraska.

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

1 Section 1. Section 18-419, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 18-419 In addition to the powers authorized by sections 18-401 to
4 18-418 and any ordinances or resolutions relating to the provision of
5 electric service, any city or village owning or operating electric
6 generation or transmission facilities may sell, ~~or lease,~~ or license its
7 dark fiber pursuant to sections 86-574 to ~~86-577~~ 86-578.

8 Sec. 2. Section 70-625, Revised Statutes Cumulative Supplement,
9 2022, is amended to read:

10 70-625 (1) Subject to the limitations of the petition for its
11 creation and all amendments to such petition, a public power district has
12 all the usual powers of a corporation for public purposes and may
13 purchase, hold, sell, and lease personal property and real property
14 reasonably necessary for the conduct of its business. No district may
15 sell household appliances at retail if the retail price of any such
16 appliance exceeds fifty dollars, except that newly developed electrical
17 appliances may be merchandised and sold during the period of time in
18 which any such appliances are being introduced to the public. New models
19 of existing appliances shall not be deemed to be newly developed
20 appliances. An electrical appliance shall be considered to be in such
21 introductory period of time until the particular type of appliance is
22 used by twenty-five percent of all the electrical customers served by
23 such district, but such period shall in no event exceed five years from
24 the date of introduction by the manufacturer of the new appliance to the
25 local market.

26 (2) In addition to its powers authorized by Chapter 70 and specified
27 in its petition for creation, as amended, a public power district may
28 sell, lease, and service satellite television signal descrambling or
29 decoding devices, satellite television programming, and equipment and
30 services associated with such devices and programming, except that this
31 section does not authorize public power districts (a) to provide signal

1 descrambling or decoding devices or satellite programming to any location
2 (i) being furnished such devices or programming on April 24, 1987, or
3 (ii) where community antenna television service is available from any
4 person, firm, or corporation holding a franchise pursuant to sections
5 18-2201 to 18-2206 or a permit pursuant to sections 23-383 to 23-388 on
6 April 24, 1987, or (b) to sell, service, or lease C-band satellite dish
7 systems or repair parts.

8 (3) In addition to the powers authorized by Chapter 70 and specified
9 in its petition for creation as amended, the board of directors of a
10 public power district may apply for and use funds available from the
11 United States Department of Agriculture or other federal agencies for
12 grants or loans to promote economic development and job creation projects
13 in rural areas as permitted under the rules and regulations of the
14 federal agency from which the funds are received. Any loan to be made by
15 a district shall only be made in participation with a bank pursuant to a
16 contract. The district and the participating bank shall determine the
17 terms and conditions of the contract. In addition, in rural areas of the
18 district, the board of directors of such district may provide technical
19 or management assistance to prospective, new, or expanding businesses,
20 including home-based businesses, provide assistance to a local or
21 regional industrial or economic development corporation or foundation
22 located within or contiguous to the district's service area, and provide
23 youth and adult community leadership training.

24 (4) In addition to the powers authorized by Chapter 70 and specified
25 in its petition for creation as amended, a public power district may
26 sell, or lease, or license its dark fiber pursuant to sections 86-574 to
27 86-577 ~~86-578~~.

28 (5) In addition to the powers authorized by Chapter 70 and specified
29 in its petition for creation as amended, a public power district may
30 develop, manufacture, use, purchase, or sell at wholesale advanced
31 biofuels and biofuel byproducts and other fuels and fuel byproducts so

1 long as the development, manufacture, use, purchase, or sale of such
2 biofuels and biofuel byproducts and other fuels and fuel byproducts is
3 done to help offset greenhouse gas emissions.

4 (6) Notwithstanding any law, ordinance, resolution, or regulation of
5 any political subdivision to the contrary, each public power district may
6 receive funds and extend loans pursuant to the Nebraska Investment
7 Finance Authority Act or pursuant to this section. In addition to the
8 powers authorized by Chapter 70 and specified in its petition for
9 creation, as amended, and without the need for further amendment thereto,
10 a public power district may own and operate, contract to operate, or
11 lease energy equipment and provide billing, meter reading, surveys, or
12 evaluations and other administrative services, but not to include natural
13 gas services, of public utility systems within a district's service
14 territory.

15 Sec. 3. Section 70-704, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 70-704 Each corporation shall have power: (1) To sue and be sued,
18 complain, and defend, in its corporate name; (2) to have perpetual
19 succession unless a limited period of duration is stated in its articles
20 of incorporation; (3) to adopt a corporate seal, which may be altered at
21 pleasure, and to use it or a facsimile thereof, as required by law; (4)
22 to generate, manufacture, purchase, acquire, and accumulate electric
23 energy and to transmit, distribute, sell, furnish, and dispose of such
24 electric energy; (5) to acquire, own, hold, use, exercise and, to the
25 extent permitted by law, to sell, mortgage, pledge, hypothecate, and in
26 any manner dispose of franchises, rights, privileges, licenses, rights-
27 of-way, and easements necessary, useful, or appropriate; (6) to purchase,
28 receive, lease as lessee, or in any other manner acquire, own, hold,
29 maintain, sell, exchange, and use any and all real and personal property
30 or any interest therein for the purposes expressed herein; (7) to borrow
31 money and otherwise contract indebtedness, to issue its obligations

1 therefor, and to secure the payment thereof by mortgage, pledge, or deed
2 of trust of all or any of its property, assets, franchises, revenue, or
3 income; (8) to sell and convey, mortgage, pledge, lease as lessor, and
4 otherwise dispose of all or any part of its property and assets; (9) to
5 have the same powers now exercised by law by public light and power
6 districts or private corporations to use any of the streets, highways, or
7 public lands of the state or its political subdivisions in the manner
8 provided by law; (10) to have and exercise the power of eminent domain
9 for the purposes expressed in section 70-703 in the manner set forth in
10 sections 76-704 to 76-724 and to have the powers and be subject to the
11 restrictions of electric light and power corporations and districts as
12 regards the use and occupation of public highways and the manner or
13 method of construction and physical operation of plants, systems, and
14 transmission lines; (11) to accept gifts or grants of money, services, or
15 property, real or personal; (12) to make any and all contracts necessary
16 or convenient for the exercise of the powers granted herein; (13) to fix,
17 regulate, and collect rates, fees, rents, or other charges for electric
18 energy furnished by the corporation; (14) to elect or appoint officers,
19 agents, and employees of the corporation and to define their duties and
20 fix their compensation; (15) to make and alter bylaws not inconsistent
21 with the articles of incorporation or with the laws of this state for the
22 administration and regulation of the affairs of the corporation; (16) to
23 sell, ~~or lease, or license~~ its dark fiber pursuant to sections 86-574 to
24 86-577 ~~86-578~~; and (17) to do and perform, either for itself or its
25 members or for any other corporation organized under the Electric
26 Cooperative Corporation Act or for the members thereof, any and all acts
27 and things and to have and exercise any and all powers as may be
28 necessary, convenient, or appropriate to effectuate the purpose for which
29 the corporation is organized. Notwithstanding any law, ordinance,
30 resolution, or regulation of any political subdivision to the contrary,
31 each corporation may receive funds and extend loans pursuant to the

1 Nebraska Investment Finance Authority Act.

2 Sec. 4. Section 70-1409, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 70-1409 Each joint authority shall have all the rights and powers
5 necessary or convenient to carry out and effectuate the purposes and
6 provisions of the Joint Public Power Authority Act including, but not
7 limited to, the right and power:

8 (1) To adopt bylaws for the regulation of the affairs and the
9 conduct of its business and to prescribe rules, regulations, and policies
10 in connection with the performance of its functions and duties;

11 (2) To adopt an official seal and alter the same at pleasure;

12 (3) To maintain an office at such place or places as it may
13 determine;

14 (4) To sue and be sued in its own name and to plead and be
15 impleaded;

16 (5) To receive, administer, and comply with the conditions and
17 requirements respecting any gift, grant, or donation of any property or
18 money;

19 (6) To acquire by purchase, lease, gift, or otherwise, or to obtain
20 options for the acquisition of, any property, real or personal, improved
21 or unimproved, including an interest in land less than an interest in
22 fee;

23 (7) To sell, lease, exchange, transfer, or otherwise dispose of, or
24 to grant options for any such purposes with respect to, any real or
25 personal property or interest in such property;

26 (8) To pledge or assign any money, rents, charges, or other revenue
27 and any proceeds derived by the joint authority from the sales of
28 property, insurance, or condemnation awards;

29 (9) To issue bonds of the joint authority for the purpose of
30 providing funds for any of its corporate purposes;

31 (10) To authorize the construction, operation, or maintenance of any

1 project or projects by any person, firm, or corporation, including
2 political subdivisions and agencies of any state or of the United States;

3 (11) To acquire by negotiated purchase or lease an existing project,
4 a project under construction, or other property, either individually or
5 jointly, with one or more public power districts in this state or with
6 any political subdivisions or agencies of this state or any other state
7 or with other joint authorities created pursuant to the Joint Public
8 Power Authority Act;

9 (12) To dispose of by negotiated sale or lease an existing project,
10 a project under construction, or other property, either individually or
11 jointly, with one or more public power districts in this state, with any
12 political subdivisions or agencies of this state or any other state or,
13 with other joint authorities created pursuant to the Joint Public Power
14 Authority Act, except that no such sale or lease of any project located
15 in this state shall be made to any private person, firm, or corporation
16 engaged in the business of generating, transmitting, or distributing
17 electricity for profit;

18 (13) To fix, charge, and collect rents, rates, fees, and charges for
19 electric power or energy, hydrogen, or ethanol and other services,
20 facilities, and commodities sold, furnished, or supplied through any
21 project;

22 (14) To generate, produce, transmit, deliver, exchange, purchase, or
23 sell for resale only electric power or energy, to produce, store,
24 deliver, or distribute hydrogen for use in fuel processes, or to produce,
25 deliver, or distribute ethanol and to enter into contracts for any or all
26 such purposes, subject to sections 70-1410 and 70-1413;

27 (15) To negotiate and enter into contracts for the purchase,
28 exchange, interchange, wheeling, pooling, or transmission of electric
29 power and energy with any public power district, any other joint
30 authority, any political subdivision or agency of this state or any other
31 state, any electric cooperative, or any municipal agency which owns

1 electric generation, transmission, or distribution facilities in this
2 state or any other state;

3 (16) To negotiate and enter into contracts for the sale or use of
4 electric power and energy, hydrogen, or ethanol with any joint authority,
5 electric cooperative, any political subdivision or agency or any public
6 or private electric utility of this state or any other state, any joint
7 agency, electric cooperative, municipality, public or private electric
8 utility, or any state or federal agency or political subdivision, subject
9 to sections 70-1410 and 70-1413;

10 (17) To make and execute contracts and other instruments necessary
11 or convenient in the exercise of the powers and functions of the joint
12 authority under the Joint Public Power Authority Act, including contracts
13 with persons, firms, corporations, and others;

14 (18) To apply to the appropriate agencies of the state, the United
15 States, or any other state and to any other proper agency for such
16 permits, licenses, certificates, or approvals as may be necessary to
17 construct, maintain, and operate projects in accordance with such
18 licenses, permits, certificates, or approvals, and to obtain, hold, and
19 use the same rights granted in any licenses, permits, certificates, or
20 approvals as any other person or operating unit would have under such
21 documents;

22 (19) To employ engineers, architects, attorneys, appraisers,
23 financial advisors, and such other consultants and employees as may be
24 required in the judgment of the joint authority and to fix and pay their
25 compensation from funds available to the joint authority. The joint
26 authority may employ technical experts and such other officers, agents,
27 and employees as it may require and shall assess their qualifications,
28 duties, compensation, and term of office. The board may delegate to one
29 or more of the joint authority's employees or agents such powers and
30 duties as the board may deem proper;

31 (20) To make loans or advances for long-term, supplemental, short-

1 term, and interim financing for both capital projects and operational
2 purposes to those member districts on such terms and conditions as the
3 board of directors of the joint authority may deem necessary and to
4 secure such loans or advances by assignment of revenue, receivables, or
5 other sums of the member district and such other security as the board of
6 directors of the joint authority may determine; and

7 (21) To sell, ~~or lease,~~ or license its dark fiber pursuant to
8 sections 86-574 to 86-577 ~~86-578~~.

9 Any joint authority shall have the same power of eminent domain as
10 the public power districts have under section 70-670.

11 Sec. 5. Section 75-132.01, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 75-132.01 (1) Notwithstanding the provisions of section 75-131, the
14 commission shall have exclusive original jurisdiction over any action
15 concerning a violation of any provision of ~~(a)~~ the Automatic Dialing-
16 Announcing Devices Act, the Emergency Telephone Communications Systems
17 Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call
18 Regulation Act, the Nebraska Telecommunications Regulation Act, the
19 Nebraska Telecommunications Universal Service Fund Act, the
20 Telecommunications Relay System Act, or the Telephone Consumer Slamming
21 Prevention Act by any person providing telecommunications service for a
22 fee in Nebraska intrastate commerce pursuant to such acts ~~or (b)~~ sections
23 ~~86-574 to 86-578~~ by an agency or political subdivision of the state.

24 (2) If the commission enters an order declining jurisdiction under
25 subsection (1) of this section, any interested person may petition the
26 district court of the county in which such alleged violation has
27 occurred. If it appears to the court, after a hearing, that a provision
28 of such acts or sections has been violated, the court may issue an
29 injunction or other proper process to restrain the telecommunications
30 company and its directors, officers, employees, or agents or the agency
31 or political subdivision of the state from continuing such violation and

1 may order additional relief. Any party to the case shall have the right
2 to appeal the decision of the district court to the Court of Appeals
3 under the rules provided by law for appeals in civil cases.

4 Sec. 6. Section 86-416, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 86-416 (1) Notwithstanding any other provision of Nebraska law, any
7 city, county, village, public power district, or fire protection district
8 may enter into a service agreement with any joint entity created pursuant
9 to the Interlocal Cooperation Act or any joint public agency created
10 pursuant to the Joint Public Agency Act which owns or operates or
11 proposes to own or operate any public safety communication project for
12 obtaining communication services, including the use or right to use real
13 or personal property included in any such project. This subsection shall
14 not be construed to authorize any service agreements that conflict with
15 the provisions for the sale, ~~or lease,~~ or license of dark fiber pursuant
16 to sections 86-574 to 86-577 ~~86-578~~.

17 (2) Any such service agreement may provide for the following:

18 (a) The payment of fixed or variable periodic amounts for service or
19 the right to obtain service, including the use or right to use real or
20 personal property;

21 (b) That such service agreement may extend for a term of years as
22 determined by the governing body of the city, county, village, public
23 power district, or fire protection district and be binding upon such
24 city, county, village, public power district, or fire protection district
25 over such term of years;

26 (c) That fixed or variable periodic amounts payable may be
27 determined based upon any of the following factors:

28 (i) Operating, maintenance, and management expenses, including
29 renewals and replacements for facilities and equipment;

30 (ii) Amounts payable with respect to debt service on bonds or other
31 obligations, including margins of coverage if deemed appropriate; and

1 (iii) Amounts necessary to build or maintain operating reserves,
2 capital reserves, and debt service reserves;

3 (d) That any such service agreement may require payment to be made
4 in the agreed fixed or variable periodic amounts irrespective of whether
5 such public safety communication project or regional communication system
6 is completed or operational and notwithstanding any suspension,
7 interruption, interference, reduction, or curtailment of the services of
8 such project or system; and

9 (e) Such other provisions as the parties to the service agreement
10 deem appropriate in connection with providing and obtaining public safety
11 communication service, including the acquisition of real and personal
12 property, the construction of facilities, and the operation, maintenance,
13 and management of services, property, and facilities.

14 (3) In order to provide for the payments due under such service
15 agreement:

16 (a) Any city, county, village, or fire protection district may
17 provide that payments may be made from a special tax levied for such
18 purpose upon all taxable property within such city, county, village, or
19 fire protection district, if determined appropriate by the governing body
20 by a vote of three-fourths of the members of the governing body, if there
21 are four or more members of such body, or by a vote of two-thirds of the
22 members of the governing body, if there are less than four members of
23 such body. The special tax shall for all purposes of Nebraska law,
24 including limitations upon tax levies, budgets, revenue, and expenditures
25 of public funds, have the same status as a tax levied for the purpose of
26 paying the bonded indebtedness of such city, county, village, or fire
27 protection district; and

28 (b) Any public power district may pledge the revenue of the
29 district, subject to any existing pledges made for bonded indebtedness or
30 borrowings from the United States or any other party and existing
31 conditions relating to issuance of additional bonds or other

1 indebtedness, and, if deemed appropriate by the governing body, the
2 service agreement may have the status of revenue bond indebtedness issued
3 pursuant to sections 70-631 to 70-635.

4 Sec. 7. Section 86-574, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 86-574 For purposes of sections 86-574 to ~~86-577~~ 86-578, dark fiber
7 means any unused fiber optic cable through which no light is transmitted
8 or any installed fiber optic cable not carrying a signal.

9 Sec. 8. Section 86-575, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 86-575 (1) Any agency or political subdivision of the state may:

12 (a) Own dark fiber;

13 (b) Sell dark fiber pursuant to section 86-576; and

14 (c) Lease or license dark fiber pursuant to section 86-577.

15 (2) Any agency or political subdivision which sells, ~~or leases, or~~
16 licenses its dark fiber pursuant to sections 86-574 to ~~86-577~~ 86-578
17 shall not be deemed to be providing telecommunications services as
18 defined in section 86-593.

19 Sec. 9. Section 86-577, Revised Statutes Cumulative Supplement,
20 2022, is amended to read:

21 ~~86-577 (1) For purposes of this section:~~

22 ~~(a) Served location means a location receiving, or at the time the~~
23 ~~lease is filed with the Public Service Commission able to receive,~~
24 ~~communications service at a minimum download speed of twenty-five~~
25 ~~megabits per second and a minimum upload speed of three megabits per~~
26 ~~second or higher speeds, as determined by the Public Service Commission;~~
27 ~~and~~

28 ~~(b) Unserved location means a location not receiving, and at the~~
29 ~~time the lease is filed with the Public Service Commission not able to~~
30 ~~receive, communications service at a minimum download speed of twenty-~~
31 ~~five megabits per second and a minimum upload speed of three megabits per~~

1 ~~second or higher speeds, as determined by the Public Service Commission.~~

2 ~~(2) Any agency or political subdivision of the state may lease or~~
3 ~~license its dark fiber and related infrastructure under such terms as~~
4 ~~determined by such agency or political subdivision pursuant to its duly~~
5 ~~adopted and promulgated rules and regulations, issued orders, written~~
6 ~~policies, enacted ordinances, or adopted resolutions. if:~~

7 ~~(a) The lessee is a certificated telecommunications common carrier~~
8 ~~or a permitted telecommunications contract carrier pursuant to section~~
9 ~~86-128 or an Internet service provider;~~

10 ~~(b) The lease terms are fair, reasonable, and nondiscriminatory; and~~

11 ~~(c) The lease complies with this section.~~

12 ~~(3)(a) Before a lease of dark fiber under this section becomes~~
13 ~~effective, it shall be filed with the commission which shall~~
14 ~~expeditiously cause notice of the lease, including lease rates, to be~~
15 ~~published.~~

16 ~~(b)(i) The lease shall become effective fourteen business days after~~
17 ~~the date of the published notice unless a protest is filed with the~~
18 ~~commission, in which event the commission shall consider the lease as a~~
19 ~~contested matter and consider the contested lease according to the~~
20 ~~commission's rules of procedure.~~

21 ~~(ii) If the allocation of served location and unserved location in~~
22 ~~the lease is contested, the commission shall determine such allocation~~
23 ~~under the lease as a contested matter and consider the contested lease~~
24 ~~according to the commission's rules of procedure.~~

25 ~~(4) For the lease of dark fiber:~~

26 ~~(a) The commission shall establish a safe harbor range of market~~
27 ~~rates for all dark fiber leases using a competitive price determination~~
28 ~~comparison. When conducting a competitive price determination comparison,~~
29 ~~the commission, in its discretion, shall use rate schedules,~~
30 ~~interconnection agreements, or other documents within its regulatory~~
31 ~~oversight and shall gather other market rate information as deemed~~

1 ~~necessary. If a lease utilizes rates within the safe harbor range, such~~
2 ~~rates shall be deemed approved. Any other term of the lease may be~~
3 ~~contested pursuant to subdivision (3)(b) of this section; and~~

4 ~~(b) Fifty percent of the profit earned by the agency or political~~
5 ~~subdivision under a lease of dark fiber leased to serve a served location~~
6 ~~shall be remitted to the State Treasurer for credit to the Nebraska~~
7 ~~Telecommunications Universal Service Fund. For purposes of this~~
8 ~~subdivision, profit earned by the agency or political subdivision means~~
9 ~~the lease price less the cost of infrastructure deployment. This~~
10 ~~subdivision does not apply to a lease or portion of a lease of dark fiber~~
11 ~~leased to exclusively serve unserved locations.~~

12 ~~(5) The lessee shall make every reasonable effort to activate the~~
13 ~~maximum amount of the leased fiber as is possible, within one year after~~
14 ~~entering into the lease, unless good cause is shown.~~

15 Sec. 10. Original sections 18-419, 70-704, 70-1409, 75-132.01,
16 86-416, 86-574, and 86-575, Reissue Revised Statutes of Nebraska, and
17 sections 70-625 and 86-577, Revised Statutes Cumulative Supplement, 2022,
18 are repealed.

19 Sec. 11. The following section is outright repealed: Section
20 86-578, Reissue Revised Statutes of Nebraska.