

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 733

Introduced by Bostar, 29.

Read first time January 18, 2023

Committee: Transportation and Telecommunications

- 1 A BILL FOR AN ACT relating to telecommunications; to adopt the Broadband
- 2 Pole Placement and Undergrounding Fund Act; to state intent for
- 3 appropriations; and to declare an emergency.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 7 of this act shall be known and may cited
2 as the Broadband Pole Placement and Undergrounding Fund Act.

3 Sec. 2. For purposes of the Broadband Pole Placement and
4 Undergrounding Fund Act:

5 (1) Affiliate means any person or entity that is under common
6 ownership or control, or a participant in a joint venture, partnership,
7 consortium, or other business arrangement with another person or entity
8 relating to the provision of broadband service;

9 (2) Broadband facilities means network equipment, cables,
10 electronics, and associated power equipment used in whole or in part to
11 provide broadband facilities;

12 (3) Broadband grant area means an area in which a broadband provider
13 is subject to a binding commitment to deploy broadband facilities and
14 offer qualifying broadband service;

15 (4) Commission means the Public Service Commission;

16 (5) Fund means the Broadband Pole Placement and Undergrounding Fund
17 created under section 3 of this act;

18 (6) Last-mile broadband service means broadband service provided to
19 retail customers, including homes and businesses;

20 (7) Last-mile broadband facilities means broadband facilities used
21 in whole or in part to provide last-mile broadband service, and which
22 either connect to an end-user location or establish connections between a
23 central office, distribution hubs, and access nodes used to connect end-
24 user locations;

25 (8) Mid-span pole placement means the installation of a new pole
26 between two existing utility poles to comply with clearance, load-
27 bearing, or other safety and engineering requirements in connection with
28 the attachment of broadband facilities to such poles;

29 (9) Mid-span pole placement costs means the actual and reasonable
30 costs in performing mid-span pole placement, including to purchase and
31 install a mid-span pole and to transfer or attach any existing facilities

1 to such pole;

2 (10) Pole means any pole used, in whole or in part, for any wire
3 communications or electric distribution regardless of who owns or
4 operates the pole;

5 (11) Pole owner means any person or entity that owns or controls a
6 pole;

7 (12) Pole replacement means the removal of an existing utility pole
8 and replacement with a new utility pole in order to accommodate the
9 attachment of broadband facilities to such utility pole;

10 (13) Pole replacement costs means the actual and reasonable costs in
11 performing pole replacement, including to remove and dispose of an
12 existing utility pole, to purchase and install a replacement utility
13 pole, and to transfer any existing facilities to a new pole;

14 (14) Program means the Broadband Pole Placement and Undergrounding
15 Program established under section 4 of this act;

16 (15) Qualifying broadband service means a retail wireline broadband
17 service capable of delivering Internet access speeds of at least one
18 hundred megabits per second for both downloading and uploading, and with
19 latency at a level sufficient to permit real-time, interactive
20 applications;

21 (16) Undergrounding means the placement of broadband facilities
22 underground, including the placement of new ducts or conduits as well as
23 the installation of broadband facilities in such ducts or conduits;

24 (17) Undergrounding costs means the actual and reasonable costs of
25 undergrounding including (a) materials costs, including for conduit, (b)
26 installation costs, including, but not limited to, the cost of cable
27 plowing, digging, and sealing a trench, performing directional boring,
28 and installing conduit, inclusive of materials and labor, (c) engineering
29 costs reasonably necessary to design and plan underground routes, (d)
30 permitting and surveying costs, and (e) any additional costs necessary
31 for compliance with federal, state, and local environmental laws and

1 regulations in connection with undergrounding. Undergrounding costs do
2 not include the costs of any broadband infrastructure placed underground;
3 and

4 (18) Unserved area means an area without access to broadband
5 Internet service providing speeds of at least twenty-five megabits per-
6 second for downloading and three megabits per-second for uploading,
7 according to the most recent version of the Federal Communications
8 Commission National Broadband Map.

9 Sec. 3. (1) The Broadband Pole Placement and Undergrounding Fund is
10 created. The fund shall be used to advance the provision of qualifying
11 broadband service to residences and businesses in unserved areas of the
12 state by reimbursing certain costs of pole replacements, mid-span pole
13 placements, and undergrounding. The fund shall consist of money
14 appropriated or transferred by the Legislature, including from available
15 federal funds, and grants, gifts, and donations made to the fund.

16 (2) Money in the fund shall be used by the commission to provide
17 reimbursements to qualified applicants under the broadband pole and
18 undergrounding program and for the administration of such program. To the
19 extent the fund receives and deploys funds received from the federal
20 government, such funds must be used in a manner consistent with federal
21 law and any applicable federal conditions.

22 (3) Any money in the fund available for investment shall be invested
23 by the state investment officer pursuant to the Nebraska Capital
24 Expansion Act and the Nebraska State Funds Investment Act. Any interest
25 earned on money credited to the fund shall be retained in the fund.

26 (4) The commission shall engage in efforts to obtain approval from
27 the National Telecommunications and Information Administration for the
28 fund as part of the state's application for grant funding from the
29 federal government under the federal Broadband Equity Access and
30 Deployment Program pursuant to the federal Infrastructure Investment and
31 Jobs Act, Public Law 117-58. Upon approval of the fund by the National

1 Telecommunications and Information Administration and as soon as
2 practicable following receipt by the state of money from the federal
3 Broadband Equity Access and Deployment Program, the Legislature shall
4 make a one-time transfer of money received by the state from the federal
5 government for credit by the State Treasurer to the Broadband Pole
6 Placement and Undergrounding Fund.

7 Sec. 4. (1) The Broadband Pole Placement and Undergrounding Program
8 is established. The commission shall administer the program, act as
9 fiscal agent for the program, and be responsible for receiving and
10 reviewing applications and awarding reimbursements under the program.

11 (2) The commission shall adopt and promulgate any rules and
12 regulations necessary for the administration of the program. Such rules
13 and regulations shall include requirements necessary to comply with the
14 Broadband Pole Placement and Undergrounding Act and with any conditions
15 on federal funds used in connection with the program. To the extent that
16 any rules or regulations under this section impose requirements on
17 persons or entities that are not applicants for reimbursements or
18 affiliates thereof, they may do so only to the extent required by law.

19 (3) The commission shall award reimbursements under the program
20 using funds made available for such purpose, including from the fund.
21 Within sixty days of receipt of a completed application establishing the
22 eligibility of mid-span pole placement costs, pole replacement costs, or
23 undergrounding costs for reimbursement, and to the extent that money is
24 available, the commission shall award reimbursements under the broadband
25 pole replacement program for up to:

26 (a) For mid-span pole placement costs and pole replacement costs,
27 the lesser of either five thousand dollars or fifty percent of the total
28 amount paid by the applicant for each mid-span pole placement or pole
29 replacement;

30 (b) Up to fifty percent of the applicant's undergrounding costs,
31 provided that the reimbursement may not exceed the lesser of XXXX dollars

1 for each route mile or XXXX dollars per residential household or small
2 business passed; and

3 (c) One hundred percent of the applicant's documented and reasonable
4 administrative expenses in preparing and submitting the reimbursement
5 application of an amount not to exceed five percent of the award.

6 (4) To the extent required by federal law, the commission may
7 announce a tentative award within the timeframe provided under subsection
8 (3) of this section and disburse the funds at such later date as federal
9 law permits. The commission shall award and fund pole replacement
10 reimbursements until money available for such purpose is no longer
11 available. Any application for reimbursement pending at the exhaustion of
12 the money available shall be deemed denied but may be refiled if
13 sufficient money is later made available.

14 Sec. 5. (1) Applications for reimbursement for mid-span pole
15 placement costs, pole replacement costs, and undergrounding costs under
16 the program are eligible for reimbursement only if the applicant
17 satisfies the requirements of this section.

18 (2) An applicant for reimbursement under the program shall:

19 (a) Provide qualifying broadband service to households and small
20 businesses in an unserved area;

21 (b) Provide such service using the last-mile broadband facilities in
22 such unserved area that the applicant's mid-span pole placement costs,
23 pole replacement costs, or undergrounding costs were incurred to install;

24 (c) Offer broadband service affordable to households in the areas
25 for which reimbursement is requested;

26 (d) Certify compliance with the requirements of the Broadband Pole
27 Placement and Undergrounding Fund Act;

28 (e) Agree to comply with rules issued by the commission for the
29 program as well as any additional requirements required by federal law
30 identified by the commission; and

31 (f) Agree to refund with interest at the applicable federal funds

1 rate, as specified in U.C.C. section 4A-506, any reimbursements or
2 portions of reimbursements received from the program if the commission
3 finds upon substantial evidence after notice and opportunity to respond
4 that any of the requirements agreed to under this section were materially
5 violated by the recipient with respect to such reimbursements or such
6 portions of reimbursements.

7 (3) An applicant for reimbursement under the program shall not:

8 (a) Obtain reimbursement under the program for costs for which the
9 applicant is entitled to reimbursement from a third party;

10 (b) Obtain reimbursement under the program for costs in a broadband
11 grant area in which the applicant is not the recipient of the existing
12 broadband grant;

13 (c) Obtain reimbursement under the program for costs in a broadband
14 grant area for which the applicant is entitled to reimbursement from
15 another state or federal broadband grant program; provided that such an
16 applicant may obtain reimbursement from the fund for otherwise eligible
17 mid-span pole placement costs, pole replacement costs, and undergrounding
18 costs where its support from the other broadband grant program in the
19 broadband grant area is insufficient to cover its total broadband
20 deployment costs inclusive of such costs, and such costs are not
21 specifically reimbursed by such other program on a line-item basis; or

22 (d) For mid-span pole placement costs and pole replacement costs, be
23 the pole owner or an affiliate of the pole owner with respect to the
24 poles installed or replaced.

25 (4) An applicant that is already subject to a legally enforceable
26 commitment to deploy qualifying broadband service to the area in which it
27 is applying for reimbursement must commit to either:

28 (a) Completing broadband deployment in the area no later than two
29 years earlier than the legally enforceable commitment would require;

30 (b) Offering broadband service at speeds exceeding the levels to
31 which the applicant is committed under its existing requirement; or

1 (c) Satisfying such other additional requirements in connection with
2 its deployment of broadband facilities that the commission determines to
3 be in the public interest.

4 Sec. 6. (1) Not later than sixty days after funds are available for
5 the program, the commission shall prescribe and provide an application
6 form for reimbursements that requires:

7 (a) Information sufficient to establish the applicant's satisfaction
8 of the eligibility requirements described in section 5 of this act;

9 (b) Information sufficient to establish the number, cost, and
10 eligibility of mid-span pole placements and pole replacements that
11 qualify for reimbursement, or if reimbursement for undergrounding is
12 sought, information sufficient to establish the cost, eligibility, and
13 route distance of the undergrounding costs for reimbursement;

14 (c) Documentation sufficient to establish that the claimed eligible
15 mid-span pole placements, pole replacements, or undergrounding have been
16 completed;

17 (d) If the applicant seeks reimbursement for undergrounding,
18 documentation sufficient to establish that the undergrounding costs are
19 reasonable, including an explanation for why undergrounding the broadband
20 facilities in question, as well as the specific route chosen, were
21 preferable to alternatives or required by law, regulation, or local
22 ordinance;

23 (e) The amount of program reimbursement requested in the application
24 and any grant funding or accounting information required to justify the
25 amount of the request;

26 (f) A notarized statement from an officer or agent of the applicant
27 that the contents of the application are true and accurate and that the
28 applicant accepts the requirements of this section as a condition of
29 receiving an award of program reimbursement, including, but not limited
30 to, such further information necessary to ensure that the program is
31 consistent with any applicable conditions on the use of federal funds;

1 and

2 (g) Any other information the commission deems necessary for final
3 review, award, and payment of program reimbursements.

4 (2) Any broadband provider who pays or incurs eligible pole
5 replacement costs or eligible undergrounding costs may submit an
6 application for reimbursement of such costs in accordance with the
7 requirements of this section.

8 (3) Any pole owner performing a pole replacement to accommodate
9 broadband facilities owned or operated by an entity providing qualifying
10 broadband service, if such pole replacement would result in such
11 broadband provider being responsible in whole or in part for any eligible
12 pole replacement costs, shall coordinate in good faith with such
13 broadband provider to provide any information and documentation necessary
14 to enable such broadband provider to submit an application for
15 reimbursement in accordance with the requirements of this section.

16 (4) Not later than sixty days after the commission receives funds
17 under the Broadband Pole Placement and Undergrounding Fund Act for the
18 purpose of administering the program, and to ensure the transparency of
19 the broadband pole placement and undergrounding program, the commission
20 shall maintain and publish on its website:

21 (a) Statistics on the number of program applications received,
22 processed, approved, and rejected;

23 (b) Statistics on the size, number, and status of reimbursements
24 awarded by the program, including the broadband providers receiving
25 reimbursements; and

26 (c) The amount of money remaining to fund program reimbursements.

27 (5) Not later than one year after funds are received for the purpose
28 of providing reimbursements to qualified applicants, the Auditor of
29 Public Accounts shall audit the program, including the Broadband Pole
30 Placement and Undergrounding Fund and its administration to determine
31 compliance with the requirements of this section.

1 (6) Not later than one year after the exhaustion of the money
2 available for reimbursements under the broadband pole replacement
3 program, the commission shall issue a report on the deployment of
4 broadband infrastructure and technology facilitated by pole
5 reimbursements awarded by the commission under the program. The report
6 shall be submitted electronically to the Legislature.

7 Sec. 7. Nothing in the Broadband Pole Placement and Undergrounding
8 Fund Act alters the rights or obligations of any party under section
9 86-5,107 or under a broadband facility agreement entered into pursuant to
10 such section.

11 Sec. 8. It is the intent of the Legislature to appropriate fifteen
12 million dollars from federal funds for fiscal year 2022-23 to the Public
13 Service Commission to be used for reimbursements made under the Broadband
14 Pole Placement and Undergrounding Fund Act. The federal funds
15 appropriated in this section are from the funds allocated to the State of
16 Nebraska from the federal Coronavirus State Fiscal Recovery Fund pursuant
17 to the federal American Rescue Plan Act of 2021, Public Law 117-2,
18 Subtitle M, Sec. 9901.

19 Sec. 9. Since an emergency exists, this act takes effect when
20 passed and approved according to law.