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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. **3605**

02/21/2022 Authored by Rasmusson, Ecklund, Lislegard, Pelowski, Hamilton and others

The bill was read for the first time and referred to the Committee on Industrial Education and Economic Development Finance and Policy

03/30/2022 Adoption of Report: Amended and re-referred to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act

1.2 relating to broadband; establishing a program of financial assistance to extend

1.3 broadband service to unserved areas; establishing a process to allow existing

1.4 easements to be used for broadband service; amending Minnesota Statutes 2020,

1.5 sections 116J.395, subdivision 8; 116J.396, subdivision 2; proposing coding for

1.6 new law in Minnesota Statutes, chapter 116J.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2020, section 116J.395, subdivision 8, is amended to read:

1.9 Subd. 8. **Application evaluation report.** By June 30 of each year, the Office of

1.10 Broadband Development shall publish on the Department of Employment and Economic

1.11 Development's website and provide to the chairs and ranking minority members of the

1.12 senate and house of representatives committees with primary jurisdiction over broadband:

1.13 (1) a list of all applications for grants under this section received during the previous

1.14 year and, for each application:

1.15 ~~(1)~~ (i) the results of any quantitative weighting scheme or scoring system the

1.16 commissioner used to award grants or rank the applications;

1.17 ~~(2)~~ (ii) the grant amount requested; and

1.18 ~~(3)~~ (iii) the grant amount awarded, if any; and

1.19 (2) with respect to the line extension program under section 116J.3951:

1.20 (i) the number of addresses submitted to the portal;

1.21 (ii) the number of addresses served or to be served under the line extension program;

- 2.1 (iii) the average cost to the state per address served under the line extension program;
2.2 and
2.3 (iv) the total amount expended under the line extension program.

2.4 **Sec. 2. [116J.3951] BROADBAND LINE EXTENSION PROGRAM.**

2.5 Subdivision 1. **Program established.** A broadband line extension grant program is
2.6 established in the Department of Employment and Economic Development. The purpose
2.7 of the broadband line extension grant program is to award grants to eligible applicants in
2.8 order to extend existing broadband infrastructure to unserved locations.

2.9 Subd. 2. **Portal.** No later than November 1, 2022, the department must develop and
2.10 implement a portal on the department's website that allows a person to report (1) that
2.11 broadband service is unavailable at the physical address of the person's residence or business,
2.12 and (2) any additional information the department deems necessary to ensure the broadband
2.13 line extension grant program functions effectively. The department must develop a form
2.14 that allows the information identified in this subdivision to be submitted on paper.

2.15 Subd. 3. **Data sharing.** (a) Beginning no later than six months after the date the portal
2.16 is implemented and every six months thereafter, the department must send via e-mail to
2.17 each broadband service provider serving Minnesota customers (1) a list of addresses
2.18 submitted to the portal under subdivision 2 during the previous six months, and (2) any
2.19 additional information the department deems necessary to ensure the broadband line extension
2.20 grant program functions effectively.

2.21 (b) No later than ten days after the date the list in paragraph (a) is provided, a broadband
2.22 service provider may notify the department of any posted address at which the broadband
2.23 service provider's broadband service is available. The department must provide persons
2.24 residing or doing business at those addresses with contact information for:

2.25 (1) a broadband service provider whose broadband service is available at that address;
2.26 and

2.27 (2) programs administered by government agencies, nonprofit organizations, or the
2.28 applicable broadband service provider that reduce the cost of broadband service and for
2.29 which the persons may be eligible.

2.30 Subd. 4. **Reverse auction process.** (a) No later than ten days after the date the notice
2.31 requirement in subdivision 3, paragraph (b), expires, the department must notify each
2.32 broadband service provider that the broadband service provider may participate in the reverse
2.33 auction process established under this subdivision. Within 60 days of the date the notification

3.1 is received, a broadband service provider may submit a bid to the department to extend the
3.2 broadband service provider's existing broadband infrastructure to one or more addresses
3.3 where broadband service is currently unavailable.

3.4 (b) A bid submitted under this subdivision must include:

3.5 (1) a proposal to extend broadband infrastructure to one or more of the addresses on the
3.6 list sent by the department to the broadband service provider under subdivision 3, paragraph
3.7 (a), at which broadband service is unavailable;

3.8 (2) the amount of the broadband infrastructure extension's total cost that the broadband
3.9 service provider proposes to pay;

3.10 (3) the amount of the broadband infrastructure extension's total cost that the broadband
3.11 service provider proposes that the department is responsible for paying; and

3.12 (4) any additional information required by the department.

3.13 (c) Financial assistance that the department provides under this section must be in the
3.14 form of a grant issued to the broadband service provider. A grant issued under this section
3.15 must not exceed \$25,000 per line extension.

3.16 (d) Within 60 days of the date the bidding period closes, the department must review
3.17 the bids submitted and select the broadband service provider bids that request the least
3.18 amount of financial support from the department, provided that the department determines
3.19 that the selected bids represent a cost-effective expenditure of state resources.

3.20 Subd. 5. **Line extension agreement; requirement.** The department must enter into a
3.21 line extension agreement with each winning bidder identified under subdivision 4, except
3.22 that the department may not enter into a line extension agreement to serve any customer
3.23 who is to be served under a grant previously awarded by the department under section
3.24 116J.395.

3.25 Subd. 6. **Line extension agreement.** A line extension agreement under subdivision 5
3.26 must contain the following terms:

3.27 (1) the broadband service provider agrees to extend broadband infrastructure to support
3.28 broadband service scalable to speeds of at least 100 megabits per second download and 100
3.29 megabits per second upload to each address included in the broadband service provider's
3.30 winning bid;

3.31 (2) the department agrees to pay the portion of the line extension cost proposed by the
3.32 broadband service provider in subdivision 4 in a grant issued to the broadband service

4.1 provider upon the completion of the broadband infrastructure extension to each address in
4.2 the broadband service provider's winning bid; and

4.3 (3) the winning bidder has an exclusive right to apply the grant to the cost of the
4.4 broadband infrastructure extension for a period of one year after the date the agreement is
4.5 executed.

4.6 Subd. 7. **Expenditure limit.** The department may expend no more than \$5,000,000 per
4.7 fiscal year on the line extension program under this section in fiscal years 2023, 2024, and
4.8 2025.

4.9 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.10 Sec. 3. Minnesota Statutes 2020, section 116J.396, subdivision 2, is amended to read:

4.11 Subd. 2. **Expenditures.** Money in the account may be used only:

4.12 (1) for grant awards made under ~~section~~ sections 116J.395 and 116J.3951, including
4.13 costs incurred by the Department of Employment and Economic Development to administer
4.14 ~~that section~~ those sections;

4.15 (2) to supplement revenues raised by bonds sold by local units of government for
4.16 broadband infrastructure development; or

4.17 (3) to contract for the collection of broadband deployment data from providers and the
4.18 creation of maps showing the availability of broadband service.

4.19 Sec. 4. **[116J.399] BROADBAND EASEMENTS.**

4.20 Subdivision 1. **Definitions.** For the purposes of this section, the following terms have
4.21 the meanings given:

4.22 (1) "broadband infrastructure" has the meaning given in section 116J.394, paragraph
4.23 (c);

4.24 (2) "broadband service" has the meaning given in section 116J.394, paragraph (b); and

4.25 (3) "provider" means a broadband service provider, but does not include an electric
4.26 cooperative association organized under chapter 308A that provides broadband service.

4.27 Subd. 2. **Use of existing easements for broadband services.** (a) A provider or provider's
4.28 affiliate, or another entity that has entered into an agreement with a provider, may use the
4.29 provider, affiliate, or entity's existing or subsequently acquired easement to install broadband

5.1 infrastructure and provide broadband service, which may include an agreement to lease
5.2 fiber capacity.

5.3 (b) Before exercising rights granted under this subdivision, a provider must provide
5.4 notice to the owner of the property on which the easement is located, as described in
5.5 subdivision 3.

5.6 (c) Use of an easement to install broadband infrastructure and provide broadband service
5.7 vests and runs with the land beginning six months after the first notice is provided under
5.8 subdivision 3, unless a court action challenging the use of the easement has been filed before
5.9 that time by the property owner, as provided under subdivision 4. The provider must also
5.10 file copies of the notices with the county recorder.

5.11 Subd. 3. **Notice to property owner.** (a) A provider must send two written notices to
5.12 impacted property owners declaring that the provider intends to use the easements to install
5.13 broadband infrastructure and provide broadband service. The notices must be sent by first
5.14 class mail and at least two months apart to the last known address of the owner of the
5.15 property on which the easement is located or, if the property owner is an existing customer
5.16 of the provider, by separate printed insertion in the property owner's monthly invoice or
5.17 included as a separate page on the property owner's electronic invoice.

5.18 (b) The notice must include:

5.19 (1) the provider's name and mailing address;

5.20 (2) a narrative describing the nature and purpose of the intended easement use;

5.21 (3) a description of any trenching or other underground work expected to be required
5.22 to install broadband infrastructure and provide broadband service, and the anticipated time
5.23 frame for the work;

5.24 (4) a phone number for an employee of the provider that the property owner may contact
5.25 regarding the easement; and

5.26 (5) the following statement, in bold red lettering: "It is important to make any challenge
5.27 by the deadline to preserve any legal rights you may have."

5.28 (c) The provider must file copies of the notices with the county recorder.

5.29 Subd. 4. **Action for damages.** (a) Notwithstanding any other law to the contrary, this
5.30 subdivision governs an action under this section and is the exclusive means to bring a claim
5.31 for compensation with respect to a notice of intent to use a provider's existing easement to
5.32 install broadband infrastructure and provide broadband service.

6.1 (b) Within six months after the date the first notice is sent under subdivision 3, a property
6.2 owner may file an action seeking to recover damages for a provider's proposed use of an
6.3 existing easement to install broadband infrastructure and provide broadband service. Claims
6.4 for damages under \$15,000 may be brought in conciliation court.

6.5 (c) To initiate an action under this subdivision, a property owner must serve a complaint
6.6 upon the provider in the same manner as in a civil action and must file the complaint with
6.7 the district court for the county in which the easement is located. The complaint must state
6.8 whether the property owner:

6.9 (1) challenges the provider's right to use the easement to install broadband infrastructure
6.10 and provide broadband service, as provided under subdivision 5, paragraph (a);

6.11 (2) seeks damages as provided under subdivision 5, paragraph (b); or

6.12 (3) seeks to proceed under both clauses (1) and (2).

6.13 **Subd. 5. Deposit and hearing required.** (a) If a property owner files a complaint
6.14 challenging a provider's right to use an easement to install broadband infrastructure and
6.15 provide broadband service, after the provider answers the complaint, the district court must
6.16 promptly hold a hearing on the complaint. If the district court denies the property owner's
6.17 complaint, the provider may proceed to use the easement to install broadband infrastructure
6.18 and provide broadband service, unless the complaint also seeks damages. If the complaint
6.19 seeks damages, the provider may proceed under paragraph (b).

6.20 (b) If a property owner files a claim for damages, a provider may, after answering the
6.21 complaint, deposit with the court administrator an amount equal to the provider's estimate
6.22 of damages. A provider's estimate of damages must be no less than \$1. After the estimated
6.23 damages are deposited, the provider may use the existing easement to install broadband
6.24 infrastructure and provide broadband service, conditioned on an obligation, filed with the
6.25 court administrator, to pay the amount of damages determined by the court.

6.26 **Subd. 6. Calculation of damages; burden of proof.** (a) In an action under this section
6.27 involving a property owner's claim for damages:

6.28 (1) the property owner has the burden to prove the existence and amount of any net
6.29 reduction in the fair market value of the property, considering the existence, installation,
6.30 construction, maintenance, modification, operation, repair, replacement, or removal of
6.31 broadband infrastructure in the easement, adjusted to reflect any increase in the property's
6.32 fair market value resulting from access to broadband service;

6.33 (2) a court is prohibited from awarding consequential or special damages; and

7.1 (3) evidence of estimated revenue, profits, fees, income, or similar benefits accruing to
7.2 the provider, the provider's affiliate, or a third party as a result of use of the easement is
7.3 inadmissible.

7.4 (b) Any fees or costs incurred as a result of an action under this subdivision must be
7.5 paid by the party that incurred the fees or costs, except that a provider is responsible for a
7.6 property owner's attorney fees if the final judgment or award of damages by the court exceeds
7.7 140 percent of the provider's damage deposit made under subdivision 5, if applicable.

7.8 Subd. 7. **No limits on existing easement.** Nothing in this section limits in any way a
7.9 provider's existing easement rights.

7.10 Subd. 8. **Local governmental right-of-way management preserved.** The placement
7.11 of broadband infrastructure to provide broadband service under subdivisions 2 to 7 is subject
7.12 to local government permitting and right-of-way management authority under section
7.13 237.163, and must be coordinated with the relevant local government unit in order to
7.14 minimize potential future relocations. The provider must notify a local government unit
7.15 prior to placing infrastructure for broadband service in an easement that is in or adjacent to
7.16 the local government unit's public right-of-way.

7.17 Subd. 9. **Railroad rights-of-way crossings.** The placement of broadband infrastructure
7.18 to provide broadband service under this section or section 308A.201, subdivision 12, in any
7.19 portion of an existing easement located in a railroad right-of-way is subject to sections
7.20 237.04 and 237.045.

7.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.