

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1336

Introduced by DeKay, 40.

Read first time January 17, 2024

Committee:

1 A BILL FOR AN ACT relating to broadband; to amend sections 86-1301,
2 86-1302, 86-1303, 86-1305, 86-1306, 86-1307, 86-1308, 86-1310, and
3 86-1311, Revised Statutes Cumulative Supplement, 2022, and sections
4 75-109.01, 86-331, 86-1304, 86-1309, and 86-1312, Revised Statutes
5 Supplement, 2023; to remove certain jurisdiction from the Public
6 Service Commission and transfer administration of the Nebraska
7 Broadband Bridge Act to the Nebraska Broadband Office; to change and
8 provide powers and duties; to define and redefine terms; to change
9 matching funds requirements; to change application weighted scoring
10 considerations; to create a fund; to change how the Nebraska
11 Broadband Bridge Act is construed; to harmonize provisions; and to
12 repeal the original sections.
13 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 75-109.01, Revised Statutes Supplement, 2023, is
2 amended to read:

3 75-109.01 Except as otherwise specifically provided by law, the
4 Public Service Commission shall have jurisdiction, as prescribed, over
5 the following subjects:

6 (1) Common carriers, generally, pursuant to sections 75-101 to
7 75-158;

8 (2) Grain pursuant to the Grain Dealer Act and the Grain Warehouse
9 Act and sections 89-1,104 to 89-1,108;

10 (3) Manufactured homes and recreational vehicles pursuant to the
11 Uniform Standard Code for Manufactured Homes and Recreational Vehicles;

12 (4) Modular housing units pursuant to the Nebraska Uniform Standards
13 for Modular Housing Units Act;

14 (5) Motor carrier registration, licensure, and safety pursuant to
15 sections 75-301 to 75-343, 75-369.03, 75-370, and 75-371;

16 (6) Pipeline carriers and rights-of-way pursuant to the Major Oil
17 Pipeline Siting Act, the State Natural Gas Regulation Act, and sections
18 75-501 to 75-503. If the provisions of Chapter 75 are inconsistent with
19 the provisions of the Major Oil Pipeline Siting Act, the provisions of
20 the Major Oil Pipeline Siting Act control;

21 (7) Railroad carrier safety pursuant to sections 74-918, 74-919,
22 74-1323, and 75-401 to 75-430;

23 (8) Telecommunications carriers pursuant to the Automatic Dialing-
24 Announcing Devices Act, the Emergency Telephone Communications Systems
25 Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call
26 Regulation Act, the Nebraska Telecommunications Regulation Act, the
27 Nebraska Telecommunications Universal Service Fund Act, the
28 Telecommunications Relay System Act, the Telephone Consumer Slamming
29 Prevention Act, and sections 86-574 to 86-578, ~~86-1307, and 86-1308~~;

30 (9) Transmission lines and rights-of-way pursuant to sections 70-301
31 and 75-702 to 75-724;

1 (10) Water service pursuant to the Water Service Regulation Act; and
2 (11) Jurisdictional utilities governed by the State Natural Gas
3 Regulation Act. If the provisions of Chapter 75 are inconsistent with the
4 provisions of the State Natural Gas Regulation Act, the provisions of the
5 State Natural Gas Regulation Act control.

6 Sec. 2. Section 86-331, Revised Statutes Supplement, 2023, is
7 amended to read:

8 86-331 (1) It is the intent of the Legislature to ensure that all
9 federal, state, and local government funding for broadband infrastructure
10 and services in Nebraska be leveraged strategically to ensure that all
11 Nebraskans have access to affordable, reliable broadband services before
12 January 1, 2028. To accomplish this intent, the Nebraska Broadband Office
13 is created. The office shall be headed by the Director of Broadband. The
14 director shall be appointed by and serve at the pleasure of the Governor
15 with the approval of a majority of the Legislature. For administrative
16 and budgetary purposes, the Nebraska Broadband Office shall be located in
17 the Department of Transportation. All administrative and budgetary
18 decisions for the Nebraska Broadband Office shall be made by the Director
19 of Broadband.

20 (2) The Nebraska Broadband Office shall:

21 (a) Through active outreach, collaborate with officials at all
22 levels of government and with stakeholders, which may include, but not be
23 limited to, businesses and industries, community foundations, local
24 governments, local or regional economic development organizations,
25 schools, colleges, other educational entities, public libraries, health
26 care institutions, financial institutions, agricultural producers,
27 telecommunications providers, public power districts, electric
28 cooperatives, nonprofit organizations, and other interested entities;

29 (b) Through such collaboration, develop a strategic plan that
30 maximizes the use of public and private resources and encourages
31 innovative models for ownership of infrastructure that is used for both

1 private and public purposes;

2 (c) Direct the coordination among state agencies, boards, and
3 commissions on policy matters affecting use of federal or state funding
4 for broadband infrastructure deployment, operation, and maintenance;

5 (d) Conduct state advocacy on broadband issues at the federal level,
6 including the accuracy of federal mapping and speed data;

7 (e) Ensure that all governmental funding is utilized in a cost-
8 effective and accountable manner for Nebraska broadband projects;

9 (f) Oversee the coordination of programs for broadband users, such
10 as libraries and schools, and digital equity and inclusion projects;

11 (g) Provide resources and assistance for local and regional
12 broadband planning; ~~and~~

13 (h) Provide resources and information to the public through a
14 website and other communication modes; and -

15 (i) Administer the Nebraska Broadband Bridge Act.

16 (3) If any final decision of the Nebraska Broadband Office relating
17 to funding for broadband projects is appealed to district court, the
18 appeal shall take precedence on the trial docket over all other cases and
19 shall be assigned for hearing, trial, or argument at the earliest
20 practicable date and expedited in every way.

21 (4)(a) On or before December 1 of each year, the Nebraska Broadband
22 Office shall file with the Clerk of the Legislature an annual report on
23 the status of broadband within the State of Nebraska. The report shall:

24 (i) Describe the status of all publicly administered broadband
25 deployment programs, including the number of projects funded through
26 October of the report year;

27 (ii) Describe the quality of broadband service being provided to
28 Nebraska residents;

29 (iii) Provide any updates to the strategic plan developed under
30 subdivision (2)(b) of this section;

31 (iv) Summarize the Nebraska Broadband Office's outreach efforts and

1 collaboration with all interested stakeholders;

2 (v) Provide an update on efforts to promote digital equity and
3 inclusion on behalf of Nebraska residents; and

4 (vi) Provide an update on state advocacy on broadband issues being
5 conducted at the federal level.

6 (b) Upon receipt of such report, the Transportation and
7 Telecommunications Committee of the Legislature shall hold a public
8 hearing to allow an opportunity for public comment on the report.

9 (5) The Nebraska Broadband Office may establish administrative
10 procedures as deemed necessary by the Director of Broadband to carry out
11 the duties of the Nebraska Broadband Office.

12 Sec. 3. Section 86-1301, Revised Statutes Cumulative Supplement,
13 2022, is amended to read:

14 86-1301 Sections 86-1301 to 86-1312 and section 12 of this act shall
15 be known and may be cited as the Nebraska Broadband Bridge Act.

16 Sec. 4. Section 86-1302, Revised Statutes Cumulative Supplement,
17 2022, is amended to read:

18 86-1302 For purposes of the Nebraska Broadband Bridge Act:

19 (1) Commission means the Public Service Commission;

20 (2) Development costs means the amount paid for project planning,
21 obtaining construction permits, construction of facilities including both
22 middle-mile and last-mile infrastructure, equipment, and installation and
23 testing of the broadband Internet service;

24 (3) Digital inclusion means access to and use of information and
25 communication technologies by all individuals and communities, including
26 the most disadvantaged individuals and communities;

27 (4) Eligible telecommunications carrier means an eligible
28 telecommunications carrier as designated under 47 U.S.C. 214(e), as such
29 section existed on January 1, 2021;

30 (5) Grant means money provided to an applicant for purposes of a
31 project under the act;

1 (6) Office means the Nebraska Broadband Office;

2 (7) (6) Program means the Broadband Bridge Program created under the
3 act;

4 (8) (7) Project means the development of a broadband network in an
5 unserved or underserved area;

6 (9) (8) Project area means the geographical area in which a
7 broadband network is to be developed pursuant to a grant;

8 (10) (9) Provider means a broadband Internet service provider,
9 including any telecommunications company, cable television company, or
10 wireless network provider that provides broadband Internet service;

11 (11) (10) Speed test means a measurement of download and upload
12 speeds for access to broadband Internet service between a specific
13 consumer location and a specific remote server location that meets the
14 specifications of the office commission;

15 (12) (11) Underserved area means a geographical area of the state
16 which lacks broadband Internet service providing access to the Internet
17 at speeds of at least one hundred megabits per second for downloading and
18 twenty megabits per second for uploading; and

19 (13) (12) Unserved area means a geographical area of the state which
20 lacks broadband Internet service providing access to the Internet at
21 speeds of at least twenty-five megabits per second for downloading and
22 three megabits per second for uploading.

23 Sec. 5. Section 86-1303, Revised Statutes Cumulative Supplement,
24 2022, is amended to read:

25 86-1303 The Broadband Bridge Program is created. The purpose of the
26 program is to facilitate and fund the development of broadband networks
27 in unserved and underserved areas ~~in addition to the reverse auction~~
28 ~~program available pursuant to section 86-330.~~ The office commission shall
29 administer the program. It is the intent of the Legislature to
30 appropriate twenty million dollars annually from the General Fund
31 ~~beginning with fiscal year 2021-22~~ to the office commission to be

1 distributed as grants through the program and to pay for administrative
2 costs associated with the program.

3 Sec. 6. Section 86-1304, Revised Statutes Supplement, 2023, is
4 amended to read:

5 86-1304 (1)(a) A provider, a cooperative, a political subdivision,
6 or an Indian tribe may apply to the office ~~commission~~ for a grant on
7 forms provided by the office ~~commission~~. The grant shall only be used for
8 development costs for a qualifying project. The application shall
9 indicate the project area. The applicant shall provide matching funds
10 equal to at least twenty ~~twenty~~ percent of the total development costs of
11 the project if located outside a high-cost area, as such areas are
12 determined by the office. ~~If or twenty-five percent of the total~~
13 ~~development costs of the project if located inside a high-cost area, the~~
14 office may impose such matching funds requirement ~~as such areas are~~
15 ~~determined by the commission.~~ ~~The matching funds requirement in this~~
16 ~~subdivision shall not apply to any portion of a grant comprised of~~
17 ~~federal funds.~~ In order to qualify, the project is required to provide
18 broadband Internet service scalable to one hundred megabits per second
19 for downloading and one hundred megabits per second for uploading, or
20 greater. The office ~~commission~~ shall establish deadlines for applications
21 and publish notice of the deadlines on the office's ~~commission's~~ website.

22 (b) An application from a political subdivision or an Indian tribe
23 shall be made as part of a public-private partnership with a provider.

24 (2)(a) As part of the application, the applicant shall agree to
25 complete the project within eighteen months after the date the grant is
26 awarded. The office ~~commission~~ may permit extensions upon request and for
27 good cause shown.

28 (b) If a grant recipient fails to complete the project by the agreed
29 or extended deadline, as the case may be, the recipient shall repay the
30 grant as provided in this subdivision. If no extension is permitted, ten
31 percent of the grant shall be repaid for each month that the project is

1 not complete after the eighteen-month period, up to one hundred percent
2 of the grant. If an extension is permitted, twenty percent of the grant
3 shall be repaid for each month that the project is not complete after the
4 extension period, up to one hundred percent of the grant.

5 (3)(a) As part of the application, the applicant shall agree to
6 submit the broadband network completed as a result of the grant to speed
7 tests as determined by the office commission. The grant recipient shall
8 conduct the speed tests and submit the results to the office commission.
9 The speed tests shall be conducted for one week using a random sample of
10 locations of consumers who subscribe to the network completed as a result
11 of the grant.

12 (b) If the broadband network does not provide service at the speeds
13 required pursuant to subdivision (1)(a) of this section according to the
14 speed tests under subdivision (3)(a) of this section, the grant recipient
15 shall be allowed a reasonable time to address the speed deficiencies and
16 conduct a second set of speed tests as described in subdivision (3)(a) of
17 this section. If the broadband network does not provide service at the
18 speeds required pursuant to subdivision (1)(a) of this section according
19 to the second set of speed tests, the grant recipient shall repay the
20 grant.

21 (4) No applicant shall be eligible to receive a grant if such
22 applicant uses or provides any communications equipment or service deemed
23 to pose a threat to national security identified on the Covered List
24 developed pursuant to 47 C.F.R. 1.50002, as such regulation existed on
25 January 1, 2023, and published by the Public Safety and Homeland Security
26 Bureau of the Federal Communications Commission pursuant to the federal
27 Secure and Trusted Communications Networks Act of 2019, 47 U.S.C. 1601 et
28 seq., as such act existed on January 1, 2023, and the rules adopted
29 pursuant to such act by the Federal Communications Commission on November
30 11, 2022, in its Report and Order FCC 22-84.

31 Sec. 7. Section 86-1305, Revised Statutes Cumulative Supplement,

1 2022, is amended to read:

2 86-1305 The office ~~commission~~ shall distribute grants based on
3 priority as follows:

4 (1) The first priority is a project in a project area that is an
5 unserved area which the commission has determined pursuant to section
6 75-160 or 86-166 needs further support but has not received public
7 assistance for development of a broadband network;

8 (2) The second priority is a project that is in an unserved area,
9 that has received federal support for development of a broadband network,
10 and that will not be completed within twenty-four months after the grant
11 application deadline if the office ~~commission~~ determines that a grant
12 under the program will accelerate the deployment of the broadband
13 network; and

14 (3) The third priority is a project in a project area that is an
15 underserved area and that the office ~~commission~~ determines has a digital
16 inclusion plan.

17 Sec. 8. Section 86-1306, Revised Statutes Cumulative Supplement,
18 2022, is amended to read:

19 86-1306 (1) The office ~~commission~~ shall establish a weighted scoring
20 system to evaluate and rank the applications received each fiscal year.

21 (2) In each fiscal year, at least thirty days prior to the first day
22 that applications may be submitted, the office ~~commission~~ shall publish
23 on the office's ~~commission's~~ website the specific criteria and the
24 quantitative weighted scoring system the office ~~commission~~ will use to
25 evaluate and rank applications and award grants pursuant to the program.
26 Such weighted scoring system shall consider, at a minimum:

27 (a) The financial, technical, and legal capability of the applicant
28 to deploy and operate broadband Internet service;

29 (b) Whether the provider is designated as an eligible
30 telecommunications carrier or will be so designated prior to the project
31 completion date;

1 (c) The ability of an applicant to offer rates in the project area
2 for the applicant's currently offered speed tiers that are comparable to
3 the rates offered by the applicant outside the project area for the same
4 currently offered speed tiers;

5 (d) The available minimum broadband speeds, with higher scores for
6 faster speeds, except that no grant shall be awarded based on speeds less
7 than those scalable to one hundred megabits per second for downloading
8 and one hundred megabits per second for uploading, or greater;

9 (e) The ability of the broadband infrastructure to be scalable to
10 higher broadband Internet speeds in the future; and

11 (f) The amount and percentage of matching funds ~~Whether the~~
12 applicant commits ~~has committed~~ to fund ~~more than fifty percent of the~~
13 total development costs of the project ~~if located outside a high-cost~~
14 ~~area, or more than twenty-five percent of the total development costs of~~
15 ~~the project if located inside a high-cost area, as such areas are~~
16 ~~determined by the commission,~~ from sources other than grants under the
17 program, with higher scores for higher amounts of matching funds.

18 Sec. 9. Section 86-1307, Revised Statutes Cumulative Supplement,
19 2022, is amended to read:

20 86-1307 (1) Within three business days after the application
21 deadline described in subdivision (1)(a) of section 86-1304, the office
22 ~~commission~~ shall publish on its website the proposed projects, project
23 areas, and broadband Internet service speeds for each application
24 submitted.

25 (2) Any provider may, within thirty days after the publication under
26 subsection (1) of this section, submit to the office ~~commission~~ on forms
27 provided by the office ~~commission~~ a challenge to an application, except
28 that the office ~~commission~~ may, upon good cause shown, allow a provider
29 up to ninety days to submit a challenge to an application. Such challenge
30 shall contain information demonstrating that, at the time of submitting
31 the challenge, (a) the provider provides or has begun construction to

1 provide a broadband network in the proposed project area with access to
2 the Internet at speeds equal to or greater than one hundred megabits per
3 second for downloading and twenty megabits per second for uploading or
4 (b) the provider provides broadband service through a broadband network
5 in or proximate to the proposed project area and the provider commits to
6 complete construction of broadband infrastructure and provide a broadband
7 network to the proposed project area with access to the Internet at
8 speeds equal to or greater than one hundred megabits per second for
9 downloading and twenty megabits per second for uploading, no later than
10 eighteen months after the date grant awards are made under the program.

11 (3) Within three business days after the submission of a challenge
12 as provided in subsection (2) of this section, the office ~~commission~~
13 shall notify the applicant of such challenge. The applicant shall have
14 ten business days after receipt of such notification to provide any
15 supplemental information regarding the challenged application to the
16 office ~~commission~~.

17 (4) The office ~~commission~~ shall require a provider submitting a
18 challenge under subsection (2) of this section to provide speed test
19 results in the challenged portion of the proposed project area in which
20 the provider submitting the challenge states that broadband service is
21 currently available at minimum speeds of one hundred megabits per second
22 for downloading and twenty megabits per second for uploading. Such speed
23 test results shall be provided in a manner prescribed by the office
24 ~~commission~~.

25 (5) The office ~~commission~~ shall evaluate the information submitted
26 in a challenge and shall not award a grant if the information submitted
27 under subsection (2) of this section is credible and if the provider
28 submitting the challenge agrees to submit documentation no later than
29 eighteen months after the date grant awards are made for the then-current
30 fiscal year under the program substantiating that the provider submitting
31 the challenge has fulfilled its commitment to deploy broadband Internet

1 service with access to the Internet at the stated speeds in the proposed
2 project area.

3 (6) If the office commission ~~denies~~ denies an application for a grant based
4 on a challenge and the provider which submitted the challenge does not
5 provide broadband Internet service to the proposed project area within
6 eighteen months, ~~the commission shall impose a civil penalty for each day~~
7 ~~such provider fails to provide service after the expiration of such~~
8 ~~eighteen-month period, and~~ such provider shall not challenge any grant
9 application or make any application for a grant under the Nebraska
10 Broadband Bridge Act for the following two fiscal years unless the
11 failure to provide such service is due to factors beyond the provider's
12 control.

13 Sec. 10. Section 86-1308, Revised Statutes Cumulative Supplement,
14 2022, is amended to read:

15 86-1308 (1) For each fiscal year, the office commission shall
16 approve grant funding for all qualified applicants within the limits of
17 available appropriations.

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

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

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

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

1 ~~75-156.~~

2 (3) The office commission shall not add to the obligations required
3 of a grant recipient except as specifically authorized under the Nebraska
4 Broadband Bridge Act or as required by federal law to access and
5 distribute federal funds appropriated for the purpose of broadband
6 expansion.

7 (4) The maximum grant amount awarded under the program with respect
8 to any single project shall be five million dollars.

9 Sec. 11. Section 86-1309, Revised Statutes Supplement, 2023, is
10 amended to read:

11 86-1309 ~~(1)~~The Nebraska Broadband Bridge Fund is created. The fund
12 shall consist of money appropriated by the Legislature ~~and federal funds~~
13 ~~designated by the Governor for broadband enhancement purposes.~~ The office
14 ~~commission~~ shall administer the fund and use the fund to finance grants
15 for qualifying projects under the Nebraska Broadband Bridge Act and for
16 expenses of the office commission as appropriated by the Legislature for
17 administering the fund. ~~(2)~~ Any money in the Nebraska Broadband Bridge
18 Fund available for investment shall be invested by the state investment
19 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
20 State Funds Investment Act.

21 Sec. 12. The Nebraska Broadband Federal Fund is created. The fund
22 shall consist of federal funds received for broadband enhancement
23 purposes and designated by the Governor to be administered by the office.
24 The office shall administer the fund and use the fund to finance grants
25 for qualifying projects under federal program guidelines and for expenses
26 of the office for administering the fund. Any money in the Nebraska
27 Broadband Federal Fund available for investment shall be invested by the
28 state investment officer pursuant to the Nebraska Capital Expansion Act
29 and the Nebraska State Funds Investment Act.

30 Sec. 13. Section 86-1310, Revised Statutes Cumulative Supplement,
31 2022, is amended to read:

1 86-1310 The office commission may establish administrative
2 procedures ~~adopt and promulgate rules and regulations~~ to carry out the
3 Nebraska Broadband Bridge Act.

4 Sec. 14. Section 86-1311, Revised Statutes Cumulative Supplement,
5 2022, is amended to read:

6 86-1311 (1) Nothing in the Nebraska Broadband Bridge Act shall be
7 construed to authorize the office to regulate Internet protocol-enabled
8 service or voice over Internet protocol service, including rates, service
9 or contract terms, or conditions or requirements for entry relating to
10 such service ~~commission to regulate Internet services as prohibited by~~
11 ~~subdivision (1)(d) of section 86-124.~~

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

19 Sec. 15. Section 86-1312, Revised Statutes Supplement, 2023, is
20 amended to read:

21 86-1312 (1) Any political subdivision of the state that allocates
22 federal funds received under the federal American Rescue Plan Act of 2021
23 for eligible broadband infrastructure projects may coordinate with the
24 office commission by mutual consent to administer such federal funds in a
25 manner consistent with the Nebraska Broadband Bridge Act.

26 (2) In administering federal funds pursuant to subsection (1) of
27 this section, the office commission may allocate such funds received for
28 eligible projects awarded grants under subdivision (1)(c) of section
29 81-12,245 to any portion of a local exchange area containing a city of
30 the second class or village.

31 Sec. 16. Original sections 86-1301, 86-1302, 86-1303, 86-1305,

1 86-1306, 86-1307, 86-1308, 86-1310, and 86-1311, Revised Statutes
2 Cumulative Supplement, 2022, and sections 75-109.01, 86-331, 86-1304,
3 86-1309, and 86-1312, Revised Statutes Supplement, 2023, are repealed.