

AMENDMENTS TO LB338

(Amendments to Standing Committee amendments, AM110)

Introduced by Bostelman, 23.

1 1. Strike amendment 1 and insert the following new amendment:

2 1. Strike the original sections and insert the following new  
3 sections:

4 Section 1. Section 86-103.01, Reissue Revised Statutes of Nebraska,  
5 is amended to read:

6 86-103.01 Advanced telecommunications capability service means high-  
7 speed, broadband service at a minimum download speed of one hundred  
8 megabits per second and a minimum upload speed of twenty megabits per  
9 second telecommunications capability provided by a local exchange carrier  
10 that enables users to originate and receive high-quality voice, data,  
11 graphics, and video communications using any technology.

12 Sec. 2. Section 86-316, Revised Statutes Cumulative Supplement,  
13 2020, is amended to read:

14 86-316 Sections 86-316 to 86-329 and section 3 of this act shall be  
15 known and may be cited as the Nebraska Telecommunications Universal  
16 Service Fund Act.

17 Sec. 3. Any recipient of ongoing high-cost support from the Nebraska  
18 Telecommunications Universal Service Fund shall agree to submit to speed  
19 tests as determined by the Public Service Commission. Upon the  
20 commission's request, such recipient shall conduct the speed tests and  
21 submit the results to the commission. The speed tests shall be conducted  
22 for one week using a random sample of locations of consumers who  
23 subscribe to services provided over infrastructure for which ongoing  
24 high-cost support is received.

25 Sec. 4. Section 86-330, Revised Statutes Cumulative Supplement,  
26 2020, is amended to read:

1           86-330 (1) Based on consumer complaints or upon its own motion, the  
2 Public Service Commission may open a docket to consider the  
3 implementation and operation of a funding redirection ~~reverse auction~~  
4 program that awards funding to broadband Internet service providers to  
5 support high-speed Internet infrastructure deployment projects in  
6 unserved or underserved exchanges within the State of Nebraska. The  
7 commission may, in its discretion, withhold funding from the Nebraska  
8 Telecommunications Universal Service Fund to any telecommunications  
9 company that has not served, to the commission's satisfaction, those  
10 areas with service that meets the criteria for successful investment of  
11 funding from the Nebraska Telecommunications Universal Service Fund.

12           (2) The commission shall adopt and promulgate rules and regulations  
13 that establish standards governing the withholding of funding from the  
14 Nebraska Telecommunications Universal Service Fund from any recipient,  
15 including the provision of notice and the right to a hearing prior to the  
16 issuance of an order withdrawing such funding. If the commission  
17 withdraws funding from the Nebraska Telecommunications Universal Service  
18 Fund from any telecommunications company, the commission may redirect the  
19 withdrawn funding through a reverse auction or rural-based plan to  
20 another eligible telecommunications company ~~use the funding that is~~  
21 ~~withdrawn to implement and operate a reverse auction program~~, except that  
22 any funding that is withdrawn shall be utilized in the exchange area for  
23 which the funding was originally granted. The commission shall have wide  
24 discretion in the design, implementation, and operation of a funding  
25 redirection ~~reverse auction~~ program but may use as a guide the reverse  
26 auction program designed by the Federal Communications Commission in its  
27 Connect America Fund Phase II Auction process.

28           (3)(a) In redirecting funding that has been withheld from an  
29 eligible telecommunications company, the commission may consider rural-  
30 based plans. To qualify for commission consideration, a rural-based plan  
31 shall include an eligible telecommunications company.

1       (b) The commission shall consider rural-based plans based on the  
2 following scoring criteria:

3       (i) The history of the participating eligible telecommunications  
4 company in providing quality and affordable telecommunications and  
5 broadband services in rural areas;

6       (ii) The capability of the eligible telecommunications company to  
7 use the proposed technology to provide broadband services to every  
8 location in the exchange area on a reasonably comparable basis;

9       (iii) The support of local businesses, hospitals, schools, colleges,  
10 agricultural producers, and residents;

11       (iv) Other sources of funding;

12       (v) Partnerships and other cooperative arrangements with local  
13 public power providers;

14       (vi) Partnerships and other cooperative arrangements with local  
15 wireless Internet service providers; and

16       (vii) Cooperation by the incumbent local exchange carrier from which  
17 funding has been withheld.

18       (c) In entering an order redirecting funding, the commission shall  
19 establish a timeline for deployment that includes periodic milestones for  
20 ensuring timely deployment and shall require the eligible  
21 telecommunications company to file reports sufficient to assess  
22 compliance with deployment milestones.

23       (d) The commission shall adopt and promulgate rules and regulations  
24 to carry out this subsection.

25       (4) For purposes of this section, rural-based plan means a proposal  
26 for redirecting funding as described in this section which is made by  
27 rural residential and business users of telecommunications and broadband  
28 services in high-cost areas of the exchange.

29       Sec. 5. Section 86-577, Revised Statutes Cumulative Supplement,  
30 2020, is amended to read:

31       86-577 (1) For purposes of this section:

1 (a) Served location means a location receiving, or at the time the  
2 lease is filed with the Public Service Commission able to receive,  
3 communications service at a minimum download speed of one hundred ~~twenty-~~  
4 ~~five~~ megabits per second and a minimum upload speed of twenty ~~three~~  
5 megabits per second or higher speeds, as determined by the Public Service  
6 Commission; and

7 (b) Unserved location means a location not receiving, and at the  
8 time the lease is filed with the Public Service Commission not able to  
9 receive, communications service at a minimum download speed of one  
10 hundred ~~twenty-five~~ megabits per second and a minimum upload speed of  
11 twenty ~~three~~ megabits per second or higher speeds, as determined by the  
12 Public Service Commission.

13 (2) Any agency or political subdivision of the state may lease its  
14 dark fiber if:

15 (a) The lessee is a certificated telecommunications common carrier  
16 or a permitted telecommunications contract carrier pursuant to section  
17 86-128 or an Internet service provider;

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

19 (c) The lease complies with this section.

20 (3)(a) Before a lease of dark fiber under this section becomes  
21 effective, it shall be filed with the commission which shall  
22 expeditiously cause notice of the lease, including lease rates, to be  
23 published.

24 (b)(i) The lease shall become effective fourteen business days after  
25 the date of the published notice unless a protest is filed with the  
26 commission, in which event the commission shall consider the lease as a  
27 contested matter and consider the contested lease according to the  
28 commission's rules of procedure.

29 (ii) If the allocation of served location and unserved location in  
30 the lease is contested, the commission shall determine such allocation  
31 under the lease as a contested matter and consider the contested lease

1 according to the commission's rules of procedure.

2 (4) For the lease of dark fiber:

3 (a) The commission shall establish a safe harbor range of market  
4 rates for all dark fiber leases using a competitive price determination  
5 comparison. When conducting a competitive price determination comparison,  
6 the commission, in its discretion, shall use rate schedules,  
7 interconnection agreements, or other documents within its regulatory  
8 oversight and shall gather other market rate information as deemed  
9 necessary. If a lease utilizes rates within the safe harbor range, such  
10 rates shall be deemed approved. Any other term of the lease may be  
11 contested pursuant to subdivision (3)(b) of this section; and

12 (b) Fifty percent of the profit earned by the agency or political  
13 subdivision under a lease of dark fiber leased to serve a served location  
14 shall be remitted to the State Treasurer for credit to the Nebraska  
15 Telecommunications Universal Service Fund. For purposes of this  
16 subdivision, profit earned by the agency or political subdivision means  
17 the lease price less the cost of infrastructure deployment. This  
18 subdivision does not apply to a lease or portion of a lease of dark fiber  
19 leased to exclusively serve unserved locations.

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

23 Sec. 6. Section 86-1101, Revised Statutes Cumulative Supplement,  
24 2020, is amended to read:

25 86-1101 (1) The Legislature finds and declares that:

26 (a) ~~(1)~~ The availability, quality, and affordability of broadband  
27 telecommunications service is important to the residents of Nebraska; and

28 (b) ~~(2)~~ Because availability, quality, and affordability of  
29 broadband telecommunications service is lacking in certain rural areas in  
30 Nebraska, combined with greater investment in urban areas, the state may  
31 be facing a digital divide.

1           (2) It is the intent of the Legislature that broadband  
2 ~~telecommunications~~ service in rural areas of the state should be  
3 comparable in download and upload speed and price to urban areas in the  
4 state where possible and that state resources should be utilized to  
5 ensure that the rural residents of the state should not be penalized  
6 simply because of their rural residence. It is further the intent of the  
7 Legislature that the residents of this state should have access to  
8 broadband ~~telecommunications~~ service at a minimum download speed of one  
9 hundred ~~twenty-five~~ megabits per second and a minimum upload speed of one  
10 hundred ~~three~~ megabits per second.

11           (3) The changes made to this section by this legislative bill shall  
12 not be construed to affect, abrogate, or alter any commitments by the  
13 Public Service Commission made prior to the effective date of this act to  
14 provide ongoing high-cost support from the Nebraska Telecommunications  
15 Universal Service Fund for infrastructure capable of providing broadband  
16 service at a minimum download speed of twenty-five megabits per second  
17 and a minimum upload speed of three megabits per second.

18           Sec. 7. Section 86-1102, Revised Statutes Cumulative Supplement,  
19 2020, is amended to read:

20           86-1102 (1) The Rural Broadband Task Force is hereby created. Task  
21 force members shall include the chairperson of the Transportation and  
22 Telecommunications Committee of the Legislature and a member of the  
23 Legislature selected by the Executive Board of the Legislative Council  
24 who shall both serve as nonvoting, ex officio members, a member of the  
25 Public Service Commission who shall be selected by the chairperson of  
26 such commission, the chairperson of the Nebraska Information Technology  
27 Commission or his or her designee who shall act as chairperson of the  
28 task force, the Director of Economic Development or his or her designee,  
29 the Director of Agriculture or his or her designee, and the following  
30 members to be appointed by the Governor: A representative of the  
31 agribusiness community, a representative of the Nebraska business

1 community, a representative of the regulated wireline telecommunications  
2 industry, a representative of the wireless telecommunications industry, a  
3 representative of the public power industry, a representative of health  
4 care providers, a representative of Nebraska postsecondary educational  
5 institutions, and a representative of rural schools offering kindergarten  
6 through grade twelve. The members appointed by the Governor shall serve  
7 for a term of two years and may be reappointed.

8 (2) The task force may appoint advisory groups to assist the task  
9 force in providing technical expertise and advice on any issue. The  
10 advisory groups may be composed of representatives of stakeholder groups  
11 which may include, but not necessarily be limited to, representatives  
12 from small and large wireline companies, wireless companies, public power  
13 districts, electric cooperative corporations, cable television companies,  
14 Internet service providers, low-income telecommunications and electric  
15 utility customers, health care providers, and representatives of  
16 educational sectors. No compensation or expense reimbursement shall be  
17 provided to any member of any advisory group appointed by the task force.

18 (3) The Nebraska Information Technology Commission shall provide  
19 staff assistance to the task force in consultation with staff from the  
20 Public Service Commission and other interested parties. The task force  
21 may hire consultants to assist in carrying out its duties. The task force  
22 shall review issues relating to availability, adoption, and affordability  
23 of broadband services in rural areas of Nebraska. In particular, the task  
24 force shall:

25 (a) Determine how Nebraska rural areas compare to neighboring states  
26 and the rest of the nation in average download and upload speeds and in  
27 subscription rates to higher speed tiers, when available;

28 (b) Examine the role of the Nebraska Telecommunications Universal  
29 Service Fund in bringing comparable and affordable broadband services to  
30 rural residents and any effect of the fund in deterring or delaying  
31 capital formation, broadband competition, and broadband deployment;

1 (c) Review the feasibility of alternative technologies and providers  
2 in accelerating access to faster and more reliable broadband service for  
3 rural residents;

4 (d) Examine alternatives for deployment of broadband services to  
5 areas that remain unserved or underserved, such as funding redirection  
6 ~~reverse-auction~~ programs described in section 86-330, public-private  
7 partnerships, funding for competitive deployment, and other measures, and  
8 make recommendations to the Public Service Commission to encourage  
9 deployment in such areas;

10 (e) Recommend state policies to effectively utilize state universal  
11 service fund dollars to leverage federal universal service fund support  
12 and other federal funding;

13 (f) Make recommendations to the Governor and Legislature as to the  
14 most effective and efficient ways that federal broadband rural  
15 infrastructure funds received after July 1, 2018, should be expended if  
16 such funds become available; and

17 (g) Determine other issues that may be pertinent to the purpose of  
18 the task force.

19 (4) Task force members shall serve on the task force without  
20 compensation but shall be entitled to receive reimbursement for expenses  
21 incurred for such service as provided in sections 81-1174 to 81-1177.

22 (5) The task force shall meet at the call of the chairperson and  
23 shall present its findings in a report to the Executive Board of the  
24 Legislative Council no later than November 1, 2019, and by November 1  
25 every odd-numbered year thereafter. The report shall be submitted  
26 electronically.

27 (6) For purposes of this section, broadband services means high-  
28 speed telecommunications capability at a minimum download speed of one  
29 hundred twenty-five megabits per second and a minimum upload speed of one  
30 hundred three megabits per second, and that enables users to originate  
31 and receive high-quality voice, data, and video telecommunications using



1 any technology.

2 (7) The changes made to this section by this legislative bill shall  
3 not be construed to affect, abrogate, or alter any commitments by the  
4 Public Service Commission made prior to the effective date of this act to  
5 provide ongoing high-cost support from the Nebraska Telecommunications  
6 Universal Service Fund for infrastructure capable of providing broadband  
7 service at a minimum download speed of twenty-five megabits per second  
8 and a minimum upload speed of three megabits per second.

9 Sec. 8. Original section 86-103.01, Reissue Revised Statutes of  
10 Nebraska, and sections 86-316, 86-330, 86-577, 86-1101, and 86-1102,  
11 Revised Statutes Cumulative Supplement, 2020, are repealed.