

LEGISLATIVE BILL 994

Approved by the Governor April 17, 2018

Introduced by Friesen, 34; Brewer, 43; Wayne, 13.

A BILL FOR AN ACT relating to telecommunications and technology; to amend sections 77-2704.51 and 86-579, Reissue Revised Statutes of Nebraska; to state intent; to create the Rural Broadband Task Force; to provide powers and duties; to create the Rural Broadband Task Force Fund; to provide powers and duties for the Public Service Commission; to exempt dark fiber from sales and use taxes as prescribed; to provide for a transfer from the Nebraska Internet Enhancement Fund; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. The Legislature finds and declares that:

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

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

It is the intent of the Legislature that broadband telecommunications service in rural areas of the state should be comparable in download and upload speed and price to urban areas in the state where possible and that state resources should be utilized to ensure that the rural residents of the state should not be penalized simply because of their rural residence. It is further the intent of the Legislature that the residents of this state should have access to broadband telecommunications service at a minimum download speed of twenty-five megabits per second and a minimum upload speed of three megabits per second.

Sec. 2. (1) The Rural Broadband Task Force is hereby created. Task force members shall include the chairperson of the Transportation and Telecommunications Committee of the Legislature and a member of the Legislature selected by the Executive Board of the Legislative Council who shall both serve as nonvoting, ex officio members, a member of the Public Service Commission who shall be selected by the chairperson of such commission, the chairperson of the Nebraska Information Technology Commission or his or her designee who shall act as chairperson of the task force, the Director of Economic Development or his or her designee, the Director of Agriculture or his or her designee, and the following members to be appointed by the Governor: A representative of the agribusiness community, a representative of the Nebraska business community, a representative of the regulated wireline telecommunications industry, a representative of the wireless telecommunications industry, a representative of the public power industry, a representative of health care providers, a representative of Nebraska postsecondary educational institutions, and a representative of rural schools offering kindergarten through grade twelve.

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

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

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

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

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

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

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

(f) Make recommendations to the Governor and Legislature as to the most effective and efficient ways that federal broadband rural infrastructure funds received after the operative date of this section should be expended if such funds become available; and

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

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

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

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

Sec. 3. The Rural Broadband Task Force Fund is created. The fund shall be used to carry out the purposes of the Rural Broadband Task Force as described in section 2 of this act. For administrative purposes, the fund shall be located in the Nebraska Information Technology Commission. The fund shall consist of money appropriated or transferred by the Legislature and gifts, grants, or bequests from any source, including federal, state, public, and private sources. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

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

The commission shall adopt and promulgate rules and regulations that establish standards governing the withholding of funding from the Nebraska Telecommunications Universal Service Fund from any recipient, including the provision of notice and the right to a hearing prior to the issuance of an order withdrawing such funding. If the commission withdraws funding from the Nebraska Telecommunications Universal Service Fund from any telecommunications company, the commission may use the funding that is withdrawn to implement and operate a reverse auction program, except that any funding that is withdrawn shall be utilized in the exchange area for which the funding was originally granted. The commission shall have wide discretion in the design, implementation, and operation of a reverse auction program but may use as a guide the program designed by the Federal Communications Commission in its Connect America Fund Phase II Auction process.

Sec. 5. (1) The Public Service Commission shall establish and maintain a registry of locations within the State of Nebraska for complaints made to the commission regarding the lack of appropriate coverage for wireless telecommunications service.

(2) The commission may utilize the information maintained in the registry only for making any determination related to the granting of funds through any program administered by the commission to support the construction of wireless telecommunications service facilities.

(3) For purposes of this section, lack of appropriate coverage means a geographic area where a wireless device is not able to receive a signal from the wireless service provider's network whereby an individual is unable to use a wireless device.

(4) The commission shall adopt and promulgate any rules and regulations required to carry out this section.

Sec. 6. Section 77-2704.51, Reissue Revised Statutes of Nebraska, is amended to read:

77-2704.51 Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of:

(1) Telecommunications sales of telecommunications service between telecommunications companies, including division of revenue, settlements, or carrier access charges; or -

(2) Dark fiber as defined in section 86-574 between telecommunications companies.

Sec. 7. Section 86-579, Reissue Revised Statutes of Nebraska, is amended to read:

86-579 The Nebraska Internet Enhancement Fund is created. The fund shall be used to provide financial assistance to install and deliver broadband or other advanced telecommunications infrastructure and service throughout the state. It is the intent of the Legislature that two hundred fifty thousand

dollars shall be appropriated to the fund to be used for startup costs and seed money for FY2001-02. The Public Service Commission may receive gifts, contributions, property, and equipment from public and private sources for purposes of the fund. The fund shall consist of money appropriated by the Legislature, any money transferred pursuant to section 86-127, and gifts, grants, or bequests from any source, including money remitted to the fund pursuant to section 86-577 and any other federal, state, public, and private sources. Money in the fund shall be distributed by the commission pursuant to section 86-580. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Nebraska Internet Enhancement Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The State Treasurer shall transfer one hundred thousand dollars from the Nebraska Internet Enhancement Fund to the General Fund on or before July 15, 2003.

The State Treasurer shall transfer fifty thousand dollars from the Nebraska Internet Enhancement Fund to the Rural Broadband Task Force Fund on or before July 15, 2018.

Sec. 8. Sections 1, 2, 3, 4, 5, 7, and 9 of this act become operative on July 1, 2018. Sections 6 and 10 of this act become operative on October 1, 2018. The other sections of this act become operative on their effective date.

Sec. 9. Original section 86-579, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 10. Original section 77-2704.51, Reissue Revised Statutes of Nebraska, is repealed.

Sec. 11. Since an emergency exists, this act takes effect when passed and approved according to law.