

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 456**

Introduced by Friesen, 34.

Read first time January 15, 2021

Committee:

- 1 A BILL FOR AN ACT relating to telecommunications and technology; to adopt
- 2 the Nebraska Enhancing Broadband Act; and to state intent for an
- 3 appropriation.
- 4 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 8 of this act shall be known and may be  
2 cited as the Nebraska Enhancing Broadband Act.

3           Sec. 2. For purposes of the Nebraska Enhancing Broadband Act:

4           (1) Department means the Department of Economic Development;

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

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

12           (4) Program means the Nebraska Enhancing Broadband Program created  
13 under the Nebraska Enhancing Broadband Act;

14           (5) Project means the development of a broadband network in an  
15 unserved area or underserved area;

16           (6) Project area means the geographical area in which a broadband  
17 network is to be developed pursuant to a grant, a loan, or any  
18 combination thereof;

19           (7) Provider means a broadband Internet service provider, including  
20 any telecommunications company, cable television company, wireless  
21 network provider, or satellite service that provides broadband Internet  
22 service;

23           (8) Speed test means a measurement of download and upload speeds for  
24 access to broadband Internet service between a specific consumer location  
25 and a specific remote server location that meets the specifications of  
26 the department;

27           (9) Underserved area means a project area within the state which  
28 lacks broadband Internet service providing access to the Internet at  
29 speeds of at least one hundred megabits per second for downloading and  
30 twenty megabits per second for uploading; and

31           (10) Unserved area means a project area within the state which lacks

1 broadband Internet service providing access to the Internet at speeds of  
2 at least twenty-five megabits per second for downloading and three  
3 megabits per second for uploading.

4       Sec. 3. The Nebraska Enhancing Broadband Program is created. The  
5 purpose of the program is to facilitate and fund the development of  
6 broadband networks in unserved areas and underserved areas. The  
7 department shall administer the program.

8       Sec. 4. (1)(a) A provider, a cooperative, a political subdivision,  
9 or an Indian tribe may apply to the department for a grant, a loan, or  
10 any combination of grants and loans, on forms provided by the department.  
11 The grant or loan shall only be used for development costs for a  
12 qualifying project. The application shall indicate the project area. In  
13 order to qualify, the project is required to provide broadband Internet  
14 service scalable to one hundred megabits per second for downloading and  
15 one hundred megabits per second for uploading, or greater. Applications  
16 shall be submitted to the department on or before October 1, 2021, for  
17 fiscal year 2021-22, and on or before July 1 for each fiscal year  
18 thereafter.

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

21       (c) For each application, matching funds equal to fifty percent of  
22 the grant or twenty-five percent of the loan shall be required.

23       (2)(a) As part of the application, the applicant shall agree to  
24 complete the project within eighteen months after the date the grant or  
25 loan is awarded. The department may grant one extension of up to six  
26 months upon request and for good cause shown.

27       (b) If a grant or loan recipient fails to complete the project by  
28 the agreed or extended deadline, as applicable, the recipient shall repay  
29 the grant or loan as provided in this subsection. If no extension is  
30 granted, ten percent of the grant or loan shall be repaid for each month  
31 that the project is not complete after the eighteen-month period, up to

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

5 (3)(a) As part of the application, the applicant shall agree to  
6 submit the broadband network completed and funded as a result of the  
7 grant or loan to speed tests as determined by the department. The grant  
8 or loan recipient shall conduct the speed tests and submit the results to  
9 the department, which may request assistance of the Public Service  
10 Commission in verifying the results. The speed tests shall be conducted  
11 for one week using a random sample of locations of consumers who  
12 subscribe to the network completed and funded as a result of the grant or  
13 loan.

14 (b) If any applicant fails to meet the speed test requirements as  
15 provided in this subsection, such applicant shall repay any grant or loan  
16 received.

17 (4) The Attorney General may, at the request of the department,  
18 bring an action against an applicant for recovery of any grant or loan  
19 received and not used in accordance with subsection (1) of this section  
20 or not repaid as required by subsection (2) or (3) or this section, and  
21 for recovery of any other damages.

22 Sec. 5. The department shall distribute grants or loans based on  
23 priority as follows:

24 (1) The first priority is a project in a project area that is an  
25 unserved area which the department has determined pursuant to section  
26 75-160 or 86-166 needs further support but has not received state or  
27 federal assistance for development of a broadband network;

28 (2) The second priority is a project that is in an unserved area,  
29 that has received federal support for development of a broadband network,  
30 and that will not be completed within twenty-four months after the  
31 application deadline unless the department determines that a grant or

1 loan under the program will accelerate the deployment of the network; and  
2 (3) The third priority is a project in a project area that is an  
3 underserved area and that the department determines has a broadband and  
4 digital inclusion plan.

5 Sec. 6. (1) Within three days after the application deadline  
6 described in subdivision (1)(a) of section 4 of this act, the department  
7 shall publish on its web site the proposed projects, project areas, and  
8 proposed broadband Internet service speeds for each application  
9 submitted.

10 (2) Any provider may, within thirty days after the publication made  
11 under subsection (1) of this section, file with the department, on forms  
12 provided by the department, a challenge to an application. Such challenge  
13 shall contain information demonstrating that, at the time of filing the  
14 challenge, (a) the provider provides or has begun construction to provide  
15 a broadband network in the proposed project area with access to the  
16 Internet at speeds equal to or greater than one hundred megabits per  
17 second for downloading and twenty megabits per second for uploading or  
18 (b) the provider provides broadband service through a broadband network  
19 in or proximate to the proposed project area and the provider commits to  
20 complete construction of broadband infrastructure and provision of a  
21 broadband network to the proposed project area with access to the  
22 Internet at speeds equal to or greater than one hundred megabits per  
23 second for downloading and twenty megabits per second for uploading no  
24 later than eighteen months after the date the challenged application was  
25 submitted.

26 (3) The department shall evaluate the information submitted in a  
27 challenge filing and shall not award a grant or loan if the information  
28 is credible and if the provider filing the challenge agrees to submit  
29 documentation to the department no later than eighteen months after the  
30 date the challenged application was submitted substantiating that the  
31 provider filing the challenge has fulfilled its commitment to deploy

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

3 (4) The department may request assistance from the Public Service  
4 Commission in its review of the provider's filed challenge and shall  
5 adopt and promulgate rules and regulations to carry out the Nebraska  
6 Enhancing Broadband Act, including any necessary rules of procedure for  
7 filing a challenge and notice and hearing requirements. Any appeal of a  
8 challenge ruling by the department shall be pursuant to the  
9 Administrative Procedure Act.

10 (5) If the department denies an application based on a filed  
11 challenge and the provider that filed the challenge does not provide  
12 broadband Internet service to the proposed project area within eighteen  
13 months after the date the challenged application was submitted, the  
14 provider shall not challenge any other application for the following two  
15 fiscal years unless the department determines such failure was due to  
16 factors beyond the provider's control.

17 Sec. 7. The Auditor of Public Accounts may audit any program grant  
18 or loan recipient to ensure that the grant or loan received is spent  
19 according to the terms and conditions of such grant or loan and in  
20 conformance with the Nebraska Enhancing Broadband Act.

21 Sec. 8. (1) The Nebraska Enhancing Broadband Fund is created. The  
22 fund shall consist of money appropriated by the Legislature and federal  
23 funds received for broadband enhancement purposes. The department shall  
24 administer the fund and use the fund to finance grants and loans for  
25 qualifying projects under the Nebraska Enhancing Broadband Program and  
26 for expenses of the department as appropriated by the Legislature for  
27 administering the fund. Any money in the fund available for investment  
28 shall be invested by the state investment officer pursuant to the  
29 Nebraska Capital Expansion Act and the Nebraska State Funds Investment  
30 Act.

31 (2) It is the intent of the Legislature to appropriate ten million

1 dollars annually beginning with fiscal year 2021-22 to the fund to be  
2 distributed as grants and loans for the Nebraska Enhancing Broadband  
3 Program.