

ONE HUNDRED EIGHTH LEGISLATURE - FIRST SESSION - 2023
COMMITTEE STATEMENT (CORRECTED)
LB412

Hearing Date: Tuesday February 07, 2023
Committee On: Transportation and Telecommunications
Introducer: Geist
One Liner: Provide powers for the Public Service Commission under the Nebraska Broadband Bridge Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Bostelman, Brandt, Cavanaugh, M., DeBoer, DeKay, Fredrickson,
Geist, Moser

Nay:

Absent:

Present Not Voting:

Testimony:

Proponents:

Suzanne Geist
Tip O'Neill
Brian Thompson
Brent Smoyer
Dayton Murty
James Dukesherer
Dan Watermeier

Representing:

Introducer
Nebraska Telecommunications Association
Consolidated Companies, Inc
Nebraska Rural Broadband Alliance
Charter Communications
Nebraska Rural Electric Association
Nebraska Public Service Commission

Opponents:

Representing:

Neutral:

Lash Chaffin

Representing:

League of Nebraska Municipalities

* ADA Accommodation Written Testimony

Summary of purpose and/or changes:

Amends section 86- 1312; Federal Funds; administration; coordination.

This section currently provides that any political subdivision that receives ARPA funding for broadband projects may coordinate with the Public Service Commission (PSC) by mutual consent to administer federal funding in a manner consistent with the Broadband Bridge Act.

The section is amended by adding a new subsection (2) that provides that the PSC may allocate funding funds received for eligible projects under section 81-12,245 (1) (c) to any portion of a local exchange area containing a city of the second class or village.

NOTE:

LB 1024 (2022) enacted section 81-12,245 and provided for the distribution of federal Capital Project Fund dollars. Subsection (1)(C) directs that Capital Project Funds allocated to Nebraska Congressional District #3 shall be only distributed to cities of the second class and villages. LB412 states that such funding may be provided to the local exchange area containing a second class city or village.

Section 86-115 defines the term "local exchange area" as a territorial unit established by a telecommunications company for the administration of telecommunications service within a specific area generally encompassing a city or village and its environs as described in maps filed with and approved by the commission.

Explanation of amendments:

Explanation of the Standing Committee Amendment:

The Committee considered and adopted an amendment which accomplishes the following:

The Standing Committee Amendment retains LB 412 as introduced (Section 18 of the amendment) and adds the following legislative bills heard and advanced by the Committee:

LB 122 (Bostelman) as amended by the Committee. Change provisions of the One-Call Notification Act. (Sections 1 through 8 and 20 of the Standing Committee Amendment)

LB 722 (Bostelman) as amended by the Committee. Provide authority for the Public Service Commission regarding construction of broadband or other telecommunications infrastructure. (Sections 9 through 15 of the Standing Committee Amendment)

LB 155 (DeBoer) Change provisions regarding the applicability of the Small Wireless Facilities Deployment Act. (Section 16 of the Standing Committee amendment)

LB 359 (Hughes) Change application deadlines under the Nebraska Broadband Bridge Act. (Section 17 of the Standing Committee Amendment)

Summary of the bills amended into LB 412 by AM868:

LB 122:

Amends the One-Call Notification Act by adding new provisions that create the Underground Excavation Safety Committee (sections 3, and 4). The Underground Excavation Safety Committee (UESC) is a five member committee that consists of the State Fire Marshal (or designee), two operators, and two excavators.

The operator and excavator representatives are to be appointed by the Governor and subject to confirmation by the Legislature and will serve a four-year term. (Two of the members will initially serve a two-year term.) Members are not compensated, but will receive actual expenses.

The UESC shall meet quarterly and at the call of the chair. The duty of the UESC is to review complaints of One-Call Act violations, determine if violations have occurred, and determine if a civil penalty should be assessed when a violation has occurred. No member shall participate in any matter in which the member possesses a conflict.

The State Fire Marshal on their own, or based upon information provided by another, may initiate an investigation of any violation of the One-Call Act and may refer any complaint and investigative findings to the UESC.

The UESC shall review the complaint and investigation and if a violation is determined to have occurred serve on the violator written findings of fact, conclusions of law, and any civil fine to be imposed. If the proposed civil fine exceeds \$10,000 the matter shall be referred to

the Attorney General for prosecution.

For violations in which the proposed civil penalty is less than \$10,000 the violator shall have thirty days following service to have a hearing on the matter before the UESC. If no hearing is requested the party shall pay the civil penalty within 30 days of receiving the notice of violation.

The UESC shall employ a hearing officer who shall have the power to compel the attendance of witnesses and subpoena documents. Following hearing, the hearing officer shall prepare findings of fact and conclusions of law and shall issue a final order affirming, modifying, or reversing the initial determination of the UESC. Any final order may be appealed pursuant to the Administrative Procedures Act.

The UESC may, in lieu of a civil penalty for any violation of the One-Call Notification Act, order a violator to take and complete a continuing education course regarding compliance with the requirements and obligations of the Act.

THE FOLLOWING SECTION IS REPEALED OUTRIGHT:

76-2325.02. Attorney General; annual report; contents.

The Attorney General shall make an annual report to the Legislature, the State Fire Marshal, and the board of directors by each March 15 on the number of complaints filed and the number of such complaints prosecuted under section 76-2325 during the previous calendar year. The report to the Legislature shall be made electronically.

Committee Amendment Summary:

The Committee considered and adopted an amendment which accomplishes the following:

The amendment strikes the contents of LB 122 as introduced and substitutes AM 647.

The One-Call Notification System Act is amended with the addition of three new sections.

The amendment creates the Underground Excavation Safety Committee. The committee consists of the State Fire Marshal, three excavators, 3 facility operators and two alternatives, 1 representing excavators, and 1 representing operators. The alternatives participate in the event of conflicts of interest. Decisions of the committee shall be by majority vote. The members shall be appointed by the Governor. The Committee is to meet monthly and no member shall participate in the hearing on a matter in which the member's business is a party to the hearing. The Committee shall take effect and function beginning on September 1, 2024.

The duty of the UESC is to review complaints of One-Call Act violations, determine if violations have occurred, and determine if a civil penalty should be assessed when a violation has occurred. No member shall participate in any matter in which the member possesses a conflict.

The State Fire Marshal on their own, or based upon information provided by another, may initiate an investigation of any violation of the One-Call Act and may refer any complaint and investigative findings to the UESC.

The UESC shall review the complaint and investigation and if a violation is determined to have occurred serve on the violator written findings of fact, conclusions of law, and any civil fine to be imposed. If the proposed civil fine exceeds \$10,000 the matter shall be referred to the Attorney General for prosecution.

For violations in which the proposed civil penalty is less than \$10,000 the violator shall have thirty days following service to have a hearing on the matter before the UESC. If no hearing is requested the party shall pay the civil penalty within 30 days of receiving the notice of violation.

The UESC shall employ a hearing officer who shall have the power to compel the attendance of witnesses and subpoena documents. Following hearing, the hearing officer shall prepare findings of fact and conclusions of law and shall issue a final order affirming, modifying, or reversing the initial determination of the UESC. Any final order may be appealed pursuant to the Administrative Procedures Act.

The UESC may in lieu of a civil penalty for any violation of the One-Call Notification Act order a violator to take and complete a continuing education course regarding compliance with the requirements and obligations of the Act.

It is a violation of the act for an excavator to request facility location for a location where excavation cannot be commenced within 17 days of the notice. Additionally, it is a violation of the act to request a marking refresh when excavation cannot be reasonably commenced or continued within 14 days of the date remarking is completed.

Hearing Date: 1/31/23, 9:30am

Testifiers:

Proponents:

Bruce Bostelman, Introducer

Brad Wegner, National Utility Contractors of America - Nebraska Chapter

Brent Smoyer, Northwestern Energy

Opponents:

John Buckley, OPPD and NPA

Neutral:

Jill Becker, Black Hills Energy

Ken Yoho, Nebraska Attorney General

Doug Hohbein, Interim State Fire Marshall

Tip O'Neill, Nebraska Telecommunications Association

Mike Loeffler, Northern Natural Gas

Committee Vote:

Motion to Advance to General File: Senator Bruce Bostelman

Seconded by: Senator Suzanne Geist

Aye: Bostelman, Brandt, M. Cavanaugh, DeBoer, DeKay, Fredrickson, Geist, Moser

Nay: None

PNV: None

Absent: None

LB 155:

Amends section 86-1241; Small Wireless Deployment Act; Authority; Powers and Duties; Limitation

This section summarizes the powers and limitations of powers of authorities under the Small Wireless Facilities Deployment Act. (An "authority" is defined as the state, any state agency, county, city, village, or other political subdivision excluding public power providers, state courts having jurisdiction over an authority, or an entity that does not have zoning or permit-granting authority).

Subsection (2) of the section currently provides that unless expressly allowed an authority may not impose any tax, fee or rate on a communications service provider authorized to operate in the right-of-way for the provision of communications service over their own facilities in the right-of-way, enforce

any requirement on the placement or operation of facilities in the right-of-way or regulate any communications services.

The subsection is amended by stating that it does not apply to the activities of a communications service provider that are outside the scope of the provisions of the Small Wireless Facilities Deployment Act.

Hearing Date: 2/7/23, 1:30pm

Testifiers:

Proponents:

Wendy DeBoer, Introducer

Bernard in den Bosch, City of Omaha

Lash Chaffin, League of Nebraska Municipalities

Opponent: None

Neutral: None

Committee Vote:

Motion to advance to General File: Senator Machaela Cavanaugh

Seconded by: Senator Barry DeKay

Aye: Bostelman, Brandt, M. Cavanaugh, DeBoer, DeKay, Fredrickson, Geist, Moser

Nay: None

PNV: None

Absent: None

LB359:

Amends section 86-1304; Broadband Bridge Act; Purpose; Applications.

The section currently provides that applications for funding under the Broadband Bridge Act shall be filed with the Public Service Commission on or before July 1 of each fiscal year.

The section is amended by striking the statutory date for filing applications and language is substituted that provides that the Commission shall establish and post on their website the deadline date for the filing of applications.

Hearing Date: 2/7/23, 1:30pm

Testifiers:

Proponents:

Jana Hughes, Introducer

Dan Watermeier, Nebraska Public Service Commission

Brent Smoyer, Nebraska Rural Broadband Alliance

Tonya Mayer, Mobius Communications

Tip O'Neill, Nebraska Telecommunications Association

Opponents: None

Neutral:None

Committee Vote:

Motion to Advance to General File: Senator Machaela Cavanaugh

Seconded by: Senator Wendy DeBoer

Aye: Bostelman, Brandt, M. Cavanaugh, DeBoer, DeKay, Fredrickson, Geist, Moser

Nay: None

PNV: None

Absent: None

LB 722:

The bill enacts a new provision of law related to the authority of the Nebraska Public Service Commission (NPSC).

Provides that when any entity of government grants federal or state broadband funding to a competing carrier in an area served by an incumbent local exchange carrier the NPSC shall have the authority make the following determinations:

- 1) The smooth transition of services;
- 2) The undepreciated investment owned by the incumbent carrier that provides broadband at speeds of 100/20Mbps;
- 3) The transfer of federal and state eligible telecommunications carrier designations and responsibilities, including carrier of last resort obligations; and
- 4) Whether rural customers in the service area and nearby service areas are receiving broadband services.

Explanation of Committee Amendment

The considered and adopted an amendment which accomplishes the following:

The amendment substitutes for the bill. Adopts the Rural Communications Sustainability Act.

Section 2- Statement of Policy. The act is intended preserve and ensure all Nebraskan's have access to affordable and reliable communications in rural high cost of service areas.

Section 3- Definition of terms for purposes of the Act.

Section 4- Agencies providing grant funding to enhance communications capabilities shall collaborate with the Nebraska Broadband Office and the Nebraska Public Service Commission (NPSC) to ensure compliance with the Act.

Section 5- Following the final payment of any grant to improve telecommunications infrastructure to a competitive carrier the incumbent carrier may request, and the NPSC shall:

- 1) Relieve the incumbent of eligible telecommunications and carrier of last resort obligations in the project funding area;
- 2) Make any necessary determinations related to the allocation and distribution of support from the Nebraska Universal Service Fund (NUSF) within the project area; and
- 3) Consult with the carriers involved and the Federal Communications Commission as to whether eligible telecommunications carrier and carrier of last resort obligations should be transferred to the competitive provider.

Section 6- In carrying out the Act the NPSC shall not:

- 1) Require a competitive carrier to accept or receive NUSF support;
- 2) Impose eligible telecommunications carrier responsibilities or carrier of last resort obligations on a competitive carrier in any project area where the incumbent or competitive carrier is not receiving NUSF support; or
- 3) Impose eligible telecommunications carrier or carrier of last resort obligations on an incumbent carrier that are not in existence on the date the final payment is made on any grant to enhance telecommunications service.

Section 7- Authorizes the NPSC to adopt any necessary rule to carry out the Act.

Hearing Date: 2/7/23, 1:30pm

Testifiers:

Proponents:

Bruce Bostelman, Introducer

Tonya Mayer, Mobius Communications

Sarah Meier, Nebraska Rural Broadband Alliance
Dan Watermeier, Nebraska Public Service Commission
Kevin Choquette, Glenwood Telephone Membership Co-op
Andrew Vinton, Allo Communications
Lash Chaffin, League of Nebraska Municipalities
Candace Meredith, Nebraska Association of County Officials
John K. Hansen, Nebraska Farmers Union

Opponents:

Dayton Murty, Charter Communications
John Wyvill, Cox Communications

Neutral:

Tip O'Neill, Nebraska Telecommunications Association
Taylor Teepell, Lumen

Committee Vote:

Motion to Advance to General File: Senator Bruce Bostelman

Seconded by: Senator Tom Brandt

Aye: Bostelman, Brandt, M. Cavanaugh, DeBoer, DeKay, Fredrickson, Geist, Moser

Nay: None

PNV: None

Absent: None

Suzanne Geist, Chairperson