

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB462

Hearing Date: Monday February 11, 2019
Committee On: Transportation and Telecommunications
Introducer: Friesen
One Liner: Change provisions of the One-Call Notification System Act

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

Vote Results:
Aye: 7 Senators Albrecht, Bostelman, DeBoer, Friesen, Geist, Hilgers, Hughes
Nay:
Absent:
Present Not Voting: 1 Senator Cavanaugh

Oral Testimony:

Proponents:
Senator Curt Friesen
Brad Wegner
Lucas Billesbach

Representing:
Introducer
NUCA & AGC
ACEC - Nebraska

Opponents:
Jill Becker
Bruce Hoehne
Justin Brady
Steve Preister
James Spickelmier
Kristen Gottschalk
Joe Kohout
Dennis Placke
Lash Chaffin

Representing:
Black Hills Energy
NE Rural Electric Assoc
NE Telecommunications Assoc
USIC - United States Infrastructure Corp
Spickelmier HDD
NE Rural Electric Assoc, NE Power Assoc
American Petroleum Institute
NorthWestern Energy
League of Nebraska Municipalities

Neutral:
Christopher Cantrell
Randi Scott
Gerald Todd Heyne

Representing:
State Fire Marshal
Northern Natural Gas
ALLO Communications

Summary of purpose and/or changes:

LB 462 would propose changes to the One-Call Notification System Act. This law provides notification requirements for excavators to utility operators in advance of excavation activities. The bill would provide additional duties for the one-call Board of Directors, the Nebraska State Fire Marshal and other persons. It would also create a one-call Dispute Resolution Board and require utility locators to be licensed.

Following is a section-by-section summary of the bill.

Section 1. Harmonizes new provisions into Section 76-2301.

Section 2. Harmonizes new definitions into Section 76-2303.

Section 3-6. New definitions include Board of Directors, Center, Locator, and Ticket. The definition for Center is similar to the definition of "statewide one-call notification center" currently found in Section 76-2316, which is outright repealed in the bill, but does not contain any requirement that the Center be operated on a nonprofit basis. Board of Directors refers to the board composed of members designated by rules and regulations adopted and promulgated by the Fire Marshal. Locator is a person who locates underground facilities for an operator, and includes a contractor for an operator who performs location services. Ticket refers to the information received by the Center in the notice of excavation and facility locations provided to the Center by operators. Tickets are assigned unique identifying numbers.

Section 7. Amends Section 76-2319 to provide additional authority for the Board, which shall include (a) proposing regulations; (b) hiring and retaining staff, and contracting with the Fire Marshal for services to carry out the act; (c) appoint a dispute resolution board pursuant to Section 9; (d) determine the parameter of cases the dispute resolution board could consider; and (e) have such other authority as provided by the rules and regulations that are not inconsistent with the Act.

Section 8. New language relating to locator licensing. Application would be made to the Fire Marshal. Only a licensed locator could perform underground facility location services. The Fire Marshal could adopt minimum training standards and practices. Each locator's training shall be documented, and shall be maintained by each operator and locator and submitted to and reviewed by the Fire Marshal. The Fire Marshal may issue the license based on training documentation and payment of a non-refundable application fee, which would be used to offset the costs of administering the locator license program. The Fire Marshal could refuse to issue the license based on the applicant failing the training standards, and could suspend or revoke a license for malfeasance or nonfeasance in performing location activities or violating the Act. Denial of a license may only be done after notice, and a hearing could be requested by the applicant. Any action of the Fire Marshal could be appealed pursuant to the Administrative Procedures Act.

Section 9. New language relating to the operation of the dispute resolution board. The board shall consist of two excavator members and two operator members of the One-Call Board, and would also include an employee of the Fire Marshal, but not the Fire Marshal. The dispute resolution board shall hear disputes between excavators and operators regarding damage to any underground facility caused by an excavation. The hearing would be based on a complaint filed with the Fire Marshal, who would initiate the proceeding and provide notice to all parties. The dispute could be settled prior to the hearing. Hearing expenses would be reimbursed to the Fire Marshal from center funds. After the hearing, the dispute resolution board would make its findings and submit a recommendation to the Fire Marshal for issuance of an order determining liability. The Fire Marshal would issue the order no later than 30 days from the hearing. The order could be appealed through the Administrative Procedures Act, and nothing would prohibit a party from pursuing other forms of civil relief. The Fire Marshal may adopt rules and regulations to carry out Section 9.

Section 10. Amends Section 76-2322 to provide all excavation notices shall be transmitted to operators and excavators as a ticket, and that each ticket include the unique identification number.

Section 11. Amends Section 76-2325 of the current penalty provision for Act violations by providing for a maximum fine of \$500 for a person operating as an unlicensed locator.

Section 12. New language that provides additional authority for the Fire Marshal, pursuant to rules and regulations, to define occurrences regarding damage to underground facilities that create an emergency condition and requirements for excavators in those instances. Gas and liquid natural gas occurrences are excluded because the Fire Marshal currently has that authority.

Section 13. Repealer

Section 14. Outright repeals Section 76-2316, which contains the definition of state-wide one call center that is replaced

in Section 4 of the bill.

Explanation of amendments:

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

The amendment substitutes for the bill and revises the language of LB 462 as introduced, and in addition adds provisions of LB 617, as amended by the committee.

Committee changes to LB 462 as originally introduced are as follows:

The definition of "Board of Directors" in Section 3 of the bill is stricken. It is unnecessary because of the elimination of a term by striking original Section 9 of the original bill.

The definition of "Center" is amended to clarify the intent of the definition. (Section 3, p.1)

Amends current statutory definition of "Person" to include an employee or contractor of an individual. (Section 5, p. 1-2)

Strikes proposed change to Section 76-2319 that would (1) allow the board to hire staff and contract with the State Fire Marshal for services; and (2) appoint a dispute resolution board. Language relating to the board's ability to propose rules and regulations is retained. (Section 7, pp. 2-3)

Strikes provisions of original Section 9 relating to locator licensing. Instead, it provides that locators shall be trained in locator standards and practices applicable to the industry, and allows the board to review locator training materials and provides discretion for the board to propose best practices for locators. (Section 8, p. 3)

Strikes all provisions of original Section 10 relating to the creation of a dispute resolution board.

Adds a new Section with a requirement that plastic or nonmetallic underground facilities installed after January 1, 2021 shall be locatable either by mapping or by the use of tracer wire by the operator. (Section 9, p. 3)

Adds a new Section that requires the board to assess the effectiveness of enforcement programs and enforcement actions and the board's damage prevention and public awareness programs and make a report to the Governor and Legislature no later than December 1, 2021 and every two years thereafter. (Section 10, p. 3)

Amends Section 76-2323 relating to responses by an operator that it does not have facilities in a particular planned excavation area. It requires those responses to be made to the center in a timely manner, and that all these types of responses shall be transmitted by the center to the operator. (Section 12, p. 4)

Amends Section 76-2324 by clarifying that an operator who fails to comply with Section 76-2323 shall be liable to the excavator for any damages caused by such failure. (Section 13, p. 5)

Amends Section 76-2325 by clarifying that operators and excavators can be subject to civil penalties for violations of the one-call act. Damages relating to operators' liability would be limited to actual damages. (Section 14, p. 5-6)

New Section requires an annual report from the Attorney General to the Legislature, the State Fire Marshal, and the board by March 15 each year on the number of complaints filed and the number of such complaints prosecuted under 76-2325 during the previous calendar year. Section 15 p. 6)

LB 617 (Hilgers) Change provisions of Nebraska Telecommunications Regulation Act

Introduced by: Senator Hilgers

Transportation and Telecommunications Hearing Date: February 11, 2019

Oral Testimony:

Proponents, Representing:

Senator Mike Hilgers, Introducer

John Idoux, CenturyLink

Tim Hruza, AT&T

Eric Carstenson, Nebraska Telecommunications

Opponents, Representing:

Mary Ridder, Nebraska Public Service Commission

Neutral, Representing:

Tim Gay, Charter Cable Communications

LB 617 as introduced would amend provisions of Nebraska law relating to regulation by the Public Service Commission (PSC) of telecommunications carriers who provide landline voice services. The bill would limit regulatory authority in exchange areas deemed competitive based on procedures contained in proposed changes to the Nebraska Telecommunications Regulation Act.

Following is a section-by-section summary of LB617 as originally introduced.

Sections 3-6 contain definitions used in the bill. "Competitive local provider" is a telecommunications company offering a service for which there are alternative services available without regard to the technology employed. "Internet protocol" means the method by which data is sent from one computer to another on the Internet or other networks. "Internet-protocol-enabled service" means any service, capability, functionality, or application, other than voice over Internet protocol (VOIP) service, which uses IP that enables an end user to send or receive a voice, data, or video communication utilizing a broadband connection at the end user's location. "VOIP service" means a service that enables real-time, two-way communication originating from or terminating at the user's location using IP that uses a broadband connection from the user's location, that requires IP-compatible equipment, and that permits a user to receive a call that originates on the public-switched telephone network and to terminate a call to the public-switched telephone network.

Section 7 amends Section 86-123, to change internal references relating to the PSC's authority to regulate wireline telecommunications companies.

Section 8 amends Section 86-124 with new language relating to the PSC's regulatory authority. It provides that the PSC shall not regulate (1) the rates, terms, conditions, definition, and standards of local exchange telecommunications service provided by a company deemed or determined to be a competitive local provider as provided in subsections (2) and (3) of section 86-143; (2) interexchange services; (3) business services; and (4) IP-enabled service and VOIP service, including rates, service or contract terms, conditions, or requirements for entry for such service.

This section shall not affect or modify (a) enforcement of criminal or civil laws; (b) interconnection agreements, tariff rates for carrier-to-carriers, or service quality standards; (c) contribution requirements for 911 services; (d) eligibility and requirements for receipt of funds from the Federal or State Universal Service Funds, regardless of whether a company is regulated, or (e) any company's responsibilities to register as a carrier with the PSC, the carrier's use of public streets, roads, highways, and rights-of-way, or requirements for a certificate of public convenience and necessity or a permit from the PSC.

Subsection (3) provides that notwithstanding any other provision of the Act, the PSC shall retain limited authority with respect to the adequacy and quality of service for local exchange telecommunications services determined to be competitive. The authority would be limited to nonbinding mediation of disputes between customers and providers.

Section 9 amends Section 86-143 relating to exemptions from certain requirements for competitive local providers. The exempt provider would be deemed competitive in any geographic area defined by the provider's exchange boundary. If located in a city of the metropolitan class, primary class or in an exchange of at least 100,000 population, it would be

deemed competitive. It would also be deemed competitive if it files a verified statement that one of the following conditions exist: (i) the number of active residential local exchange subscribers constitutes 50% or less of the households located in the exchange; or (ii) at least 60% of the households in the exchange can choose voice service from among two or more other unaffiliated providers. For purposes of this section, the availability of all types of voice communications services from unaffiliated providers, regardless of technology, would be considered including wireless service, satellite service, and VOIP in the exchange.

It provides that a company will be deemed a competitive local provider in all its exchanges if, on or after January 1, 2021, the company files a verified statement that 67% or more of the total number of households in all its exchanges are located in exchanges in which it has been deemed a competitive local provider. The PSC would have 90 days to review the verified statement, or else the application would be deemed approved. Publication notice requirements are repealed in this section. The PSC could have two years to reimpose service quality standards for voice services after a competitive provider designation, in exchange areas not previously deemed competitive, only upon a finding that the company has engaged in a pattern or practice of inadequate voice service and that reimposition of those standards is necessary to ensure the protection of consumer rights or public safety. The company would have the opportunity to remedy the deficiencies, in which case the PSC could not reimpose its service quality standards. If the company did not remedy the deficiencies, the PSC could reimpose its service quality standards for a time period not to exceed 12 months, upon a finding that: (a) the reimposition of the standards is necessary to protect the majority of the company's customers or public safety; (b) no alternative or less burdensome action is adequate to protect the majority of the company's customers; and (c) competitive market forces have been or will continue to be insufficient to protect the majority of the telecommunications company's customers.

Subsection (5) of Section 9 provides that no exchange in which a company has been deemed competitive shall receive support for voice services under any high-cost program of the NUSF. The PSC would reallocate any support to the high-cost program for redistribution to companies, including the company which has been deemed competitive, for the deployment of advanced services in unserved rural areas of the state.

Section 10 amends Section 86-144 to allow rates for regulated local telephone voice service to be changed upon 10 days' notice to the PSC. The current requirement is for 90 days' notice and public informational meetings to be held in any commission district where rates are to be increased.

Section 11 provides that nothing in the Act shall be construed to affect sections relating to exchange abandonment or discontinuation of service by any local service provider.

Section 12 Repealer

Section 13 outright repeals Sections 86-145 through 86-148. These sections deal with PSC authority over local exchange rate review, either based on subscriber complaints or on the PSC's own motion. These provisions apply to non-competitive exchanges.

The amendments made by the committee to LB 617 as originally introduced are contained in Sections 17-24, pp. 6-9 of the committee amendment. All references to local exchange service in areas deemed to be competitive are eliminated. Therefore, the PSC continues to have all of its current authority with respect to traditional voice services. The major change to current law would eliminate notice and hearing requirements for local telecommunications companies if they wish to raise local service rates.

The amendment strikes the definition of "Internet protocol" and "Competitive local provider" and clarifies the definition of "Internet protocol-enabled services" (Section 19, p. 7), and "Voice over Internet protocol service" (Section 20, p. 7).

It also strikes the change to Section 86-123, which would have provided the exception to PSC authority over competitive local providers.

The change is Section 86-124 (Section 21, p. 7-8) strikes the proposed amendment to the PSC's authority to regulate

rates, terms, conditions, definitions, and standards of local exchange companies deemed to be competitive. It also strikes new language that would prohibit PSC regulation of local exchange telecommunications service provided as a business service. It adds a provision that the PSC shall continue to have jurisdiction over intrastate switched access rates, terms, and conditions including the resolution of disputes arising from those issues, and implementation of federal and state law with respect to intercarrier compensation.

Amendments to Section 86-144 (Section 22, pp. 8-9) allow rate lists for local telephone voice service to be changed with 10 days' notice to the PSC, and strike the notice and public meeting requirements to increase rates.

Curt Friesen, Chairperson