

2022 Regular Session

HOUSE BILL NO. 1080 (Substitute for House Bill No. 1038 by Representative Deshotel)

BY REPRESENTATIVE DESHOTEL

UTILITIES: Provides relative to broadband

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(35) and R.S. 51:2370.2(introductory paragraph), (2),
3 and (16), 2370.3(A) and (E), 2370.4(A)(introductory paragraph) and (12), (B), and
4 (C)(1), 2370.5(A), (B)(introductory paragraph), (D), (E), (H), (I), and (J), 2370.13,
5 and 2370.16 and to enact R.S. 51:2370.3(H) and (I), relative to broadband; to provide
6 for the GUMBO grant program; to provide for definitions; to provide for mapping;
7 to provide for description of service; to provide for protest; to adjust the
8 administrative fee; to provide for public records exceptions; to make technical
9 changes; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 44:4.1(B)(35) is hereby amended and reenacted to read as follows:

12 §4.1. Exceptions

13 * * *

14 B. The legislature further recognizes that there exist exceptions, exemptions,
15 and limitations to the laws pertaining to public records throughout the revised
16 statutes and codes of this state. Therefore, the following exceptions, exemptions, and
17 limitations are hereby continued in effect by incorporation into this Chapter by
18 citation:

19 * * *

1 (35) R.S. 51:710.2(B), 705, 706, 936, 1404, 1926, 1934, 2113, 2182, 2262,
2 2318, 2370.3, 2370.16, 2389

3 * * *

4 Section 2. R.S. 51:2370.2(introductory paragraph), (2), and (16), 2370.3(A) and (E),
5 2370.4(A)(introductory paragraph) and (12), (B), and (C)(1), 2370.5(A), (B)(introductory
6 paragraph), (D), (E), (H), (I), and (J), 2370.13, and 2370.16 are hereby amended and
7 reenacted and R.S. 51:2370.3(H) and (I) are hereby enacted to read as follows:

8 §2370.2. Definitions

9 As used in this Part, the following terms have the ~~meaning ascribed to them~~
10 following meanings:

11 * * *

12 (2) "Broadband service" means deployed internet access service with a
13 minimum of ~~twenty-five~~ one hundred megabits per second (Mbps) download and at
14 least ~~three~~ twenty megabits per second upload transmission speeds. The office shall
15 have the authority to determine whether any particular technology can reliably meet
16 or exceed any internet transmission speed threshold.

17 * * *

18 (16) "Unserved" means, notwithstanding any other provision of law, any
19 federal funding awarded to or allocated by the state for broadband deployment shall
20 not be used, directly or indirectly, to deploy broadband infrastructure to provide
21 broadband internet service in any area of the state where broadband internet service
22 of at least ~~twenty-five~~ one hundred Mbps download and ~~three~~ twenty Mbps upload
23 is available from at least one internet service provider.

24 * * *

25 §2370.3. Ineligibility due to funds; submission of census block, shape file area, and
26 address data; time limitations; mapping

27 A. A provider receiving Universal Service, Connect America Phase II, Rural
28 Digital Opportunity Fund, or ~~nonfederal~~ other public funds to deploy broadband
29 service may qualify the area for protection by submitting, within sixty days of the

1 close of the application period, a listing of the census blocks, shapefile areas,
2 individual addresses, or portions thereof, comprising the ~~federally-funded~~ publicly-
3 funded project areas meeting this requirement to the office.

4 * * *

5 E. Failure on the part of a provider to submit the listing of census blocks,
6 shapefile areas, individual addresses, or portions thereof by the deadline shall result
7 in those areas being ineligible for exclusion under the GUMBO program during the
8 upcoming program year. A provider that has facilities in the area or that intends to
9 deploy broadband service within twenty-four months, as a result of receiving public
10 funds specifically for broadband deployment, shall be able to protest ineligibility.

11 * * *

12 H.(1) The office shall secure information from any entity, public or private,
13 providing internet service to at least one location in this state to assist the office in
14 compiling a statewide parish by parish broadband map identifying the locations and
15 capability of broadband service in this state. At the request of the office, any such
16 entity shall submit to the office, on or before fifteen days following the expiration
17 of the date required for submission of broadband deployment information to the
18 federal government, any such broadband deployment information. The information
19 provided to the office shall contain the same information and be provided in the same
20 format as the information that was submitted to the Federal Communications
21 Commission, in a manner specified by the office.

22 (2) Any entity, public or private, providing internet service to at least one
23 location in this state, that does not comply with the requirements of this Section or
24 that submits inaccurate information, may be ineligible to participate in, or receive
25 any funding from, any state-administered grant program designated for broadband
26 infrastructure deployment in this state in the calendar year of noncompliance and the
27 following calendar year.

28 (3) Any location in the state purportedly served by any entity, public or
29 private, providing internet service to at least one location in this state, that does not

1 comply with the requirements of this Section may be considered to have internet
2 access service of less than one hundred megabits per second for download and
3 twenty megabits per second for upload.

4 (4) Any broadband availability data provided in accordance with this Section
5 shall be used solely for the purpose of identifying served, underserved, and unserved
6 areas to aid in the administration of the GUMBO program and for no additional
7 purpose.

8 (5) Any entity submitting broadband data to the office as required by this
9 Section may review the proposed draft of the state broadband map and submit any
10 necessary corrective data to the office prior to the publication or utilization of the
11 state broadband map for any state-administered grant program designated for
12 broadband infrastructure deployment in this state.

13 (6) Any entity submitting broadband data to the office as required by this
14 Section may challenge any area ultimately deemed eligible for any
15 state-administered grant program designated for broadband infrastructure
16 deployment in the state that overlaps with an entity's verified service territory.

17 I. Information compiled pursuant to the provisions of Subsection H of this
18 Section shall be exempt from the Public Records Law and shall be considered
19 confidential, proprietary, and a trade secret of the internet service provider providing
20 the information. The office shall keep strictly confidential and shall not disclose, or
21 cause or permit to be disclosed, to any third person, private entity or public body as
22 defined in R.S. 44:1, any broadband availability data provided in accordance with
23 Subsection H of this Section. The office shall take all actions reasonably necessary
24 to ensure that the broadband availability data remains strictly confidential and is not
25 disclosed to or seen, used, or obtained by any third person, private entity, or public
26 body as defined in R.S. 44:1.

27 §2370.4. Applications; burden of proof; public comment; protest

28 A. Applications for grants ~~shall~~ may be submitted at times designated by the
29 director and shall include, at a minimum, the following information:

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* * *

(12) Evidence of support for the project from citizens, local government, businesses, ~~and~~ or institutions in the community.

* * *

B. A provider submitting an application pursuant to this Section shall bear the burden of proof that the proposed area to be served can, in fact, be served using the proposed technology and that the area is, as of the close of the application deadline, unserved.

C.(1) Applications shall be made publicly available, subject to the confidentiality protections provided in this Part, by posting on the website of the office or the website of the division of administration for a period of at least sixty days prior to award. During the sixty-day period, any ~~interested party may submit comments to the director concerning any pending application.~~ Any aggrieved ~~person~~ party may submit a protest of any application or award in accordance with R.S. 51:2370.5, specific to whether a location or area is served or unserved, which shall be the sole reason allowable for the submission of a protest. Protests shall be submitted in writing, accompanied by all relevant supporting documentation, and shall be considered by the office in connection with the review of the application. Upon submission of evidence to the office that the proposed project area includes prospective broadband recipients that are served, the office may work with an applicant to amend an application to reduce the number of unserved prospective broadband recipients in the project area to reflect an accurate level of current broadband service. The office may revise application scores in accordance with amended applications. The office shall not grant funds to an applicant who submits an application that does not comply with program requirements. For applications with filed protests, the director shall issue a written decision to the protesting party at least fifteen days prior to the approval of that application. Following a protest that is granted for a portion of the application, the office shall release to an applicant the locations or areas declared ineligible. Any provider submitting a protest shall attest

1 that the information in the protest is accurate and that the protest is submitted in good
2 faith. The office may deny any protest or application that contains inaccurate
3 information.

4 * * *

5 §2370.5. Administrative and judicial review

6 A. The director or his designee shall have authority, prior to the
7 commencement of an action in court concerning a protest arising under this Part, to
8 settle and resolve the protest of an aggrieved ~~person~~ party concerning a grant
9 application. This authority shall be exercised in accordance with applicable
10 regulations.

11 B. If the protest is not resolved by mutual agreement, the director or his
12 designee shall, within ~~fourteen~~ seven days, issue a decision in writing. The decision shall:

13 * * *

14 D. A decision required by Subsection B of this Section shall be final and
15 conclusive unless one of the following applies:

- 16 (1) The decision is fraudulent.
- 17 (2) The ~~person~~ party adversely affected by the decision has timely appealed
18 to the commissioner of administration in accordance with Subsection E of this
19 Section.

20 E. The aggrieved ~~person~~ party shall file an appeal with the commissioner of
21 administration within ~~fifteen~~ seven days of receipt of a decision issued pursuant to
22 Subsection B of this Section. The commissioner of administration shall have the
23 authority to review and determine any appeal by an aggrieved ~~person~~ party from a
24 determination by the director or his designee.

25 * * *

26 H. A decision issued pursuant to Subsection F of this Section shall be final
27 and conclusive unless one of the following applies:

- 28 (1) The decision is fraudulent.

1 (2) The ~~person party~~ adversely affected by the decision has appealed to the
2 court as provided for in Subsection I of this Section.

3 I. The aggrieved ~~person party~~ shall file an appeal in the Nineteenth Judicial
4 District Court within seven days of receipt of a decision issued pursuant to
5 Subsection F of this Section. The Nineteenth Judicial District Court shall have
6 exclusive venue over an action between the state and ~~an applicant, prospective or~~
7 ~~actual~~; any aggrieved party to determine whether ~~an award of~~ a grant application is
8 in accordance with this state's constitution, statutes, and regulations. Such actions
9 shall extend to all kinds of actions, whether for monetary damages or for declaratory,
10 injunctive, or other equitable relief.

11 J. Any party aggrieved by a final judgment or interlocutory order or ruling
12 of the Nineteenth Judicial District Court may appeal or seek review thereof, as the
13 case may be, to the Louisiana Court of Appeal, First Circuit or the Supreme Court
14 of Louisiana, as otherwise permitted in civil cases by law and the constitution of this
15 state. However, there shall be no challenge by any legal process to a grant award
16 except for fraud, bias for pecuniary or personal reasons not related to the taxpayers'
17 interest, or arbitrary and capricious selection by officers.

18 * * *

19 §2370.13. Administration fee

20 The office may use up to one percent of the appropriated funds to administer
21 the GUMBO program. The office may use an additional one percent of the
22 appropriated funds to hire third-party contractors as deemed necessary for the further
23 administration of the GUMBO program. The additional one percent shall not be
24 used as compensation for any new or existing positions within the office.

25 * * *

26 §2370.16. Records; limitations

27 Notwithstanding any provision of this Part to the contrary, all records related
28 to the GUMBO program shall be public records as provided by the Public Records
29 Law, except ~~the following:~~ for

1 ~~(1) A~~ a provider's trade secret and proprietary information, including
2 coverage data, maps, and shapefiles.

3 ~~(2) Information regarding unserved coverage areas not yet awarded or~~
4 ~~announced.~~

5 ~~(3) Applications pending evaluation.~~

6

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 1080 Original

2022 Regular Session

Deshotel

Abstract: Makes changes to the GUMBO grant program.

Present law requires an applicant to provide a description of the broadband service to be provided by including the proposed upstream and downstream speeds to be delivered. Pursuant to present law an area that has access to internet with a connection speed of 3/25 Mbps is not considered an unserved area eligible for a grant.

Proposed law requires the office to collect information to be used to create a statewide broadband map to be utilized by the office in administering the GUMBO program.

Proposed law retains the requirement that an applicant provide a description of the area and proposed connection speed, but raises the minimum allowable connection speed that constitutes an unserved area from 25/3 Mbps to 100/20 Mbps.

Present law provides a procedure for protest by the provider and requires the provider to attest that all information is correct. Proposed law retains present law, and specifies that a protest can only be brought to challenge the determination of an area as unserved. Proposed law further modifies the protest process by making changes relative to various time limits.

Present law allows for judicial review of a decision made by the office relative to an award. Proposed law retains present law but limits the grounds for challenge.

Present law allows the office to use up to 1% of the appropriate funds to administer the program.

Proposed law raises the cap on the administrative fee from 1% to 2% and specifies that the additional 1% is not to be used for in-office personnel positions.

(Amends R.S. 44:4.1(B)(35) and R.S. 51:2370.2(intro. para.), (2), and (16), 2370.3(A) and (E), 2370.4(A)(intro. para.) and (12), (B), and (C)(1), 2370.5(A), (B)(intro. para.), (D), (E), (H), (I), and (J), 2370.13, and 2370.16; Adds R.S. 51:2370.2(intro. para.) and (5), 2370.4(A)(8) and (C)(1), and 2370.13)