

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), 2370.9,
5 2370.13, and 2370.16 and to enact R.S. 51:2370.3(H) and (I), relative to broadband;
6 to provide for the GUMBO grant program; to provide for definitions; to provide for
7 mapping; to provide for description of service; to provide for protest; to authorize
8 certain reports; to adjust the administrative fee; to provide for public records
9 exceptions; to make technical 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), 2370.9, 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~~ that has been fully authorized to receive Universal
28 Service, Connect America Phase II, Rural Digital Opportunity Fund, or ~~nonfederal~~
29 other public funds to deploy broadband service may qualify the area for protection

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

5 * * *

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

12 * * *

13 H.(1) The office shall secure information from any entity, public or private,
14 providing internet service to at least one location in this state to assist the office in
15 compiling a statewide parish by parish broadband map identifying the locations and
16 capability of broadband service in this state. At the request of the office, any such
17 entity shall submit to the office, on or before fifteen days following the expiration
18 of the date required for submission of broadband deployment information to the
19 federal government, any such broadband deployment information. The information
20 provided to the office shall contain the same information and be provided in the same
21 format as the information that was submitted to the Federal Communications
22 Commission, in a manner specified by the office. In no instance shall an entity be
23 required to provide any data beyond that which it is required to provide to the
24 Federal Communications Commission.

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

1 infrastructure deployment in this state in the calendar year of noncompliance and the
2 following calendar year.

3 (3) Any location in this state purportedly served by any entity, public or
4 private, providing internet service to at least one location in this state, that does not
5 comply with the requirements of this Section may be considered to have internet
6 access service of less than twenty-five megabits per second for download and three
7 megabits per second for upload.

8 (4) Any location in this state purportedly served by any entity, public or
9 private, providing internet service to at least one location in this state, that does not
10 comply with the requirements of this Section may be considered to have internet
11 access service of less than twenty-five megabits per second for download and three
12 megabits per second for upload.

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

17 (6) Any entity submitting broadband data to the office as required by this
18 Section may review the proposed draft of the state broadband map and submit any
19 necessary corrective data to the office prior to the publication or utilization of the
20 state broadband map for any state-administered grant program designated for
21 broadband infrastructure deployment in this state.

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

26 I.(1) The office may contract with a private entity or third-party consultant
27 to develop and maintain the state broadband map. Any contract entered into by the
28 office and a private entity or third-party consultant for the purpose of developing and
29 maintaining the state broadband map shall include a confidentiality agreement

1 prohibiting the disclosure of any broadband data provided in accordance with this
2 Section.

3 (2) Information compiled pursuant to the provisions of Subsection H of this
4 Section shall be exempt from the Public Records Law and shall be considered
5 confidential, proprietary, and a trade secret of the internet service provider providing
6 the information. The office, including any private entity or third-party consultant
7 retained or employed pursuant to this Section, shall keep strictly confidential and
8 shall not disclose, or cause or permit to be disclosed, to any third person, private
9 entity or public body as defined in R.S. 44:1, any broadband availability data
10 provided in accordance with Subsection H of this Section. The office, including any
11 private entity or third-party consultant retained or employed pursuant to this Section,
12 shall take all actions reasonably necessary to ensure that the broadband availability
13 data remains strictly confidential and is not disclosed to or seen, used, or obtained
14 by any third person, private entity, or public body as defined in R.S. 44:1.

15 (3) The requirements of this Section shall terminate under any one of the
16 following conditions, whichever occurs first:

17 (a) A determination by the office that it is no longer necessary to compile a
18 statewide parish-by-parish broadband map identifying the locations and capability
19 of broadband service in this state.

20 (b) At midnight on December 31, 2026.

21 (4) The office may promulgate rules necessary to carry out the provisions of
22 this Section in accordance with the Administrative Procedure Act.

23 §2370.4. Applications; burden of proof; public comment; protest

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

26 * * *

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

29 * * *

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

5 C.(1) Applications shall be made publicly available, subject to the
6 confidentiality protections provided in this Part, by posting on the website of the
7 office or the website of the division of administration for a period of at least sixty
8 days prior to award. During the sixty-day period, any ~~interested party may submit~~
9 ~~comments to the director concerning any pending application.~~ Any aggrieved person
10 party may submit a protest of any application or award in accordance with R.S.
11 51:2370.5, specific to whether a location or area is served or unserved, which shall
12 be the sole reason allowable for the submission of a protest. Protests shall be
13 submitted in writing, accompanied by all relevant supporting documentation, and
14 shall be considered by the office in connection with the review of the application.
15 Upon submission of evidence to the office that the proposed project area includes
16 prospective broadband recipients that are served, the office may work with an
17 applicant to amend an application to reduce the number of unserved prospective
18 broadband recipients in the project area to reflect an accurate level of current
19 broadband service. The office may revise application scores in accordance with
20 amended applications. The office shall not grant funds to an applicant who submits
21 an application that does not comply with program requirements. For applications
22 with filed protests, the director shall issue a written decision to the protesting party
23 at least fifteen days prior to the approval of that application. Following a protest that
24 is granted for a portion of the application, the office shall release to an applicant the
25 locations or areas declared ineligible. Any provider submitting a protest shall attest
26 that the information in the protest is accurate and that the protest is submitted in good
27 faith. The office may deny any protest or application that contains inaccurate
28 information.

29

* * *

1 §2370.5. Administrative and judicial review

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

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

9 * * *

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

- 12 (1) The decision is fraudulent.
- 13 (2) The ~~person~~ party adversely affected by the decision has timely appealed
14 to the commissioner of administration in accordance with Subsection E of this
15 Section.

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

21 * * *

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

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

27 I. The aggrieved ~~person~~ party shall file an appeal in the Nineteenth Judicial
28 District Court within seven days of receipt of a decision issued pursuant to
29 Subsection F of this Section. The Nineteenth Judicial District Court shall have

1 exclusive venue over an action between the state and ~~an applicant, prospective or~~
2 ~~actual~~; any aggrieved party to determine whether ~~an award of a grant application is~~
3 in accordance with this state's constitution, statutes, and regulations. Such actions
4 shall extend to all kinds of actions, whether for monetary damages or for declaratory,
5 injunctive, or other equitable relief.

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

13 * * *

14 §2370.9. Compliance during the agreement

15 The office shall require that grant recipients offer the proposed advertised
16 minimum download and minimum upload speeds of twenty-five Mbps download and
17 three Mbps upload. Grant recipients that have offered broadband service to at least
18 one thousand consumers for a period of at least five consecutive years shall offer
19 broadband service at prices consistent with offers to consumers in other areas of the
20 state. Any other broadband provider shall ensure that the broadband service is priced
21 to consumers at no more than the cost rate identified in the project application, for
22 the duration of the five-year service agreement. In calculating cost, the recipient
23 may adjust annually, consistent with the annual percentage increase in the Consumer
24 Price Index in the preceding year. At least annually, a grant recipient shall provide
25 to the office evidence consistent with Federal Communications Commission
26 attestation that the grant recipient is making available the proposed advertised speed,
27 or a faster speed, as contained in the grant agreement. For the duration of the
28 agreement, grant recipients shall disclose any changes to data caps. The office may

1 require that grant recipients submit, no more than quarterly, a report for each funded
2 project for the duration of the agreement.

3 * * *

4 §2370.13. Administration fee

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

10 * * *

11 §2370.16. Records; limitations

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

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

17 ~~(2) Information regarding unserved coverage areas not yet awarded or~~
18 ~~announced.~~

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

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 Reengrossed

2022 Regular Session

Deshotel

Abstract: Makes changes to the GUMBO grant program.

Present law provides definitions.

Proposed law makes changes to the definitions of "broadband service" and "unserved".

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 of broadband and connectivity (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.

Proposed law requires an entity to submit to the office certain broadband deployment information. The information is required to contain the same information and be provided in the same format as the information that was submitted to the Federal Communications Commission (FCC). The entity is not required to provide any data beyond the information that is required to be provided to the FCC.

Proposed law authorizes the office to contract with a private entity or third-party consultant to develop and maintain the state broadband map and requires such contract to include a confidentiality agreement prohibiting the disclosure of any broadband data provided in accordance with proposed law. Proposed law creates an exception to Public Records Law.

Proposed law provides that certain provisions of proposed law will terminate under either of the following conditions, whichever occurs first:

- (1) A determination by the office that the statewide parish-by-parish broadband map is no longer necessary.
- (2) At midnight on Dec. 31, 2026.

Proposed law authorizes the office to promulgate any necessary rules in accordance with the Administrative Procedure Act.

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 requires grant recipients to offer proposed advertised minimum download and minimum upload speeds. Present law requires grant recipients that have offered broadband services to at least 1,000 consumers for at least 5 consecutive years to offer broadband service at prices consistent with offers to consumers in other areas of the state. Present law requires a grant recipient to provide to the office, annually, evidence consistent with FCC attestation that the grant recipient is making available the proposed advertised speed, or a faster speed, as contained in the grant agreement.

Proposed law authorizes the office to require grant recipients to submit a report for each funded project for the duration of the grant agreement.

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), 2370.9, 2370.13, and 2370.16; Adds R.S. 51: 2370.3(H) and (I))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Provide that an entity is not required to provide any data beyond what is required to be provided to the FCC.
3. Authorize the office to contract with a private entity or third-party consultant to develop and maintain the state broadband map and require such contract to include a confidentiality agreement.
4. Provide that certain provisions of proposed law will terminate for either a determination by the office that a statewide parish-by-parish broadband map is necessary or by Dec. 31, 2026.
5. Authorize the office to require grant recipients to submit a report for each funded project for the duration of the grant agreement.