

2022 Regular Session

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

BY REPRESENTATIVE DESHOTEL

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, 2370.4(A)(introductory paragraph) and (12), (B), and (C)(1),
4 2370.5(A), (B)(introductory paragraph), (D), (E), (H), (I), and (J), 2370.9,
5 2370.10(B), 2370.13, and 2370.16, to enact R.S. 51:2370.10(D), and to repeal R.S.
6 51:2370.4(C)(2), relative to broadband; to provide for the GUMBO grant program;
7 to provide for definitions; to provide for mapping; to provide for privately- funded
8 broadband deployment; to require performance bonds under certain circumstances;
9 to authorize objections by local governing authorities; to provide for description of
10 service; to provide for protest; to authorize certain reports; to adjust the
11 administrative fee; to provide for public records exceptions; to make technical
12 changes; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

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

15 §4.1. Exceptions

16 * * *

17 B. The legislature further recognizes that there exist exceptions, exemptions,
18 and limitations to the laws pertaining to public records throughout the revised
19 statutes and codes of this state. Therefore, the following exceptions, exemptions, and

1 limitations are hereby continued in effect by incorporation into this Chapter by
2 citation:

3 * * *

4 (35) R.S. 51:710.2(B), 705, 706, 936, 1404, 1926, 1934, 2113, 2182, 2262,
5 2318, 2370.3, 2370.16, 2389

6 * * *

7 Section 2. R.S. 51:2370.2(introductory paragraph), (2), and (16), 2370.3,
8 2370.4(A)(introductory paragraph) and (12), (B), and (C)(1), 2370.5(A), (B)(introductory
9 paragraph), (D), (E), (H), (I), and (J), 2370.9, 2370.10(B), 2370.13, and 2370.16 are hereby
10 amended and reenacted and R.S. 51:2370.10(D) is hereby enacted to read as follows:

11 §2370.2. Definitions

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

14 * * *

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

20 * * *

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

28 * * *

1 §2370.3. Ineligibility due to funds; submission of census block, shape file area, and
2 address data; time limitations; mapping

3 A. A provider ~~receiving that has been fully authorized to receive~~ Universal
4 Service, Connect America Phase II, Rural Digital Opportunity Fund, or ~~nonfederal~~
5 other public funds to deploy broadband service using wireline technology may
6 qualify the area for protection by submitting, within sixty days of the close of the
7 application period, a listing of the census blocks, shapefile areas, individual
8 addresses, or portions thereof, comprising the ~~federally-funded~~ publicly-funded
9 project areas meeting this requirement to the office. Any location or area of the
10 state, subject to a Rural Digital Opportunity Fund award, in which the provider
11 receiving the award has proposed to provide broadband internet access service
12 through a technology other than a wireline technology, may be eligible for the
13 GUMBO grant program.

14 B.(1) A provider with firm plans to privately fund broadband deployment
15 within twenty months may qualify the area for protection by submitting to the office,
16 within thirty days of the close of the application period, a listing of the census
17 blocks, shapefile areas, individual addresses, or portions thereof, comprising the
18 privately-funded project areas meeting this requirement. A provider seeking to
19 qualify the area for protection pursuant to this Subsection shall also provide the
20 office with evidence of plans to deploy within twenty months, which shall include
21 detailed project plans, schedules, detailed budgets, or executive affidavits. Providers
22 that block competitive bidding for GUMBO funding through credible evidence of
23 intent to build shall be required to sign a commitment with penalties for failure to
24 execute. The office may, at its discretion, grant an extension of the twenty-month
25 period provided in this Paragraph.

26 (2) A provider seeking to privately fund broadband deployment in accordance
27 with this Subsection shall construct and provide deployable broadband service within
28 the twenty-month period to at least eighty percent of the designated locations;
29 however, the office may, at its discretion, grant an extension to this twenty-month
30 period.

1 (3)(a) The office shall require any provider seeking to privately fund
 2 broadband deployment in accordance with this Subsection to furnish a bond to
 3 guarantee the faithful performance of work.

4 (b) The performance bond required by this Paragraph shall be in an amount
 5 equal to the cost of construction and deployment.

6 (4) If a provider fails to perform as required by this Subsection and the
 7 performance bond is due, the provider shall be ineligible for any state-administered
 8 federal grant program designated for broadband development services.

9 C.(1) A local governing authority may submit, in writing, to the office an
 10 objection to any provider that seeks to bid to deploy broadband services in the local
 11 governing authority's area if the provider has received a letter grade rating of "D" or
 12 "F" from the Better Business Bureau.

13 (2) At the request of the local governing authority that submits an objection
 14 in accordance with this Paragraph, a provider shall be ineligible to bid to deploy
 15 broadband services.

16 D. In future program years, the deadline for submitting the census blocks,
 17 shapefile areas, individual addresses, or portions thereof shall be established by the
 18 office, but shall not be less than sixty days prior to the beginning date of the
 19 application period. This will enable the office to update maps and advise applicants
 20 as to the unserved areas of the state that are ineligible for consideration in that
 21 program year.

22 ~~E.~~ E. The office shall only utilize the data to update maps of census blocks,
 23 shapefile areas, individual addresses, or portions thereof and to reflect the census
 24 blocks, shapefile areas, individual addresses, or portions thereof as being served.

25 ~~F.~~ F. In no instance shall an applicant be required to provide any data
 26 beyond that which it is required to provide to the Federal Communications
 27 Commission pursuant to The Broadband Deployment Accuracy and Technological
 28 Availability Act pursuant to 47 U.S.C. 641 et seq.

29 ~~G.~~ G. Failure on the part of a provider to submit the listing of census blocks,
 30 shapefile areas, individual addresses, or portions thereof by the deadline shall result

1 in those areas being ineligible for exclusion under the GUMBO program during the
2 upcoming program year. A provider using wireline technology that has facilities in
3 the area or that intends to deploy broadband service within twenty-four months, as
4 a result of receiving public funds specifically for broadband deployment or upon
5 providing the office with evidence of firm plans to privately fund deployment, shall
6 be able to protest ineligibility.

7 F. H. The office shall use the provided census blocks, shapefile areas,
8 individual addresses, or portions thereof only for mapping of unserved areas.

9 ~~G.~~ I. Upon expiration of the twenty-four month reservation period described
10 in Subsection ~~E~~ G of this Section, a provider that has received a reservation of census
11 blocks, shapefile areas, individual addresses, or portions thereof shall submit written
12 documentation by April thirtieth of the year following the program year that the
13 initiation of activity related to broadband infrastructure will or has begun in the
14 census blocks, shapefile areas, individual addresses, or portions thereof, that have
15 been deemed ineligible by the office due to the existence of a federally-funded
16 project area.

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

29 (2) Any entity, public or private, providing internet service to at least one
30 location in this state, that does not comply with the requirements of this Section or

1 that submits inaccurate information, may be ineligible to participate in, or receive
 2 any funding from, any state-administered grant program designated for broadband
 3 infrastructure deployment in this state in the calendar year of noncompliance and the
 4 following calendar year.

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

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

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

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

23 K.(1) The office may contract with a private entity or third-party consultant
 24 to develop and maintain the state broadband map. Any contract entered into by the
 25 office and a private entity or third-party consultant for the purpose of developing and
 26 maintaining the state broadband map shall include a confidentiality agreement
 27 prohibiting the disclosure of any broadband data provided in accordance with this
 28 Section.

29 (2) Information compiled pursuant to the provisions of Subsection J of this
 30 Section shall be exempt from the Public Records Law and shall be considered

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

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

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

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

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

19 §2370.4. Applications; burden of proof; public comment; protest

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

22 * * *

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

25 * * *

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

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

* * *

§2370.5. Administrative and judicial review

29 A.(1) An aggrieved party may submit a protest of an award in accordance
30 with this Section. The period for protesting an award shall be thirty days from the

1 announcement of an award. Protests shall be submitted in writing, accompanied by
 2 all supporting documentation, and shall be considered by the office in connection
 3 with the review of the application and award. Any provider submitting a protest shall
 4 attest that the information in the protest is accurate and that the protest is submitted
 5 in good faith. The office may deny any protest or application that contains inaccurate
 6 information.

7 ~~A.~~(2) The director or his designee shall have authority, prior to the
 8 commencement of an action in court concerning a protest arising under this Part, to
 9 settle and resolve the protest of an aggrieved ~~person~~ party concerning a grant
 10 ~~application~~ award. An aggrieved party may also submit a protest of eligibility of an
 11 application only if the aggrieved party has facilities in the area or intends to deploy
 12 broadband services within the next twenty-four months, as a result of receiving
 13 public funds specifically for broadband deployment or if the aggrieved party is
 14 seeking to privately fund broadband deployment in accordance with R.S. 51:2370.3.
 15 This authority shall be exercised in accordance with applicable regulations.

16 (3) If the basis of the protest of an award is that an application proposes to
 17 serve an area that is already served, the office may utilize speed tests that conform
 18 to the methodology employed in the Federal Communications Commission's
 19 "Measuring Broadband America" report to determine if the protested area or
 20 individual households or businesses currently have access to broadband service as
 21 defined in this Part. All decisions regarding the speed test to be utilized and the
 22 manner by which the speed tests are applied shall be made by the director or his
 23 designee.

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

27 * * *

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

- 30 (1) The decision is fraudulent.
- 31 (2) The ~~person~~ party adversely affected by the decision has timely appealed
- 32 to the commissioner of administration in accordance with Subsection E of this
- 33 Section.

1 E. The aggrieved person party shall file an appeal with the commissioner of
2 administration within ~~fifteen~~ ten days of receipt of a decision issued pursuant to
3 Subsection B of this Section. The commissioner of administration shall have the
4 authority to review and determine any appeal by an aggrieved person party from a
5 determination by the director or his designee.

6 * * *

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

9 (1) The decision is fraudulent.

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

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

20 J. Any party aggrieved by a final judgment or interlocutory order or ruling
21 of the Nineteenth Judicial District Court may appeal or seek review thereof, as the
22 case may be, to the Louisiana Court of Appeal, First Circuit or the Supreme Court
23 of Louisiana, as otherwise permitted in civil cases by law and the constitution of this
24 state. If a court has found in a final judgment that an applicant or protestor has
25 incorrectly designated a location as served or unserved, the office may assess a civil
26 penalty of up to one thousand dollars per incorrectly designated location identified
27 in the GUMBO award process and disputed in litigation.

28 * * *

1 §2370.9. Compliance during the agreement

2 The office shall require that grant recipients offer the proposed advertised
3 minimum download and minimum upload speeds of twenty-five Mbps download and
4 three Mbps upload. Grant recipients that have offered broadband service to at least
5 one thousand consumers for a period of at least five consecutive years shall offer
6 broadband service at prices consistent with offers to consumers in other areas of the
7 state. Any other broadband provider shall ensure that the broadband service is priced
8 to consumers at no more than the cost rate identified in the project application, for
9 the duration of the five-year service agreement. In calculating cost, the recipient
10 may adjust annually, consistent with the annual percentage increase in the Consumer
11 Price Index in the preceding year. At least annually, a grant recipient shall provide
12 to the office evidence consistent with Federal Communications Commission
13 attestation that the grant recipient is making available the proposed advertised speed,
14 or a faster speed, as contained in the grant agreement. For the duration of the
15 agreement, grant recipients shall disclose any changes to data caps. The office may
16 require that grant recipients submit, no more than quarterly, a report for each funded
17 project for the duration of the agreement.

18 §2370.10. Failure to perform

19 * * *

20 B. A grant recipient shall not be required to forfeit the amount of the grant
21 received if it fails to perform due to a natural disaster, an act of God, force majeure,
22 a catastrophe, pandemic, the failure to obtain access to private or public property or
23 any government permits under reasonable terms or such other occurrence over which
24 the grant recipient has no control.

25 * * *

26 D. Notwithstanding the provisions of this Section to the contrary, if a grant
27 recipient fails to complete a project in a material respect, the grant recipient, at the
28 discretion of the office, may be required to reimburse the state the actual cost to
29 finish the project. The actual cost to finish the project shall be determined by the
30 office in consultation with the grant recipient. The office shall not require a grant

1 recipient that it deems has made a good faith effort to complete a project to
2 reimburse the state an amount greater than the remaining GUMBO cost per
3 prospective broadband recipient as set forth in the grant recipient's application.

4 * * *

5 §2370.13. Administration fee

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

11 * * *

12 §2370.16. Records; limitations

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

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

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

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

21 Section 3. R.S. 51:2370.4(C)(2) is hereby repealed in its entirety.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____