

2023 Regular Session

HOUSE BILL NO. 653 (Substitute for House Bill No. 603 by Representative Deshotel)

BY REPRESENTATIVE DESHOTEL

UTILITIES: Provides relative to Granting Unserved Municipalities Broadband Opportunities

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(35) and to enact Subpart B of Part VI-C of Chapter
3 39 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.
4 51:2370.21 through 2370.33, relative to grants for broadband expansion; to provide
5 for the creation of the GUMBO 2.0 program; to provide for a short title; to provide
6 for definitions; to provide for administration fees and their use; to require the
7 promulgation of rules; to provide for the grant process and its funding; to provide
8 for administrative and judicial review; to require the submission of certain reports;
9 to provide for the disbursement and reimbursement of certain funds; to provide
10 parameters for the failure of performance by grant recipients; to provide exceptions
11 to the Public Records Law; to authorize the Louisiana State Law Institute to make
12 certain conforming technical changes; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Subpart B of Part VI-C of Chapter 39 of Title 51 of the Louisiana Revised
15 Statutes of 1950, comprised of R.S. 51:2370.21 through 2370.33, is hereby enacted to read
16 as follows:

17 SUBPART B. GRANTING UNSERVED MUNICIPALITIES BROADBAND

18 OPPORTUNITIES 2.0

19 §2370.21. Establishment; short title

20 A. There is hereby created a grant program to be known as the "Granting
21 Unserved Municipalities Broadband Opportunities 2.0" program, hereinafter referred

1 to in this Subpart as the "GUMBO 2.0" program. Funding and administration of this
2 program shall be governed in accordance with the Infrastructure Investment and Jobs
3 Act (IIJA), Public Law 117-58, and the Broadband Equity, Access, and Deployment
4 (BEAD) Program Notice of Funding Opportunity (NOFO) issued by the National
5 Telecommunications and Information Administration of United States Department
6 of Commerce (NTIA).

7 B. This Subpart shall be known and may be cited as the "GUMBO 2.0
8 Program Law".

9 §2370.22. Definitions

10 As used in this Subpart, the following terms have the following meanings:

11 (1) "Agriculture" means the commercial planting, growing, harvesting,
12 production, storage, processing, marketing, distribution, or export of any agricultural
13 product, including but not limited to farm products, livestock and livestock products,
14 poultry and poultry products, milk and dairy products, fruit and other horticultural
15 products, and seafood and aquacultural products.

16 (2) "Broadband DATA Maps" means the maps created in accordance with
17 section 802(c)(1) of the Communications Act of 1934, 47 U.S.C. 641(c)(1).

18 (3) "Broadband service" means deployed mass-market retail internet access
19 service with a minimum of one hundred megabits per second, or Mbps, download
20 and at least twenty megabits per second upload transmission speeds. This definition
21 has the meaning given by the Federal Communications Commission under rules and
22 guidance that are in effect as of the date of enactment of the Infrastructure
23 Investment and Jobs Act.

24 (4) "Broadband-serviceable location" means a business or residential
25 location in the United States at which fixed broadband internet access service is, or
26 can be, installed. See IIJA, Pub. L. No.117-58, §60102(a)(2)(h), 135 Stat. 429, 1184
27 (2021). In the Third Broadband Data Collection Report and Order, the Commission
28 adopted "as fundamental definition of a 'location' for purposes of the broadband-
29 serviceable location fabric: a business or residential location in the United States at

1 which fixed broadband Internet access service is, or can be, installed." See
2 Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form
3 477 Data Program, WC Docket Nos. 19§195, 11§10, Third Report and Order, 36
4 FCC Rcd 1126m 1175 para. 126 (2021).

5 (5) "Community anchor institution" means an entity such as a school, library,
6 health clinic, health center, hospital or other medical provider, public safety entity,
7 institution of higher education, public housing organization, or community support
8 organization that facilitates greater use of broadband service by vulnerable
9 populations, including but not limited to low-income individuals, unemployed
10 individuals, children, the incarcerated, and aged individuals.

11 (6) "Cooperative" means a corporation organized pursuant to Part I of
12 Chapter 4 of Title 12 of the Louisiana Revised Statutes of 1950 or a corporation that
13 becomes subject to those provisions pursuant to R.S. 12:401 et seq.

14 (7) "Director" means the executive director of the office of broadband
15 development and connectivity within the division of administration.

16 (8) "Eligible costs" means costs that are eligible for BEAD Program funding
17 as specified by the assistant secretary.

18 (9) "Eligible grant recipient" means a provider of broadband service,
19 including a provider operated by a local government if the local government is
20 compliant with the Local Government Fair Competition Act, R.S. 45:844.41 et seq.,
21 prior to July 1, 2021, with respect to providing such services, a cooperative, or any
22 partnership thereof.

23 (10) "Eligible location" means an unserved location or underserved location.

24 (11) "Eligible parish" means any parish with unserved or underserved
25 broadband-serviceable locations.

26 (12) "Eligible project" means an undertaking by an eligible grant recipient
27 to construct and deploy infrastructure for the provision of broadband service. An
28 eligible project may constitute a single unserved or underserved
29 broadband-serviceable location, or a grouping of broadband-serviceable locations in

1 which not less than eighty percent of broadband-serviceable locations served by the
2 project are unserved locations or underserved locations. If an overall project area
3 crosses from one eligible parish into one or more eligible adjacent parishes, for the
4 purposes of this Subpart, the project shall be determined to be located in the parish
5 where the greatest number of unserved or underserved households are proposed to
6 be served.

7 (13) "Enforceable commitment" means any location that is already subject
8 to a legally enforceable federal, state, or local commitment to deploy broadband.

9 (14) "Extremely high-cost per location threshold" means a BEAD subsidy
10 cost per location to be utilized during the grantee selection process described in
11 Section IV.B.7 of the BEAD NOFO above which the office may decline to select an
12 application if use of an alternative technology meeting the BEAD Program's
13 technical requirements would be less expensive.

14 (15) "Household" means any individual or group of individuals who are
15 living together at the same address as one economic unit. A household may include
16 related and unrelated persons. An "economic unit" consists of all adult individuals
17 contributing to and sharing in the income and expenses of a household. An adult is
18 any person eighteen years or older. If an adult has no or minimal income, and lives
19 with someone who provides financial support to him, both people shall be considered
20 part of the same household. A child under the age of eighteen living with his parent
21 or guardian is considered to be part of the same household as his parent or guardian.

22 (16)(a) "High-cost area" means an unserved area in which the cost of
23 building out broadband service is higher, as compared with the average cost of
24 building out broadband service in unserved areas in the United States, as determined
25 by the assistant secretary of the United States Department of Commerce for
26 Communications and Information, in consultation with the Federal Communications
27 Commission incorporating factors that include all of the following:

28 (i) The remote location of the area.

29 (ii) The lack of population density of the area.

1 (iii) The unique topography of the area.

2 (iv) The high rate of poverty in the area.

3 (v) Any other factor identified by the assistant secretary of the United States
4 Department of Commerce, in consultation with the Federal Communications
5 Commission, that contributes to the higher cost of deploying broadband service in
6 the area.

7 (b) For purposes of defining "high-cost area," the term "unserved area"
8 means an area in which not less than eighty percent of broadband-serviceable
9 locations are unserved locations.

10 (17) "Infrastructure" means existing facilities, equipment, materials, and
11 structures that an internet service provider has installed either for its core business
12 or public enterprise purposes. Examples include but are not limited to copper wire,
13 coaxial cable, optical cable, loose tube cable, communication huts, conduits, vaults,
14 patch panels, mounting hardware, poles, generators, batteries and cabinets, network
15 nodes, network routers, network switches, microwave relays, microwave receivers,
16 site routers, outdoor cabinets, towers, easements, rights-of-way, and buildings or
17 structures owned by the entity that are made available for location or collocation
18 purposes.

19 (18) "Local government" means a parish, municipality, or school board.

20 (19) "Office" means the office of broadband development and connectivity
21 within the division of administration.

22 (20) "Shapefile" means a file format for storing, depicting, and analyzing
23 geospatial data depicting broadband coverage, comprised of several component files.

24 (21) "Reliable broadband service" means broadband service that the
25 Broadband DATA Maps show are accessible to a location via any of the following:

26 (a) Fiber-optic technology.

27 (b) Cable modem or hybrid fiber-coaxial technology.

28 (c) Terrestrial fixed wireless technology utilizing entirely licensed spectrum
29 or using a hybrid of licensed and unlicensed spectrum.

1 (22) "Underserved location" means a broadband-serviceable location that
2 meets both of the following criteria:

3 (a) Is not an unserved location.

4 (b) The Broadband DATA Maps shows as lacking access to reliable
5 broadband service offered with all of the following:

6 (i) A speed of not less than one hundred Mbps for downloads.

7 (ii) A speed of not less than twenty Mbps for uploads.

8 (iii) Latency less than or equal to one hundred milliseconds.

9 (23) "Unserved location" means a broadband-serviceable location that the
10 Broadband DATA Maps show as having all of the following:

11 (a) No access to broadband service.

12 (b) Lacking access to reliable broadband service offered with all of the
13 following:

14 (i) A speed of not less than twenty-five Mbps for downloads.

15 (ii) A speed of not less than three Mbps for uploads.

16 (iii) Latency less than or equal to one hundred milliseconds.

17 §2370.23. Administration fee

18 The office may use up to one percent of the appropriated funds to administer
19 the GUMBO 2.0 program. The office may use an additional one percent of the
20 appropriated funds to hire third-party contractors as determined necessary for the
21 further administration of the GUMBO 2.0 program. The additional one percent shall
22 not be used as compensation for any new or existing positions within the office.

23 §2370.24. Rules

24 A. The office shall have the authority and responsibility to promulgate rules
25 that are consistent with requirements promulgated by the assistant secretary pursuant
26 to IJJA, BEAD program guidelines, state law, and this Subpart.

27 B. In administering the program or adopting rules pursuant to Subsection A
28 of this Section, the office shall not include consideration of any new or additional

1 regulatory obligations beyond those provided in this Subpart and any other
2 applicable law.

3 C. Grants solicited and awarded pursuant to the GUMBO 2.0 program are
4 not subject to the provisions of the Louisiana Procurement Code, R.S. 39:1551 et
5 seq. or the Public Bid Law, R.S. 38:2181 et seq. The office shall devise and
6 implement alternative procurement methods consistent with the requirements defined
7 by the assistant secretary to award grants.

8 §2370.25. Records; limitations

9 A. Notwithstanding any provision of this Subpart to the contrary, all records
10 related to the GUMBO 2.0 program are public records as provided by the Public
11 Records Law, R.S. 44:1.1 et seq., except for a broadband service provider's trade
12 secret and proprietary information, including coverage data, maps, and shapefiles.

13 B. The office shall treat any information submitted with a broadband
14 availability challenge or grant award protest that is not publicly available as
15 confidential and subject to the trade secrets protections of state law upon a
16 challenging broadband service provider's request for confidential treatment.

17 §2370.26. Funding; match requirement

18 A. A grant recipient is required to provide matching funds in accordance
19 with state law and rules promulgated by the office. A grant recipient shall contribute
20 from its own funds a minimum of twenty-five percent of the total estimated cost of
21 the project, to be validated by the office, unless granted a written waiver by the
22 office.

23 B.(1) A local government may contribute funding or in-kind contributions
24 for use on an eligible project in accordance with the provisions of this Subpart. The
25 contribution of funding by local government for an eligible project in accordance
26 with the provisions of this Subpart shall not be considered a partnership for
27 providing a covered service in accordance with the Local Government Fair
28 Competition Act, R.S. 45:844.41 et seq.

1 (2) A local government shall not make or grant any undue or unreasonable
2 preference or advantage to itself or to any provider of broadband service.

3 (3) A local government shall apply without discrimination as to itself and to
4 any broadband service provider the local government's ordinances, rules, and
5 policies, including those relating to access to public right-of-way, permitting, and
6 any bonding requirements.

7 §2370.27. Grant process

8 A. The office shall have the authority and responsibility to promulgate rules
9 that are consistent with requirements promulgated by the assistant secretary pursuant
10 to IJA, BEAD program guidelines, state law, and this Subpart. This office will
11 carry out the grant process including broadband availability challenges, grant
12 applications, scoring, grant awards, and awards.

13 B. Broadband availability challenge process. (1) The state shall use the
14 NTIA Model Challenge process and will conduct the process at least ninety days
15 before a future grand round is launched.

16 (2) The office shall permit challenges for planned, privately funded
17 broadband projects where a broadband service provider provides convincing
18 evidence that it is currently building out broadband to locations without government
19 subsidy or is building out broadband offering performance beyond the program
20 requirements. Convincing evidence shall include a construction contract,
21 rights-of-way license, or pole attachment license for the build.

22 (3) To minimize duplication of funding, the office may not treat as unserved
23 or underserved any location that is already subject to an enforceable commitment as
24 of the date the challenge process commences. Telecommunications and Information
25 Administration's preferred model approach to conduct the process to allow local
26 governments, nonprofit organizations, and internet service providers to challenge
27 whether specific locations in this state have broadband service as defined in this
28 Subpart. Broadband service providers shall submit challenges within thirty days of
29 mapping information being released publicly.

1 (4) The National Telecommunications and Information Administration shall
2 be the final arbiter of availability challenges.

3 (5) The office shall keep challenge details confidential for evaluation to the
4 extent required consistent with state law and federal requirements and pursuant to
5 this Subpart.

6 C. Application process. (1) A grant round administered by the office shall
7 be open for a period of at least thirty days but not longer than sixty days.

8 (2) The office shall identify eligible locations for grant funding based on the
9 most recent Federal Communications Commission's National Broadband Map,
10 updated according to the outcomes of the challenge process and as approved by the
11 assistant secretary. Any broadband-serviceable locations within the
12 applicant-defined project area that are not included on the version of the Broadband
13 DATA Map used for identifying eligible locations prior to the opening of the grant
14 round added to the Broadband Data Map after the submission of an application but
15 before the completion of the project shall also be served by the grant award winner
16 subject to the requirements of Subsection F of this Section.

17 (3) The office shall release eligible locations at least thirty days prior to the
18 start of a grant round.

19 (4) Application information used for scoring purposes shall be made
20 publicly available, subject to the confidentiality protections provided in this Subpart,
21 by posting on the website of the office or the website of the division of
22 administration for a period of at least seven days prior to the grant award.

23 (5) The office shall have the authority and responsibility to promulgate rules
24 that are consistent with requirements promulgated by the assistant secretary pursuant
25 to IJJA, BEAD program guidelines, state law, and this Subpart.

26 (6) A grant applicant shall define its proposed project area which may
27 include proposed project areas delineated by the office. The office shall provide
28 additional points for applications that will serve areas determined to be most in need
29 due to the high cost to serve or economic or other needs of the community. The

1 office shall immediately post the final outcome of any National Telecommunications
2 and Information Administration match waiver request, including location details, on
3 its website. Eligible locations as defined in this Subpart shall comprise at least
4 eighty percent of a proposed project area. Proposed project areas consisting of less
5 than eighty percent eligible locations are ineligible for funding.

6 (7)(a) The office shall resolve partially overlapping applications to make as
7 many eligible applications viable for consideration as possible. The office shall not
8 require applicants to resolve overlapping project areas among themselves.

9 (b) If proposed project areas overlap, the office may do either of the
10 following:

11 (i) Determine that the overlap is insignificant such that no action is
12 necessary.

13 (ii) If the office determines the overlap is significant, it shall award the
14 project that scores higher and permit one or more next highest scoring applications
15 to be revised to eliminate the overlapping territory and retain eligible project status.
16 The revised applications shall be rescored in the same funding cycle.

17 (8)(a) A governing authority of an eligible parish may submit in writing to
18 the office, up to seven days after the grant applications are made public, an objection
19 to a grant application to deploy broadband services in the governing authority's
20 parish if the broadband service provider has received a letter grade rating of "D" or
21 "F" from the Better Business Bureau.

22 (b) At the request of the governing authority of an eligible parish that submits
23 an objection in accordance with this Subparagraph, a broadband service provider
24 shall be ineligible to be awarded grant funds to deploy broadband services in that
25 eligible parish.

26 (9)(a) If, after soliciting applications, the office has received no applications
27 to serve one or more eligible locations, the office may engage with eligible grant
28 recipients to serve eligible locations. The office may offer inducements as set forth
29 in Section III.B of the Broadband, Equity, Access, and Deployment Program Notice

1 of Funding Opportunity or benefits during the grant selection process, such as points
2 or credits. The office shall ensure that its approach is as transparent as possible.

3 (b) The outreach authorized by this Paragraph is permitted only after the
4 office has solicited proposals and failed to obtain one or more applications to serve
5 the location or locations at issue.

6 D. Scoring. The office shall have the authority and responsibility to
7 promulgate application minimum requirements and scoring rules that are consistent
8 with requirements promulgated by the assistant secretary pursuant to IIJA, BEAD
9 program guidelines, state law, and this Subpart.

10 E. Grant award. The office shall have the authority and responsibility to
11 promulgate rules that are consistent with requirements promulgated by the assistant
12 secretary pursuant to IIJA, BEAD program guidelines, state law, and this Subpart.

13 F. Subsequently Identified Broadband-Serviceable Locations in Funded
14 Project Areas. (1) The office shall not require a grantee to deploy broadband
15 service to any subsequently identified broadband-serviceable locations in the
16 grantee's funded project area.

17 (2) If the grantee elects to deploy broadband service to a subsequently
18 identified broadband-serviceable location in the funded project area, the office and
19 the grantee shall execute an amendment to the grant agreement, which may include
20 any changes to the scope of the project, project time line, and project funding.

21 G. Protest of grant award. (1) Upon a grant award announcement, any
22 eligible grant recipient may protest a grant award during a fourteen-business-day
23 protest period on a basis that would result in an award change. A particular
24 location's eligibility for grant funding shall be determined in the broadband
25 availability challenge process under R.S. 51:2370.27, not in accordance with this
26 Subsection. Any eligible grant recipient submitting a protest shall attest that the
27 information in the protest is accurate and that the protest is submitted in good faith.
28 The office may deny any protest that contains inaccurate information.

1 (2) The director or his designee may, prior to the commencement of an
2 action in court concerning a protest arising pursuant to this Subpart, settle and
3 resolve the protest.

4 §2370.28. Administrative and judicial review

5 A. If the protest of a grant award is not resolved by mutual agreement, the
6 director or his designee shall, within fourteen business days, issue a decision in
7 writing. The decision shall do all of the following:

8 (1) State the reasons for the action taken.

9 (2) Inform all parties to the protest of their right to administrative and
10 judicial review as provided in this Subpart.

11 B. A copy of the decision required by Subsection A of this Section shall be
12 furnished immediately to all parties to the protest.

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

15 (1) The decision is fraudulent.

16 (2) A party to the protest has timely appealed to the commissioner of
17 administration in accordance with Subsection D of this Section.

18 D. If a party to the protest files an appeal with the commissioner of
19 administration, it shall be filed within fourteen business days of receipt of a decision
20 issued pursuant to Subsection A of this Section. The commissioner of administration
21 may review and determine any appeal by a party to the protest from a determination
22 by the director or his designee.

23 E. On any appeal filed pursuant to Subsection D of this Section, the
24 commissioner of administration shall decide within fourteen business days whether
25 the decision concerning a grant application was in accordance with this state's
26 constitution, statutes, and regulations, the terms and conditions of the application,
27 and any requirements of federal laws or regulations. Any prior determinations by the
28 director or his designee shall not be final or conclusive.

1 F. A copy of the decision issued pursuant to Subsection E of this Section
2 shall be mailed or otherwise furnished immediately to all parties to the protest.

3 G. A decision issued pursuant to Subsection E of this Section shall be final
4 and conclusive unless one of the following applies:

5 (1) The decision is fraudulent.

6 (2) A party to the protest has appealed to the court as provided for in
7 Subsection H of this Section.

8 H. A party to the protest may file an appeal in the Nineteenth Judicial
9 District Court within seven business days of receipt of a decision issued pursuant to
10 Subsection E of this Section. The Nineteenth Judicial District Court shall have
11 exclusive venue over an action between the state and a party to the protest to
12 determine whether an award of a grant is in accordance with this state's constitution,
13 statutes, and regulations. Such actions shall extend to all kinds of actions, whether
14 for monetary damages or for declaratory, injunctive, or other equitable relief.

15 I. A party to the protest by a final judgment or interlocutory order or ruling
16 of the Nineteenth Judicial District Court may appeal or seek review thereof, as the
17 case may be, to the Louisiana Court of Appeal, First Circuit or the Supreme Court
18 of Louisiana, as otherwise permitted in civil cases by law and the constitution of this
19 state. If a court has found in a final judgment that an applicant or a party to the
20 protest has incorrectly designated a location as served or unserved, the office may
21 assess a civil penalty of up to one thousand dollars per incorrectly designated
22 location identified in the GUMBO 2.0 award process and disputed in litigation.

23 §2370.29. Compliance during the grant agreement

24 The office will conduct an implementation meeting with a grant recipient
25 within thirty days of execution of a grant agreement and will make reporting
26 templates and instructions available at or shortly after the implementation meeting.

27 The office shall require that a grant recipient offer the proposed advertised minimum
28 download and minimum upload speeds of one hundred Mbps download and twenty
29 Mbps upload. A grant recipient that has offered broadband service to at least one

1 thousand consumers for a period of at least five consecutive years shall offer
2 broadband service at prices consistent with offers to consumers in other areas of the
3 state. Any other broadband service provider shall ensure that the broadband service
4 is priced to consumers at no more than the cost rate identified in the project
5 application, for the duration of the five-year service agreement. In calculating cost,
6 the grant recipient may adjust annually, consistent with the annual percentage
7 increase in the Consumer Price Index in the preceding year. At least annually, a
8 grant recipient shall provide to the office evidence consistent with the Federal
9 Communications Commission attestation that the grant recipient is making available
10 the proposed advertised speed, or a faster speed, as contained in the grant agreement.

11 §2370.30. Reporting requirements

12 A. A grantee shall submit to the office an annual report for each funded
13 project for the duration of a grant agreement. The report shall include a summary
14 of the items contained in the grant agreement and shall also include all of the
15 following:

16 (1) The number of residential and commercial locations that have broadband
17 access as a result of the project.

18 (2) The percentage of end users in the project area who have access to
19 broadband service and the percentage of end users with access who actually
20 subscribe to the broadband service.

21 (3) The average number of subscriptions for residential and commercial
22 broadband service in the project area.

23 (4) Any right-of-way fees, permit fees, or franchise fees paid to local
24 government, state government, railroad, private entity, or person during the
25 fulfillment of the grant awarded pursuant to this Subpart.

26 (5) Any delays encountered when obtaining a right-of-way permission.

27 B. A grantee shall submit to the office a quarterly report for each funded
28 project located in this state for the duration of the project. The report shall include,
29 at a minimum, criteria including but not limited to miles, constructed, broadband-

1 serviceable locations with access to broadband service, and funds expended. If a
2 grant recipient does not submit quarterly reports for each funded project in this state
3 for two consecutive quarters, the office may, at its discretion, consider locations
4 within the awarded area unserved.

5 C. A grantee shall submit to the office a monthly report for each funded
6 project for the duration of the grant agreement. The report shall include criteria as
7 defined in the grant agreement, including miles constructed, broadband-serviceable
8 locations with access to broadband service, and funds expended.

9 D. On or before September thirtieth of each calendar year, the office shall
10 submit a report to the House Committee on Commerce, Senate Committee on
11 Commerce, Consumer Protection, and International Affairs, and the Joint Legislative
12 Committee on Technology and Cybersecurity. The report shall contain all of the
13 following:

14 (1) The number of grant applications and the number of executed grant
15 agreements.

16 (2) A timeline for each grant agreement and the number of households,
17 businesses, agriculture operations, and community anchor institutions expected to
18 benefit from each grant project.

19 (3) The amount of matching funds committed to each grant project and the
20 total amount of project costs.

21 (4) A summary of locations by parish that will have, or currently have,
22 access to broadband service through the GUMBO 2.0 program, including the average
23 GUMBO 2.0 grant award per location and advertised broadband speeds and price of
24 services.

25 (5) Number of unserved and underserved locations that will have, or
26 currently have, access to broadband service through the GUMBO 2.0 program, and
27 the number of unserved and underserved locations that have not yet received grant
28 funding.

1 (6) Any breaches of grant agreements, grant fund forfeitures, or subsequent
2 reductions or refunds grant funds.

3 (7) Any recommendations for the GUMBO 2.0 program, including better
4 sources and methods for improving outcomes and accountability.

5 §2370.31. Receipt and disbursement of federal grant funds

6 The division of administration shall be the designated agency for receipt and
7 disbursement of state and federal funds intended for the state for broadband
8 expansion or allocated by the state for broadband expansion and shall seek available
9 federal grant funds for that purpose. All federal grant funds received for the purpose
10 of broadband expansion shall be disbursed in accordance with this Subpart.

11 §2370.32. Reimbursement for grantees

12 Reimbursements of eligible costs shall be made by percentage of total project
13 costs expended: ten percent, thirty-five percent, sixty percent, eighty-five percent,
14 and the final fifteen percent payment shall not be paid without an approved
15 completion report. Invoice for final payment shall be submitted within ninety days
16 of a completion date. All invoices are subject to audit for three years from the
17 completion date.

18 §2370.33. Failure to perform

19 A. A grant recipient forfeits the amount of a grant received if the grant
20 recipient fails to perform, in material respect, the obligations established in law or
21 in the grant agreement. A grant agreement shall last, at a minimum, for the duration
22 of broadband project construction and, or longer, in accordance with the grant
23 agreement, but not to exceed five years after construction completion. A grant
24 recipient that fails to provide the minimum advertised connection speed and cost at
25 the advertised rate shall forfeit any grant funds, up to the entire amount received
26 through the GUMBO 2.0 program. The office shall use its discretion to determine
27 the amount forfeited. A grant recipient that forfeits amounts disbursed in accordance
28 with this Subpart is liable for up to the amount disbursed plus interest. The number
29 of subscribers that subscribe to broadband services offered by the broadband service

1 provider in the project area shall not be a measure of performance under the grant
2 agreement for the purposes of this Subsection.

3 B. A grant recipient is not required to forfeit the amount of a grant received
4 if the grant recipient it fails to perform due to a natural disaster, an act of God, force
5 majeure, a catastrophe, pandemic, the failure to obtain access to private or public
6 property or any government permits under reasonable terms, or such other
7 occurrence over which the grant recipient has no control.

8 C. Except as provided for in Subsection B of this Section, if a grant recipient
9 fails to perform and fails to return the full forfeited amount required pursuant to this
10 Section, the ownership and use of the broadband infrastructure funded by the
11 GUMBO program shall revert to the division of administration.

12 D. Notwithstanding the provisions of this Section to the contrary, if a grant
13 recipient fails to complete a project in a material respect, the grant recipient, at the
14 discretion of the office, may be required to reimburse the state the actual cost to
15 finish the project. The actual cost to finish the project shall be determined by the
16 office in consultation with the grant recipient. The office shall not require a grant
17 recipient that it determines has made a good faith effort to complete a project to
18 reimburse the state an amount greater than the remaining GUMBO 2.0 cost per
19 broadband-serviceable location as set forth in the grant recipient's application.

20 Section 2. R.S. 44:4.1(B)(35) is hereby amended and reenacted to read as follows:

21 §4.1. Exceptions

22 * * *

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

28 * * *

1 (35) R.S. 51:710.2(B), 705, 706, 936, 1363.1, 1404, 1926, 1934, 2113, 2182,
2 2262, 2318, 2370.3, 2370.16, 2370.25, 2370.27, 2389

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4 Section 3.(A) The Louisiana State Law Institute is hereby authorized and requested
5 to redesignate R.S. 51: 2370.1 through 2370.16 as Subpart A of Part VI-C of Chapter 39 of
6 Title 51 of the Louisiana Revised Statutes of 1950 and entitled as "Subpart A. Granting
7 Unserved Municipalities Broadband Opportunities 1.0".

8 (B) The Louisiana State Law Institute is hereby authorized and requested to make
9 conforming changes from references to "Part" to "Subpart" in R.S. 51:2370.1 through
10 2370.16.

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 653 Re-Reengrossed

2023 Regular Session

Deshotel

Abstract: Creates the GUMBO 2.0 program and provides for the administration of the program.

Proposed law establishes the "Granting Unserved Municipalities Broadband Opportunities 2.0" (GUMBO 2.0) program.

Proposed law defines certain terms including "broadband service", "eligible grant recipient", "eligible project", "infrastructure", "shapefile", "underserved location", and "unserved location".

Proposed law authorizes the office of broadband development and connectivity (office) to use up to one percent of appropriated funds to administer GUMBO 2.0. Proposed law further authorizes the office to use one percent of funds to hire 3rd party contractors to administer the program. Proposed law prohibits the use of the funds for compensation of any new or existing positions within the office.

Proposed law gives the office the authority and responsibility to promulgate rules at least 90 days prior to a grant round. The rules must be consistent with state law and federal guidelines pertaining to the Infrastructure Investment and Jobs Act and proposed law.

Proposed law exempts the GUMBO 2.0 program from the provisions of present law, the La. Procurement Code and the Public Bid Law.

Proposed law provides that, unless stated otherwise in proposed law, all records related to GUMBO 2.0 are public records. A broadband service provider's trade secret and proprietary information are not subject to the Public Records Law.

Proposed law requires the office to treat any information submitted with a protest that is not publicly available as confidential.

Proposed law requires grant recipients to provide matching funds. Further requires a grant recipient to contribute from its own funds a minimum of 25% of the total estimated cost of the project. A written waiver to this requirement can be granted by the office.

Proposed law authorizes a local government to contribute in-kind contributions for an eligible project. Such contributions shall not be considered a partnership for providing a covered service in accordance with present law, the Local Government Fair Competition Act.

Proposed law gives the office the authority and responsibility to promulgate rules with regard to the grant process.

Proposed law requires the challenge process start at least 90 days before a future grant round is launched. The state is required to use the Broadband DATA Maps and the National Telecommunications and Information Administration's (NTIA) Model Challenge process to conduct the process. Proposed law requires broadband service providers to submit challenges within 30 days of mapping information being released publicly.

Proposed law provides that NTIA is the final arbiter of availability challenges.

Proposed law requires the office to keep confidential challenge details.

Proposed law requires that the office keep a grant round open for a period of at least 30 days but not longer than 60 days.

Proposed law requires the office to identify eligible locations for grant funding using the Broadband DATA Map.

Proposed law requires the office to release eligible locations at least 30 days prior to the start of a grant round.

Proposed law requires application information used for scoring purposes to be made publicly available, subject to confidentiality protections provided in proposed law. Such information is required to be posted on the office's website or the division of administration's website for at least seven days prior to the grant award.

Proposed law requires a grant applicant to define its proposed project area. Proposed law requires the office to provide additional points for applications that will serve areas determined to be most in need due to the high cost to serve or economic or other needs of the community.

Proposed law requires the office to promulgate application minimum requirements and scoring rules at least 90 days prior to a grant round.

Proposed law provides the procedure for a party to protest an award and requires such party to do so within 14 days. Further requires a party that submits a protest to attest that the information in the protest is accurate and that the protest is submitted in good faith.

Proposed law allows a local governing authority to submit to the office an objection to any provider that seeks to deploy broadband service in the local governing authority's area if the provider has received a letter grade rating of "D" or "F" from the Better Business Bureau.

Proposed law gives the director of the office the authority to settle and resolve a protest.

Proposed law requires the director of the office to provide a written decision, within 14 business days, when a protest cannot be resolved by mutual agreement. Proposed law

provides the requirements for the written decision and requires the decision to be provided to a party to the protest immediately. Proposed law provides that the office's decision is final and conclusive with exceptions.

Proposed law allows a party a protest to file an appeal with the commissioner of administration within 14 business days. Proposed law gives the commissioner the authority to review and determine any appeal by a party to the protest. The commissioner has 14 days to decide the appeal and that decision is required to be mailed or otherwise provided immediately to the party to the protest.

Proposed law allows a party to the protest to file an appeal, within seven business days of receipt of a decision from the commissioner, with the 19th Judicial District Court. Proposed law also gives a party to the protest the right to appeal to the 1st Circuit Court of Appeal or the La. Supreme Court.

Proposed law requires the office to conduct an implementation meeting with a grant recipient within 30 days of execution of a grant agreement.

Proposed law requires a grant recipient to submit to the office an annual report for each funded project during an agreement period. Proposed law provides requirements for the report. Proposed law further requires a grant recipient to submit to the office a quarterly report for each project during an agreement period and the necessary information for the report.

Proposed law requires the office to submit annually, on or before Sept. 30th, a report to the House and Senate commerce committees and the Joint Legislative Committee on Technology and Cybersecurity. Proposed law provides the necessary elements for the report.

Proposed law requires eligible grant recipients to submit a quarterly report for each funded project located in the state and provides the required elements for the report. Proposed law provides that if a grant recipient does not submit quarterly reports for two consecutive quarters, the office may consider locations within the awarded area unserved.

Proposed law provides that the division of administration shall be the designated agency for receipt and disbursement of state and federal funds for broadband expansion.

Proposed law provides that reimbursements shall be made at certain points of a project. Proposed law provides that the final 15% of a grant shall not be paid without an approved completion report.

Proposed law provides that a grant recipient forfeits the amount of a grant if the recipient fails to perform, in material respect, its obligations. Proposed law provides that grant agreements shall last, at a minimum, for the duration of broadband project construction and five years after construction completion.

Proposed law provides that a grant recipient is not required to forfeit the amount of a grant if the recipient fails to perform due to circumstances beyond its control.

Proposed law provides that a grant recipient could be required to reimburse the state the actual cost to finish a project if the recipient fails to complete the project in a material respect.

Present law, the Public Records Law, provides that unless there is an exception, records are subject to public review and examination.

Present law provides exceptions to the Public Records Law.

Proposed law creates an exception to the Public Records Law for the limitations contained in proposed law, R.S. 51:2370.25 and 2370.27, for information identified as confidential, trade secret, or proprietary.

Proposed law authorizes the La. State Law Institute to make certain technical changes to the law regarding GUMBO 1.0 to conform with proposed law.

(Adds R.S. 51:2370.21-2370.33; Amends R.S. 44:4.1(B)(35))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the engrossed bill:

1. Add a citation of proposed law to the list of exceptions to the Public Records Law for the proposed law limitation for a broadband service provider's trade secret and proprietary information.

The House Floor Amendments to the reengrossed bill:

1. Make technical changes.
2. Revise certain definitions, deletes certain terms, and defines new terms for the purposes of proposed law.
3. Revise the broadband availability challenge process.
4. Require rules relative to GUMBO 2.0 be promulgated that are consistent with the requirements promulgated by the assistant secretary for Communications and Information of the U.S. Dept. of Commerce.
5. Relative to the application process, allow a governing authority to object to a grant application if the broadband service provider has received a letter grade of "D" or "F" from the Better Business Bureau.
6. Prohibit the office of broadband from requiring a grantee to deploy broadband service to any subsequently identified broadband-serviceable locations in the grantee's funded project area.
7. Increase from seven days to 14 business days the time period within which the director of the office to issue a decision in the event of a protest of a grant award.
8. Increase from 10 days to 14 days the time period within which a party to the protest can file an appeal with the commissioner of administration.