

2021 Regular Session

HOUSE BILL NO. 648

BY REPRESENTATIVE DESHOTEL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TELECOMMUNICATIONS: Establishes a grant program to be administered by the office of broadband development and connectivity in the division of administration

1 AN ACT

2 To enact Part VIII of Chapter 39 of Title 51 of the Louisiana Revised Statutes of 1950, to  
3 be comprised of R.S. 51:2370.1 through 51:2370.15, relative to grants for broadband  
4 expansion; to provide for the establishment of the grant program; to define terms; to  
5 establish a fund for the program; to provide requirements for area protection; to  
6 provide a procedure for application; to allow for public comment; to allow for  
7 protest; to provide for consultation; to provide conditions for the scoring process; to  
8 require fund matching; to provide requirements for compliance; to mandate  
9 forfeiture of funds for failure to perform; to provide for the receipt and disbursement  
10 of federal grant funds; to require reports; to allow for an administration fee; to  
11 require the legislative auditor to approve the program before implementation; to  
12 provide for promulgation of rules; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Part VI-C of Chapter 39 of Title 51 of the Louisiana Revised Statutes of  
15 1950, comprised of R.S. 51:2370.1 through 51:2370.15, is hereby enacted to read as follows:

16 PART VI-C. GRANTING UNSERVED MUNICIPALITIES BROADBAND

17 OPPORTUNITIES

18 §2370.1 Establishment

1           There is hereby created a grant program to be known as the "Granting  
2           Unserved Municipalities Broadband Opportunities" program hereinafter referred to  
3           as the "GUMBO" program.

4           §2370.2 Definitions

5           As used in this Part, the following terms have the meaning ascribed to them:

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

11           (2) "Broadband service" means deployed internet access service with  
12           transmission speeds of at least twenty-five megabits per second (Mbps) download  
13           and at least three megabit per second upload.

14           (3) "Cooperative" means a corporation organized under Part I of Chapter 2  
15           of Title 12 of the Louisiana Revised Statutes of 1950 or a corporation who becomes  
16           subject to the those provisions pursuant to R.S. 12:401 et seq.

17           (4) "Director" means the Executive Director of the Office of Broadband  
18           Development and Connectivity, within the Louisiana Division of Administration.

19           (5) "Eligible grant recipient" means a private provider of broadband services,  
20           including cooperatively organized entities, or any partnerships formed between  
21           cooperatively organized entities, private providers, or any combination thereof.

22           (6) "Eligible parishes" means any parish with unserved structures.

23           (7) "Eligible project" means a discrete and specific project located in an  
24           unserved area of an eligible parish seeking to provide broadband service to homes,  
25           businesses, and community anchor points not currently served. Eligible projects do  
26           not include middle mile, backhaul, and other similar projects not directed at  
27           broadband service to end users. If a contiguous project area crosses from one  
28           eligible parish into one or more eligible adjacent parishes, for the purposes of this

1 Part, the project shall be deemed to be located in the parish where the greatest  
2 number of unserved households are proposed to be served.

3 (8) "Household" means a house, apartment, single room, or other group of  
4 rooms, if occupied or intended for occupancy as separate living quarters, and where  
5 the occupants do not live with any other persons in the structure and there is direct  
6 access from the outside or through a common hall.

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

15 (10) "Infrastructure costs" means costs directly related to the construction  
16 of broadband infrastructure for the extension of broadband service for an eligible  
17 project, including installation, acquiring or updating easements, backhaul  
18 infrastructure, and testing costs. The term does not include overhead or  
19 administrative costs.

20 (11) "Office" means The Office of Broadband Development and  
21 Connectivity within the Louisiana Division of Administration.

22 (12) "Partnership" means a project for which an internet service provider  
23 affirms that a formalized agreement exists between the provider and one or more  
24 unaffiliated partners, where the partner is one of the following:

25 (a) A separate internet service provider.

26 (b) A nonprofit or not-for-profit, or a for-profit subsidiary of either, and the  
27 Internet service provider is being allowed access and use of the partner's  
28 infrastructure, on special terms and conditions designed to facilitate the provision of  
29 broadband services in unserved areas, or is utilizing a financial contribution provided

1 by one or more partners where the total contribution is not less than ten percent, but  
2 not more than forty-nine percent, of the match required by this Part. A parish that is  
3 not engaged in providing consumer broadband service may qualify as a nonprofit for  
4 the purpose of this Part.

5 (13) "Prospective broadband recipient" means a household, home, business,  
6 community anchor point, agricultural operation, or agricultural processing facility  
7 that is currently unserved and is identified in an application submitted in accordance  
8 with this Part.

9 (14) "Unserved area" means a designated geographic area that is presently  
10 without access to broadband service, as defined in this section, offered by a wireline  
11 or fixed wireless provider. Areas where a private provider has been designated to  
12 receive funds through other state or federally funded programs designed specifically  
13 for broadband deployment shall be considered served if such funding is intended to  
14 result in construction of broadband in the area within eighteen months.

15 §2370.3 Establishment of the fund

16 A. There is hereby created as a special fund in the state treasury the  
17 Granting Unserved Municipalities Broadband Opportunities (GUMBO) Fund,  
18 hereinafter referred to as the "fund".

19 B. The treasurer shall deposit in and credit to the fund one hundred eighty  
20 million dollars received by the state from the Federal Coronavirus State Fiscal  
21 Recovery Fund established in the American Rescue Plan Act of 2021, P.L. 117-2.  
22 All unexpended and unencumbered monies in the fund at the end of the fiscal year  
23 shall remain in the fund. Monies in the fund shall be invested by the state treasurer  
24 in the same manner as monies in the state general fund and interest earned on the  
25 investment of those monies shall be credited to the fund.

26 C. Monies in the fund shall be used solely for providing grants to help fund  
27 broadband access in rural and disadvantaged areas.

28 D. Funding shall be distributed by the director in accordance with the  
29 GUMBO program established pursuant to this Part.

1        §2370.4 Ineligibility due to funds; submission of census block and address data;  
2                    time limitations

3                    Project areas comprised of census blocks, or portions thereof, within which  
4        a broadband provider is receiving matching funds to deploy broadband service  
5        within the next eighteen months are ineligible for the GUMBO program. It is  
6        essential for the office to know the location of census blocks, or portions thereof,  
7        comprising these areas so it can determine project eligibility. A private provider  
8        receiving Universal Service, Connect America Phase II, or nonfederal funds to  
9        deploy broadband service may qualify the area for protection by submitting, within  
10       sixty days of the application period, a listing of the census blocks, including  
11       individual addresses, or portions thereof, comprising the federally funded project  
12       areas meeting this requirement and nothing more to the office. In future program  
13       years, the cutoff date for submitting the census block and address data shall be  
14       established by the office, but shall be not less than sixty days prior to the beginning  
15       date of the application period. This will enable the office to update maps and advise  
16       applicants as to the unserved areas of the state that are eligible for consideration in  
17       that program year. The office shall only utilize the data to update maps of census  
18       blocks, including individual addresses, and to reflect these census blocks, individual  
19       addresses, or portions thereof, as being served. Failure on the part of a provider to  
20       submit the listing of census blocks, including addresses, by the cutoff date shall  
21       result in those areas being eligible for inclusion under the GUMBO program during  
22       the upcoming program year. The office shall use the census block and address data  
23       provided only for mapping of unserved areas. Upon expiration of the eighteen  
24       month reservation period described in this Section, a private provider that has  
25       received a reservation of census blocks and individual addresses shall submit written  
26       documentation by April thirtieth of the year following the program year that  
27       broadband deployment has begun or been completed in the census blocks, including  
28       individual addresses, or portions thereof, that have been deemed ineligible by the  
29       office due to the existence of a federally funded project area. Information provided

1 to the office pursuant to this Section is not a public record, as that term is provided  
2 for in R.S. 44:1.

3 §2370.5 Applications; burden of proof; public comment; protest

4 A. Applications for grants will be submitted at times designated by the  
5 director and will include, at a minimum, the following information:

6 (1) An attestation to the office that the proposed project area is eligible.

7 (2) The identity of the applicant and its qualifications and experience with  
8 deployment of broadband.

9 (3) The total cost and duration of the project.

10 (4) The amount to be funded by the applicant.

11 (5) An illustration or description of the area to be served, identifying the  
12 number of homes, businesses, community anchor points, agricultural operations, or  
13 agricultural processing facilities that will have access to broadband as a result of the  
14 project, including any available addresses, or other identifying information  
15 satisfactory to the office, for the foregoing. In the event that the office is unable to  
16 identify the proposed project area with specificity, the Office may require the  
17 applicant to submit additional information. If construction of the proposed project  
18 would result in the provision of broadband service to areas that are not eligible for  
19 funding, those ineligible areas should be identified in the application along with the  
20 eligible areas.

21 (6) An assessment of the current level of broadband access in the proposed  
22 deployment area.

23 (7) The proposed construction time line.

24 (8) A description of the services to be provided, including the proposed  
25 upstream and downstream broadband speeds to be delivered and any applicable data  
26 caps, shall provide justification to the satisfaction of the office that the proposed cap  
27 is in the public interest and consistent with industry standards.

28 (9) Any other information or supplementary documentation requested by the  
29 office.

1           (10) A plan to encourage users to connect that incorporates, at a minimum,  
2           community education forums, multimedia advertising, and marketing programs.

3           (11) For the proposed area to be served, the infrastructure cost per household  
4           for the project.

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

7           (13) The proposed advertised speed to be marketed to end users, and the  
8           projected cost to the consumer to utilize the service at the projected speed..

9           (14) An explanation of the scalability of the broadband infrastructure to be  
10           deployed for higher broadband speeds in the future.

11           B. A provider submitting an application pursuant to this Section shall bear  
12           the burden of proof that the proposed area to be served can, in fact, be served using  
13           the proposed technology. The burden of proof may be satisfied by the submission  
14           of data, maps, and any other information satisfactory to the office, demonstrating that  
15           the area and number of prospective broadband recipients proposed to be served can  
16           be provided the minimum upload and download speeds indicated in the application.

17           C.(1) Applications shall be made publicly available by posting on the  
18           website of the office or the website of the Division of Administration for a period of  
19           at least thirty days prior to award. During the thirty day period, any interested party  
20           may submit comments to the director concerning any pending application. A  
21           provider of broadband services may submit a protest of any application on the  
22           grounds the proposed project covers an area that is not an eligible area under this  
23           Part. Protests shall be submitted in writing, accompanied by all relevant supporting  
24           documentation, and shall be considered by the office in connection with the review  
25           of the application. Upon submission of evidence satisfactory to the office that the  
26           proposed project area includes prospective broadband recipients that are served, as  
27           measured using a methodology satisfactory to the office, the office may work with  
28           an applicant to amend an application to reduce the number of unserved prospective  
29           broadband recipients in the project area to reflect an accurate level of current

1 broadband service. The office may revise application scores in accordance with  
2 amended applications. For applications with filed protests, the director shall issue  
3 a written decision to the protesting party at least fifteen days prior to the approval of  
4 that application. Following a protest that is granted for a portion of the application,  
5 the office may release to an applicant the locations or areas declared ineligible. The  
6 information released to the applicant is not a public record, as provided for in R.S.  
7 44:1, and shall remain confidential. Any provider submitting a protest shall verify  
8 that the information in the protest is accurate and that the protest is submitted in good  
9 faith. The office may deny any protest or application that contains inaccurate  
10 information.

11 (2) As a means of resolving a protest, the office may utilize speed tests to  
12 determine if the protested area or individual households or businesses currently have  
13 access to broadband service as defined in this Part. The office shall publish the  
14 speed test methodology it uses to assess speed levels pursuant to this. All decisions  
15 regarding the speed test to be utilized and the manner by which the speed tests are  
16 applied shall be made by the director or his designee.

17 §2370.6 Consultation

18 A. The office may consult with the Louisiana Department of Economic  
19 Development to determine if a broadband project proposed under this Part will  
20 benefit a potential economic development project relevant to the proposed area  
21 outlined in the broadband project.

22 B. Pursuant to R.S. 51:2370.14, the office shall consult with the legislative  
23 auditor prior to implementation of the GUMBO program.

24 §2370.7. Scoring

25 A. Applications shall be scored based upon a system that awards a single  
26 point for criteria considered to be the minimum level for the provision of broadband  
27 service with additional points awarded to criteria that exceed minimum levels. The  
28 office shall develop a scoring system in accordance with the following:



1           (1) Projects involving partnership shall be given points in their application  
 2           score. For the purposes of scoring under this Section, a parish that provides a portion  
 3           of the match required by this Part, or that has entered into an agreement with the  
 4           applicant to make available its infrastructure that has been installed for the parish's  
 5           enterprise, nonconsumer broadband purposes, or any other property, buildings, or  
 6           structures owned by the parish, for a proposed project under this Part shall be  
 7           considered a partnership. A parish may provide a portion of the match required,  
 8           pursuant to this Part. Projects involving partnerships shall be given additional points  
 9           in their application score.

10           (2) The office shall give additional points to projects based upon the  
 11           estimated number of unserved households within the eligible economically distressed  
 12           parish, as determined by the most recent data published by the Federal  
 13           Communications Commission or any other information available to the office.

14           (3) The office shall give additional points to projects that will provide  
 15           broadband service based upon the percentage of the total unserved households within  
 16           the eligible economically distressed parish that the project will serve. The number  
 17           of unserved households shall be determined using the most recent data published by  
 18           the Federal Communications Commission or any other information available to the  
 19           office.

20           (4) The office shall give additional points to projects that will provide  
 21           broadband service to unserved businesses located within the eligible economically  
 22           distressed parish, as determined by the most recent data published by the Federal  
 23           Communications Commission or any other information available to the office.

24           (5) The office shall consider the ultimate price to the consumer in awarding  
 25           points.

26           §2370.8 Fund matching

27           A. Grant recipients are required to provide matching funds in accordance  
 28           with rules promulgated by the office.

1           B. Up to fifty percent of matching funds paid by the grant recipient may be  
2           comprised of third-party funding and other grant programs. Universal Service Fund,  
3           or Connect America Phase II Fund shall not be used for the required matching funds.  
4           Any other current or future federal funds may be used, including any future phase  
5           of the Connect America Fund, for the required matching funds within the parameters  
6           of the GUMBO program.

7           §2370.9 Compliance during the agreement

8           The office shall require that grant recipients offer the proposed advertised  
9           minimum download and minimum upload speeds and the projected cost to  
10           consumers, identified in the project application, for the duration of the five year  
11           service agreement. In calculating cost, the recipient may adjust annually, consistent  
12           with the annual percentage increase in the Consumer Price Index in the preceding  
13           year. At least annually, a grant recipient shall provide to the office evidence  
14           consistent with Federal Communications Commission attestation that the grant  
15           recipient is making available the proposed advertised speed, or a faster speed, as  
16           contained in the grant agreement. For the duration of the agreement, grant recipients  
17           shall disclose any changes to data caps for the project area that differ from the data  
18           caps listed in the grant application to the office.

19           §2370.10. Failure to perform

20           A grant recipient shall forfeit the amount of the grant received if it fails to  
21           perform, in material respect, the obligations established in the agreement. Grant  
22           recipients that fail to provide the minimum advertised connection speed at the  
23           advertised consumer cost for which a reduction in matching funds was applied shall  
24           forfeit that amount. A grant recipient that forfeits amounts disbursed under this Part  
25           is liable for the amount disbursed plus interest, at a rate established by the office.  
26           The number of subscribers that subscribe to broadband services offered by the  
27           provider in the project area shall not be a measure of performance under the  
28           agreement for the purposes of this subsection.

29           §2370.11. Receipt and disbursement of federal grant funds

1           The office shall be the designated agency for receipt and disbursement of  
2           federal grant funds intended for the state for broadband expansion and shall seek  
3           available federal grant funds for that purpose. All federal grant funds received for  
4           the purpose of broadband expansion shall be disbursed in accordance with this Part.

5           §2370.12. Reporting requirements

6           A. Grant recipients shall submit to the office an annual report for each  
7           funded project for the duration of the agreement. The report shall include a summary  
8           of the items contained in the grant agreement and level of attainment for each and  
9           shall also include all of the following:

10           (1) The number of households, businesses, agriculture operations, and  
11           community anchor points that have broadband access as a result of the project.

12           (2) The percentage of end users in the project area who have access to  
13           broadband service and actually subscribe to the broadband service.

14           (3) The average monthly subscription cost for broadband service in the  
15           project area.

16           B. The office shall submit an annual report to the House Commerce  
17           Committee, Senate Commerce, Consumer Protection, and International Affairs  
18           Committee, and the Joint Legislative Committee on Technology and Cybersecurity  
19           on or before September 1. The report shall contain all of the following:

20           (1) The number of grant projects applied for and the number of grant  
21           agreements entered into.

22           (2) A time line for each grant agreement and the number of households,  
23           businesses, agriculture operations, and community anchor points expected to benefit  
24           from each agreement.

25           (3) The amount of matching funds required for each agreement and the total  
26           amount of investment.

27           (4) A summary of areas receiving grants that are now being provided  
28           broadband service and the advertised broadband speeds and corresponding costs for  
29           those areas.

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

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

5           §2370.13 Administration fee

6           The office may use up to one percent of the appropriated funds to administer  
7           the GUMBO program.

8           §2370.14. Legislative auditor

9           A. Prior to the implementation of the GUMBO program, the office shall  
10          submit to the legislative auditor, a detailed plan which provides the following:

11           (1) The application process.

12           (2) The information provided for in the application.

13           (3) The scoring process to be implemented.

14           (4) The standard that will be applied in selecting grant recipients.

15           (5) The procedure for awarding and administering a grant.

16           (6) The procedure for monitoring compliance.

17           (7) The procedure for non compliance.

18           (8) The procedure for terminating a grant.

19           (9) Any procedures necessary for enforcement.

20           (10) Any other information the auditor deems necessary.

21           B. Only after the auditor has approved the plan reported pursuant to  
22          Subsection A of this Section, shall the office initiate the administration of the  
23          GUMBO program.

24           §2370.15. Rules

25           The office shall promulgate rules necessary to carry out the provisions of this  
26          Part.

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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)]

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HB 648 Original

2021 Regular Session

Deshotel

**Abstract:** Creates a grant program to allow municipalities to expand broadband.

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

Proposed law provides that the Office of Broadband Development and Connectivity (hereinafter "office") shall administer the GUMBO program.

Proposed law defines "agriculture", "broadband service", "cooperative", "eligible parishes", "eligible project", "eligible grant recipient", "household", "infrastructure", "infrastructure costs", "office", "partnership", "prospective broadband recipient", "director", and "unserved area".

Proposed law establishes the GUMBO fund in the state treasury and provides the procedure and monies relative to the fund.

Proposed law allows an applicant to access the grant, despite being outside the bounds of an eligible parish, by providing information regarding the census block and individual addresses of the unserved area within that parish. Proposed law refers to this as area protection.

Proposed law provides a listing of 14 items, required to be addressed in the application, and delegates the office with the responsibility of creating the application.

Proposed law requires applications to be made public, and allows a 30 day period for interested parties to submit public comment and protest where applicable. Proposed law provides the procedure to be followed in case of a protest, including the burden of proof and the evidentiary requirements.

Proposed law allows the office to consult with the La. Dept. of Economic Development regarding the GUMBO program.

Proposed law requires the office to create a procedure for point scoring of applications and determining which applicants receive grants, but requires the office to award points based upon partnership involvement; fund matching, the estimated number of unserved households that will be affected; the percentage of unserved homes in the parish to be served; the number of unserved business to be affected; and the price to the consumer.

Proposed law requires fund matching and provides details for how the funds can be acquired.

Proposed law requires grant recipients to offer the speed and cost, as indicated in the application, for 5 years.

Proposed law requires an applicant to provide evidence of compliance at annually.

Proposed law provides that a grant recipient who fails to perform is required to forfeit all matching funds and pay interest. The number of subscribers is not to be considered in a determination of failure to perform.

Proposed law designates the office as the agency for receipt and distribution of federal grant funds.

Proposed law requires grant recipients to provide an annual report to the office and provides the information to be included in the report.

Proposed law requires the office to submit a report to various house and senate committees and provides the information to be included in the report.

Proposed law allows the office an administrative fee of 1% of the federal funds.

Proposed law requires the legislative auditor to approve the plan submitted by the office before the office can begin administering the GUMBO program.

Proposed law outlines the information the office is to include in the plan.

Proposed law requires the office to promulgate rules to carry out proposed law.

(Adds R.S. 51:2370.1-51:2370.15)