
DIGEST

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HB 648 Re-Reengrossed

2021 Regular Session

Deshotel

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

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

Proposed law provides that the office of broadband development and connectivity within the division of administration (office) shall administer the GUMBO program.

Proposed law defines "agriculture", "broadband service", "cooperative", "director", "economically distressed parish", "eligible parishes", "eligible project", "eligible grant recipient", "household", "infrastructure", "infrastructure costs", "office", "prospective broadband recipient", "shapefile", and "unserved".

Proposed law allows a private provider receiving certain types of funds to deploy broadband access to qualify the area for protection by submitting a report of census blocks, shapefile areas, addresses, and portions thereof comprising the funded area. The report is to be submitted within 60 days of the close of the application period.

Proposed law allows the office to set a different deadline for submission of the report in future program years.

Proposed law limits the office on how it uses the information submitted pursuant to proposed law and limits the information that the office can require an applicant to submit.

Proposed law provides that a provider who fails to submit the report before the deadline shall be ineligible for participation in the GUMBO program, but allows for the provider to protest the exclusion in certain situations.

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 provides that the burden of proof is on the applicant and describes sufficient evidence.

Proposed law requires the office to treat information submitted with a protest that is not publicly available as confidential and subject to trade secrets protections of state law if requested.

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 for amendments to an application and provides a procedure for amending.

Proposed law allows the office to deny an application or protest that contains inaccurate information.

Proposed law prohibits the office from granting funds to an applicant that does not comply with program requirements.

Proposed law allows the office to utilize speed tests to settle protests and provides the necessary requirements for implementation.

Proposed law requires the office to treat any information submitted with a protest that is not publicly available as confidential and subject to trade secrets protections provided in present law.

Proposed law provides a procedure for administrative and judicial review including the steps necessary for a mutual agreement, a settlement by the director, a report from the director, an appeal with the commissioner of administration, an appeal to the 19th Judicial District Court, a review from the 1st Circuit Court of Appeal, and a review by the Louisiana Supreme Court, and civil proceedings.

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

Proposed law requires the office to consult with the legislative auditor.

Proposed law requires the office to create a procedure for point scoring of applications and determining which applicants receive grants, and additionally provides that the office shall award points based upon experience, technical ability, financial wherewithal, fund matching by the applicant, access to infrastructure, 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 businesses to be affected, fund matching on the part of the parish, municipality, or school board, and the estimated price to the consumer.

Proposed law requires fund matching by grant recipients and provides details how the funds can be acquired and in what amount.

Proposed law allows a parish, municipality, or school board to contribute to the project in cash.

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

Proposed law requires an applicant to notify the office of any change in data caps.

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

Proposed law requires a grant recipient to forfeit the amount of the grant received, if it fails to perform, in a material respect, the terms of the agreement.

Proposed law provides that a grant recipient who fails to provide the minimum advertised connection speed and cost to consumers are required to forfeit any matching funds, up to the amount of the grant received. The office is required, under proposed law, to use its discretion to determine the amount forfeited, in these circumstances.

Proposed law provides that a grant recipient who forfeits amounts disbursed under proposed law is liable for up to the amount disbursed plus interest.

Proposed law provides that the number of subscribers is not to be considered in a determination of failure to perform.

Proposed law makes an exception to the forfeiture requirement for certain occurrences.

Proposed law provides that if the grant recipient fails to perform and fails to return the required funds, the ownership and use of the broadband infrastructure reverts to the office.

Proposed law designates the office as the agency for receipt and distribution of state and 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 review the plan submitted by the office and make recommendations 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.

Proposed law prohibits the office from considering any new or additional regulations in awarding grants or administering the program.

Proposed law prohibits a municipality from operating as an internet service provider or participating in revenue sharing.

Proposed law provides for reimbursement for grantees.

Proposed law is exempt from the provisions of the Louisiana Procurement Code and Public Bid Law. The office is responsible for implementing alternate methods for carrying out proposed law.

Proposed law specifies that notwithstanding any provision of proposed law to the contrary, all records related to the GUMBO program shall be public records as provided by the Public Records Law, except (a) a provider's trade secret and proprietary information, including coverage data, maps, and shapefiles; (b) information regarding unserved coverage areas not yet awarded or announced; and (c) applications pending evaluation

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 44:4.1(B)(25); Adds R.S. 51:2370.1-2370.18)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Revise the definition of "household".
2. Specify that for the purposes of the definition of "infrastructure" an entity refers to an internet service provider.
3. Remove the definition and other references to "partnership".
4. Add definitions for "shapefile" and "economically distressed parishes".
5. Remove provision relative to the GUMBO fund.
6. Add language to require submission of shapefile areas in addition to census blocks and addresses.
7. Provide that for purposes of the application, the cost and construction time line disclosures are to be the estimated cost and construction time line.
8. Remove a requirement that the applicant provide justification that the proposed data caps are in the public interest and consistent with industry standards.
9. Remove the requirement that the submitted plan incorporate community education forums.
10. Remove the condition that certain information be considered satisfactory.
11. Place confidentiality requirements on the office.

12. Change the period the application shall be public from thirty days to sixty days.
13. Change the speed tests conditions.
14. Provide a procedure for judicial review.
15. Make changes to the scoring systems.
16. Require fund matching from municipalities.
17. Add requirements of disclosure and compliance with projected connection speed and cost.
18. Add an exemption for forfeiture of funds for certain occurrences.
19. Add a requirement that the report indicate both residential and commercial locations that have gained broadband access from the GUMBO program.
20. Prohibit the office from making certain considerations in awarding grants.
21. Prohibit any municipality from being an internet service provider or participating in profit sharing.
22. Move provisions relative to reimbursement for grantees.
23. Add provisions relative to minority-owned business.
24. Change the requirements of the legislative auditor's involvement with the GUMBO program.
25. Make technical changes.

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

1. Remove provision regarding the office treating non-publicly available information with an application as confidential.
2. Remove provision specifying that information released to an applicant regarding locations or areas that are ineligible as confidential and not a public record.
3. Specify that all records related to the GUMBO program are public records as provided by the Public Records Law, except a provider's trade secret and proprietary information; information regarding unserved coverage areas not yet awarded or announced; and applications pending evaluation and recognize the limitation in the Public Records Law.

The House Floor Amendments to the reengrossed bill:

1. Narrow the definition of "eligible grant recipient" to include only a private provider.
2. Expand the definition of "eligible project" to include households, educational facilities, and healthcare facilities not currently served.
3. Allow middle-mile, backhaul, and other similar projects to be considered eligible projects in certain circumstances.
4. Expand the definition of "prospective broadband recipient" to include educational and healthcare facilities.
5. Change the manner in which an applicant shall provide information regarding the locations that will have access to broadband as a result of the project.
6. Expand the parameters by which a person may protest certain actions by the office.
7. Prohibit the office from granting funds to an applicant who does not comply with program requirements.
8. Change the time limit to file an appeal with the commissioner of administration from within 7 days of receipt of a decision to 15 days of receipt of a decision.
9. Remove a provision requiring additional points to be given for partnerships.
10. Add a provision requiring the office to give additional points to projects receiving funds from a parish, municipality, or school board.
11. Remove the requirement that a municipality contribute funds to the project, and instead allows a parish, municipality, or school board to contribute to the project in cash.
12. Provide that if a recipient fails to provide service at the minimum advertised speed and cost, the recipient shall forfeit an amount, as determined by the office, up to the entire amount received through the GUMBO program.
13. Provide that a grant recipient shall not be required to forfeit funds, if the failure was due to a supply chain disruption.
14. Revert ownership of the broadband infrastructure to the office, if the recipient fails to perform and fails to return the requisite funds.
15. Exempt the GUMBO program from the Louisiana Procurement Code and Public Bid Law.

16. Require the office to devise and implement alternative methods for procurement and the bidding process.
17. Remove provisions regarding minority-owned businesses.
18. Make technical changes.