

HOUSE SUMMARY OF SENATE AMENDMENTS

House Bill No. 648 by Representative Deshotel

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

Synopsis of Senate Amendments

1. Changes the definition of "eligible grant recipient" to include a provider operated by a local government if the local government is compliant with present law prior to July 1, 2021.
2. Adds a definition for "local government".
3. Removes the condition that providers be private to be subject to provisions of proposed law, in order to reflect the new definition of "eligible grant recipient".
4. Changes the information the office is enabled to advise applicants on from areas of the state that are eligible for consideration in the program to areas of the state that are ineligible for the program.
5. Changes the consequence of a provider failing to submit certain information by the deadline from the areas being ineligible for inclusion under the program to the areas being ineligible for exclusion under the program.
6. Specifies that the services required to be described in the application are to be broadband services.
7. Removes a provision of proposed law relative to the mechanism by which the burden of proof, relative to proving a proposed area can be served, may be satisfied.
8. Requires the office to release to an applicant the locations or areas declared ineligible, following a protest that is granted for a portion of the application.
9. Removes the requirement that a provider submitting a protest verify that the information in the protest is correct and instead requires the provider to attest that the information in the protest is correct.
10. Removes the requirement that the office consult with the legislative auditor.
11. Removes a provision of proposed law stating that a parish that contributes a portion of the requisite fund match or makes certain infrastructure available shall be considered a partnership.
12. Requires the office to give additional points to applicants that provide a letter of support from local government.
13. Removes a provision of proposed law requiring the office to give additional points to projects receiving cash funds from a parish, municipality, or school board.
14. Requires the office to give additional points to projects receiving funding or in-kind contributions from local government for projects within the local government's jurisdiction.

15. Requires the office to give additional points to projects in which the eligible grant recipient is a small business entrepreneurship certified under present law.
16. Requires the office to give additional points to projects in which the eligible grant recipient commits to contract with certain small businesses certified under present law.
17. Removes a provision of proposed law which allows a parish, municipality, or school board to contribute to the project in cash and instead allows a local government to contribute funding or in-kind contribution to a project. Proposed law provides that this contribution shall not constitute a partnership.
18. Prohibits a local government from making any undue preference or advantage to itself or a provider.
19. Requires a local government to apply local government ordinances, rules, and policies indiscriminately.
20. Requires grant recipients who have offered broadband service to at least one thousand consumers for a period of at least five consecutive years to offer broadband service at prices consistent with offers to consumers in other areas of the state, and requires all other providers to ensure that the service is priced at no more than the cost rate identified in the application.
21. Removes an exception to the forfeiture requirement for supply chain disruption.
22. Changes the recipient of forfeited funds from the office to the division of administration.
23. Changes the designated agency for receipt and disbursement of funds from the office to the division of administration.
24. Adds certain fees and delays to the list of information to be included in the annual report.
25. Removes the requirement that the office consult with the legislative auditor to develop a detailed plan prior to the implementation of the program.
26. Removes a provision of proposed law that prohibits the administration of the program from imposing requirements or considering factors that would constrain an awardee from offering or providing broadband service in the same manner as the service is offered without funding support by the provider in other areas of the state.
27. Removes the prohibition on a municipality operating as an internet service provider or participating in any revenue sharing.
28. Changes the effective date from August 1, 2021 to July 1, 2021.
29. Makes technical changes.

Digest of Bill as Finally Passed by Senate

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", "local government", "office", "prospective broadband recipient", "shapefile", and "unserved".

Proposed law allows a 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 exclusion in the GUMBO program, but allows for the provider to protest the ineligibility 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 provider.

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 60-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 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, a letter of support from local government, 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, projects receiving funding or in-kind contributions, recipients who are a small business entrepreneurship certified by the Hudson Initiative, and recipients who commit to contracting with a small business entrepreneurship certified by the Hudson Initiative or the Veteran Initiative.

Proposed law prohibits the office from considering the format of mapping data in evaluating a grant proposal.

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 local government to contribute funding or in-kind contributions for use on a project and states that the contribution is not to be considered a partnership.

Proposed law prohibits a local government from making or granting any undue or unreasonable preference or advantage to itself or any provider of broadband service.

Proposed law requires a local government to apply ordinances, rules, and policies without discrimination to itself and any provider.

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 who have offered broadband service to at least one thousand consumers for a period of at least five consecutive years to offer broadband service at prices consistent with offers to consumers in other areas of the state, and requires all other providers to ensure that the service is priced at no more than the cost rate identified in the application.

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 division of administration.

Proposed law designates the division of administration 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 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 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 July 1, 2021; if vetoed by the governor and subsequently approved by the legislature, effective on July 1, 2021 or on the day following the approval by the legislature, whichever is later.

(Amends R.S. 44:4.1(B)(25); Adds R.S. 51:2370.1-2370.16)