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**HOUSE COMMITTEE AMENDMENTS**

2022 Regular Session

Substitute for Original House Bill No. 1038 by Representative Deshotel as proposed by the House Committee on Commerce

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**This document reflects the content of a substitute bill but is not in a bill form; page numbers in this document DO NOT correspond to page numbers in the substitute bill itself.**

To amend and reenact R.S. 44:4.1(B)(35) and R.S. 51:2370.2(introductory paragraph), (2), and (16), 2370.3(A) and (E), 2370.4(A)(introductory paragraph) and (12), (B), and (C)(1), 2370.5(A), (B)(introductory paragraph), (D), (E), (H), (I), and (J), 2370.13, and 2370.16 and to enact R.S. 51:2370.3(H) and (I), relative to broadband; to provide for the GUMBO grant program; to provide for definitions; to provide for mapping; to provide for description of service; to provide for protest; to adjust the administrative fee; to provide for public records; to make technical changes; and to provide for related matters and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

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

§2370.2. Definitions

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

\* \* \*

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

\* \* \*

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

\* \* \*

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

A. A provider receiving Universal Service, Connect America Phase II, Rural Digital Opportunity Fund, or ~~nonfederal~~ other public funds to deploy broadband service may qualify the area for protection by submitting, within sixty days of the close of the application period, a listing of the census blocks, shapefile areas, individual addresses, or portions thereof, comprising the ~~federally-funded~~ publicly-funded project areas meeting this requirement to the office.

\* \* \*

E. Failure on the part of a provider to submit the listing of census blocks, shapefile areas, individual addresses, or portions thereof by the deadline shall result in those areas being ineligible for exclusion under the GUMBO program during the upcoming program year. A provider that has facilities in the area or that intends to deploy broadband service within twenty-four months, as a result of receiving public funds specifically for broadband deployment, shall be able to protest ineligibility.

\* \* \*

H.(1) The office shall secure information from any entity, public or private, providing internet service to at least one location in this state to assist the office in compiling a statewide parish by parish broadband map identifying the locations and capability of broadband service in this state. At the request of the office, any such entity shall submit to the office, on or before fifteen days following the expiration of the date required for submission of broadband deployment information to the federal government, any such broadband deployment information. The information

provided to the office shall contain the same information and be provided in the same format as the information that was submitted to the Federal Communications Commission, in a manner specified by the office.

(2) Any entity, public or private, providing internet service to at least one location in this state, that does not comply with the requirements of this Section or that submits inaccurate information, may be ineligible to participate in, or receive any funding from, any state-administered grant program designated for broadband infrastructure deployment in this state in the calendar year of noncompliance and the following calendar year.

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

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

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

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

I. Information compiled pursuant to the provisions of Subsection H of this Section shall be exempt from the Public Records Law and shall be considered confidential, proprietary, and a trade secret of the internet service provider providing

the information. The office shall keep strictly confidential and shall not disclose, or cause or permit to be disclosed, to any third person, private entity or public body as defined in R.S. 44:1, any broadband availability data provided in accordance with Subsection H of this Section. The office shall take all actions reasonably necessary to ensure that the broadband availability data remains strictly confidential and is not disclosed to or seen, used, or obtained by any third person, private entity, or public body as defined in R.S. 44:1.

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

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

\* \* \*

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

\* \* \*

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

C.(1) Applications shall be made publicly available, subject to the confidentiality protections provided in this Part, by posting on the website of the office or the website of the division of administration for a period of at least sixty days prior to award. During the sixty-day period, any ~~interested party may submit comments to the director concerning any pending application. Any aggrieved person party~~ may submit a protest of any application or award in accordance with R.S. 51:2370.5, specific to whether a location or area is served or unserved, which shall be the sole reason allowable for the submission of a protest. Protests shall be submitted in writing, accompanied by all relevant supporting documentation, and shall be considered by the office in connection with the review of the application. Upon submission of evidence to the office that the proposed project area includes prospective broadband recipients that are served, the office may work with an

applicant to amend an application to reduce the number of unserved prospective broadband recipients in the project area to reflect an accurate level of current broadband service. The office may revise application scores in accordance with amended applications. The office shall not grant funds to an applicant who submits an application that does not comply with program requirements. For applications with filed protests, the director shall issue a written decision to the protesting party at least fifteen days prior to the approval of that application. Following a protest that is granted for a portion of the application, the office shall release to an applicant the locations or areas declared ineligible. Any provider submitting a protest shall attest that the information in the protest is accurate and that the protest is submitted in good faith. The office may deny any protest or application that contains inaccurate information.

\* \* \*

#### §2370.5. Administrative and judicial review

A. The director or his designee shall have authority, prior to the commencement of an action in court concerning a protest arising under this Part, to settle and resolve the protest of an aggrieved ~~person~~ party concerning a grant application. This authority shall be exercised in accordance with applicable regulations.

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

\* \* \*

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

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

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

\* \* \*

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

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

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

J. Any party aggrieved by a final judgment or interlocutory order or ruling of the Nineteenth Judicial District Court may appeal or seek review thereof, as the case may be, to the Louisiana Court of Appeal, First Circuit or the Supreme Court of Louisiana, as otherwise permitted in civil cases by law and the constitution of this state. However, there shall be no challenge by any legal process to a grant award except for fraud, bias for pecuniary or personal reasons not related to the taxpayers' interest, or arbitrary and capricious selection by officers.

\* \* \*

§2370.13. Administration fee

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

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

appropriated funds to hire third-party contractors as deemed necessary for the further administration of the GUMBO program. The additional one percent shall not be used as compensation for any new or existing positions within the office.

\* \* \*

§2370.16. Records; limitations

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

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

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

~~(3) Applications pending evaluation.~~

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

§4.1. Exceptions

\* \* \*

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

\* \* \*

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

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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)]

HB Draft

2022 Regular Session

**Abstract:** Makes changes to the GUMBO grant program.

Present law requires an applicant to provide a description of the broadband service to be provided by including the proposed upstream and downstream speeds to be delivered. Pursuant to present law an area that has access to internet with a connection speed of 3/25 Mbps is not considered an unserved area eligible for a grant.

Proposed law requires the office to collect information to be used to create a statewide broadband map to be utilized by the office in administering the GUMBO program.

Proposed law retains the requirement that an applicant provide a description of the area and proposed connection speed, but raises the minimum allowable connection speed that constitutes an unserved area from 25/3 Mbps to 100/20 Mbps.

Present law provides a procedure for protest by the provider and requires the provider to attest that all information is correct. Proposed law retains present law, and specifies that a protest can only be brought to challenge the determination of an area as unserved. Proposed law further modifies the protest process by making changes relative to various time limits.

Present law allows for judicial review of a decision made by the office relative to an award. Proposed law retains present law but limits the grounds for challenge.

Present law allows the office to use up to one percent of the appropriate funds to administer the program.

Proposed law raises the cap on the administrative fee from one percent to two percent and specifies that the additional one percent is not to be used for in-office personnel positions.

(Amends R.S. 44:4.1(B)(35) and R.S. 51:2370.2(intro. para.), (2), and (16), 2370.3(A) and (E), 2370.4(A)(intro. para.) and (12), (B), and (C)(1), 2370.5(A), (B)(intro. para.), (D), (E), (H), (I), and (J), 2370.13, and 2370.16; Adds R.S. 51:2370.2(intro. para.) and (5), 2370.4(A)(8) and (C)(1), and 2370.13)