

CONFERENCE COMMITTEE REPORT

HB 1080

2022 Regular Session

Deshotel

June 6, 2022

To the Honorable Speaker and Members of the House of Representatives and the Honorable President and Members of the Senate.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. 1080 by Representative Deshotel, recommend the following concerning the Reengrossed bill:

1. That the set of Senate Committee Amendments by the Senate Committee on Commerce, Consumer Protection and International Affairs (#3966) be adopted.
2. That Senate Floor Amendments Nos. 1, 2, 4 through 6, 8, 13 through 25, and 28 by Senator Mizell (#4345) be adopted.
3. That Senate Floor Amendment Nos. 3, 7, 9 through 12, 26, and 27 by Senator Mizell (#4345) be rejected.
4. That the following amendments to the Reengrossed bill be adopted:

AMENDMENT NO. 1

In Senate Committee Amendment No. 8 by the Senate Committee on Commerce, Consumer Protection and International Affairs (#3966), on page 1, line 21, change "eighteen" to "twenty"

AMENDMENT NO. 2

In Senate Committee Amendment No. 8 by the Senate Committee on Commerce, Consumer Protection and International Affairs (#3966), on page 1, line 22, change "sixty" to "thirty"

AMENDMENT NO. 3

In Senate Committee Amendment No. 8 by the Senate Committee on Commerce, Consumer Protection and International Affairs (#3966), on page 1, line 32, change "is required to" to "shall"

AMENDMENT NO. 4

In Senate Committee Amendment No. 8 by the Senate Committee on Commerce, Consumer Protection and International Affairs (#3966), on page 1, line 33, change "eighteen-month" to "twenty-month"

AMENDMENT NO. 5

In Senate Floor Amendment No. 2 by Senator Mizell (#4345), on page 1, line 9, change "twenty month" to "twenty-month"

AMENDMENT NO. 6

In Senate Floor Amendment No. 4 by Senator Mizell (#4345), on page 1, delete line 18 in its entirety and insert in lieu thereof:

"26, 2022, on page 1, line 34, after "locations" change the period "." to a semicolon ";" and add"

AMENDMENT NO. 7

In Senate Floor Amendment No. 4 by Senator Mizell (#4345), on page 1, line 20, change "twenty month" to "twenty-month"

AMENDMENT NO. 8

In Senate Floor Amendment No. 6 by Senator Mizell (#4345), on page 1, line 28, delete "all"

AMENDMENT NO. 9

In Senate Floor Amendment No. 21 by Senator Mizell (#4345), on page 3, line 5, change "A(1)." to "A(1)"

AMENDMENT NO. 10

In Senate Floor Amendment No. 21 by Senator Mizell (#4345), on page 3, delete line 6 in its entirety, and insert in lieu thereof: "with this Section. The period for protesting an award shall be thirty days from the announcement of an award. Protests shall be submitted in writing, accompanied by all"

AMENDMENT NO. 11

In Senate Floor Amendment No. 28 by Senator Mizell (#4345), on page 4, line 10, after "repealed" and before the period "." insert "in its entirety"

AMENDMENT NO. 12

On page 1, at the end of line 4, insert "2370.10(B),"

AMENDMENT NO. 13

On page 2, line 6, after "2370.9," and before "2370.13" insert "2370.10(B),"

AMENDMENT NO. 14

On page 3, at the end of line 4, insert the following:

"Any location or area of the state, subject to a Rural Digital Opportunity Fund award, in which the provider receiving the award has proposed to provide broadband internet access service through a technology other than a wireline technology, may be eligible for the GUMBO grant program."

AMENDMENT NO. 15

On page 6, line 7, delete "sixty" and insert "thirty"

AMENDMENT NO. 16

On page 8, delete lines 10 through 12 in their entirety and insert in lieu thereof the following:

"state. If a court has found in a final judgment that an applicant or protestor has incorrectly designated a location as served or unserved, the office may assess a civil penalty of up to one thousand dollars per incorrectly designated location identified in the GUMBO award process and disputed in litigation."

AMENDMENT NO. 17

On page 9, between lines 2 and 3, insert the following:

"§2370.10. Failure to perform

* * *

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

* * *

D. Notwithstanding the provisions of this Section to the contrary, if a grant recipient fails to complete a project in a material respect, the grant recipient, at the discretion of the office, may be required to reimburse the state the actual cost to finish the project. The actual cost to finish the project shall be determined by the office in consultation with the grant recipient. The office shall not require a grant recipient that it deems has made a good faith effort to complete a project to reimburse the state an amount greater than the remaining GUMBO cost per prospective broadband recipient as set forth in the grant recipient's application."

Respectfully submitted,

Representative Daryl Andrew Deshotel

Senator Rick Ward III

Representative Paula P. Davis

Senator Beth Mizell

Representative Larry Selders

Senator Stewart Cathey, Jr.

CONFERENCE COMMITTEE REPORT DIGEST

HB 1080

2022 Regular Session

Deshotel

Keyword and oneliner of the instrument as it left the House

UTILITIES: Provides relative to broadband

Report adopts Senate amendments to:

1. Provide procedure to privately fund broadband deployment services.
2. Require providers that will privately fund services to construct and deploy broadband service within 20 months to at least 80% of the designated locations.
3. Require providers that will privately fund services to furnish a performance bond in an amount equal to the cost of construction and deployment.
4. Make a provider that privately funds services ineligible for any state-administered federal grant program designated for broadband development services if he fails to perform as required under proposed law.
5. Allow a local governing authority to object to a provider that will privately fund services with a "D" or "F" letter grade by the Better Business Bureau.
6. Allow the office of broadband to grant extensions to the 20-month deployment time period.
7. Increase from 7 days to 10 days the time period within which an aggrieved party may file an appeal with the commissioner of administration.
8. Allow the protest of awards and eligibility and provide guidelines and procedures for initiating such protests.

Report rejects Senate amendments which would have:

1. After a finding of a court in a final and definitive judgment, allowed the office to assess a fine of up to \$1,000 to an applicant or protestor that incorrectly designates a location as served or unserved.
2. Allowed any location or area of the state in which the provider receiving the award has proposed to provide broadband internet access service through a technology other than a wireline technology to be eligible for the GUMBO grant program.
3. Made technical changes.

Report amends the bill to:

1. Make technical changes.
2. Set the period for protesting an award at 30 days from the announcement of the award.
3. Allow any location or area of the state in which the provider receiving the award has proposed to provide broadband internet access service through a technology other than a wireline technology to be eligible for the GUMBO grant program.

4. Allow the office to assess a civil penalty of up to \$1,000 to an applicant or protestor that incorrectly designates a location as served or unserved, after a finding of a court in a final judgment,
5. Prohibit the forfeiture of a grant award if a grant recipient is unable to perform due to failure to obtain access to private or public property or obtain any government permits under reasonable terms.
6. Provide that a provider will not be required to forfeit a grant if the provider is unable to perform due to failure to obtain access to private or public property or any government permits under reasonable terms.
7. Provide that a grant recipient may be required to reimburse the state the actual cost to finish a project if the recipient fails to complete a project in a material respect.
8. Provide that if the office determines a grant recipient has made a good faith effort to complete a project, the office shall not require the recipient to reimburse the state an amount greater than the remaining GUMBO cost per prospective broadband recipient as set forth in the grant recipient's application.

Digest of the bill as proposed by the Conference Committee

Present law defines certain terms as they relate to broadband service.

Proposed law makes changes to the definitions of "broadband service" and "unserved".

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 25/3 megabits per second (Mbps) is not considered an unserved area eligible for a grant.

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.

Proposed law requires the office of broadband and connectivity (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 provides that a provider with plans to privately fund broadband development within 20 months may qualify the area for protection by submitting to the office specific information within 60 days of the close of the application period. A provider seeking to privately fund broadband deployment is required to construct and provide deployable broadband service within the 20-month period to at least 80% of the designated location.

Proposed law authorizes the office to grant extensions to the 20-month period.

Present law authorizes a provider receiving funds from Universal Service, Connect America Phase II, Rural Digital Opportunity Fund or other nonfederal to qualify an area for protection.

Proposed law changes present law by authorizing the provider to receive other public funds, instead of nonfederal funds, and specifies the use of wireline technology. Further authorizes any location or area in the state, subject to a Rural Digital Opportunity Fund award, to be eligible for the GUMBO grant program.

Proposed law requires any provider seeking to privately fund broadband deployment to furnish a bond, in the amount equal to construction and deployment, to guarantee the faithful performance of work.

Proposed law provides that if a provider fails to perform and the performance bond is due, the provider shall be ineligible for any state-administered federal grant program designated for broadband development services.

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

Proposed law requires an entity to submit to the office certain broadband deployment information. The information is required to contain the same information and be provided in the same format as the information that was submitted to the Federal Communications Commission (FCC). The entity is not required to provide any data beyond the information that is required to be provided to the FCC.

Proposed law authorizes the office to contract with a private entity or third-party consultant to develop and maintain the state broadband map and requires such contract to include a confidentiality agreement prohibiting the disclosure of any broadband data provided in accordance with proposed law.

Proposed law creates an exception to Public Records Law.

Proposed law provides that certain provisions of proposed law will terminate under either of the following conditions, whichever occurs first:

- (1) A determination by the office that the statewide parish-by-parish broadband map is no longer necessary.
- (2) At midnight on Dec. 31, 2026.

Proposed law authorizes the office to promulgate any necessary rules in accordance with the Administrative Procedure Act.

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 provides that if a court finds in a final judgment that an applicant or protestor has incorrectly designated a location as served or unserved, the office may assess a civil penalty up to \$1,000 for each instance that it is identified in the GUMBO award process and disputed in litigation.

Present law requires grant recipients to offer proposed advertised minimum download and minimum upload speeds. Present law requires grant recipients that have offered broadband services to at least 1,000 consumers for at least 5 consecutive years to offer broadband service at prices consistent with offers to consumers in other areas of the state. Present law requires a grant recipient to provide to the office, annually, evidence consistent with FCC attestation that the grant recipient is making available the proposed advertised speed, or a faster speed, as contained in the grant agreement.

Proposed law authorizes the office to require grant recipients to submit a report for each funded project for the duration of the grant agreement.

Present law allows the office to use up to 1% of the appropriate funds to administer the program.

Proposed law raises the cap on the administrative fee from 1% to 2% and specifies that the additional 1% is not to be used for in-office personnel positions.

Present law does not require a grant recipient to forfeit the grant amount it receives if it fails to perform due to a natural disaster, an act of God, force majeure, catastrophe, pandemic or other occurrence out of the provider's hands.

Proposed law adds that a provider will not be required to forfeit the grant if the provider is unable to perform due to failure to obtain access to private or public property or any government permits under reasonable terms.

Proposed law provides that a grant recipient may 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. Further provides that the office determines the actual cost to finish the project in consultation with the grant recipient. If the office determines a grant recipient has made a good faith effort to complete a project, the office shall not require the recipient to reimburse the state an amount greater than the remaining GUMBO cost per prospective broadband recipient as set forth in the grant recipient's application.

Present law provides that present law shall be public records with 2 exceptions:

- (1) 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.

Proposed law repeals the exception for information regarding unserved coverage areas not yet awarded or announced.

Present law (R.S. 51:2370.4(C)(2)) provides that, to resolve protests, the office may utilize speed tests that conform to the methodology employed in the FCC's "Measuring Broadband America" report to determine if a protested area, households, or businesses have access to broadband service as defined in present law. Requires the director or his designee to make the decision regarding the speed test to be utilized.

Proposed law repeals present law.

(Amends R.S. 44:4.1(B)(35) and R.S. 51:2370.2(intro. para.), (2), and (16), 2370.3, 2370.4(A)(intro. para.) and (12), (B), and (C)(1), 2370.5(A), (B)(intro. para.), (D), (E), (H), (I), and (J), 2370.9, 2370.10(B), 2370.13, and 2370.16; Adds R.S. 51:2370.10(D); Repeals R.S. 51:2310.4(C)(2))