

2022 Regular Session

# ACT No. 288

HOUSE BILL NO. 1080 (Substitute for House Bill No. 1038 by Representative Deshotel)

BY REPRESENTATIVE DESHOTEL

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AN ACT

To amend and reenact R.S. 44:4.1(B)(35) and R.S. 51:2370.2(introductory paragraph), (2), and (16), 2370.3, 2370.4(A)(introductory paragraph) and (12), (B), and (C)(1), 2370.5(A), (B)(introductory paragraph), (D), (E), (H), (I), and (J), 2370.9, 2370.10(B), 2370.13, and 2370.16, to enact R.S. 51:2370.10(D), and to repeal R.S. 51:2370.4(C)(2), relative to broadband; to provide for the GUMBO grant program; to provide for definitions; to provide for mapping; to provide for privately- funded broadband deployment; to require performance bonds under certain circumstances; to authorize objections by local governing authorities; to provide for description of service; to provide for protest; to authorize certain reports; to adjust the administrative fee; to provide for public records exceptions; to make technical changes; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. 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

1 limitations are hereby continued in effect by incorporation into this Chapter by  
2 citation:

3 \* \* \*

4 (35) R.S. 51:710.2(B), 705, 706, 936, 1404, 1926, 1934, 2113, 2182, 2262,  
5 2318, 2370.3, 2370.16, 2389

6 \* \* \*

7 Section 2. R.S. 51:2370.2(introductory paragraph), (2), and (16), 2370.3,  
8 2370.4(A)(introductory paragraph) and (12), (B), and (C)(1), 2370.5(A), (B)(introductory  
9 paragraph), (D), (E), (H), (I), and (J), 2370.9, 2370.10(B), 2370.13, and 2370.16 are hereby  
10 amended and reenacted and R.S. 51:2370.10(D) is hereby enacted to read as follows:

11 §2370.2. Definitions

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

14 \* \* \*

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

20 \* \* \*

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

28 \* \* \*



1                   (3)(a) The office shall require any provider seeking to privately fund  
2                   broadband deployment in accordance with this Subsection to furnish a bond to  
3                   guarantee the faithful performance of work.

4                   (b) The performance bond required by this Paragraph shall be in an amount  
5                   equal to the cost of construction and deployment.

6                   (4) If a provider fails to perform as required by this Subsection and the  
7                   performance bond is due, the provider shall be ineligible for any state-administered  
8                   federal grant program designated for broadband development services.

9                   C.(1) A local governing authority may submit, in writing, to the office an  
10                  objection to any provider that seeks to bid to deploy broadband services in the local  
11                  governing authority's area if the provider has received a letter grade rating of "D" or  
12                  "F" from the Better Business Bureau.

13                  (2) At the request of the local governing authority that submits an objection  
14                  in accordance with this Paragraph, a provider shall be ineligible to bid to deploy  
15                  broadband services.

16                  D. In future program years, the deadline for submitting the census blocks,  
17                  shapefile areas, individual addresses, or portions thereof shall be established by the  
18                  office, but shall not be less than sixty days prior to the beginning date of the  
19                  application period. This will enable the office to update maps and advise applicants  
20                  as to the unserved areas of the state that are ineligible for consideration in that  
21                  program year.

22                  ~~E.~~ E. The office shall only utilize the data to update maps of census blocks,  
23                  shapefile areas, individual addresses, or portions thereof and to reflect the census  
24                  blocks, shapefile areas, individual addresses, or portions thereof as being served.

25                  ~~F.~~ F. In no instance shall an applicant be required to provide any data  
26                  beyond that which it is required to provide to the Federal Communications  
27                  Commission pursuant to The Broadband Deployment Accuracy and Technological  
28                  Availability Act pursuant to 47 U.S.C. 641 et seq.

29                  ~~G.~~ G. Failure on the part of a provider to submit the listing of census blocks,  
30                  shapefile areas, individual addresses, or portions thereof by the deadline shall result

1 in those areas being ineligible for exclusion under the GUMBO program during the  
 2 upcoming program year. A provider using wireline technology that has facilities in  
 3 the area or that intends to deploy broadband service within twenty-four months, as  
 4 a result of receiving public funds specifically for broadband deployment or upon  
 5 providing the office with evidence of firm plans to privately fund deployment, shall  
 6 be able to protest ineligibility.

7 F. H. The office shall use the provided census blocks, shapefile areas,  
 8 individual addresses, or portions thereof only for mapping of unserved areas.

9 ~~G.~~ I. Upon expiration of the twenty-four month reservation period described  
 10 in Subsection ~~E~~ G of this Section, a provider that has received a reservation of census  
 11 blocks, shapefile areas, individual addresses, or portions thereof shall submit written  
 12 documentation by April thirtieth of the year following the program year that the  
 13 initiation of activity related to broadband infrastructure will or has begun in the  
 14 census blocks, shapefile areas, individual addresses, or portions thereof, that have  
 15 been deemed ineligible by the office due to the existence of a federally-funded  
 16 project area.

17 J.(1) The office shall secure information from any entity, public or private,  
 18 providing internet service to at least one location in this state to assist the office in  
 19 compiling a statewide parish-by-parish broadband map identifying the locations and  
 20 capability of broadband service in this state. At the request of the office, any such  
 21 entity shall submit to the office, on or before fifteen days following the expiration  
 22 of the date required for submission of broadband deployment information to the  
 23 federal government, any such broadband deployment information. The information  
 24 provided to the office shall contain the same information and be provided in the same  
 25 format as the information that was submitted to the Federal Communications  
 26 Commission, in a manner specified by the office. In no instance shall an entity be  
 27 required to provide any data beyond that which it is required to provide to the  
 28 Federal Communications Commission.

29 (2) Any entity, public or private, providing internet service to at least one  
 30 location in this state, that does not comply with the requirements of this Section or

1 that submits inaccurate information, may be ineligible to participate in, or receive  
 2 any funding from, any state-administered grant program designated for broadband  
 3 infrastructure deployment in this state in the calendar year of noncompliance and the  
 4 following calendar year.

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

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

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

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

23 K.(1) The office may contract with a private entity or third-party consultant  
 24 to develop and maintain the state broadband map. Any contract entered into by the  
 25 office and a private entity or third-party consultant for the purpose of developing and  
 26 maintaining the state broadband map shall include a confidentiality agreement  
 27 prohibiting the disclosure of any broadband data provided in accordance with this  
 28 Section.

29 (2) Information compiled pursuant to the provisions of Subsection J of this  
 30 Section shall be exempt from the Public Records Law and shall be considered

1 confidential, proprietary, and a trade secret of the internet service provider providing  
 2 the information. The office, including any private entity or third-party consultant  
 3 retained or employed pursuant to this Section, shall keep strictly confidential and  
 4 shall not disclose, or cause or permit to be disclosed, to any third person, private  
 5 entity or public body as defined in R.S. 44:1, any broadband availability data  
 6 provided in accordance with Subsection I of this Section. The office, including any  
 7 private entity or third-party consultant retained or employed pursuant to this Section,  
 8 shall take all actions reasonably necessary to ensure that the broadband availability  
 9 data remains strictly confidential and is not disclosed to or seen, used, or obtained  
 10 by any third person, private entity, or public body as defined in R.S. 44:1.

11 (3) The requirements of this Section shall terminate under any one of the  
 12 following conditions, whichever occurs first:

13 (a) A determination by the office that it is no longer necessary to compile a  
 14 statewide parish-by-parish broadband map identifying the locations and capability  
 15 of broadband service in this state.

16 (b) At midnight on December 31, 2026.

17 (4) The office may promulgate rules necessary to carry out the provisions of  
 18 this Section in accordance with the Administrative Procedure Act.

19 §2370.4. Applications; burden of proof; public comment; protest

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

22 \* \* \*

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

25 \* \* \*

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





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

6   \*       \*       \*

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

9                           (1) The decision is fraudulent.

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

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

20           J. Any party aggrieved by a final judgment or interlocutory order or ruling  
 21           of the Nineteenth Judicial District Court may appeal or seek review thereof, as the  
 22           case may be, to the Louisiana Court of Appeal, First Circuit or the Supreme Court  
 23           of Louisiana, as otherwise permitted in civil cases by law and the constitution of this  
 24           state. If a court has found in a final judgment that an applicant or protestor has  
 25           incorrectly designated a location as served or unserved, the office may assess a civil  
 26           penalty of up to one thousand dollars per incorrectly designated location identified  
 27           in the GUMBO award process and disputed in litigation.

28   \*       \*       \*

1 §2370.9. Compliance during the agreement

2 The office shall require that grant recipients offer the proposed advertised  
3 minimum download and minimum upload speeds of twenty-five Mbps download and  
4 three Mbps upload. Grant recipients that have offered broadband service to at least  
5 one thousand consumers for a period of at least five consecutive years shall offer  
6 broadband service at prices consistent with offers to consumers in other areas of the  
7 state. Any other broadband provider shall ensure that the broadband service is priced  
8 to consumers at no more than the cost rate identified in the project application, for  
9 the duration of the five-year service agreement. In calculating cost, the recipient  
10 may adjust annually, consistent with the annual percentage increase in the Consumer  
11 Price Index in the preceding year. At least annually, a grant recipient shall provide  
12 to the office evidence consistent with Federal Communications Commission  
13 attestation that the grant recipient is making available the proposed advertised speed,  
14 or a faster speed, as contained in the grant agreement. For the duration of the  
15 agreement, grant recipients shall disclose any changes to data caps. The office may  
16 require that grant recipients submit, no more than quarterly, a report for each funded  
17 project for the duration of the agreement.

18 §2370.10. Failure to perform

19 \* \* \*

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

25 \* \* \*

26 D. Notwithstanding the provisions of this Section to the contrary, if a grant  
27 recipient fails to complete a project in a material respect, the grant recipient, at the  
28 discretion of the office, may be required to reimburse the state the actual cost to  
29 finish the project. The actual cost to finish the project shall be determined by the  
30 office in consultation with the grant recipient. The office shall not require a grant

