

2023 Regular Session

HOUSE BILL NO. 653 (Substitute for House Bill No. 603 by Representative Deshotel)

BY REPRESENTATIVE DESHOTEL

UTILITIES: Provides relative to Granting Unserved Municipalities Broadband Opportunities

1 AN ACT

2 To amend and reenact R.S. 44:4.1(B)(35) and to enact Subpart B of Part VI-C of Chapter

3 39 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S.

4 51:2370.21 through 2370.33, relative to grants for broadband expansion; to provide

5 for the creation of the GUMBO 2.0 program; to provide for a short title; to provide

6 for definitions; to provide for administration fees and their use; to require the

7 promulgation of rules; to provide for the grant process and its funding; to provide

8 for administrative and judicial review; to require the submission of certain reports;

9 to provide for the disbursement and reimbursement of certain funds; to provide

10 parameters for the failure of performance by grant recipients; to provide an exception

11 to the Public Records Law; to authorize the Louisiana State Law Institute to make

12 certain conforming technical changes; and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Subpart B of Part VI-C of Chapter 39 of Title 51 of the Louisiana Revised

15 Statutes of 1950, comprised of R.S. 51:2370.21 through 2370.33, is hereby enacted to read

16 as follows:

1           SUBPART B. GRANTING UNSERVED MUNICIPALITIES BROADBAND

2   OPPORTUNITIES 2.0

3           §2370.21. Establishment; short title

4                           A. There is hereby created a grant program to be known as the "Granting  
5                           Unserved Municipalities Broadband Opportunities 2.0" program, hereinafter referred  
6                           to in this Subpart as the "GUMBO 2.0" program. Funding and administration of this  
7                           program shall be governed in accordance with the Infrastructure Investment and Jobs  
8                           Act, Public Law 117-58 and the Broadband Equity, Access, and Deployment  
9                           Program, or BEAD, Notice of Funding Opportunity issued by the National  
10                           Telecommunications and Information Administration of United States Department  
11                           of Commerce.

12                           B. This Subpart shall be known and may be cited as the "GUMBO 2.0  
13                           Program Law".

14           §2370.22. Definitions

15                           As used in this Subpart, the following terms have the following meanings:

16                           (1) "Agriculture" means the commercial planting, growing, harvesting,  
17                           production, storage, processing, marketing, distribution, or export of any agricultural  
18                           product, including but not limited to farm products, livestock and livestock products,  
19                           poultry and poultry products, milk and dairy products, fruit and other horticultural  
20                           products, and seafood and aquacultural products.

21                           (2) "Broadband service" means deployed internet access service with a  
22                           minimum of one hundred megabits per second, or Mbps, download and at least  
23                           twenty megabits per second upload transmission speeds. The office shall have the  
24                           authority to determine whether any particular technology can reliably provide  
25                           broadband service at this speed threshold.

26                           (3) "Broadband-serviceable location" means a business or residential  
27                           location in the United States at which fixed broadband internet access service is, or  
28                           can be, installed.

1           (4) "Cooperative" means a corporation organized pursuant to Part I of  
2           Chapter 4 of Title 12 of the Louisiana Revised Statutes of 1950 or a corporation that  
3           becomes subject to those provisions pursuant to R.S. 12:401 et seq.

4           (5) "Director" means the executive director of the office of broadband  
5           development and connectivity within the division of administration.

6           (6) "Eligible grant recipient" means a provider of broadband service,  
7           including a provider operated by a local government if the local government is  
8           compliant with the Local Government Fair Competition Act, R.S. 45:844.41 et seq.,  
9           prior to July 1, 2021, with respect to providing such services, a cooperative, or any  
10          partnership thereof.

11          (7) "Eligible location" means an unserved location or underserved location.

12          (8) "Eligible parishes" means any parish with unserved or underserved  
13          broadband-serviceable locations.

14          (9) "Eligible project" means a discrete and specific project located in an  
15          eligible parish seeking to reach unserved or underserved broadband-serviceable  
16          locations. If a contiguous project area crosses from one eligible parish into one or  
17          more eligible adjacent parishes, for the purposes of this Subpart, the project shall be  
18          determined to be located in the parish where the greatest number of unserved or  
19          underserved households are proposed to be served.

20          (10) "Household" means any individual or group of individuals who are  
21          living together at the same address as one economic unit. A household may include  
22          related and unrelated persons. An "economic unit" consists of all adult individuals  
23          contributing to and sharing in the income and expenses of a household. An adult is  
24          any person eighteen years or older. If an adult has no or minimal income, and lives  
25          with someone who provides financial support to him, both people shall be considered  
26          part of the same household. A child under the age of eighteen living with his parent  
27          or guardian is considered to be part of the same household as his parent or guardian.

28          (11) "High-cost area" means an unserved area in which the cost of building  
29          out broadband service is higher, as compared with the average cost of building out

1 broadband service in unserved areas in the United States, as determined by the  
2 assistant secretary of the United States Department of Commerce, in consultation  
3 with the Federal Communications Commission. In factoring cost, consideration may  
4 include all of the following:

5 (a) The remote location of the area.

6 (b) The lack of population density of the area.

7 (c) The unique topography of the area.

8 (d) The high rate of poverty in the area.

9 (e) Any other factor identified by the assistant secretary of the United States  
10 Department of Commerce, in consultation with the Federal Communications  
11 Commission, that contributes to the higher cost of deploying broadband service in  
12 the area.

13 (12) "Infrastructure" means existing facilities, equipment, materials, and  
14 structures that an internet service provider has installed either for its core business  
15 or public enterprise purposes. Examples include but are not limited to copper wire,  
16 coaxial cable, optical cable, loose tube cable, communication huts, conduits, vaults,  
17 patch panels, mounting hardware, poles, generators, batteries and cabinets, network  
18 nodes, network routers, network switches, microwave relays, microwave receivers,  
19 site routers, outdoor cabinets, towers, easements, rights-of-way, and buildings or  
20 structures owned by the entity that are made available for location or collocation  
21 purposes.

22 (13) "Intended infrastructure" means infrastructure where a legally  
23 enforceable agreement is in place with a local government for completion in a parish  
24 within an established project timeline.

25 (14) "Infrastructure costs" means costs directly related to the construction  
26 of broadband infrastructure for the extension of broadband service for an eligible  
27 project, including installation, acquiring or updating easements, backhaul  
28 infrastructure, and testing costs. The term does not include overhead or  
29 administrative costs.

1           (15) "Local government" means a parish, municipality, or school board.

2           (16) "Office" means the office of broadband development and connectivity  
3 within the division of administration.

4           (17) "Shapefile" means a file format for storing, depicting, and analyzing  
5 geospatial data depicting broadband coverage, comprised of several component files.

6           (18) "Reliable broadband service" means broadband service that the Federal  
7 Communications Commission's National Broadband Map shows is accessible to a  
8 location via either of the following:

9           (a) Fiber-optic technology.

10          (b) Cable modem or hybrid fiber-coaxial technology.

11          (c) Digital subscriber line, or DSL, technology.

12          (d) Terrestrial fixed wireless technology utilizing entirely licensed spectrum  
13 or using a hybrid of licensed and unlicensed spectrum.

14          (19) "Underserved location" means a broadband-serviceable location that  
15 meets both of the following criteria:

16          (a) Is not an unserved location.

17          (b) The Federal Communications Commission's National Broadband Map  
18 shows as lacking access to reliable broadband service offered with all of the  
19 following:

20          (i) A speed of not less than one hundred Mbps for downloads.

21          (ii) A speed of not less than twenty Mbps for uploads.

22          (iii) Latency less than or equal to one hundred milliseconds.

23          (20) "Unserved location" means a broadband-serviceable location that the  
24 Federal Communications Commission's National Broadband Map shows as having  
25 all of the following:

26          (a) No access to broadband service.

27          (b) Lacking access to reliable broadband service offered with all of the  
28 following:

29          (i) A speed of not less than twenty-five Mbps for downloads.

1                   (ii) A speed of not less than three Mbps for uploads.

2                   (iii) Latency less than or equal to one hundred milliseconds.

3                   §2370.23. Administration fee

4                   The office may use up to one percent of the appropriated funds to administer  
5                   the GUMBO 2.0 program. The office may use an additional one percent of the  
6                   appropriated funds to hire third-party contractors as determined necessary for the  
7                   further administration of the GUMBO 2.0 program. The additional one percent shall  
8                   not be used as compensation for any new or existing positions within the office.

9                   §2370.24. Rules

10                  A. The office shall have the authority and responsibility to promulgate rules  
11                  at that are consistent with state law and guidelines pertaining to the Infrastructure  
12                  Investment and Jobs Act and this Subpart at least ninety days prior to a grant round.

13                  B. In administering the program or adopting rules pursuant to Subsection A  
14                  of this Section, the office shall not include consideration of any new or additional  
15                  regulatory obligations beyond those provided in this Subpart and any other  
16                  applicable law.

17                  C. Grants solicited and awarded pursuant to the GUMBO 2.0 program are  
18                  not subject to the provisions of the Louisiana Procurement Code, R.S. 39:1551 et  
19                  seq. or the Public Bid Law, R.S. 38:2181 et seq. The office shall devise and  
20                  implement alternative procurement methods to identify and award on the basis of  
21                  best value, soliciting applications and scoring product features, cost, and technical  
22                  factors in accordance with this Subpart.

23                  §2370.25. Records; limitations

24                  A. Notwithstanding any provision of this Subpart to the contrary, all records  
25                  related to the GUMBO 2.0 program are public records as provided by the Public  
26                  Records Law, R.S. 44:1.1 et seq., except for a broadband service provider's trade  
27                  secret and proprietary information, including coverage data, maps, and shapefiles.

28                  B. The office shall treat any information submitted with a protest that is not  
29                  publicly available as confidential and subject to the trade secrets protections of state

1 law upon a challenging broadband service provider's request for confidential  
2 treatment.

3 §2370.26. Funding; match requirement

4 A. A grant recipient is required to provide matching funds in accordance  
5 with state law and rules promulgated by the office. A grant recipient shall contribute  
6 from its own funds a minimum of twenty-five percent of the total estimated cost of  
7 the project, unless granted a written waiver by the office.

8 B.(1) A local government may contribute funding or in-kind contributions  
9 for use on an eligible project in accordance with the provisions of this Subpart. The  
10 contribution of funding by local government for an eligible project in accordance  
11 with the provisions of this Subpart shall not be considered a partnership for  
12 providing a covered service in accordance with the Local Government Fair  
13 Competition Act, R.S. 45:844.41 et seq.

14 (2) A local government shall not make or grant any undue or unreasonable  
15 preference or advantage to itself or to any provider of broadband service.

16 (3) A local government shall apply without discrimination as to itself and to  
17 any broadband service provider the local government's ordinances, rules, and  
18 policies, including those relating to the obligation to serve, access to public right-of-  
19 way, permitting, performance bonding, reporting, and quality of service.

20 §2370.27. Grant process

21 A. The office shall have the authority and responsibility to promulgate rules  
22 that are consistent with state law and guidelines pertaining to the Infrastructure  
23 Investment and Jobs Act and this Subpart at least ninety days prior to a grant round.  
24 This will carry out the grant process including the challenge process, grant  
25 applications, scoring, grant award, and protest of award.

26 B. Broadband availability challenge process. (1) The broadband availability  
27 challenge process to finalize identification of eligible locations shall start at least  
28 ninety days before a future grant round is launched. The state shall use the Federal  
29 Communications Commission's National Broadband Map and the National

1        Telecommunications and Information Administration's preferred model approach to  
2        conduct the process to allow local governments, nonprofit organizations, and internet  
3        service providers to challenge whether specific locations in this state have broadband  
4        service as defined in this Subpart. Broadband service providers shall submit  
5        challenges within thirty days of mapping information being released publicly.

6                (2) The National Telecommunications and Information Administration shall  
7        be the final arbiter of availability challenges.

8                (3) The office shall keep challenge details confidential for evaluation to the  
9        extent required consistent with state law and federal requirements and pursuant to  
10       this Subpart.

11               C. Application process. (1) A grant round administered by the office shall  
12       be open for a period of at least thirty days but not longer than sixty days.

13               (2) The office shall identify eligible locations for grant funding based on the  
14       most recent Federal Communications Commission's National Broadband Map,  
15       updated according to the outcomes of the challenge process. Any new broadband-  
16       serviceable locations within the applicant-defined project area that are not included  
17       on the most recent Federal Communications Commission's National Broadband Map  
18       are to be served by the grant award winner before project completion.

19               (3) The office shall release eligible locations at least sixty days prior to the  
20       start of a grant round.

21               (4) Application information used for scoring purposes shall be made  
22       publicly available, subject to the confidentiality protections provided in this Subpart,  
23       by posting on the website of the office or the website of the division of  
24       administration for a period of at least seven days prior to the grant award.

25               (5) The office shall have the authority and responsibility to promulgate rules  
26       that are consistent with federal guidelines pertaining to the Infrastructure Investment  
27       and Jobs Act and this Subpart at least ninety days prior to a grant round.

28               (6) A grant applicant shall define its proposed project area which may  
29       include proposed project areas delineated by the office. The office shall provide

1 additional points for applications that will serve areas determined to be most in need  
2 due to the high cost to serve or economic or other needs of the community. The  
3 office shall immediately post the final outcome of any National Telecommunications  
4 and Information Administration match waiver request, including location details, on  
5 its website. Eligible locations as defined in this Subpart shall comprise at least  
6 eighty percent of a proposed project area. Proposed project areas consisting of less  
7 than eighty percent eligible locations are ineligible for funding.

8 (7)(a) The office shall resolve partially overlapping applications to make as  
9 many eligible applications viable for consideration as possible. The office shall not  
10 require applicants to resolve overlapping project areas among themselves.

11 (b) If proposed project areas overlap, the office may do either of the  
12 following:

13 (i) Determine that the overlap is so insignificant that no action is necessary.

14 (ii) If the office determines the overlap is significant, it shall award the  
15 project that scores higher and permit one or more next highest scoring applications  
16 to be revised to eliminate the overlapping territory and be rescored in the same  
17 funding cycle.

18 (8)(a) If, after soliciting applications, the office has received no applications  
19 to serve a location or group of locations that are unserved, underserved, or a  
20 combination of both, the office may engage with existing broadband service  
21 providers or other prospective applicants to find broadband service providers willing  
22 to expand their existing or proposed service areas. The office may offer inducements  
23 as set forth in Section III.B of the Broadband, Equity, Access, and Deployment  
24 Program Notice of Funding Opportunity or benefits during the grant selection  
25 process, such as points or credits. The office shall ensure that its approach is as  
26 transparent as possible.

27 (b) The broadband service provider-specific outreach authorized by this  
28 Paragraph is permitted only after the office has solicited proposals and failed to  
29 obtain one or more applications to serve the location or locations at issue.

1           D. Scoring. The office shall have the authority and responsibility to  
2           promulgate application minimum requirements and scoring rules that are consistent  
3           with state law and federal guidelines pertaining to the Infrastructure Investment and  
4           Jobs Act and this Subpart at least ninety days prior to a grant round.

5           E. Grant award. The office shall have the authority and responsibility to  
6           promulgate rules that are consistent with state law and federal guidelines pertaining  
7           to the Infrastructure Investment and Jobs Act and this Subpart at least ninety days  
8           prior to a grant round.

9           F. Protest of grant award. (1) Upon a grant award announcement, any  
10          aggrieved party may protest a grant award during a fourteen-business-day protest  
11          process on the basis that would result in an award change other than a served versus  
12          unserved basis, such as a scoring error. Any aggrieved broadband service provider  
13          submitting a protest shall attest that the information in the protest is accurate and that  
14          the protest is submitted in good faith. The office may deny any protest that contains  
15          inaccurate information.

16          (2) A local governing authority may submit in writing to the office, up to  
17          seven days after the grant award announcement, an objection to any broadband  
18          service provider that seeks to bid to deploy broadband services in the local governing  
19          authority's area if the broadband service provider has received a letter grade rating  
20          of "D" or "F" from the Better Business Bureau.

21          (3) At the request of the local governing authority that submits an objection  
22          in accordance with this Subsection, a broadband service provider shall be ineligible  
23          to bid to deploy broadband services.

24          (4) The director or his designee may, prior to the commencement of an  
25          action in court concerning a protest arising pursuant to this Subpart, settle and  
26          resolve the protest of an aggrieved party concerning a grant award.

1        §2370.28. Administrative and judicial review

2            A. If the protest of a grant award is not resolved by mutual agreement, the  
3        director or his designee shall, within seven days, issue a decision in writing. The  
4        decision shall do all of the following:

5            (1) State the reasons for the action taken.

6            (2) Inform the aggrieved party of its right to administrative and judicial  
7        review as provided in this Subpart.

8            B. A copy of the decision required by Subsection A of this Section shall be  
9        furnished immediately to the aggrieved party and any other party that is intervening.

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

12          (1) The decision is fraudulent.

13          (2) The party adversely affected by the decision has timely appealed to the  
14        commissioner of administration in accordance with Subsection D of this Section.

15          D. If an aggrieved party files an appeal with the commissioner of  
16        administration, it shall be filed within ten business days of receipt of a decision  
17        issued pursuant to Subsection A of this Section. The commissioner of administration  
18        may review and determine any appeal by an aggrieved party from a determination  
19        by the director or his designee.

20          E. On any appeal filed pursuant to Subsection D of this Section, the  
21        commissioner shall decide within fourteen days whether the decision concerning a  
22        grant application was in accordance with this state's constitution, statutes, and  
23        regulations, the terms and conditions of the application, and any requirements of  
24        federal laws or regulations. Any prior determinations by the director or his designee  
25        shall not be final or conclusive.

26          F. A copy of the decision issued pursuant to Subsection E of this Section  
27        shall be mailed or otherwise furnished immediately to the aggrieved party and any  
28        other party intervening.

1           G. A decision issued pursuant to Subsection E of this Section shall be final  
2           and conclusive unless one of the following applies:

3           (1) The decision is fraudulent.

4           (2) The party adversely affected by the decision has appealed to the court as  
5           provided for in Subsection H of this Section.

6           H. The aggrieved party may file an appeal in the Nineteenth Judicial District  
7           Court within seven days of receipt of a decision issued pursuant to Subsection E of  
8           this Section. The Nineteenth Judicial District Court shall have exclusive venue over  
9           an action between the state and any aggrieved party to determine whether an award  
10           of a grant is in accordance with this state's constitution, statutes, and regulations.  
11           Such actions shall extend to all kinds of actions, whether for monetary damages or  
12           for declaratory, injunctive, or other equitable relief.

13           I. Any party aggrieved by a final judgment or interlocutory order or ruling  
14           of the Nineteenth Judicial District Court may appeal or seek review thereof, as the  
15           case may be, to the Louisiana Court of Appeal, First Circuit or the Supreme Court  
16           of Louisiana, as otherwise permitted in civil cases by law and the constitution of this  
17           state. If a court has found in a final judgment that an applicant or aggrieved party  
18           has incorrectly designated a location as served or unserved, the office may assess a  
19           civil penalty of up to one thousand dollars per incorrectly designated location  
20           identified in the GUMBO 2.0 award process and disputed in litigation.

21           §2370.29. Compliance during the agreement

22           The office will conduct an implementation meeting with a grant recipient  
23           within thirty days of execution of a grant agreement and will make reporting  
24           templates and instructions available at or shortly after the implementation meeting.  
25           The office shall require that a grant recipient offer the proposed advertised minimum  
26           download and minimum upload speeds of one hundred Mbps download and twenty  
27           Mbps upload. A grant recipient that has offered broadband service to at least one  
28           thousand consumers for a period of at least five consecutive years shall offer  
29           broadband service at prices consistent with offers to consumers in other areas of the

1 state. Any other broadband service provider shall ensure that the broadband service  
2 is priced to consumers at no more than the cost rate identified in the project  
3 application, for the duration of the five-year service agreement. In calculating cost,  
4 the grant recipient may adjust annually, consistent with the annual percentage  
5 increase in the Consumer Price Index in the preceding year. At least annually, a  
6 grant recipient shall provide to the office evidence consistent with the Federal  
7 Communications Commission attestation that the grant recipient is making available  
8 the proposed advertised speed, or a faster speed, as contained in the grant agreement.  
9 For the duration of the agreement, a grant recipient shall disclose any changes to data  
10 caps. The office may require that a grant recipient submit, no more than quarterly,  
11 a report for each funded project for the duration of the agreement.

12 §2370.30. Reporting requirements

13 A. A eligible grant recipient shall submit to the office an annual report for  
14 each funded project for the duration of an agreement. The report shall include a  
15 summary of the items contained in the grant agreement and shall also include all of  
16 the following:

17 (1) The number of residential and commercial locations that have broadband  
18 access as a result of the project.

19 (2) The percentage of end users in the project area who have access to  
20 broadband service and the percentage of those with access who actually subscribe  
21 to the broadband service.

22 (3) The average monthly subscription rate for residential and commercial  
23 broadband service in the project area.

24 (4) Any right-of-way fees, permit fees, or franchise fees paid to local  
25 government, state government, railroad, private entity, or person during the  
26 fulfillment of the grant awarded pursuant to this Subpart.

27 (5) Any delays encountered when obtaining a right-of-way permission.

28 B. A eligible grant recipient shall submit to the office a quarterly report for  
29 each funded project for the duration of the agreement. The report shall include, at

1 a minimum, criteria as defined in the grant agreement, including but not limited to  
2 miles constructed, broadband-serviceable locations served, and funds expended.

3 C. On or before September thirtieth of each year, the office shall submit a  
4 report to the House Committee on Commerce, Senate Committee on Commerce,  
5 Consumer Protection, and International Affairs, and the Joint Legislative Committee  
6 on Technology and Cybersecurity. The report shall contain all of the following:

7 (1) The number of grant projects applied for and the number of grant  
8 agreements entered into.

9 (2) A timeline for each grant agreement and the number of households,  
10 businesses, agriculture operations, and community anchor points expected to benefit  
11 from each agreement.

12 (3) The amount of matching funds required for each agreement and the total  
13 amount of investment.

14 (4) A summary of areas receiving grants that are currently being provided  
15 broadband service and the advertised broadband speeds and corresponding costs for  
16 those areas.

17 (5) Any breaches of agreements, grant fund forfeitures, or subsequent  
18 reductions or refunds of matching grant funds.

19 (6) Any recommendations for the GUMBO program, including better  
20 sources and methods for improving outcomes and accountability.

21 D. An eligible grant recipient receiving any federal funds for broadband  
22 infrastructure deployment shall submit to the office a quarterly report for each  
23 funded project located in this state for the duration of the project. The report shall  
24 include, at a minimum, criteria including but not limited to miles constructed,  
25 broadband-serviceable locations served, and expended. If a grant recipient does not  
26 submit quarterly reports for each funded project located in this state for two  
27 consecutive quarters, the office may, at its discretion, consider locations within the  
28 awarded area unserved.

1        §2370.31. Receipt and disbursement of federal grant funds

2                The division of administration shall be the designated agency for receipt and  
3        disbursement of state and federal funds intended for the state for broadband  
4        expansion or allocated by the state for broadband expansion and shall seek available  
5        federal grant funds for that purpose. All federal grant funds received for the purpose  
6        of broadband expansion shall be disbursed in accordance with this Subpart.

7        §2370.32. Reimbursement for grantees

8                Reimbursements shall be made at the following completion points: ten  
9        percent completion, thirty-five percent completion, sixty percent completion,  
10       eighty-five percent completion, and the final fifteen percent payment shall not be  
11       paid without an approved completion report. Invoice for final payment shall be  
12       submitted within ninety days of a completion date. All invoices are subject to audit  
13       for three years from the completion date.

14       §2370.33. Failure to perform

15               A. A grant recipient forfeits the amount of a grant received if the grant  
16       recipient fails to perform, in material respect, the obligations established in law or  
17       in the grant agreement. A grant agreement shall last, at a minimum, for the duration  
18       of broadband project construction and five years after construction completion. A  
19       grant recipient that fails to provide the minimum advertised connection speed and  
20       cost at the advertised rate shall forfeit any matching grant funds, up to the entire  
21       amount received through the GUMBO program. The office shall use its discretion  
22       to determine the amount forfeited. A grant recipient that forfeits amounts disbursed  
23       in accordance with this Subpart is liable for up to the amount disbursed plus interest.  
24       The number of subscribers that subscribe to broadband services offered by the  
25       broadband service provider in the project area shall not be a measure of performance  
26       under the agreement for the purposes of this Subsection.

27               B. A grant recipient is not required to forfeit the amount of a grant received  
28       if the grant recipient it fails to perform due to a natural disaster, an act of God, force  
29       majeure, a catastrophe, pandemic, the failure to obtain access to private or public

1 property or any government permits under reasonable terms, or such other  
2 occurrence over which the grant recipient has no control.

3 C. Except as provided for in Subsection B of this Section, if a grant recipient  
4 fails to perform and fails to return the full forfeited amount required pursuant to this  
5 Section, the ownership and use of the broadband infrastructure funded by the  
6 GUMBO program shall revert to the division of administration.

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

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

16 §4.1. Exceptions

17 \* \* \*

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

23 \* \* \*

24 (35) R.S. 51:710.2(B), 705, 706, 936, 1363.1, 1404, 1926, 1934, 2113, 2182,  
25 2262, 2318, 2370.3, 2370.16, 2370.27, 2389

26 \* \* \*

27 Section 3.(A) The Louisiana State Law Institute is hereby authorized and requested  
28 to redesignate R.S. 51: 2370.1 through 2370.16 as Subpart A of Part VI-C of Chapter 39 of

1 Title 51 of the Louisiana Revised Statutes of 1950 and entitled as "Subpart A. Granting  
2 Unserved Municipalities Broadband Opportunities 1.0".

3 (B) The Louisiana State Law Institute is hereby authorized and requested to make  
4 conforming changes from references to "Part" to "Subpart" in R.S. 51:2370.1 through  
5 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)]

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HB 653 Engrossed

2023 Regular Session

Deshotel

**Abstract:** Creates the GUMBO 2.0 program and provides for the administration of the program.

Proposed law establishes the "Granting Unserved Municipalities Broadband Opportunities 2.0" (GUMBO 2.0) program.

Proposed law defines certain terms including "broadband service", "eligible grant recipient", "eligible project", "infrastructure", "shapefile", "underserved location", and "unserved location".

Proposed law authorizes the office of broadband development and connectivity (office) to use up to one percent of appropriated funds to administer GUMBO 2.0. Proposed law further authorizes the office to use one percent of funds to hire 3<sup>rd</sup> party contractors to administer the program. Proposed law prohibits the use of the funds for compensation of any new or existing positions within the office.

Proposed law gives the office the authority and responsibility to promulgate rules at least 90 days prior to a grant round. The rules must be consistent with state law and federal guidelines pertaining to the Infrastructure Investment and Jobs Act and proposed law.

Proposed law exempts the GUMBO 2.0 program from the provisions of present law, the La. Procurement Code and the Public Bid Law.

Proposed law provides that, unless stated otherwise in proposed law, all records related to GUMBO 2.0 are public records. A broadband service provider's trade secret and proprietary information are not subject to the Public Records Law.

Proposed law requires the office to treat any information submitted with a protest that is not publicly available as confidential.

Proposed law requires grant recipients to provide matching funds. Further requires a grant recipient to contribute from its own funds a minimum of 25% of the total estimated cost of the project. A written waiver to this requirement can be granted by the office.

Proposed law authorizes a local government to contribute funding of in-kind contributions for an eligible project. Such contributions shall not be considered a partnership for providing a covered service in accordance with present law, the Local Government Fair Competition Act.

Proposed law gives the office the authority and responsibility to promulgate rules with regard to the grant process.

Proposed law requires the challenge process start at least 90 days before a future grant round is launched. The state is required to use the Federal Communications Commission's (FCC) National Broadband Map and the National Telecommunications and Information Administration's (NTIA) preferred model approach to conduct the process. Proposed law requires broadband service providers to submit challenges within 30 days of mapping information being released publicly.

Proposed law provides that NTIA is the final arbiter of availability challenges.

Proposed law requires the office to keep confidential challenge details.

Proposed law requires that the office keep a grant round open for a period of at least 30 days but not longer than 60 days.

Proposed law requires the office to identify eligible locations for grant funding using the most recent FCC National Broadband Map.

Proposed law requires the office to release eligible locations at least 60 days prior to the start of a grant round.

Proposed law requires application information used for scoring purposes to be made publicly available, subject to confidentiality protections provided in proposed law. Such information is required to be posted on the office's website or the division of administration's website for at least 7 days prior to the grant award.

Proposed law requires a grant applicant to define its proposed project area. Proposed law requires the office to provide additional points for applications that will serve areas determined to be most in need due to the high cost to serve or economic or other needs of the community.

Proposed law requires the office to promulgate application minimum requirements and scoring rules at least 90 days prior to a grant round.

Proposed law provides the procedure for an aggrieved party to protest an award and requires such party to do so within 14-business-day protest process. Further requires such a party that submits a protest to attest that the information in the protest is accurate and that the protest is submitted in good faith.

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

Proposed law gives the director of the office the authority to settle and resolve a protest of an aggrieved party.

Proposed law requires the director of the office to provide a written decision, within seven days, when a protest cannot be resolved by mutual agreement. Proposed law provides the requirements for the written decision and requires the decision to be provided to the aggrieved party immediately. Proposed law provides that the office's decision is final and conclusive with exceptions.

Proposed law allows an aggrieved party to file an appeal with the commissioner of administration within 10 business days of receipt of a decision issued pursuant to proposed law. Proposed law gives the commissioner the authority to review and determine any appeal by an aggrieved party. The commissioner has 14 days to decide the appeal and that decision

is required to be mailed or otherwise provided immediately to the aggrieved party.

Proposed law allows an aggrieved party to file an appeal, within seven days of receipt of a decision from the commissioner, with the 19th Judicial District Court. Proposed law also gives an aggrieved party the right to appeal to the 1st Circuit Court of Appeal or the La. Supreme Court.

Proposed law requires the office to conduct an implementation meeting with a grant recipient within 30 days of execution of a grant agreement.

Proposed law requires a grant recipient to submit to the office an annual report for each funded project during an agreement period. Proposed law provides requirements for the report. Proposed law further requires a grant recipient to submit to the office a quarterly report for each project during an agreement period and the necessary information for the report.

Proposed law requires the office to submit annually, on or before Sept. 30th, a report to the House and Senate commerce committees and the Joint Legislative Committee on Technology and Cybersecurity. Proposed law provides the necessary elements for the report.

Proposed law requires eligible grant recipients to submit a quarterly report for each funded project located in the state and provides the required elements for the report. Proposed law provides that if a grant recipient does not submit quarterly reports for two consecutive quarters, the office may consider locations within the awarded area unserved.

Proposed law provides that the division of administration shall be the designated agency for receipt and disbursement of state and federal funds for broadband expansion.

Proposed law provides that reimbursements shall be made at certain completion points of a project. Proposed law provides that the final 15% of a grant shall not be paid without an approved completion report.

Proposed law provides that a grant recipient forfeits the amount of a grant if the recipient fails to perform, in material respect, its obligations. Proposed law provides that grant agreements shall last, at a minimum, for the duration of broadband project construction and 5 years after construction completion.

Proposed law provides that a grant recipient is not required to forfeit the amount of a grant if the recipient fails to perform due to circumstances beyond its control.

Proposed law provides that a grant recipient could 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.

Present law, the Public Records Law, provides that unless there is an exception, records are subject to public review and examination.

Present law provides exceptions to the Public Records Law.

Proposed law creates an exception to the Public Records Law for proposed law, R.S. 51:2370.27.

Proposed law authorizes the La. State Law Institute to make certain technical changes to the law regarding GUMBO 1.0 to conform with proposed law.

(Adds R.S. 51:2370.21-2370.33; Amends R.S. 44:4.1(B)(35))