AN ACT

To amend and reenact R.S. 44:4.1(B)(35) and to enact Subpart B of Part VI-C of Chapter 39 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 51:2370.21 through 2370.33, relative to grants for broadband expansion; to provide for the creation of the GUMBO 2.0 program; to provide for a short title; to provide for definitions; to provide for administration fees and their use; to require the promulgation of rules; to provide for the grant process and its funding; to provide for administrative and judicial review; to require the submission of certain reports; to provide for the disbursement and reimbursement of certain funds; to provide parameters for the failure of performance by grant recipients; to provide exceptions to the Public Records Law; to authorize the Louisiana State Law Institute to make certain conforming technical changes; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subpart B of Part VI-C of Chapter 39 of Title 51 of the Louisiana Revised Statutes of 1950, comprised of R.S. 51:2370.21 through 2370.33, is hereby enacted to read as follows:

SUBPART B. GRANTING UNSERVED MUNICIPALITIES BROADBAND OPPORTUNITIES 2.0

§2370.21. Establishment; short title

A. There is hereby created a grant program to be known as the "Granting Unserved Municipalities Broadband Opportunities 2.0" program, hereinafter referred to in this Subpart as the "GUMBO 2.0" program. Funding and administration of this program shall be governed in accordance with the Infrastructure Investment and Jobs
Act (IIJA), Public Law 117-58, and the Broadband Equity, Access, and Deployment
(BEAD) Program Notice of Funding Opportunity (NOFO) issued by the National
Telecommunications and Information Administration of United States Department
of Commerce (NTIA), including any additional regulations promulgated by or
guidance of the assistant secretary may provide.

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

§2370.22. Definitions

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

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

(2) "Assistant secretary" means the assistant secretary of the United States
Department of Commerce for Communications and Information.

(3) "Broadband DATA Maps" means the maps created in accordance with the

(4) "Broadband service" means deployed mass-market retail internet access
service with a minimum of one hundred megabits per second, or Mbps, download
and at least twenty megabits per second upload transmission speeds. This definition
has the meaning given by the Federal Communications Commission under rules and
guidance that are in effect as of the date of enactment of the Infrastructure
Investment and Jobs Act.

(5) "Broadband-serviceable location" means a business or residential
location in the United States at which fixed broadband internet access service is, or
can be, installed. See IIJA, Pub. L. No.117-58, §60102(a)(2)(h), 135 Stat. 429, 1184
(2021). In the Third Broadband Data Collection Report and Order, the Commission
adopted "as fundamental definition of a 'location' for purposes of the broadband-
serviceable location fabric: a business or residential location in the United States at
which fixed broadband Internet access service is, or can be, installed." See
Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form
477 Data Program, WC Docket Nos. 19-195, 11-10, Third Report and Order, 36
FCC Rd 1126m 1175 para. 126 (2021).

(6) "Community anchor institution" means an entity such as a school, library,
health clinic, health center, hospital or other medical provider, public safety entity,
institution of higher education, public housing organization, or community support
organization that facilitates greater use of broadband service by vulnerable
populations, including but not limited to low-income individuals, unemployed
individuals, children, the incarcerated, and aged individuals.

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

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

(9) "Eligible costs" means costs that are eligible for BEAD Program funding
as specified by the assistant secretary.

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

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

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

(13) "Enforceable commitment" means any location that is already subject
to a legally enforceable federal, state, or local commitment to deploy broadband.

(14) "Extremely high-cost per location threshold" means a BEAD subsidy
cost per location to be utilized during the grantee selection process described in
Section IV.B.7 of the BEAD NOFO above which the office may decline to select an
application if use of an alternative technology meeting the BEAD Program's technical requirements would be less expensive.

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

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

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

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

(19) "Project" means an undertaking by an eligible grant recipient to construct and deploy infrastructure for the provision of broadband service. A project may constitute a single unserved or underserved broadband-serviceable location, or a grouping of broadband-serviceable locations in which not less than eighty percent of broadband-serviceable locations served by the project are unserved locations or underserved locations. If an overall project area crosses from one eligible parish into one or more eligible adjacent parishes, for the purposes of this Subpart, the project
shall be determined to be located in the parish where the greatest number of unserved
or underserved households are proposed to be served.

(20) "Reliable broadband service" means broadband service that the
Broadband DATA Maps show are accessible to a location via any of the following:

(a) Fiber-optic technology.

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

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

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

(22) "Underserved location" means an underserved location as defined in the
IIJA and the BEAD NOFO.

(23) "Unserved location" means an unserved location as defined in the IIJA
and the BEAD NOFO.

§2370.23. Administration fee

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

§2370.24. Rules

A. The office shall have the authority and responsibility to promulgate rules
that are consistent with requirements promulgated by the assistant secretary pursuant
to IIJA, BEAD program guidelines, state law, and this Subpart.

B. Grants solicited and awarded pursuant to the GUMBO 2.0 program are
not subject to the provisions of the Louisiana Procurement Code, R.S. 39:1551 et
seq. or the Public Bid Law, R.S. 38:2181 et seq. The office shall devise and
implement alternative procurement methods consistent with the requirements defined
by the assistant secretary to award grants.
§2370.25. Records; limitations

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

B. The office shall treat any information submitted with a broadband availability challenge or grant award protest that is not publicly available as confidential and subject to the trade secrets protections of state law upon a challenging broadband service provider's request for confidential treatment.

§2370.26. Funding; match requirement

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

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

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

(3) A local government shall apply without discrimination as to itself and to any broadband service provider the local government's ordinances, rules, and policies, including those relating to access to public right-of-way, permitting, and any bonding requirements.

§2370.27. Grant process

A. The office shall have the authority and responsibility to promulgate rules that are consistent with requirements promulgated by or guidance of the assistant
secretary pursuant to IIJA, BEAD program guidelines, state law, and this Subpart.

The office shall carry out the grant process including broadband availability challenges, grant applications, scoring, grant awards, and awards.

B. Broadband availability challenge process. (1) The state shall use the NTIA BEAD Model Challenge process and shall complete the process before a future grant round is launched.

(2) The office shall permit challenges for planned, privately funded broadband projects where a broadband service provider provides convincing evidence that it is currently building out broadband to locations without government subsidy or is building out broadband offering performance beyond the program requirements.

(3) To minimize duplication of funding, the office may not treat as unserved or underserved any location that is already subject to an enforceable commitment as of the date the challenge process commences.

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

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

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

(2) The office shall identify eligible locations for grant funding based on the most recent Broadband DATA Map, updated according to the outcomes of the challenge process and as approved by the assistant secretary. Any broadband-serviceable locations within the applicant-defined project area that are not included on the version of the Broadband DATA Map used for identifying eligible locations prior to the opening of the grant round added to the Broadband Data Map after the submission of an application but before the completion of the project shall also be served by the grant award winner subject to the requirements of Subsection F of this Section.
(3) The office shall release eligible locations at least thirty days prior to the start of a grant round.

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

(5) A grant applicant may define proposed project areas in the application for grant funding, which shall include eligible locations identified by the office. However, the office shall award grants to eligible grant recipients according to the priorities established in federal law, including any additional regulations promulgated by or guidance of the assistant secretary, as provided for in R.S. 51:2370.21(A).

(6)(a) A local governing authority of an eligible parish may submit in writing to the office, up to seven days after the grant applications are made public, an objection to a grant application to deploy broadband services in the local governing authority's parish if the broadband service provider has received a letter grade rating of "D" or "F" from the Better Business Bureau.

(b) At the request of the local governing authority of an eligible parish that submits an objection in accordance with this Paragraph, a broadband service provider shall be ineligible to be awarded grant funds to deploy broadband services in that eligible parish.

(7)(a) If, after soliciting applications, the office has received no applications to serve one or more eligible locations, the office may engage with eligible grant recipients to serve eligible locations. The office may offer inducements as set forth in Section III.B of the Broadband, Equity, Access, and Deployment Program Notice of Funding Opportunity or benefits during the grant selection process, such as points or credits. The office shall ensure that its approach is as transparent as possible.

(b) The outreach authorized by this Paragraph is permitted only after the office has solicited proposals and failed to obtain one or more applications to serve the location or locations at issue.
D. Scoring and grant award. The office shall have the authority and responsibility to promulgate application minimum requirements, scoring rules, and grant awards that are consistent with requirements promulgated by the assistant secretary pursuant to IIJA, including any additional requirements or guidance provided for after enactment of this Act, BEAD program guidelines, state law, and this Subpart.

E. For subsequently identified broadband-serviceable locations in a grantee's funded project area, the timeline and additional funding to deploy shall be determined in a supplemental grant agreement between the office and the grantee.

F. Protest of grant award. (1) Upon a grant award announcement, any eligible grant recipient or local governing body may protest a grant award during a fourteen-business-day protest period on a basis that would result in an award change, other than a served versus unserved basis, such as a scoring error. Any eligible grant recipient or local governing body 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 that contains inaccurate information.

(2) The director or his designee may, prior to the commencement of an action in court concerning a protest arising pursuant to this Subpart, settle and resolve the protest.

§2370.28. Administrative and judicial review

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

(1) State the reasons for the action taken.

(2) Inform all parties to the protest of their right to administrative and judicial review as provided in this Subpart.

B. A copy of the decision required by Subsection A of this Section shall be furnished immediately to all parties to the protest.

C. A decision required by Subsection A of this Section shall be final and conclusive unless one of the following applies:
(1) The decision is fraudulent.

(2) A party to the protest has timely appealed to the commissioner of administration in accordance with Subsection D of this Section.

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

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

F. A copy of the decision issued pursuant to Subsection E of this Section shall be mailed or otherwise furnished immediately to all parties to the protest.

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

(1) The decision is fraudulent.

(2) A party to the protest has appealed to the court as provided for in Subsection H of this Section.

H. A party to the protest may file an appeal in the Nineteenth Judicial District Court within seven business days of receipt of a decision issued pursuant to Subsection E of this Section. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a party to the protest to determine whether an award of a grant 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.

I. A party to the protest 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. If a court has found in a final judgment that an applicant or a party to the protest 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 2.0 award process and disputed in litigation.

§2370.29. Compliance during the grant agreement

The office will conduct an implementation meeting with a grant recipient within thirty days of execution of a grant agreement and will make reporting templates and instructions available at or shortly after the implementation meeting. The office shall require that a grant recipient offer the proposed advertised minimum download and minimum upload speeds of one hundred Mbps download and twenty Mbps upload. A grant recipient that has offered broadband service to at least one thousand consumers for a period of at least five consecutive years shall offer broadband service at prices consistent with offers to consumers in other areas of the state. Any other broadband service provider shall ensure that the broadband service is priced to consumers at no more than the cost rate identified in the project application, for the duration of the five-year service agreement. In calculating cost, the grant recipient may adjust annually, consistent with the annual percentage increase in the Consumer Price Index in the preceding year. At least annually, a grant recipient shall provide to the office evidence consistent with the Federal Communications Commission attestation that the grant recipient is making available the proposed advertised speed, or a faster speed, as contained in the grant agreement.

§2370.30. Reporting requirements

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

   (1) The number of residential and commercial locations that have broadband access as a result of the project.
(2) The percentage of end users in the project area who have access to broadband service and the percentage of end users with access who actually subscribe to the broadband service.

(3) The average number of subscriptions for residential and commercial broadband service in the project area.

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

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

B. An entity receiving federal funds for broadband infrastructure development shall submit to the office a quarterly report for each funded project located in this state for the duration of the project. The report shall include, at a minimum, criteria including but not limited to miles constructed, broadband-serviceable locations with access to broadband service, and funds expended. If an entity does not submit quarterly reports for each funded project in this state for two consecutive quarters, the office may, at its discretion, consider locations within the awarded area unserved.

C. A grantee shall submit to the office a monthly report for each funded project for the duration of the grant agreement. The report shall include, at a minimum, criteria as defined in the grant agreement, including but not limited to miles constructed, broadband-serviceable locations with access to broadband service, and funds expended.

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

(1) The number of grant applications and the number of executed grant agreements.
(2) A timeline for each grant agreement and the number of households, businesses, agriculture operations, and community anchor institutions expected to benefit from each grant project.

(3) The amount of matching funds committed to each grant project and the total amount of project costs.

(4) A summary of locations by parish that will have, or currently have, access to broadband service through the GUMBO 2.0 program, including the average GUMBO 2.0 grant award per location and advertised broadband speeds and price of services.

(5) Number of unserved and underserved locations that will have, or currently have, access to broadband service through the GUMBO 2.0 program, and the number of unserved and underserved locations that have not yet received grant funding.

(6) Any breaches of grant agreements, grant fund forfeitures, or subsequent reductions or refunds grant funds.

(7) Any recommendations for the GUMBO 2.0 program, including better sources and methods for improving outcomes and accountability.

§2370.31. Receipt and disbursement of federal grant funds

The division of administration shall be the designated agency for receipt and disbursement of state and federal funds received to implement the Broadband Equity, Access, and Deployment Program. All federal grant funds received for this purpose shall be disbursed in accordance with R.S. 51:2370.21(A).

§2370.32. Reimbursement for grantees

Reimbursements of eligible costs shall be made by percentage of total project costs expended: ten percent, thirty-five percent, sixty percent, eighty-five percent, and the final fifteen percent payment shall not be paid without an approved completion report. Invoice for final payment shall be submitted within ninety days of a completion date. All invoices are subject to audit for three years from the completion date.
§2370.33. Failure to perform

A. A grant recipient forfeits the amount of a grant received if the grant recipient fails to perform, in material respect, the obligations established in law or in the grant agreement. A grant agreement shall last, at a minimum, for the duration of broadband project construction and, or longer, in accordance with the grant agreement, but not to exceed five years after construction completion. A grant recipient that fails to provide the minimum advertised connection speed and cost at the advertised rate shall forfeit any grant funds, up to the entire amount received through the GUMBO 2.0 program. The office shall use its discretion to determine the amount forfeited. A grant recipient that forfeits amounts disbursed in accordance with this Subpart is liable for up to the amount disbursed plus interest. The number of subscribers that subscribe to broadband services offered by the broadband service provider in the project area shall not be a measure of performance under the grant agreement for the purposes of this Subsection.

B. A grant recipient is not required to forfeit the amount of a grant received if the grant recipient 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.

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

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 determines has made a good faith effort to complete a project to
reimburse the state an amount greater than the remaining GUMBO 2.0 cost per broadband-serviceable location as set forth in the grant recipient's application.

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, 1363.1, 1404, 1926, 1934, 2113, 2182, 2262, 2318, 2370.3, 2370.16, 2370.25, 2370.27, 2389

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Section 3. (A) The Louisiana State Law Institute is hereby authorized and requested to redesignate R.S. 51:2370.1 through 2370.16 as Subpart A of Part VI-C of Chapter 39 of Title 51 of the Louisiana Revised Statutes of 1950 and entitled as "Subpart A. Granting Unserved Municipalities Broadband Opportunities 1.0".

(B) The Louisiana State Law Institute is hereby authorized and requested to make conforming changes from references to "Part" to "Subpart" in R.S. 51:2370.1 through 2370.16.