A BILL FOR AN ACT

RELATING TO BROADBAND SERVICE INFRASTRUCTURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the economic and business incentives to deploy broadband service infrastructure may be insufficient to ensure full access to broadband services in low-density, rural locations and other unserved and underserved areas of the State where the unit costs of providing service may not provide an adequate return on investment.

Economically feasible deployment of infrastructure for high-speed broadband across the State, especially to low population density areas, presents a more formidable challenge than faced by most states, which are part of one continental land mass, because the unique geography of our State prevents the use of less costly options for connectivity.

Access to broadband services in unserved and underserved areas in Hawaii would enhance economic development, education, health care, and emergency services in the State. The availability of grants for deployment to unserved and
underserved areas would further those objectives by encouraging
ew investment in broadband service infrastructure.
The legislature strongly supports efforts to improve access
to broadband services for residents across the State and efforts
that benefit consumers and businesses in accessing services.
Although broadband coverage in the State is widespread,
additional investment can be made to keep up with needs in rural
communities to bridge the digital divide. There continues to be
a need for broadband access in rural areas of the State and the
connection of the last mile.
The purpose of this Act is to facilitate the deployment of
broadband service infrastructure in unserved and underserved
areas of Hawaii by identifying and addressing remaining
obstacles to full deployment of broadband infrastructure to all
areas of Hawaii. Specifically, this Act establishes the
broadband service infrastructure grant program to award grants
to applicants to extend deployment of facilities used to provide
broadband service to unserved and underserved areas of the
State.
SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

BROADBAND SERVICE INFRASTRUCTURE GRANT PROGRAM

§ -1 Definitions. As used in this chapter, unless the context requires otherwise:

"Broadband service" means a mass market retail service using any wireline or fixed wireless technology that provides the capability to transmit data from or to all or substantially all internet endpoints.

"Broadband service infrastructure" means the signal transmission facilities and associated network equipment proposed to be deployed in a project area used for the provision of broadband service to residential customers.

"Department" means the department of business, economic development, and tourism.

"Program" means the broadband service infrastructure grant program established by this chapter.
"Project" means a proposed deployment of broadband service infrastructure set forth in an application for grant funding authorized under this chapter.

"Project area" means a census block or aggregation of adjacent census blocks proposed to be covered in an application for grant funding authorized under this chapter.

"Unserved area" means a project area without access to broadband service with minimum speeds of at least twenty-five megabits per second downstream and three megabits per second upstream.

"Underserved area" means a project area without access to broadband service with minimum speeds of at least fifty megabits per second downstream and five megabits per second upstream.

§ 2 Establishment of the broadband service infrastructure grant program. There is established the broadband service infrastructure grant program to be placed in the department of business, economic development, and tourism for administrative purposes. The department shall receive and review grant applications and may award grants for eligible projects pursuant to the program.
§ -3 Eligible projects. (a) The department may award grants for eligible projects; provided that as of the date on which the application of the eligible person or entity is submitted, the area to be served by the proposed deployment for which program support is sought shall be an unserved area or underserved area; and provided further that no funds may be used to support any project involving the upgrade of existing broadband plant by an applicant.

(b) The project area to be served by a project funded through the program shall be described on a census block basis.

§ -4 Eligible applicants. To become eligible for a grant, an applicant for a grant:

(1) May not receive funds under any other federal or state government grant or loan program for projects covered by an application;

(2) Shall commit to paying a minimum of twenty per cent of the project costs out of the applicant's own funds and may not provide a minimum matching amount from any funds derived from federal or state government grants, loans, or subsidies; and
(3) May be any non-governmental entity with demonstrated experience in providing broadband service or other communications service to residential customers within the State.

§ 5 Applications. (a) The department shall establish an annual window to commence an open process for submission of applications for funding under the program. The window for submission shall be not less than sixty and not more than ninety days.

(b) The form of the application shall be as prescribed by the department. The application shall provide the following information:

(1) Evidence demonstrating the applicant's experience and ability in building, operating, and managing broadband service networks serving residential customers;

(2) A description of the project area, including a list of census blocks covered by the proposed deployment. If a census block included in an application already is partially served by a provider of broadband service, the application shall describe the portions of the census block that are already served, the portions of
the census block that constitute an unserved area or
underserved area, and include a certification that
none of the funds provided by the program for the
project proposed in the application will be used to
extend or deploy facilities to any already-served
households;

(3) A description of the broadband service infrastructure
that is proposed to be deployed, including facilities,
equipment, and network capabilities, including minimum
speed thresholds;

(4) Evidence, including certification from the application
signatory, demonstrating the unserved or underserved
nature of the project area;

(5) The number of households that would have new access to
broadband service as a result of the grant;

(6) The total cost of the project and the timeframe in
which it will be completed;

(7) The amount of matching funds the applicant proposes to
contribute and a certification that no portion of the
funds are derived from any federal or state grant or
loan program;
Evidence demonstrating the economic and commercial feasibility of the project;

A list of all government authorizations, permits, and other approvals required in connection with the proposed deployment, and a timetable for the applicant's acquisition of such approvals; and

Any other information required by the department.

§ -6 Review of applications; approval. (a) Within five business days following the last day of the window for submission of applications, the department shall make the applications available for review in a publicly available electronic file.

(b) A broadband service provider that provides service within or directly adjacent to a proposed project area may submit, within forty-five days of the release of the applications, a written challenge to the application. Such a challenge may include information:

(1) Disputing an applicant's certification that a proposed project area is an unserved area or underserved area, or that no other federal or state programs provide
funding for a proposed project for which program
support is sought; and

(2) Attesting to the challenging provider's existing, or
planned, provision of broadband service within the
applicant's proposed project area.

(c) In reviewing applications, and any accompanying
challenge, the department shall review the proposed project
areas to ensure that all awarded funds are used to deploy
broadband service infrastructure to unserved areas or
underserved areas. The department shall not award any grants to
fund deployment of broadband service infrastructure for any
project area that fails to meet the criteria for being unserved
or underserved.

(d) The department shall award funding support for
projects set forth in applications based upon a scoring system
that shall be released to the public at least thirty days prior
to the first day of the window for submission of applications.
The weighting scheme employed by the department shall give the
highest weight or priority to the specific criteria enumerated
as follows:
(1) The size and scope of the unserved area or underserved area proposed to be served;
(2) The experience, technical ability, and financial wherewithal of the applicant in successfully deploying and providing broadband service;
(3) Length of time the applicant has been providing broadband services in the State;
(4) The extent to which government funding support is necessary to deploy broadband service infrastructure in an economically feasible manner in the proposed project area;
(5) The size and proportion of the matching funds proposed to be committed by the applicant;
(6) Whether the proposed project area is an unserved area, rather than an underserved area;
(7) The service speed thresholds proposed in the application and the scalability of the broadband service infrastructure proposed to be deployed to speeds higher than twenty-five megabits per second downstream and three megabits per second upstream;
(8) The applicant's ability to leverage nearby or adjacent broadband service infrastructure to facilitate the proposed deployment and provision of service to households;

(9) The extent to which the project does not duplicate any existing broadband service infrastructure in the proposed project area; and

(10) Such other factors the department determines to be reasonable and appropriate, consistent with the purpose of facilitating the economic deployment of broadband service infrastructure to unserved and underserved areas.

(e) In awarding grants, the department shall not include consideration of any new or additional regulatory obligations beyond those required under applicable law, including but not limited to open access network requirements or any rate, service, or other obligations beyond the speed requirements required by this chapter. The department shall not consider factors that would constrain an awardee from offering or providing broadband service in the same manner as the service is
offered without funding support by the provider in other areas
of the State.

(f) Applicants shall be afforded a reasonable timeframe to
complete projects selected for funding approval.

§ -7 Departmental authority. Nothing shall:

(1) Preclude the department from requiring disgorgement of
grant funds in response to an applicant’s pattern of
failure, following notice and an opportunity to cure
and build-out a project area in accordance with the
timeframes and milestones set forth in its
application;

(2) Be construed to preclude the department from
considering an applicant’s financial ability to
complete the project proposed in an application or
making reasonable requests for information necessary
for the oversight and administration of projects
funded under this section; and

(3) Be deemed to empower the department to adopt any new
rules or additional regulatory obligations, or to
impose any new or additional regulatory requirements
on funding recipients, through grant agreements or any
other mechanism, other than the program implementation rules expressly authorized in this chapter.

§ -8 Rules. (a) The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this chapter.

(b) The rules:

(1) Shall include reasonable oversight and reporting provisions to ensure that project funds are used as intended;

(2) Shall not include third-party audit requirements, letter of credit, security fund, performance bond obligations, or any other financial commitment to secure performance other than those expressly specified in this chapter; and

(3) May not impose any financial penalty or liquidated damages provisions, or provisions that are not reasonably related to the deployment of broadband service infrastructure by an applicant in accordance with this chapter."

SECTION 3. Within one hundred eighty days of the approval of this Act, the department of business, economic development,
and tourism shall adopt rules pursuant to chapter 91, Hawaii
Revised Statutes, to implement the broadband service
infrastructure grant program including the submission, review,
and approval of applications, and the administration of projects
funded, including rules for grant agreements memorializing the
award of funds.

SECTION 4. There is appropriated out of the general
revenues of the State of Hawaii the sum of $5,000,000 or so much
thereof as may be necessary for fiscal year 2019-2020 for the
establishment and administration of the broadband service
infrastructure grant program established by this Act.
The sum appropriated shall be expended by the department of
business, economic development, and tourism for the purposes of
this Act.

SECTION 5. This Act shall take effect on July 1, 2019.
Report Title:
Broadband Service Infrastructure Grant Program; Unserved and Underserved Areas; Appropriation

Description:
Establishes the broadband service infrastructure grant program to award grants to applicants to extend deployment of facilities used to provide broadband service to unserved and underserved areas of the State. Makes an appropriation.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.