

JAN 18 2019

A BILL FOR AN ACT

RELATING TO BROADBAND SERVICE INFRASTRUCTURE.

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

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

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

13 Access to broadband services in unserved and underserved
14 areas in Hawaii would enhance economic development, education,
15 health care, and emergency services in the State. The
16 availability of grants for deployment to unserved and



1 underserved areas would further those objectives by encouraging
2 new investment in broadband service infrastructure.

3 The legislature strongly supports efforts to improve access
4 to broadband services for residents across the State and efforts
5 that benefit consumers and businesses in accessing services.

6 Although broadband coverage in the State is widespread,
7 additional investment can be made to keep up with needs in rural
8 communities to bridge the digital divide. There continues to be
9 a need for broadband access in rural areas of the State and the
10 connection of the last mile.

11 The purpose of this Act is to facilitate the deployment of
12 broadband service infrastructure in unserved and underserved
13 areas of Hawaii by identifying and addressing remaining
14 obstacles to full deployment of broadband infrastructure to all
15 areas of Hawaii. Specifically, this Act establishes the
16 broadband service infrastructure grant program to award grants
17 to applicants to extend deployment of facilities used to provide
18 broadband service to unserved and underserved areas of the
19 State.



1 SECTION 2. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 BROADBAND SERVICE INFRASTRUCTURE GRANT PROGRAM

6 § -1 Definitions. As used in this chapter, unless the
7 context requires otherwise:

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

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

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

18 "Program" means the broadband service infrastructure grant
19 program established by this chapter.



1 "Project" means a proposed deployment of broadband service
2 infrastructure set forth in an application for grant funding
3 authorized under this chapter.

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

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

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

14 **§ -2 Establishment of the broadband service**

15 **infrastructure grant program.** There is established the
16 broadband service infrastructure grant program to be placed in
17 the department of business, economic development, and tourism
18 for administrative purposes. The department shall receive and
19 review grant applications and may award grants for eligible
20 projects pursuant to the program.



1 § -3 **Eligible projects.** (a) The department may award
2 grants for eligible projects; provided that as of the date on
3 which the application of the eligible person or entity is
4 submitted, the area to be served by the proposed deployment for
5 which program support is sought shall be an unserved area or
6 underserved area; and provided further that no funds may be used
7 to support any project involving the upgrade of existing
8 broadband plant by an applicant.

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

11 § -4 **Eligible applicants.** To become eligible for a
12 grant, an applicant for a grant:

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

16 (2) Shall commit to paying a minimum of twenty per cent of
17 the project costs out of the applicant's own funds and
18 may not provide a minimum matching amount from any
19 funds derived from federal or state government grants,
20 loans, or subsidies; and



1 (3) May be any non-governmental entity with demonstrated
2 experience in providing broadband service or other
3 communications service to residential customers within
4 the State.

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

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

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

16 (2) A description of the project area, including a list of
17 census blocks covered by the proposed deployment. If
18 a census block included in an application already is
19 partially served by a provider of broadband service,
20 the application shall describe the portions of the
21 census block that are already served, the portions of



1 the census block that constitute an unserved area or
2 underserved area, and include a certification that
3 none of the funds provided by the program for the
4 project proposed in the application will be used to
5 extend or deploy facilities to any already-served
6 households;

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

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

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

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

18 (7) The amount of matching funds the applicant proposes to
19 contribute and a certification that no portion of the
20 funds are derived from any federal or state grant or
21 loan program;



1 (8) Evidence demonstrating the economic and commercial
2 feasibility of the project;

3 (9) A list of all government authorizations, permits, and
4 other approvals required in connection with the
5 proposed deployment, and a timetable for the
6 applicant's acquisition of such approvals; and

7 (10) Any other information required by the department.

8 § -6 Review of applications; approval. (a) Within five
9 business days following the last day of the window for
10 submission of applications, the department shall make the
11 applications available for review in a publicly available
12 electronic file.

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

18 (1) Disputing an applicant's certification that a proposed
19 project area is an unserved area or underserved area,
20 or that no other federal or state programs provide



1 funding for a proposed project for which program
2 support is sought; and

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

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

14 (d) The department shall award funding support for
15 projects set forth in applications based upon a scoring system
16 that shall be released to the public at least thirty days prior
17 to the first day of the window for submission of applications.
18 The weighting scheme employed by the department shall give the
19 highest weight or priority to the specific criteria enumerated
20 as follows:



- 1 (1) The size and scope of the unserved area or underserved
2 area proposed to be served;
- 3 (2) The experience, technical ability, and financial
4 wherewithal of the applicant in successfully deploying
5 and providing broadband service;
- 6 (3) Length of time the applicant has been providing
7 broadband services in the State;
- 8 (4) The extent to which government funding support is
9 necessary to deploy broadband service infrastructure
10 in an economically feasible manner in the proposed
11 project area;
- 12 (5) The size and proportion of the matching funds proposed
13 to be committed by the applicant;
- 14 (6) Whether the proposed project area is an unserved area,
15 rather than an underserved area;
- 16 (7) The service speed thresholds proposed in the
17 application and the scalability of the broadband
18 service infrastructure proposed to be deployed to
19 speeds higher than twenty-five megabits per second
20 downstream and three megabits per second upstream;



- 1 (8) The applicant's ability to leverage nearby or adjacent
2 broadband service infrastructure to facilitate the
3 proposed deployment and provision of service to
4 households;
- 5 (9) The extent to which the project does not duplicate any
6 existing broadband service infrastructure in the
7 proposed project area; and
- 8 (10) Such other factors the department determines to be
9 reasonable and appropriate, consistent with the
10 purpose of facilitating the economic deployment of
11 broadband service infrastructure to unserved and
12 underserved areas.
- 13 (e) In awarding grants, the department shall not include
14 consideration of any new or additional regulatory obligations
15 beyond those required under applicable law, including but not
16 limited to open access network requirements or any rate,
17 service, or other obligations beyond the speed requirements
18 required by this chapter. The department shall not consider
19 factors that would constrain an awardee from offering or
20 providing broadband service in the same manner as the service is



1 offered without funding support by the provider in other areas
2 of the State.

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

5 **§ -7 Departmental authority.** Nothing shall:

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

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

18 (3) Be deemed to empower the department to adopt any new
19 rules or additional regulatory obligations, or to
20 impose any new or additional regulatory requirements
21 on funding recipients, through grant agreements or any



1 other mechanism, other than the program implementation
2 rules expressly authorized in this chapter.

3 § -8 Rules. (a) The department shall adopt rules
4 pursuant to chapter 91 to effectuate the purposes of this
5 chapter.

6 (b) The rules:

- 7 (1) Shall include reasonable oversight and reporting
8 provisions to ensure that project funds are used as
9 intended;
- 10 (2) Shall not include third-party audit requirements,
11 letter of credit, security fund, performance bond
12 obligations, or any other financial commitment to
13 secure performance other than those expressly
14 specified in this chapter; and
- 15 (3) May not impose any financial penalty or liquidated
16 damages provisions, or provisions that are not
17 reasonably related to the deployment of broadband
18 service infrastructure by an applicant in accordance
19 with this chapter."

20 SECTION 3. Within one hundred eighty days of the approval
21 of this Act, the department of business, economic development,



1 and tourism shall adopt rules pursuant to chapter 91, Hawaii
 2 Revised Statutes, to implement the broadband service
 3 infrastructure grant program including the submission, review,
 4 and approval of applications, and the administration of projects
 5 funded, including rules for grant agreements memorializing the
 6 award of funds.

7 SECTION 4. There is appropriated out of the general
 8 revenues of the State of Hawaii the sum of \$5,000,000 or so much
 9 thereof as may be necessary for fiscal year 2019-2020 for the
 10 establishment and administration of the broadband service
 11 infrastructure grant program established by this Act.

12 The sum appropriated shall be expended by the department of
 13 business, economic development, and tourism for the purposes of
 14 this Act.

15 SECTION 5. This Act shall take effect on July 1, 2019.

16

INTRODUCED BY:

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S.B. NO. 553

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.

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