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# 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 increased demand for  
2 broadband internet service has created greater disparities  
3 between remote and rural communities and densely populated areas  
4 of the State. It is becoming increasingly vital that access to  
5 broadband internet is a daily necessity.

6           The Federal Communications Commission's 2018 broadband  
7 deployment report showed improvements in nearly every area of  
8 advanced telecommunications services, but there are still  
9 significant gaps specific to rural and other low-density areas.

10          Across the United States, partnerships between government  
11 and private companies are developing new ways to bring  
12 high-speed broadband networks to areas where the challenging  
13 terrain and low populations make deployment challenging.  
14 Public-private partnerships are proving to be critical to  
15 closing the digital divide in unserved low-density areas and for  
16 creating incentives for broadband providers to spend capital to  
17 build a new network in such areas.





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

3 "Eligible applicant" means an entity that:

- 4 (1) Has authorization to do business in the State of  
5 Hawaii;
- 6 (2) Has demonstrated that it has the technical, financial,  
7 and managerial resources and experience to provide  
8 broadband service or other communications service to  
9 customers within the State; and
- 10 (3) Is not a government entity.

11 "FCC" means the Federal Communications Commission.

12 "Program" means the broadband service infrastructure grant  
13 program established by this chapter.

14 "Project" means a proposed deployment of broadband service  
15 infrastructure set forth in an application for grant funding  
16 authorized under this chapter.

17 "Project area" means a census block, aggregation of  
18 adjacent census blocks, or shapefile area within an unserved  
19 area or underserved area where the proposed broadband service  
20 infrastructure would be built as described in an application for  
21 grant funding authorized under this chapter.



1 "Shapefile" means a file format for storing, depicting, and  
2 analyzing geospatial data showing broadband coverage, comprised  
3 of several component files, such as a Main file (.shp), an Index  
4 file (.shx), and a dBASE table (.dbf).

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

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

12 **§ -2 Establishment of the broadband service**  
13 **infrastructure grant program.** There is established the  
14 broadband service infrastructure grant program to be placed in  
15 the department of business, economic development, and tourism  
16 for administrative purposes. The department shall receive and  
17 review grant applications and may award grants for eligible  
18 projects pursuant to the program.

19 **§ -3 Eligible projects.** (a) The department may award  
20 grants for eligible projects; provided that:



1 (1) As of the date the application is filed, the project  
2 area to be served by the proposed deployment for which  
3 program support is sought shall be an unserved area or  
4 underserved area;

5 (2) That no funds may be used to support any project  
6 involving the upgrade of an existing broadband plant  
7 by an eligible applicant, any affiliate, or partnering  
8 entity, nor may any funding be used to support non-  
9 capital expenses, including general operations of an  
10 eligible applicant, non-broadband services, marketing,  
11 or advertising; and

12 (3) Projects for next-generation wireless technology shall  
13 obtain an environmental impact statement under chapter  
14 343 in order to be considered eligible for the  
15 program.

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

19 § -4 **Eligible applicants.** To become eligible for a  
20 grant, an applicant for a grant:



- 1 (1) May not receive funds under any other federal or state  
2 government grant or loan program for projects covered  
3 by an application;
- 4 (2) May not receive funds in any area that is already  
5 served by another provider of broadband service;
- 6 (3) Shall commit to paying a minimum of twenty per cent of  
7 the project costs out of the applicant's own funds and  
8 may not provide a minimum matching amount from any  
9 funds derived from federal or state government grants,  
10 loans, or subsidies; and
- 11 (4) May only be a non-governmental entity with  
12 demonstrated experience in providing broadband service  
13 or other communications service to residential  
14 customers within the State.

15 § -5 Applications. (a) The department shall establish  
16 an annual window to commence an open process for submission of  
17 applications for funding under the program. The window for  
18 submission shall be no less than sixty and no more than ninety  
19 days.



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

4 (1) Evidence demonstrating the eligible applicant's  
5 technical, financial, and managerial resources and  
6 experience to provide broadband service or other  
7 communications services to customers within the State  
8 and ability in building, operating, and managing  
9 broadband service networks serving residential  
10 customers in the State;

11 (2) A description of the project area, including a list of  
12 census blocks or shapefiles that the eligible  
13 applicant proposes to build or serve. If a census  
14 block or shapefile included in an application already  
15 is partially served by a provider of broadband  
16 service, the application shall describe the portions  
17 of the project area that are already served, the  
18 portions of the project area that constitute an  
19 unserved area or underserved area, and include a  
20 certification that none of the funds provided by the  
21 program for the project proposed in the application



- 1 will be used to extend or deploy facilities to any  
2 already-served households;
- 3 (3) A description of the broadband service infrastructure  
4 that is proposed to be deployed, including facilities,  
5 equipment, and network capabilities, including minimum  
6 speed thresholds;
- 7 (4) Evidence, including certification from the application  
8 signatory, demonstrating the unserved or underserved  
9 nature of the project area;
- 10 (5) The number of households and businesses that would  
11 have new access to broadband service as a result of  
12 the grant;
- 13 (6) The total cost of the project and the timeframe in  
14 which it will be completed;
- 15 (7) The amount of matching funds the eligible applicant  
16 proposes to contribute and a certification that no  
17 portion of the funds is derived from any federal or  
18 state grant or loan program;
- 19 (8) Evidence demonstrating the economic and commercial  
20 feasibility of the project; and



1 (9) A preliminary list of all government authorizations,  
2 permits, and other approvals required in connection  
3 with the proposed deployment, and an estimated  
4 timetable for the acquisition of such approvals.

5 (c) The department shall treat any non-public information  
6 submitted by an eligible applicant as confidential and exempt  
7 from disclosure under the Uniform Information Practices Act upon  
8 any such eligible applicant's request for confidential  
9 treatment.

10 (d) Notwithstanding subsection (c), an eligible applicant  
11 shall ensure that the application contains sufficient public  
12 information to enable a provider submitting a written challenge  
13 authorized under section -6(b) to identify the specific  
14 geographic location of any proposed project area contained in  
15 such application.

16 § -6 Review of applications; approval. (a) Within five  
17 business days following the last day of the window for  
18 submission of applications, the department shall make the  
19 applications available for review in a publicly available  
20 electronic file, subject to the confidentiality provisions set  
21 forth under section -5(c).



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

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

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

14 (c) In presenting information to document a claim in  
15 support of a challenge under subsection (b), evidence of  
16 broadband service infrastructure deployment in the proposed  
17 project area that includes FCC Form 477 deployment data or  
18 public shapefile data that encompasses the project area that a  
19 challenging provider has created for purposes of complying with  
20 FCC rules shall suffice to demonstrate that a project area  
21 subject to a challenge is served.



1 (d) Upon request, the department shall treat any  
2 non-public information submitted by a challenging provider  
3 pursuant to this section as confidential and exempt from  
4 disclosure under the Uniform Information Practices Act.

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

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

20 (1) The size and scope of the unserved area or underserved  
21 area proposed to be served;



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



- 1           (8) The eligible applicant's ability to leverage its own  
2           nearby or adjacent broadband service infrastructure to  
3           facilitate the proposed deployment and provision of  
4           service to 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 areas and  
12          underserved areas.
- 13          (g) 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 (h) The department shall set a reasonable timeframe to  
4 complete projects selected for funding approval. The department  
5 may, in consultation with any successful eligible applicant, set  
6 reasonable milestones for project completion along with  
7 procedures for addressing failures to meet such milestones  
8 without reasonable cause.

9 § -7 Departmental authority. Nothing shall:

10 (1) Preclude the department from requiring disgorgement of  
11 grant funds in response to an eligible applicant's  
12 pattern of failure, following notice and an  
13 opportunity to cure and build out a project area in  
14 accordance with the timeframes and milestones set  
15 pursuant to this chapter;

16 (2) Be construed to preclude the department from  
17 considering an eligible applicant's financial ability  
18 to complete the project proposed in an application or  
19 making reasonable requests for information necessary  
20 for the oversight and administration of projects  
21 funded under this chapter; and



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

7           § -8 Rules. (a) Consistent with the provisions of  
 8 Act       , Session Laws of Hawaii 2020, the department shall adopt  
 9 rules pursuant to chapter 91 to effectuate the purposes of this  
 10 chapter.

11           (b) The rules:

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

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

20           (3) May not impose any financial penalty or liquidated  
 21           damages provisions, or provisions that are not



1 reasonably related to the deployment of broadband  
2 service infrastructure by an eligible applicant in  
3 accordance with this chapter."

4 SECTION 3. Within one hundred eighty days of the approval  
5 of this Act, the department of business, economic development,  
6 and tourism shall adopt rules pursuant to chapter 91 and section  
7 -8, Hawaii Revised Statutes, to implement the broadband  
8 service infrastructure grant program, including rules governing  
9 the submission, review, and approval of applications; the  
10 administration of projects funded; and grant agreements  
11 memorializing the award of funds.

12 SECTION 4. This Act shall take effect on July 1, 2112.



**Report Title:**

Broadband Service Infrastructure Grant Program; Unserved and Underserved Areas

**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. Takes effect on 7/1/2112. (HD1)

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

