

JAN 17 2020

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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 as of the date the  
21 application is filed, the project area to be served by the



1 proposed deployment for which program support is sought shall be  
2 an unserved area or underserved area; provided further that no  
3 funds may be used to support any project involving the upgrade  
4 of an existing broadband plant by an eligible applicant, any  
5 affiliate, or partnering entity, nor may any funding be used to  
6 support non-capital expenses, including general operations of an  
7 eligible applicant, non-broadband services, marketing, or  
8 advertising.

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

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

- 14 (1) May not receive funds under any other federal or state  
15 government grant or loan program for projects covered  
16 by an application;
- 17 (2) May not receive funds in any area that is already  
18 served by another provider of broadband service;
- 19 (3) Shall commit to paying a minimum of twenty per cent of  
20 the project costs out of the applicant's own funds and  
21 may not provide a minimum matching amount from any



1 funds derived from federal or state government grants,  
2 loans, or subsidies; and

3 (4) May only be a non-governmental entity with  
4 demonstrated experience in providing broadband service  
5 or other communications service to residential  
6 customers within the State.

7 § -5 Applications. (a) The department shall establish  
8 an annual window to commence an open process for submission of  
9 applications for funding under the program. The window for  
10 submission shall be no less than sixty and no more than ninety  
11 days.

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

15 (1) Evidence demonstrating the eligible applicant's  
16 technical, financial, and managerial resources and  
17 experience to provide broadband service or other  
18 communications services to customers within the State  
19 and ability in building, operating, and managing  
20 broadband service networks serving residential  
21 customers in the State;



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- 1           (2) A description of the project area, including a list of  
2           census blocks or shapefiles that the eligible  
3           applicant proposes to build or serve. If a census  
4           block or shapefile included in an application already  
5           is partially served by a provider of broadband  
6           service, the application shall describe the portions  
7           of the project area that are already served, the  
8           portions of the project area that constitute an  
9           unserved area or underserved area, and include a  
10          certification that none of the funds provided by the  
11          program for the project proposed in the application  
12          will be used to extend or deploy facilities to any  
13          already-served households;
- 14          (3) A description of the broadband service infrastructure  
15          that is proposed to be deployed, including facilities,  
16          equipment, and network capabilities, including minimum  
17          speed thresholds;
- 18          (4) Evidence, including certification from the application  
19          signatory, demonstrating the unserved or underserved  
20          nature of the project area;



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- 1           (5) The number of households and businesses that would
- 2           have new access to broadband service as a result of
- 3           the grant;
- 4           (6) The total cost of the project and the timeframe in
- 5           which it will be completed;
- 6           (7) The amount of matching funds the eligible applicant
- 7           proposes to contribute and a certification that no
- 8           portion of the funds is derived from any federal or
- 9           state grant or loan program;
- 10          (8) Evidence demonstrating the economic and commercial
- 11          feasibility of the project; and
- 12          (9) A preliminary list of all government authorizations,
- 13          permits, and other approvals required in connection
- 14          with the proposed deployment, and an estimated
- 15          timetable for the acquisition of such approvals.
- 16          (c) The department shall treat any non-public information
- 17          submitted by an eligible applicant as confidential and exempt
- 18          from disclosure under the Uniform Information Practices Act upon
- 19          any such eligible applicant's request for confidential
- 20          treatment.





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

7 § -6 Review of applications; approval. (a) Within five  
8 business days following the last day of the window for  
9 submission of applications, the department shall make the  
10 applications available for review in a publicly available  
11 electronic file, subject to the confidentiality provisions set  
12 forth under section -5(c).

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 eligible applicant's certification that a  
19 proposed project area is an unserved area or  
20 underserved area, or that no other federal or state



1 programs provide funding for a proposed project for  
2 which program support is sought; or

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

6 (c) In presenting information to document a claim in  
7 support of a challenge under subsection (b), evidence of  
8 broadband service infrastructure deployment in the proposed  
9 project area that includes FCC Form 477 deployment data or  
10 public shapefile data that encompasses the project area that a  
11 challenging provider has created for purposes of complying with  
12 FCC rules shall suffice to demonstrate that a project area  
13 subject to a challenge is served.

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

18 (e) In reviewing applications, and any accompanying  
19 challenge, the department shall review the proposed project  
20 areas to ensure that all awarded funds are used to deploy  
21 broadband service infrastructure to unserved areas or



1 underserved areas. The department shall not award any grants to  
2 fund deployment of broadband service infrastructure for any  
3 project area that fails to meet any of the criteria set forth in  
4 this chapter for being an unserved area or underserved area.

5 (f) The department shall award funding support for  
6 projects set forth in applications based upon a scoring system  
7 that shall be released to the public at least thirty days prior  
8 to the first day of the window for submission of applications.  
9 The weighting scheme employed by the department shall give the  
10 highest weight or priority to the specific criteria enumerated  
11 as follows:

- 12 (1) The size and scope of the unserved area or underserved  
13 area proposed to be served;
- 14 (2) The experience, technical ability, and financial  
15 wherewithal of the eligible applicant in successfully  
16 deploying and providing broadband service;
- 17 (3) Length of time the eligible applicant has been  
18 providing broadband services in the State;
- 19 (4) The extent to which government funding support is  
20 necessary to deploy broadband service infrastructure



- 1 in an economically feasible manner in the proposed  
2 project area;
- 3 (5) The size and proportion of the matching funds proposed  
4 to be committed by the eligible applicant and the  
5 extent to which an eligible applicant's proposed  
6 contribution exceeds the minimum required under  
7 section -4(3);
- 8 (6) Whether the proposed project area is an unserved area,  
9 rather than an underserved area;
- 10 (7) The service speed thresholds proposed in the  
11 application and the scalability of the broadband  
12 service infrastructure proposed to be deployed to  
13 speeds higher than twenty-five megabits per second  
14 downstream and three megabits per second upstream;
- 15 (8) The eligible applicant's ability to leverage its own  
16 nearby or adjacent broadband service infrastructure to  
17 facilitate the proposed deployment and provision of  
18 service to households;
- 19 (9) The extent to which the project does not duplicate any  
20 existing broadband service infrastructure in the  
21 proposed project area; and



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

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

16           (h) The department shall set a reasonable timeframe to  
17                  complete projects selected for funding approval. The department  
18                  may, in consultation with any successful eligible applicant, set  
19                  reasonable milestones for project completion along with  
20                  procedures for addressing failures to meet such milestones  
21                  without reasonable cause.



1           §   -7 Departmental authority. Nothing shall:

2           (1) Preclude the department from requiring disgorgement of  
3           grant funds in response to an eligible applicant's  
4           pattern of failure, following notice and an  
5           opportunity to cure and build out a project area in  
6           accordance with the timeframes and milestones set  
7           pursuant to this chapter;

8           (2) Be construed to preclude the department from  
9           considering an eligible applicant's financial ability  
10          to complete the project proposed in an application or  
11          making reasonable requests for information necessary  
12          for the oversight and administration of projects  
13          funded under this chapter; and

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

20          §   -8 Rules. (a) Consistent with the provisions of

21 Act       , Session Laws of Hawaii 2020, the department shall adopt



1 rules pursuant to chapter 91 to effectuate the purposes of this  
2 chapter.

3 (b) The rules:

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

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

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

17 SECTION 3. Within one hundred eighty days of the approval  
18 of this Act, the department of business, economic development,  
19 and tourism shall adopt rules pursuant to chapter 91 and section  
20 -8, Hawaii Revised Statutes, to implement the broadband  
21 service infrastructure grant program, including rules governing



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1 the submission, review, and approval of applications; the  
2 administration of projects funded; and grant agreements  
3 memorializing the award of funds.

4 SECTION 4. This Act shall take effect on July 1, 2020.

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INTRODUCED BY: Rosely H Baker

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Clerence M. Siskin





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**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.

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

