

ACT 225

H.B. NO. 1191

A Bill for an Act Relating to Broadband Service Infrastructure.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. The legislature finds that access to reliable high-speed broadband across the State and in every community is essential to the well-being and economic realities of the State's residents. The need for new and enhanced broadband infrastructure is significant, highlighted by the devastating impact of the coronavirus disease 2019. The lack of accessibility to reliable high-speed broadband has had a tremendous negative effect in many areas, but particularly unserved and underserved communities. Insufficient broadband infrastructure and access has hampered the ability of the State to deliver consistent and meaningful distance learning for all students. Telehealth services have replaced in-person doctor visits and are now serving as a significant tool in providing remote medical services to those who would otherwise be unable to receive proper medical care.

The legislature further finds that reliable broadband access has meant the difference between an employee being able to work remotely or possibly facing unemployment. Online access is also a critical tool for those seeking to access social services such as unemployment claims, Supplemental Nutrition Assistance Program benefits, vital records, and other critical government services. The ability to provide the services needed relies upon the existence of a robust and extensive broadband infrastructure.

Increased access to broadband services in unserved and underserved areas of the State would enhance Hawaii's overall economic development, education, health care, and emergency services. Making grants available for the de-

ployment of broadband infrastructure to unserved and underserved areas would encourage new private investment in broadband infrastructure and move the State toward universal access to broadband services.

The legislature strongly supports efforts to improve access to broadband services for residents, consumers, and businesses across the State. Although broadband coverage in the State is widespread, additional investment must be made to meet the needs in rural communities and enhance access for those in communities that require immediate broadband infrastructure.

The purpose of this part is to facilitate the deployment of last-mile broadband infrastructure in unserved and underserved areas of the State by identifying and addressing any remaining obstacles to full deployment of broadband infrastructure to all areas of Hawaii. More specifically, this part:

- (1) Establishes the broadband infrastructure grant program to award grants to extend the deployment of facilities used to provide broadband service to unserved and underserved areas of the State; and
- (2) Renames the Hawaii technology loan revolving fund to the Hawaii broadband infrastructure special fund and changes the types of funds to be deposited into the fund.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 13 to be appropriately designated and to read as follows:

**“CHAPTER A
BROADBAND INFRASTRUCTURE GRANT PROGRAM**

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

“Broadband infrastructure” shall have the same meaning as in section 440J-1.

“Broadband service” shall have the same meaning as “broadband access or broadband service” in section 440J-1. “Broadband service” does not include wireless network infrastructure or facilities used to provide wireless services over licensed spectrum.

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

“Program” means the broadband infrastructure grant program established by this chapter.

“Project” means a proposed deployment of wireline broadband infrastructure set forth in an application for grant funding authorized under this chapter.

“Project area” means an area identified by a shapefile that is proposed to be covered in an application for grant funding authorized under this chapter.

“Shapefile” means a file format for storing, depicting, and analyzing geospatial data depicting broadband coverage. “Shapefile” includes several component files, including a main file (.shp), index file (.shx), and dBASE table (.dbf).

“Underserved area” means a project area with access to broadband service but at speeds of less than fifty megabits per second for downloads and five megabits per second for uploads.

“Unserved area” means a project area without access to broadband service. “Unserved area” does not include any location where federal government funding has been awarded pursuant to the Rural Digital Opportunity Fund specifically to support the deployment or expansion of broadband networks; provided that an area shall be considered unserved if the funding award is forfeited or upon disqualification of the recipient entity awarded funding for the geographic area under the Rural Digital Opportunity Fund.

§A-2 Broadband infrastructure grant program; establishment. There is established the broadband infrastructure grant program within 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.

§A-3 Eligible projects. The department may award grants for eligible projects; provided that on the date the application is submitted, the area to be served by the project shall include either unserved areas or underserved areas.

§A-4 Eligible applicants. To be eligible for a grant, an applicant shall:

- (1) Commit to paying a minimum of sixty per cent of the total project costs out of the applicant's own funds; and
- (2) Be a non-governmental entity with demonstrated experience in providing broadband service, broadband infrastructure, or other communication services to residential customers within the State.

§A-5 Applications. (a) The department shall establish an annual time period to commence an open process for submission of applications for funding under the program. The time period for submission shall be no less than sixty days and no more than ninety days.

(b) The form of the application shall be as prescribed by the department and shall include:

- (1) Evidence demonstrating the applicant's experience and ability to build, operate, and manage broadband infrastructure servicing residential customers;
- (2) A description of the project area, including a shapefile identifying the proposed deployment;
- (3) A description of the broadband infrastructure that is proposed to be deployed, including facilities; equipment; and network capabilities, including minimum speed thresholds;
- (4) Evidence, including certification from the applicant, demonstrating the unserved or underserved nature of the project area;
- (5) The number of households in each unserved or underserved area that would gain access to broadband service as a result of the project;
- (6) The total cost and timeline for completion of the project;
- (7) The amount of matching funds that the applicant proposes to contribute and a certification that no portion of the matching funds are derived from any state government grant, loan, or subsidy;
- (8) Evidence demonstrating the economic and commercial feasibility of the project;
- (9) A list of all expected government authorizations, permits, and other approvals required for the project and a timeline for the applicant's acquisition of the approvals;
- (10) A certification that no other federal or state program provides funding that is available to the applicant for the project; and
- (11) Any other information deemed necessary by the department.

§A-6 Review of applications; confidential treatment; approval. (a) Within five business days following the last day of the time period for submission of applications to the program, the department shall make all of the applications available for review in a publicly available electronic file posted on the department's website.

(b) To the extent the information in an application or challenge falls under one or more of the exceptions to public disclosure in section 92F-13 or comprises commercially sensitive information, including information regarding the location of critical infrastructure, addresses of locations capable of receiving service under an existing provider's standard installation intervals, number of actual subscribers, subscriber addresses, non-public internal financial or network cost information, or vendor agreements, the department shall keep the information confidential upon request by:

- (1) An applicant for confidential treatment of an application, except that in no event shall a request for confidentiality prevent the publicly available portion of the application from including sufficient evidence to demonstrate the requirements of section A-5(b)(2) and A-5(b)(4); or
- (2) A challenging provider for confidential treatment of a challenge submitted pursuant to this section.

(c) A broadband service provider that provides service within or directly adjacent to a proposed project area may submit a written challenge to any application within forty-five days of the department making the applications available for review pursuant to subsection (a). The challenge may:

- (1) Dispute an applicant's certification that a proposed project area is an unserved or underserved area or that no other federal or state program provides funding that is available to the applicant for a project for which program support is sought;
 - (2) Attest to the challenging provider's existing or planned provision of broadband service within the applicant's proposed project area; or
 - (3) Attest that the project may jeopardize the eligibility of federal funding for the challenging provider.
- (d) 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 infrastructure to unserved or underserved areas.

(e) The department shall award program grants based on a scoring system that shall be released to the public at least thirty days prior to the first day of the time period for the submission of applications. The scoring system shall give the highest weight or priority to the following:

- (1) Projects proposing to serve a larger unserved or underserved geographic area;
- (2) Applicants with more experience and technical ability to successfully deploy and provide broadband service and more financial resources available to finance the project;
- (3) Projects for which fewer government funds and less support are necessary to deploy broadband infrastructure in an economically feasible manner;
- (4) Projects with a higher amount of matching funds proposed to be committed by the applicant;
- (5) High service speed thresholds proposed in the application and high scalability of the broadband infrastructure proposed to be deployed;
- (6) Applicants with a high ability to leverage nearby or adjacent broadband infrastructure to facilitate the proposed deployment of service to households;
- (7) Projects that do not duplicate any existing broadband infrastructure in the project area; and

- (8) Other factors the department determines to be reasonable, appropriate, and consistent with the purpose of facilitating the deployment of broadband infrastructure to unserved or underserved areas.

§A-7 Departmental authority. The department may:

- (1) Following notice and an opportunity to cure, require disgorgement of grant funds in response to an applicant's pattern of failure to build out a project area in accordance with the timelines and milestones set forth in its application;
- (2) Consider an applicant's financial ability to complete the project proposed in an application;
- (3) Make reasonable requests for information necessary for the oversight and administration of any project funded pursuant to this chapter;
- (4) Impose any new or additional regulatory requirements on grant recipients, through grant agreements or any other mechanism, in addition to the program implementation rules expressly authorized in this chapter; and
- (5) Deny or cancel a project if the department finds the project will impact federal funding opportunities.

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

(b) The rules shall:

- (1) Include reasonable oversight and reporting provisions to ensure that grant moneys are used as intended; and
- (2) Not impose any financial penalty or liquidated damages provisions or provisions that are not reasonably related to the deployment of broadband infrastructure in the State in accordance with this chapter."

SECTION 3. Section 206M-15.6, Hawaii Revised Statutes, is amended to read as follows:

~~"[§206M-15.6]]~~ **Hawaii ~~[technology loan revolving]~~ broadband infrastructure special fund.** There is established the Hawaii ~~[technology loan revolving]~~ broadband infrastructure special fund for the purpose of investing in ~~[technology development]~~ broadband infrastructure in ~~[Hawaii.]~~ the State. The following shall be deposited into the Hawaii ~~[technology loan revolving]~~ broadband infrastructure special fund:

- (1) Appropriations from the legislature;
- ~~(2) Moneys received as repayments of loans;~~
- ~~(3) Investment earnings;~~
- ~~(4) Royalties;~~
- ~~(5) Premiums, or fees or equity charged by the corporation, or otherwise received by the corporation; and~~
- ~~(6) Loans that are convertible to equity;]~~
- (2) Funds received from the federal government; and
- (3) Funds received from the private sector;

provided that the total amount of moneys in the fund shall not exceed ~~[\$2,000,000]~~ \$10,000,000 at the end of any fiscal year."

SECTION 4. Within twelve months following the effective date of this Act, the department of business, economic development, and tourism shall adopt rules pursuant to chapter 91 and section A-8, Hawaii Revised Statutes, to

implement the broadband infrastructure grant program; provided that any rules adopted pursuant to this section shall include rules regarding the submission, review, and approval of applications; administration of the projects funded; and grant agreements memorializing the award of funds.

SECTION 5. There is appropriated out of the funds received by the State of Hawaii from the American Rescue Plan Act of 2021, Public Law 117-2 (Section 9901), the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2021-2022 to be used for the broadband infrastructure grant program established by this part.

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

PART II

SECTION 6. The purpose of this part is to:

- (1) Establish the Hawaii broadband and digital equity office within the department of business, economic development, and tourism; and
- (2) Require the governor to appoint a strategic broadband coordinator to head the Hawaii broadband and digital equity office.

SECTION 7. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER B HAWAII BROADBAND AND DIGITAL EQUITY OFFICE

§B-1 Definitions. As used in this chapter:

“Broadband” means high-speed internet access that is always on, including mobile and fixed technologies.

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

“Digital equity” means a condition in which all individuals and communities have the information technology capacity needed for full participation in society, democracy, and the economy.

“Office” means the Hawaii broadband and digital equity office.

§B-2 Hawaii broadband and digital equity office; establishment; strategic broadband coordinator; staff. (a) There is established the Hawaii broadband and digital equity office within the department of business, economic development, and tourism.

(b) The governor, upon the advice and consent of the senate, shall appoint a strategic broadband coordinator, who shall be exempt from chapter 76, to head the office.

§B-3 Hawaii broadband and digital equity office; duties. In furtherance of the State’s objectives and policies for the economy pursuant to section 226-10.5, the office shall:

- (1) Develop and implement specific strategies and plans to aggressively increase broadband affordability, penetration, and competitive availability in the State;
- (2) Support the efforts of both public and private entities in the State to enhance or facilitate the deployment of and access to competitively priced, advanced electronic communications services, including

broadband and its products and services and internet access services of general application throughout the State;

- (3) Promote the landing of trans-Pacific submarine cable, including the development of a shared access cable station and associated terrestrial connectivity to reduce barriers to fiber landing in Hawaii;
- (4) Promote, advocate, and facilitate the implementation of the findings and recommendations of the Hawaii broadband task force established by Act 2, First Special Session Laws of Hawaii 2007, and the 2020 Hawaii Broadband Strategic Plan;
- (5) Support the findings of the community-based Broadband Hui as reflected in its digital equity declaration;
- (6) Administer grant programs in support of broadband infrastructure, innovation, and the digital economy;
- (7) Actively seek out funding from public and private sources in furtherance of the office's duties pursuant to this section; and
- (8) Provide a repository, aggregation point, and governance framework for broadband mapping and digital equity data from various sources, including digital literacy, telehealth, distance education, remote work, internet accessibility, and service coverage to support mapping, reporting, infrastructure deployment, and data-driven policy.

§B-4 Broadband planning and coordination; cooperation. (a) The office shall:

- (1) Seek input and the widest possible cooperation from public and private agencies and individuals to achieve the purposes of this chapter;
- (2) Work closely with and assist the counties in the promotion of coordinated state and county broadband planning;
- (3) Encourage every state department, county agency, and other public or private agencies and individuals involved in broadband programs to participate in the activities of the office and incorporate, to the extent feasible, the ideas and suggestions of the participants in the office's comprehensive planning goals;
- (4) Monitor the broadband-based development efforts of other states and nations in areas such as business, education, and health;
- (5) Advise the department on other states' best practices involving remote work promotion and policies and strategies related to making affordable broadband services available to every home and business in the State;
- (6) Monitor broadband-related activities at the federal level;
- (7) Encourage public-private partnerships to increase the deployment and adoption of broadband services and applications;
- (8) Monitor regulatory and policy changes for potential impact on broadband deployment and sustainability in the State; and
- (9) Advise the director of business, economic development, and tourism on broadband deployment.

(b) Nothing in this section shall be construed to delegate, or detract in any way from, the functions, powers, and duties conferred by law or rule on any department or agency of the State or county."

PART III

SECTION 8. In codifying the new chapters added by sections 2 and 7 of this Act, the revisor of statutes shall substitute appropriate chapter numbers for the letters used in designating the new chapters in this Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2021.

(Approved July 6, 2021.)