

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 835 Session of 2019

INTRODUCED BY LANGERHOLC, PITTMAN, STEFANO, ARGALL, MENSCH, J. WARD, STREET, BREWSTER AND YUDICHAK, AUGUST 26, 2019

SENATOR PHILLIPS-HILL, COMMUNICATIONS AND TECHNOLOGY, AS AMENDED, JUNE 22, 2020

AN ACT

1 Providing for funding of high-speed broadband service
2 infrastructure deployment in unserved areas of this
3 Commonwealth and for powers and duties of the Department of <--
4 Community and Economic Development. COMMONWEALTH FINANCING <--
5 AUTHORITY; ESTABLISHING THE UNSERVED HIGH-SPEED BROADBAND
6 FUNDING PROGRAM ACCOUNT; MAKING AN APPROPRIATION; AND MAKING
7 A RELATED REPEAL.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Short title.

11 This act shall be known and may be cited as the Unserved
12 High-Speed Broadband Funding Pilot Program Act.

13 Section 2. Declaration of policy.

14 The General Assembly finds and declares as follows:

15 (1) The purpose of this act is to facilitate the
16 deployment of high-speed broadband service infrastructure in
17 unserved areas of this Commonwealth.

18 (2) The economic and business incentives to deploy high-
19 speed broadband service infrastructure may be insufficient to
20 ensure full access to high-speed broadband services in low-

1 density, rural locations and other areas of this Commonwealth
2 where the unit costs of providing service may not provide an
3 adequate return on investment for private companies.

4 (3) Access to high-speed broadband services in unserved
5 areas of this Commonwealth will enhance economic development,
6 education, health care and emergency services in this
7 Commonwealth.

8 (4) Establishing a grant program to facilitate the
9 deployment of high-speed broadband services infrastructure in
10 unserved areas will further these objectives through new
11 private sector investments and is in the policy interest of
12 this Commonwealth.

13 Section 3. Definitions.

14 The following words and phrases when used in this act shall
15 have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 ~~"Department." The Department of Community and Economic <--~~
18 ~~Development of the Commonwealth.~~

19 "ACCOUNT." THE UNSERVED HIGH-SPEED BROADBAND FUNDING PROGRAM <--
20 ACCOUNT ESTABLISHED UNDER SECTION 7(C).

21 "AUTHORITY." THE COMMONWEALTH FINANCING AUTHORITY.

22 "BOARD." THE BOARD OF DIRECTORS OF THE AUTHORITY.

23 "High-speed broadband service." Any wireline or fixed
24 wireless technology having the capacity to transmit data from or
25 to the Internet at minimum speeds of at least 25 megabits per
26 second downstream and 3 megabits per second upstream.

27 "High-speed broadband service infrastructure." The signal
28 transmission facilities and associated network equipment
29 proposed to be deployed in a project area used for the provision
30 of high-speed broadband service.

1 "Overbuild." The deployment of high-speed broadband service
2 infrastructure in an area where high-speed broadband service
3 infrastructure has been deployed and high-speed broadband
4 services are offered to the public at the time of submitting a
5 grant application.

6 "Program." The Unserved High-Speed Broadband Funding Pilot
7 Program established under section 4(a).

8 "Project." The proposed deployment of high-speed broadband
9 service infrastructure in an unserved area of this Commonwealth
10 as set forth in an application for grant funding authorized
11 under this act.

12 "Unserved area." A project area without access to broadband
13 service with minimum speeds of at least 25 megabits per second
14 downstream and 3 megabits per second upstream.

15 Section 4. Establishment.

16 ~~(a) Program established.~~ The Unserved High-Speed Broadband <--
17 Funding Pilot Program is established. The ~~department, in~~ <--
18 ~~consultation with the Governor's Office of Broadband~~
19 ~~Initiatives,~~ AUTHORITY shall administer and act as the fiscal <--
20 agent for the program and shall be responsible for receiving and
21 reviewing all grant applications and awarding grants.

22 ~~(b) Funding.~~ Funding for the program shall be no less than <--
23 ~~\$10,000,000.~~

24 Section 5. Grant awards generally.

25 (a) General rule.--Grant awards shall be at the discretion
26 of the ~~department, in consultation with the Governor's Office of~~ <--
27 ~~Broadband Initiatives,~~ AUTHORITY and shall be limited to amounts <--
28 annually allocated to the ~~department~~ AUTHORITY for the program. <--

29 (b) Eligible entities.--A nongovernmental entity with the
30 technical, managerial and financial expertise to design, build

1 and operate a high-speed broadband service infrastructure within
2 this Commonwealth is eligible to receive grant funding for the
3 deployment of high-speed broadband service infrastructure. The
4 nongovernmental entity must commit to using a minimum of 25% of
5 the entity's private capital to finance a proposed project.

6 (c) Other funding sources.--Federal, State or local
7 government grants, loans or subsidies received by a
8 nongovernmental entity to finance a project shall not be counted
9 toward the capital investment requirement under subsection (b).
10 In addition to any grant award under the program, a
11 nongovernmental entity may use funds from a Federal, State or
12 local government grant or loan program to finance a proposed
13 project as long as the nongovernmental entity satisfies the
14 capital investment requirement under subsection (b).

15 (d) Ineligible projects.--Projects that result in overbuild
16 or are proposed to be managed or operated by a Federal, State or
17 local government entity are ineligible to receive grant funding
18 for the deployment of high-speed broadband service
19 infrastructure.

20 Section 6. Application process.

21 (a) Application period.--The ~~department~~ AUTHORITY shall <--
22 establish an annual application period during which applications
23 for grant funding under the program may be submitted. The annual
24 application period shall be no fewer than 90 days and no longer
25 than 150 days.

26 (b) Form and contents.--An application shall be submitted to
27 ~~the department on a form prescribed by the department in~~ <--
28 ~~consultation with the Governor's Office of Broadband Initiatives~~
29 THE AUTHORITY. An application shall include the following <--
30 information:

1 (1) Evidence demonstrating the applicant's experience
2 and ability in building, operating and managing high-speed
3 broadband service infrastructure networks serving households
4 and businesses.

5 (2) A description of the project area, including a list
6 of census blocks covered by the proposed deployment. If a
7 census block included in an application is currently
8 partially served by a provider of high-speed broadband
9 service, the application must describe the portions of the
10 census block that are already served and which constitute an
11 unserved area.

12 (3) A certification that none of the grant money
13 provided by the program for the proposed project will be used
14 to extend or deploy high-speed broadband service
15 infrastructure to areas with access to high-speed broadband
16 service at the time of submitting a grant application.

17 (4) A description of the high-speed broadband service
18 infrastructure that is proposed to be deployed, including
19 facilities, equipment and network capabilities and minimum
20 speed thresholds.

21 (5) The number of households and businesses that would
22 have new or improved access to high-speed broadband service
23 as a result of the grant award.

24 (6) The total cost of the proposed project and the
25 proposed completion date of the project.

26 (7) The amount of private capital pledged to finance the
27 proposed project and a certification that no portion of the
28 private capital pledged is derived from any Federal, State or
29 local government grant or loan program.

30 (8) Evidence demonstrating the economic and commercial

1 feasibility of the proposed project.

2 (9) A list of all government authorizations, permits and
3 other required approvals to deploy high-speed broadband
4 service infrastructure and a timetable for the applicant's
5 acquisition of the approvals.

6 (10) Any other information required by the ~~department~~ <--
7 AUTHORITY. <--

8 (c) Publication.--Within five business days following the
9 close of the application period, the ~~department~~ AUTHORITY shall <--
10 make the applications received available for review on the
11 ~~department's~~ AUTHORITY'S publicly accessible Internet website. <--

12 (d) Overbuild challenge.--Within 45 days of the ~~department~~ <--
13 AUTHORITY making the applications available on the ~~department's~~ <--
14 AUTHORITY'S PUBLICLY ACCESSIBLE Internet website, a broadband <--
15 service provider providing high-speed broadband service to
16 households and businesses within a proposed project area may
17 challenge an application on the grounds that granting an award
18 to the applicant will result in an overbuild. The challenge must
19 be submitted in writing to the ~~department~~ AUTHORITY and include <--
20 the following:

21 (1) A declaration disputing that a proposed project area
22 is unserved.

23 (2) An affidavit of the broadband service provider
24 challenging the application of the provider's existing or
25 planned provision of high-speed broadband service within the
26 applicant's proposed project area.

27 (e) Review.--In reviewing an application and any
28 accompanying challenge, the ~~department, in consultation with the~~ <--
29 ~~Governor's Office of Broadband Initiatives,~~ AUTHORITY shall <--
30 conduct a review of the proposed project areas to ensure that

1 all grants awarded are used to deploy high-speed broadband
2 service infrastructure to unserved areas. The ~~department~~ <--
3 AUTHORITY may not award a grant to fund deployment of high-speed <--
4 broadband service infrastructure for any project area that
5 results in an overbuild.

6 (f) Criteria.--The ~~department~~ AUTHORITY shall award grants <--
7 for projects based upon a scoring system, which shall be
8 released to the public at least 30 days prior to the beginning
9 of the application period. Specific criteria to be considered
10 when weighing or scoring an application are as follows:

11 (1) The size and scope of the unserved area to be
12 deployed.

13 (2) The experience, technical ability and financial
14 capability of the applicant to successfully deploy high-speed
15 broadband service infrastructure and provide high-speed
16 broadband service.

17 (3) Length of time which the applicant has been
18 providing high-speed broadband service.

19 (4) The extent to which Federal, State or local
20 government funding support is necessary to deploy high-speed
21 broadband network infrastructure in an economically feasible
22 manner in the proposed project area.

23 (5) The proportion of the private capital pledged by the
24 applicant to finance the proposed project.

25 (6) The high-speed broadband service speed thresholds
26 proposed in the application and the scalability of the high-
27 speed broadband service infrastructure proposed to be
28 deployed to provide high-speed broadband service to
29 households and businesses.

30 (7) An affidavit that no project grant awards are to be

1 used to overbuild an area that is already served with high-
2 speed broadband service.

3 (8) Other factors which the ~~department, in consultation~~ <--
4 ~~with the Governor's Office of Broadband Initiatives,~~
5 AUTHORITY determines to be reasonable and appropriate, <--
6 consistent with the purposes of this act.

7 (g) Limitation.--In awarding grants, except as required
8 under applicable law, the ~~department~~ AUTHORITY shall not <--
9 consider any additional regulatory obligations, including, but
10 not limited to, open access network requirements or any rate,
11 service or other obligation beyond the speed requirements set
12 forth in the definition of "high-speed broadband service" in
13 section 3.

14 (h) Time for project completion.--Applicants shall be
15 afforded a reasonable length of time to complete projects
16 selected for grant funding approval.

17 Section 7. Implementation.

18 ~~(a) Regulations. The department shall adopt regulations to~~ <--
19 ~~implement this act within 180 days of the effective date of this~~
20 ~~act. The regulations shall include provision for submission,~~
21 ~~review and approval of applications, award of grants and~~
22 ~~administration of projects funded under the program, including~~
23 ~~provision for reasonable oversight and reporting to ensure that~~
24 ~~project grant awards are used as intended.~~

25 (A) REQUIREMENTS.--THE FOLLOWING APPLY: <--

26 (1) THE REQUIREMENTS FOR THE ADMINISTRATION OF THE
27 PROGRAM SHALL BE AS FOLLOWS:

28 (I) AN APPLICATION FOR A GRANT UNDER THIS SECTION
29 MUST BE RECEIVED BY A DEADLINE ESTABLISHED BY THE
30 AUTHORITY UNDER SECTION 6.

1 (II) THE AUTHORITY SHALL EXECUTE A GRANT AGREEMENT
2 BETWEEN THE BOARD AND A GRANT RECIPIENT BEFORE THE
3 PAYMENT OF A GRANT AWARD.

4 (III) A GRANT RECIPIENT SHALL MAINTAIN FULL AND
5 ACCURATE RECORDS FOR THE PROJECT.

6 (IV) A GRANT RECIPIENT SHALL SUBMIT TO THE AUTHORITY
7 COPIES OF ALL CANCELED CHECKS OR OTHER RECORDS VERIFYING
8 EXPENDITURES OF GRANT MONEY.

9 (V) A GRANT RECIPIENT SHALL SUBMIT TO THE AUTHORITY
10 A FINAL REPORT OF THE PROJECT, INCLUDING ANY INFORMATION
11 AS REQUIRED BY THE BOARD.

12 (2) THE AUTHORITY MAY ESTABLISH ADDITIONAL REQUIREMENTS
13 FOR THE PROGRAM AS THE AUTHORITY DEEMS NECESSARY TO
14 ADMINISTER THE PROGRAM.

15 (B) RESTRICTIONS AND LIMITATIONS.--THE FOLLOWING APPLY:

16 (1) A GRANT RECIPIENT MAY NOT COMMENCE WORK ON A PROJECT
17 BEFORE RECEIVING AUTHORITY APPROVAL OF THE GRANT UNDER
18 SECTION 6. COMMENCEMENT OF WORK PRIOR TO RECEIVING AUTHORITY
19 APPROVAL WILL RESULT IN A PROJECT APPLICATION BEING
20 INELIGIBLE FOR FUNDING CONSIDERATION.

21 (2) A GRANT RECIPIENT MAY NOT MAKE A SUBSTANTIAL CHANGE
22 TO AN APPROVED PROJECT WITHOUT FIRST OBTAINING AUTHORITY
23 CONSENT IN WRITING.

24 (3) ANY UNUSED PORTION OF A GRANT AWARD SHALL BE
25 RETURNED TO THE AUTHORITY.

26 (4) GRANT MONEY MAY ONLY BE USED FOR NEW PROJECTS
27 APPROVED BY THE BOARD.

28 (5) GRANT MONEY MAY NOT BE USED FOR ANY OF THE
29 FOLLOWING:

30 (I) PAYING FEES FOR SECURING FINANCING.

1 (II) PAYING INTEREST ON BORROWED MONEY.

2 (III) REFINANCING EXISTING DEBT.

3 (IV) PAYING FOR LOBBYING SERVICES.

4 (V) PAYING FINES.

5 (VI) APPLICATION PREPARATION FEES.

6 (6) THE AUTHORITY MAY ESTABLISH ADDITIONAL RESTRICTIONS
7 AND LIMITATIONS AS THE AUTHORITY DEEMS NECESSARY TO
8 ADMINISTER THE PROGRAM.

9 (C) ACCOUNT.--THE AUTHORITY SHALL ESTABLISH THE UNSERVED
10 HIGH-SPEED BROADBAND FUNDING PROGRAM ACCOUNT. THE FOLLOWING
11 SHALL APPLY:

12 (1) THE PURPOSE OF THE ACCOUNT IS TO AWARD GRANTS UNDER
13 THIS ACT.

14 (2) THE FOLLOWING SHALL BE SOURCES OF FUNDING FOR THE
15 ACCOUNT:

16 (I) APPROPRIATIONS, INCLUDING FEDERAL MONEY.

17 (II) RETURN ON THE MONEY IN THE ACCOUNT.

18 (3) MONEY IN THE ACCOUNT IS CONTINUOUSLY APPROPRIATED TO
19 THE ACCOUNT. THIS APPROPRIATION SHALL NOT LAPSE AT THE END OF
20 A FISCAL YEAR.

21 (D) GUIDELINES.--WITHIN 180 DAYS OF THE EFFECTIVE DATE OF
22 THIS SECTION, THE BOARD SHALL ADOPT GUIDELINES TO IMPLEMENT THIS
23 SECTION. THE GUIDELINES SHALL INCLUDE PROVISIONS FOR SUBMISSION,
24 REVIEW AND APPROVAL OF APPLICATIONS, AWARD OF GRANTS AND
25 ADMINISTRATION OF PROJECTS FUNDED UNDER THE PROGRAM, INCLUDING A
26 PROVISION FOR REASONABLE OVERSIGHT AND REPORTING TO ENSURE THAT
27 PROJECT GRANT AWARDS ARE USED AS INTENDED.

28 ~~(b)~~ (E) Prohibition.--The ~~department~~ AUTHORITY may not
29 provide, by regulation or otherwise, for third-party audit
30 requirements, liquidated damages provisions or provisions that

<--

1 are not reasonably related to the deployment of high-speed
2 broadband service infrastructure by an applicant in accordance
3 with the purposes and provisions of this act.

4 ~~(e)~~ (F) Construction.--Nothing in this section shall be <--
5 construed to preclude the ~~department~~ AUTHORITY from considering <--
6 an applicant's financial ability to complete a proposed project
7 or making reasonable requests for information necessary for the
8 oversight and administration of projects awarded grant funding.
9 Section 8. Effect on grant recipients.

10 Nothing in this act is intended to subject a grant recipient,
11 solely by virtue of receipt of the grant award, to a statutory
12 or regulatory requirement not provided for under this act if,
13 absent the receipt of the grant award, the requirement would not
14 otherwise apply to the grant recipient.

15 SECTION 9. APPROPRIATION. <--

16 THE SUM OF \$5,000,000 IS HEREBY APPROPRIATED TO THE AUTHORITY
17 FROM THE GENERAL FUND FOR THE 2020-2021 FISCAL YEAR FOR PURPOSES
18 OF THE PROGRAM.

19 SECTION 10. PROHIBITION AND REPEALS.

20 (A) PROHIBITION.--THE DEPARTMENT OF REVENUE MAY NOT AWARD A
21 TAX CREDIT UNDER ARTICLE XVIII-E OF THE ACT OF MARCH 4, 1971
22 (P.L.6, NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, AFTER JUNE
23 30, 2020.

24 (B) REPEALS.--REPEALS ARE AS FOLLOWS:

25 (1) THE GENERAL ASSEMBLY DECLARES THAT THE REPEAL UNDER
26 PARAGRAPH (2) IS NECESSARY TO EFFECTUATE THIS ACT.

27 (2) SECTIONS 1804-E AND 1805-E OF THE ACT OF MARCH 4,
28 1971 (P.L.6, NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, ARE
29 REPEALED.

30 Section ~~9~~ 11. Effective date. <--

1 This act shall take effect immediately.