

Enrolled House Bill 3201

Sponsored by Representative MARSH, Senator WOODS, Representatives OWENS, NERON, Senator CAMPOS; Representatives ANDERSEN, BYNUM, DEXTER, GAMBA, GRAYBER, HIEB, HUDSON, KROPF, MCLAIN, NOSSE, PHAM K, SMITH G, Senators MANNING JR, SOLLMAN

CHAPTER

AN ACT

Relating to broadband; creating new provisions; amending sections 4, 5, 6 and 9, chapter 17, Oregon Laws 2020 (first special session); and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) The Oregon Business Development Department shall provide financial assistance in the form of loans or grants for the purpose of supporting broadband access, affordability and adoption.

(2) The department may establish one or more programs for providing financial assistance under this section. For each program the department establishes, the department shall, by rule, establish:

(a) Criteria for applications and for determining the eligibility of applicants and proposed projects for a loan or grant;

(b) Criteria for the department to evaluate competitive applications and for awarding a loan or grant;

(c) Reporting requirements for a loan or grant recipient; and

(d) A process for identifying and protecting from disclosure, except as permitted by state and federal law, information or data that are submitted to the department by an applicant or recipient and that may be subject to confidentiality protections provided by law or are exempt from public records disclosure.

(3) In addition to the rules required under subsection (2)(a) to (d) of this section, for each program the department establishes to support broadband service infrastructure, the department shall, by rule, establish:

(a) Criteria for determining whether a location qualifies as an underserved location or unserved location for the purpose of giving preference to proposed projects that support broadband service infrastructure to underserved locations or unserved locations in this state;

(b) Reporting requirements for a loan or grant recipient to identify the geographic area and locations served or that will be served by the project;

(c) A process for providing public notice of pending applications;

(d) A public process for interested persons to submit comments on pending applications; and

(e) A process for challenging an application.

(4)(a) The department shall comply with the provisions of ORS chapter 183 in adopting rules and awarding loans or grants under a program. Final orders issued under a program are subject to judicial review as provided in ORS chapter 183.

(b) When awarding a loan or grant under a program to support broadband service infrastructure, the department shall provide a notice of award. The notice of award shall be a final order in an other than contested case proceeding and reviewable pursuant to ORS 183.480 with jurisdiction for judicial review conferred by ORS 183.484.

(5) The department, in consultation with the Oregon Broadband Advisory Council and consistent with applicable federal requirements, shall, by rule, establish goals for broadband service speeds provided in this state to be used when establishing criteria under subsection (3)(a) of this section.

(6) The department shall define by rule the term “broadband service infrastructure program” for purposes of implementing the provisions of this section.

(7) The department may adopt rules necessary to carry out the provisions of this section.

SECTION 1a. (1) If the Oregon Business Development Department establishes a program to support broadband service infrastructure under section 1 of this 2023 Act that provides loans or grants using moneys from the federal Coronavirus Capital Projects Fund (42 U.S.C. 804), the following shall apply:

(a) For purposes of the broadband service infrastructure program, “underserved location” means, based on broadband mapping data published by the Federal Communications Commission or the State of Oregon, a location at which there is no service provider offering reliable wireline broadband service at a speed of at least 100 megabits per second for downloads and 20 megabits per second for uploads.

(b) To be eligible for a loan or grant under the broadband service infrastructure program, an applicant shall demonstrate that at least 80 percent of the broadband-serviceable locations on a proposed broadband service infrastructure project’s service route that the proposed broadband service infrastructure project will serve are underserved locations.

(c) The broadband service infrastructure program shall provide for a process for challenging an application that, except when applicable federal funding requirements require otherwise:

(A) Provides for a period of 30 days from the date that a pending application is published, during which time a broadband service provider may challenge, in writing, the application;

(B) Allows a broadband service provider to challenge an application on the basis that a location, described in the application as an underserved location that the proposed broadband service infrastructure will serve, is not an underserved location because:

(i) The broadband service provider provides broadband service at the requisite speeds to the location; or

(ii)(I) The broadband service provider has an enforceable commitment to provide broadband service at the requisite speeds to the location; and

(II) The commitment to provide broadband services at the requisite speeds to the location is by a date that is earlier than the date the proposed broadband service infrastructure will begin to provide broadband services, as described in the application; and

(C) Allows an applicant to amend an application in response to a decision regarding a challenge.

(2) If the department establishes a program to support broadband service infrastructure under section 1 of this 2023 Act that provides loans or grants using moneys from the federal Broadband Equity, Access, and Deployment Program established under 47 U.S.C. 1702, the following shall apply:

(a) For purposes of the broadband service infrastructure program:

(A) “Underserved location” means, based on broadband mapping data published by the Federal Communications Commission or the State of Oregon, a location at which there is no service provider offering reliable broadband service at a speed of at least 100 megabits per

second for downloads and 20 megabits per second for uploads and with a latency equal to or less than 100 milliseconds. “Underserved location” does not include an unserved location.

(B) “Unserved location” means, based on broadband mapping data published by the Federal Communications Commission or the State of Oregon, a location at which there is no service provider offering reliable broadband service at a speed of at least 25 megabits per second for downloads and three megabits per second for uploads and with a latency equal to or less than 100 milliseconds.

(b) To be eligible for a loan or grant under the broadband service infrastructure program, an applicant shall demonstrate that at least 80 percent of the broadband-serviceable locations on a proposed broadband service infrastructure project’s service route that the proposed broadband service infrastructure project will serve are underserved locations or unserved locations.

SECTION 2. Section 4, chapter 17, Oregon Laws 2020 (first special session), as amended by section 1, chapter 76, Oregon Laws 2022, is amended to read:

Sec. 4. (1) The Broadband Fund is established, separate and distinct from the General Fund. Interest earned by the Broadband Fund shall be credited to the fund. Moneys in the Broadband Fund are continuously appropriated to the Oregon Business Development Department to be used *[only for providing grants or loans through, or for administering, the Oregon Broadband Office and the program established by rule under section 5, chapter 17, Oregon Laws 2020 (first special session). The fund shall consist of moneys deposited in the fund pursuant to ORS 759.425 and moneys appropriated or transferred to the fund by the Legislative Assembly.]* **by the Oregon Broadband Office for the following purposes:**

- (a) **Administering the office;**
- (b) **Carrying out the duties of the office listed in ORS 285A.166;**
- (c) **Providing grants or loans through the program established by rule under section 5, chapter 17, Oregon Laws 2020 (first special session);**
- (d) **Providing financial assistance under section 1 of this 2023 Act; and**
- (e) **Covering the administrative costs associated with the fund and with making grants, loans and other distributions of moneys from the fund.**

(2) **The fund consists of:**

- (a) **Moneys appropriated or transferred to the fund by the Legislative Assembly;**
- (b) **Moneys transferred to the fund pursuant to ORS 759.425;**
- (c) **Loans repaid to the fund and interest due on the loans;**
- (d) **Amounts donated to the fund;**
- (e) **Moneys transferred to the fund from the federal government, state agencies or local governments;**
- (f) **Lottery bond proceeds allocated by the Legislative Assembly for deposit in the fund;**
- (g) **Earnings received on moneys in the fund; and**
- (h) **Other amounts deposited in the fund from any sources.**

(3) **The Broadband Fund is established to provide a flexible funding source for financing programs and projects that support broadband access, affordability or adoption in this state and to support the office in carrying out the duties of the office listed under ORS 285A.166. Notwithstanding ORS 279A.140, the department may enter into contracts as necessary or appropriate to implement programs or projects determined by the department to further broadband access, affordability or adoption.**

(4) **The department may:**

(a) **Adopt objective criteria and standards for the use and allocation of moneys in the Broadband Fund.**

(b) **Establish accounts and subaccounts within the fund when the department determines that accounts or subaccounts are necessary or desirable.**

SECTION 3. Section 4, chapter 17, Oregon Laws 2020 (first special session), as amended by section 1, chapter 76, Oregon Laws 2022, and section 2 of this 2023 Act, is amended to read:

Sec. 4. (1) The Broadband Fund is established, separate and distinct from the General Fund. Interest earned by the Broadband Fund shall be credited to the fund. Moneys in the Broadband Fund are continuously appropriated to the Oregon Business Development Department to be used by the Oregon Broadband Office for the following purposes:

- (a) Administering the office;
- (b) Carrying out the duties of the office listed in ORS 285A.166;
- [(c) *Providing grants or loans through the program established by rule under section 5, chapter 17, Oregon Laws 2020 (first special session);*]
- [(d)] (c) Providing financial assistance under section 1 of this 2023 Act; and
- [(e)] (d) Covering the administrative costs associated with the fund and with making grants, loans and other distributions of moneys from the fund.

(2) The fund consists of:

- (a) Moneys appropriated or transferred to the fund by the Legislative Assembly;
- [(b) *Moneys transferred to the fund pursuant to ORS 759.425;*]
- [(c)] (b) Loans repaid to the fund and interest due on the loans;
- [(d)] (c) Amounts donated to the fund;
- [(e)] (d) Moneys transferred to the fund from the federal government, state agencies or local governments;
- [(f)] (e) Lottery bond proceeds allocated by the Legislative Assembly for deposit in the fund;
- [(g)] (f) Earnings received on moneys in the fund; and
- [(h)] (g) Other amounts deposited in the fund from any sources.

(3) The Broadband Fund is established to provide a flexible funding source for financing programs and projects that support broadband access, affordability or adoption in this state and to support the office in carrying out the duties of the office listed under ORS 285A.166. Notwithstanding ORS 279A.140, the department may enter into contracts as necessary or appropriate to implement programs or projects determined by the department to further broadband access, affordability or adoption.

(4) The department may:

- (a) Adopt objective criteria and standards for the use and allocation of moneys in the Broadband Fund.
- (b) Establish accounts and subaccounts within the fund when the department determines that accounts or subaccounts are necessary or desirable.

SECTION 4. Section 5, chapter 17, Oregon Laws 2020 (first special session), is amended to read:

Sec. 5. [(1) *As used in this section:*]

[(a) *“Underserved area” means, based on the most recent broadband deployment data published by the Federal Communications Commission, other federal agencies or the State of Oregon, a geographic area within one or more census blocks, within which there is no service provider offering residential wireline or wireless broadband service at a speed of at least 25 megabits per second for downloads and three megabits per second for uploads.*]

[(b) *“Unserved area” means, based on the most recent broadband deployment data published by the Federal Communications Commission, other federal agencies or the State of Oregon, a geographic area within one or more census blocks, within which there is no service provider offering residential wireline or wireless broadband service at a speed of at least 10 megabits per second for downloads and one megabit per second for uploads.*]

[(2)(a)] (1) The Oregon Business Development Department shall establish by rule a program for providing grants or loans to assist eligible applicants with projects for:

- [(A)] (a) The planning and development of broadband service infrastructure;
- [(B)] (b) Digital literacy including cybersecurity;
- [(C)] (c) Digital inclusion; and
- [(D)] (d) Digital adoption.

(2) The program shall be funded only by moneys transferred to the Broadband Fund established under section 4, chapter 17, Oregon Laws 2020 (first special session), pursuant to ORS 759.425.

[(b)] (3) In establishing the program required by this section, the department shall take into consideration all federal funding opportunities for the planning and development of broadband service infrastructure and shall endeavor to administer the program in a manner that serves to maximize the total available state and federal support for broadband development and related planning.

[(3) Rules adopted under this section shall include but need not be limited to rules establishing:]

[(a) Criteria for applications and for establishing the eligibility of applicants and proposed projects for a grant or loan under the program;]

[(b) A process for:]

[(A) Identifying broadband service providers that provide service within or near the geographic area that would be benefited by a project proposed by an eligible applicant; and]

[(B) Notifying the identified broadband service providers of the pending application;]

[(c) Standards for the department to evaluate applications from eligible applicants;]

[(d) Criteria and procedures for broadband service providers to engage in a competitive bidding process for contracts to complete projects pursuant to a grant or loan awarded under the program;]

[(e) Reporting requirements by grant or loan award recipients on the broadband service infrastructure developed or planned for using grant or loan moneys and the locations served or that will be served by the broadband service infrastructure;]

[(f) A public process for interested persons to submit comments on pending applications;]

[(g) A process for appealing grant or loan decisions by the department; and]

[(h) Procedures to ensure that any records or data submitted to the department pursuant to administration of the program that relate to broadband, voice connections or subscriptions and that are confidential, privileged or otherwise protected from disclosure are not disclosed, except as permitted by state and federal law.]

[(4) In making broadband service infrastructure grant or loan award decisions under the program, the department shall apply the following preferences:]

[(a) Regarding the geographic area that a proposed project will serve, the department shall:]

[(A) Give first preference to proposed projects that will serve unserved areas; and]

[(B) Give second preference to proposed projects that will serve underserved areas.]

[(b) Regarding the customers that a proposed project will serve, the department shall:]

[(A) Give first preference to proposed projects that are eligible to receive funds from the Connecting Oregon Schools Fund established under ORS 276A.424;]

[(B) Give second preference to proposed projects that will provide broadband service access to public libraries; and]

[(C) Give third preference to proposed projects that will provide broadband service access to residential customers.]

[(5) The department shall, as part of the program, establish procedures for distributing grant or loan funds awarded for the purpose of providing broadband access to schools. Procedures established under this subsection shall include procedures for transferring not more than 20 percent of the moneys deposited in the Broadband Fund established under section 4 of this 2020 special session Act each biennium from the Broadband Fund to the Connecting Oregon Schools Fund established under ORS 276A.424.]

[(6) The department may not award a grant or loan under the program for a proposed project to:]

[(a) Develop broadband service infrastructure to serve residential locations that, at the time the application for the proposed project is received by the department, have access to terrestrial wireline or wireless broadband service at a speed of at least 25 megabits per second for downloads and three megabits per second for uploads; or]

[(b) Develop broadband service infrastructure that will serve two or fewer residential locations.]

[(7)(a) If the department awards a grant or loan for a proposed project to develop broadband service infrastructure that will serve nonresidential locations that, at the time the application for the proposed project was received by the department, were served by terrestrial wireline or wireless broadband service at a speed of at least 25 megabits per second for downloads and three megabits per second for uploads, the broadband service providers identified pursuant to rules adopted under subsection (3)(b) of this section shall be afforded a right of first refusal to contract for the development of broadband service infrastructure as part of the project. If a broadband service provider exercises the right of first refusal, the provider shall be awarded the contract to develop broadband service infrastructure as part of the project, subject to the requirement that the provider must offer access to the completed broadband service infrastructure:]

[(A) Beginning no later than one year after the date that the department awards the grant or loan to develop the proposed project;]

[(B) At demonstrated download and upload speeds equal to or faster than the speeds indicated in the application for the proposed project; and]

[(C) At a cost that is equal to or less than the cost indicated in the application for the proposed project.]

[(b) This subsection does not apply to a grant or loan award for a proposed project described in subsection (4)(b) of this section.]

SECTION 5. Section 6, chapter 17, Oregon Laws 2020 (first special session), is amended to read:

Sec. 6. *[(1) Not later than September 15 of each year, the Oregon Business Development Department shall report, in the manner provided in ORS 192.245, to an interim committee of the Legislative Assembly related to telecommunications on the status of the Broadband Fund established under section 4 of this 2020 special session Act. The report required by this section shall include a description of:]*

[(a) All loans and grants provided through the program adopted under section 5 of this 2020 special session Act; and]

[(b) The status of the projects funded by the loans and grants.]

[(2) In addition to the information required in the report under subsection (1) of this section, the report submitted on or before September 15, 2024, by the department pursuant to this section shall include an evaluation of the continuing need for the Broadband Fund, including but not limited to recommendations regarding the repeal, by section 9 of this 2020 special session Act, of the Broadband Fund and the program adopted under section 5 of this 2020 special session Act.]

The Oregon Broadband Advisory Council shall include in the biennial report required under ORS 285A.160 an evaluation of the continuing need for the program established by rule under section 5, chapter 17, Oregon Laws 2020 (first special session), including any recommendations regarding the repeal, by section 9, chapter 17, Oregon Laws 2020 (first special session), of the program established by rule under section 5, chapter 17, Oregon Laws 2020 (first special session).

SECTION 6. Section 9, chapter 17, Oregon Laws 2020 (first special session), is amended to read:

Sec. 9. (1) Sections [4,] 5 and 6, **chapter 17, Oregon Laws 2020 (first special session)**, [of this 2020 special session Act] are repealed on January 2, 2030.

(2) Any moneys in the Broadband Fund established under section 4, **chapter 17, Oregon Laws 2020 (first special session)**, [of this 2020 special session Act] **that are from the universal service fund established under ORS 759.425 and** that are unexpended and unobligated on January 2, 2030, revert to the universal service fund established under ORS 759.425.

SECTION 7. The amendments to section 4, chapter 17, Oregon Laws 2020 (first special session), by section 3 of this 2023 Act become operative on January 2, 2030.

SECTION 8. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by House March 30, 2023

Repassed by House June 23, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 22, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State