

House Bill 3249

Sponsored by Representative BYNUM, Senators FINDLEY, WOODS, Representative WALLAN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Repeals sunset of Broadband Fund and related program.

Redefines "underserved area" and "unserved area" for purposes of program related to Broadband Fund for providing grants or loans to assist with broadband service infrastructure and digital-related projects.

Removes certain customer preferences in making broadband service infrastructure grant or loan award decisions under program.

A BILL FOR AN ACT

1
2 Relating to broadband; amending ORS 759.425 and sections 5 and 6, chapter 17, Oregon Laws 2020
3 (first special session); and repealing sections 9 and 10, chapter 17, Oregon Laws 2020 (first spe-
4 cial session).

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

6 **SECTION 1.** Section 5, chapter 17, Oregon Laws 2020 (first special session), is amended to read:

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

8 (a) "Underserved area" means, based on the most recent broadband deployment data published
9 by the Federal Communications Commission, other federal agencies or the State of Oregon, a ge-
10 ographic area within one or more census blocks, within which there is no service provider offering
11 residential wireline or wireless broadband service at a speed of at least [25] **100** megabits per second
12 for downloads and [three] **20** megabits per second for uploads.

13 (b) "Unserved area" means, based on the most recent broadband deployment data published by
14 the Federal Communications Commission, other federal agencies or the State of Oregon, a ge-
15 ographic area within one or more census blocks, within which there is no service provider offering
16 residential wireline or wireless broadband service at a speed of at least [10] **25** megabits per second
17 for downloads and [one megabit] **three megabits** per second for uploads.

18 (2)(a) The Oregon Business Development Department shall establish by rule a program for pro-
19 viding grants or loans to assist eligible applicants with projects for:

20 (A) The planning and development of broadband service infrastructure;

21 (B) Digital literacy including cybersecurity;

22 (C) Digital inclusion; and

23 (D) Digital adoption.

24 (b) In establishing the program required by this section, the department shall take into consid-
25 eration all federal funding opportunities for the planning and development of broadband service
26 infrastructure and shall endeavor to administer the program in a manner that serves to maximize
27 the total available state and federal support for broadband development and related planning.

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

29 (a) Criteria for applications and for establishing the eligibility of applicants and proposed

NOTE: Matter in **boldfaced** type in an amended section is new; matter [italic and bracketed] is existing law to be omitted. New sections are in **boldfaced** type.

1 projects for a grant or loan under the program;

2 (b) A process for:

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

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

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

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

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

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

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

14 (h) Procedures to ensure that any records or data submitted to the department pursuant to ad-
15 ministration of the program that relate to broadband, voice connections or subscriptions and that
16 are confidential, privileged or otherwise protected from disclosure are not disclosed, except as per-
17 mitted by state and federal law.

18 (4) In making broadband service infrastructure grant or loan award decisions under the pro-
19 gram, the department shall *[apply]* **give** the following preferences[:]

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

21 *[(A)] (a) [Give] First preference to proposed projects that will serve unserved areas; and*

22 *[(B)] (b) [Give] Second preference to proposed projects that will serve underserved areas.*

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

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

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

28 *[(C) Give third preference to proposed projects that will provide broadband service access to resi-
29 dential customers.]*

30 *[(5) The department shall, as part of the program, establish procedures for distributing grant or
31 loan funds awarded for the purpose of providing broadband access to schools. Procedures established
32 under this subsection shall include procedures for transferring not more than 20 percent of the moneys
33 deposited in the Broadband Fund established under section 4 of this 2020 special session Act each
34 biennium from the Broadband Fund to the Connecting Oregon Schools Fund established under ORS
35 276A.424.]*

36 *[(6)] (5) The department may not award a grant or loan under the program for a proposed
37 project to:*

38 (a) Develop broadband service infrastructure to serve residential locations that, at the time the
39 application for the proposed project is received by the department, have access to terrestrial
40 wireline or wireless broadband service at a speed of at least *[25]* **100** megabits per second for
41 downloads and *[three]* **20** megabits per second for uploads; or

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

43 *[(7)(a)] (6) If the department awards a grant or loan for a proposed project to develop broadband
44 service infrastructure that will serve nonresidential locations that, at the time the application for
45 the proposed project was received by the department, were served by terrestrial wireline or wireless*

1 broadband service at a speed of at least [25] **100** megabits per second for downloads and [three] **20**
 2 megabits per second for uploads, the broadband service providers identified pursuant to rules
 3 adopted under subsection (3)(b) of this section shall be afforded a right of first refusal to contract
 4 for the development of broadband service infrastructure as part of the project. If a broadband ser-
 5 vice provider exercises the right of first refusal, the provider shall be awarded the contract to de-
 6 velop broadband service infrastructure as part of the project, subject to the requirement that the
 7 provider must offer access to the completed broadband service infrastructure:

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

10 [(B)] **(b)** At demonstrated download and upload speeds equal to or faster than the speeds indi-
 11 cated in the application for the proposed project; and

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

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

16 **SECTION 2.** Section 6, chapter 17, Oregon Laws 2020 (first special session), is amended to read:

17 **Sec. 6.** [(1)] Not later than September 15 of each year, the Oregon Business Development De-
 18 partment shall report, in the manner provided in ORS 192.245, to an interim committee of the Leg-
 19 islative Assembly related to telecommunications on the status of the Broadband Fund established
 20 under section 4, **chapter 17, Oregon Laws 2020 (first special session)** [of this 2020 special session
 21 Act]. The report required by this section shall include a description of:

22 [(a)] **(1)** All loans and grants provided through the program adopted under section 5, **chapter**
 23 **17, Oregon Laws 2020 (first special session)** [of this 2020 special session Act]; and

24 [(b)] **(2)** The status of the projects funded by the loans and grants.

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

30 **SECTION 3.** ORS 759.425, as amended by section 3, chapter 17, Oregon Laws 2020 (first special
 31 session), is amended to read:

32 759.425. (1)(a) The Public Utility Commission shall establish and implement a competitively
 33 neutral and nondiscriminatory universal service fund. The commission shall:

34 **(A)** Use the universal service fund to ensure basic telephone service is available at a reasonable
 35 and affordable rate[.]; and

36 **(B) Transfer from the universal service fund to the Oregon Business Development De-**
 37 **partment for deposit in the Broadband Fund established under section 4, chapter 17, Oregon**
 38 **Laws 2020 (first special session), an amount per year that is equal to the lesser of:**

39 **(i) \$5 million; or**

40 **(ii) The remainder of moneys deposited in the universal service fund that are unobligated**
 41 **after making the designation required in paragraph (b) of this subsection.**

42 (b) The commission shall designate the amount of moneys deposited annually in the universal
 43 service fund to be used to ensure basic telephone service. The amount designated under this para-
 44 graph may not exceed \$28 million per year.

45 (c) The commission may:

1 (A) Adopt rules to conform the universal service fund to section 254 of the federal Telecommu-
2 nications Act of 1996 (P.L. 104-104), and to related regulations adopted by the Federal Communi-
3 cations Commission, to the extent that the Public Utility Commission determines conforming the
4 rules is appropriate; and

5 (B) In addition to using the universal service fund to ensure basic telephone service, use the
6 universal service fund to encourage broadband service availability and to provide support to tele-
7 communications carriers that provide both basic telephone service and broadband service.

8 (2)(a) The commission shall establish the price a telecommunications utility may charge its
9 customers for basic telephone service. The commission shall periodically review and evaluate the
10 status of telecommunications services in the state and designate the services included in basic
11 telephone service. The commission shall periodically review and adjust as necessary the price a
12 telecommunications utility may charge for basic telephone service.

13 (b) The provisions of this subsection do not apply to the basic telephone service provided by a
14 telecommunications utility described in ORS 759.040.

15 (3)(a) The commission shall establish a benchmark for basic telephone service as necessary for
16 the administration and distribution of the universal service fund. The universal service fund shall
17 provide explicit support to an eligible telecommunications carrier that is equal to the difference
18 between the cost of providing basic telephone service and the benchmark, less any explicit com-
19 pensation received by the telecommunications carrier from federal sources specifically used to re-
20 cover local loop costs and less any explicit support received by the telecommunications carrier from
21 a federal universal service program.

22 (b) The commission shall periodically review the benchmark established under paragraph (a) of
23 this subsection and adjust the benchmark as necessary to reflect:

24 (A) Changes in competition in the telecommunications industry;

25 (B) Changes in federal universal service support; and

26 (C) Other relevant factors as determined by the commission.

27 (c) Except for a telecommunications utility described in ORS 759.040, the commission shall seek
28 to limit the difference between the price a telecommunications utility may charge for basic tele-
29 phone service and the benchmark.

30 (4)(a) There is imposed a universal service surcharge on the sale in this state of all:

31 (A) Retail telecommunications services;

32 (B) Retail commercial mobile radio services; and

33 (C) Retail interconnected voice over internet protocol services.

34 (b) A retail commercial mobile radio service provider shall identify the intrastate revenues
35 subject to the universal service surcharge based on the inverse of the percentage of interstate re-
36 venues utilized for purposes of federal universal service contributions or based on any other method
37 approved by the Public Utility Commission. A retail commercial mobile radio service provider may
38 rely upon the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (P.L. 106-252)
39 to identify revenues attributable to Oregon.

40 (c) A retail interconnected voice over internet protocol service provider may identify, in ac-
41 cordance with federal guidelines, the intrastate revenues subject to the universal service surcharge
42 based on any one of the following:

43 (A) The inverse of the interstate safe harbor percentage established by the Federal Communi-
44 cations Commission for interconnected voice over internet protocol service for federal universal
45 service contribution purposes, as the interstate safe harbor percentage may be revised from time to

1 time;

2 (B) A traffic study specific to the interconnected voice over internet protocol service provider
3 that allocates revenues between federal and state jurisdictions; or

4 (C) Another methodology for accurately apportioning interconnected voice over internet proto-
5 col service revenues between federal and state jurisdictions.

6 (d) For any service provider subject to the universal service surcharge that provides, to multiple
7 locations, shared simultaneous voice channel capacity configured to provide local dial in different
8 states, the revenue subject to the surcharge shall be only the portion of the shared capacity in this
9 state as identified:

10 (A) By information itemizing, on the billing statements provided to customers, the charges sub-
11 ject to the surcharge, as may be identified by individual end-user location, the total number of end
12 users and the number of end users at each end-user location; or

13 (B) If information described in subparagraph (A) of this paragraph does not exist, by the service
14 provider's billing system books and records.

15 (e) Unless otherwise provided by the Public Utility Commission by rule, the universal service
16 surcharge must be a uniform percentage of the sale of services subject to the surcharge in an
17 amount sufficient to support the purposes of the universal service fund established under subsection
18 (1) of this section, provided that the percentage does not exceed six percent of the sale of services
19 subject to the surcharge.

20 (f) The universal service surcharge may be listed by a telecommunications carrier as a separate
21 line item in billing statements provided to customers, as prescribed by the commission by rule or
22 order. The commission may not prescribe whether, or the manner by which, a commercial mobile
23 radio services provider or an interconnected voice over internet protocol services provider may list
24 the surcharge in billing statements provided to customers.

25 (g) A service provider required to collect the universal service surcharge shall:

26 (A) Transmit amounts collected pursuant to this section to the commission in accordance with
27 a schedule adopted by the commission; and

28 (B) Provide the commission with information requested by the commission as necessary for the
29 commission to implement this section.

30 (5) The commission shall deposit moneys transmitted to the commission pursuant to subsection
31 (4) of this section in the universal service fund established under subsection (1) of this section.

32 (6) The universal service fund established under subsection (1) of this section is separate and
33 distinct from the General Fund. The universal service fund shall consist of all universal service
34 surcharge moneys collected by service providers required to collect the surcharge and transmitted
35 to the commission for deposit in the universal service fund. The universal service fund may be used
36 only for the purposes described in this section and for payment of expenses incurred by the com-
37 mission or a third party appointed by the commission to administer this section. All moneys in the
38 universal service fund are continuously appropriated to the commission to carry out the provisions
39 of this section. Interest on moneys deposited in the universal service fund shall accrue to the uni-
40 versal service fund.

41 (7) A pay telephone provider may apply to the commission, on a form developed by the com-
42 mission, for a refund of the universal service surcharge imposed on the pay telephone provider under
43 subsection (4) of this section for the provision of pay telephone service.

44 (8) Nothing in this section is intended to grant the commission the authority to impose any re-
45 quirement or condition, or to exercise any regulatory authority, with respect to commercial mobile

1 radio services or interconnected voice over internet protocol services other than as expressly pro-
2 vided for in this section.

3 **SECTION 4. Sections 9 and 10, chapter 17, Oregon Laws 2020 (first special session), are**
4 **repealed.**

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