

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2019-230
HOUSE BILL 387

AN ACT CONSISTENT WITH HOUSE BILL 966 TO ENACT CHANGES TO THE GROWING RURAL ECONOMIES WITH ACCESS TO TECHNOLOGY PROGRAM AND TO PROVIDE FUNDING FOR THAT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-1373 reads as rewritten:

"§ 143B-1373. Growing Rural Economies with Access to Technology (GREAT) program.

(a) As used in this section, the following definitions apply:

...

(6) Eligible project. – An eligible project is a discrete and specific project located in an unserved area of an economically distressed county seeking to provide broadband service to homes, businesses, and community anchor points not currently served. Eligible projects do not include middle mile, backhaul, and other similar projects not directed at broadband service to end users. If a contiguous project area crosses from one eligible county into one or more eligible adjacent counties, for the purposes of this section, the project shall be deemed to be located in the county where the greatest number of unserved households are proposed to be served.

(7)

Eligible recipient. – Eligible grant recipients are private providers of broadband services, including cooperatively organized entities, or any partnerships formed between cooperatively organized entities, private providers, or any combination thereof, on or after January 1, 2018.~~thereof~~.

...

(8a)

Infrastructure. – Existing facilities, equipment, materials, and structures that an entity has installed either for its core business or public enterprise purposes. Examples include, but are not limited to, copper wire, coaxial cable, optical cable, loose tube cable, communication huts, conduits, vaults, patch panels, mounting hardware, poles, generators, battery and cabinet, network nodes, network routers, network switches, microwave relay, microwave receivers, site routers, outdoor cabinets, towers, easements, rights-of-way, and buildings or structures owned by the entity that are made available for location or collocation purposes.

(9)

Infrastructure costs. – Costs directly related to the construction of broadband infrastructure for the extension of broadband service for an eligible project, including installation, acquiring or updating easements, ~~equipment, fiber, construction,~~ backhaul infrastructure, and testing costs. The term does not include overhead or administrative costs.

...

(11a)

Partnership. – A project for which an Internet service provider affirms that a formalized agreement exists between the provider and one or more unaffiliated partners where the partner is one of the following:



a. A separate Internet service provider.
b. A nonprofit or not-for-profit, or a for-profit subsidiary of either, and the Internet service provider is being allowed access and use of the partner's infrastructure, on special terms and conditions designed to facilitate the provision of broadband services in unserved areas, or is utilizing a financial contribution provided by one or more partners where the total contribution is not less than ten percent (10%), but not more than forty-nine percent (49%), of the match required by this section. A county that is not engaged in providing consumer broadband service may qualify as a nonprofit for the purpose of this section.

...

(12a) Prospective broadband recipient. – A household, home, business, community anchor point, agricultural operation, or agricultural processing facility that is currently unserved and is identified in an application submitted in accordance with this section.

...

(c) Project areas comprised of census blocks, or portions thereof, within which a broadband provider is receiving ~~State or federal~~ matching funds to deploy ~~technologically neutral sealable~~ broadband service within the next 18 months are ineligible for the GREAT program. It is essential for the Office to know the location of census blocks, or portions thereof, comprising these areas so it can determine project eligibility. A private provider receiving ~~State or federal matching~~ Universal Service or Connect America Phase II, or nonfederal funds to deploy broadband service ~~within~~ may qualify such an area shall, ~~for protection by submitting~~ within 60 days of the effective date of this section, submit only application period a listing of the census blocks, or portions thereof, comprising each of its the federally funded project areas meeting this requirement and nothing more to the Office. In future program years, the cutoff date for submitting this census block data shall be May 15. established by the Office, but shall be not less than 60 days prior to the beginning date of the application period. This will enable the office to update maps and advise applicants as to the unserved areas of the State that are eligible for consideration in that program year. The Office shall only utilize this data to update maps of census blocks to reflect these census blocks, or portions thereof, as being served. Failure on the part of a provider to submit the listing of census blocks by the cutoff date shall result in those areas being eligible for inclusion under this program during the upcoming program year. The Office shall use the census block data provided only for mapping of unserved areas. Upon expiration of the 18-month reservation period described in this subsection, a private provider that has received a reservation of census blocks shall submit written documentation by April 30 of the year following the program year that broadband deployment has begun or been completed in the census blocks, or portions thereof, that have been deemed ineligible by the Office due to the existence of a federally funded project area. Information provided to the Office pursuant to this subsection is not a public record, as that term is defined in G.S. 132-1.

(d) Applications for grants will be submitted at times designated by the Secretary and will include, at a minimum, the following information:

...

(5) An illustration or description of the area to be served and served, identifying the number of homes, businesses, community anchor points, agricultural operations, or agricultural processing facilities that will have access to broadband as a result of the ~~project~~ project, including any available addresses, or other identifying information satisfactory to the Office, for the foregoing. In the event that the Office is unable to identify the proposed project area with specificity, the Office may require the applicant to submit additional

information. If construction of the proposed project would result in the provision of broadband service to areas that are not eligible for funding, those ineligible areas should be identified in the application along with the eligible areas.

...

(d1) A provider submitting an application pursuant to this section shall bear the burden of proof that the proposed area to be served can, in fact, be served using the proposed technology. The burden of proof may be satisfied by the submission of data, maps, and any other information satisfactory to the Office, demonstrating that the area and number of prospective broadband recipients proposed to be served can be provided the minimum upload and download speeds indicated in the application.

(e) Applications shall be made publicly available by posting on the Web site of the Department of Information Technology for a period of at least 30 days prior to award. During the 30-day period, any interested party may submit comments to the Secretary concerning any pending application. A provider of broadband services may submit a protest of any application on the grounds the proposed project covers an area that is not an eligible area under this section. Protests shall be submitted in writing, accompanied by all relevant supporting documentation, and shall be considered by the Office in connection with the review of the application. Upon submission of evidence satisfactory to the Office that the proposed project area includes prospective broadband recipients that are served, as measured using a methodology satisfactory to the Office, the Office may work with an applicant to amend an application to reduce the number of unserved prospective broadband recipients in the project area to reflect an accurate level of current broadband service. The Office may revise application scores in accordance with amended applications. For applications with filed protests, the Secretary shall issue a written decision to the protesting party at least 15 days prior to the approval of that application. Following a protest that is granted for a portion of the application, the Office may release to an applicant the locations or areas declared ineligible. The information released to the applicant is not a public record, as that term is defined under G.S. 132-1, and shall remain confidential. Any provider submitting a protest shall verify that the information in the protest is accurate and that the protest is submitted in good faith. The Office may deny any protest or application that contains inaccurate information.

As a means of resolving a protest, the Office may utilize speed tests to determine if the protested area or individual households or businesses currently have access to broadband service as defined in this section. The Department shall publish the speed test methodology it uses to assess speed levels pursuant to this section. All decisions regarding the speed test to be utilized and the manner by which the speed tests are applied shall be made by the Secretary or the Secretary's designee.

(f) The Office may consult with the Department of Commerce to determine if a broadband project proposed under this section will benefit a potential economic development project relevant to the proposed area outlined in the broadband project.

(g) Applications shall be scored based upon a system that awards a single point for criteria considered to be the minimum level for the provision of broadband service with additional points awarded to criteria that exceed minimum levels. The Office shall score project applications in accordance with the following:

(1) Partnership. – Projects involving partnership or affiliation by a private provider with a nonprofit or not for profit, or a for profit subsidiary of either that is required to enable certain partnership activities, or any combination thereof, shall be given five points in their application score where it is documented to the satisfaction of the Office that the partnership or affiliation will facilitate deployment and reduce cost per housing unit by utilizing the resources, facilities, and infrastructure of the partner or where the nonprofit or

~~not for profit partner provides only financial support score. For the purposes of scoring under this subdivision, a county that provides a portion of the match required by this section or that has entered into an agreement with the applicant to make available its infrastructure that has been installed for the county's enterprise, nonconsumer broadband purposes, or any other property, buildings, or structures owned by the county, for a proposed project under this section shall be considered a partnership. A county may provide a portion of the match required by this section pursuant to G.S. 153A-349.60. Projects involving partnerships shall be given six points in their application score.~~

- (2) Unserved households. – The Office shall give additional points to projects based upon the estimated number of unserved households within the eligible economically distressed county, as determined by the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that will be located in counties with estimated unserved households as follows:

Unserved Households	Points Given
<u>700-500</u> or less	1
<u>700-1999</u> <u>501-1400</u>	2
<u>2000 and over</u> <u>Over 1400</u>	3

- (3) ~~Households~~ Unserved households to be served. – The Office shall give additional points to projects that will provide broadband service ~~to~~based upon the percentage of the total unserved households within the eligible economically distressed county, as ~~county that the project will serve~~. The number of unserved households shall be determined by using the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that will serve a percentage of unserved households within the project area as follows:

% Unserved Households To Be Served	Points Given
<u>Under 150</u> <u>Less than 15%</u>	1
<u>150-249</u> <u>15% to 25%</u>	2
<u>250 and up</u> <u>Over 25%</u>	3

- ...
(6) Base speed multiplier. – Projects that will provide minimum download and minimum upload speeds shall have the aggregate points given under subdivisions (1) through (5) of this subsection multiplied by a factor at the level indicated in the table below:

Minimum Download:

Minimum Upload	Score Multiplier
<u>At least 10:1 Mbps</u> <u>Mbps. up to 25:3 Mbps</u>	0.95
<u>25:3 Mbps</u> <u>or greater</u> <u>up to 100:10 Mbps</u>	1.35
<u>100:10 Mbps</u> <u>or greater</u>	1.75

- ...
(i) Applications receiving the highest score shall receive priority status for the awarding of grants pursuant this section. ~~As a means of breaking a tie for applications receiving the same score, the Office shall give priority to the application proposing to serve the highest number of new households at the lowest cost per household.~~ Applicants awarded grants pursuant to this section shall enter into an agreement with the Office. The agreement shall contain all of the elements outlined in subsection (d) of this section and any other provisions the Office may require. The agreement shall contain a provision governing the time line and minimum requirements and thresholds for disbursement of grant funds measured by the progress of the project. Grant funds shall be disbursed only upon verification by the Office that the terms of the

agreement have been fulfilled according to the progress milestones contained in the agreement. At project completion, the grant recipient shall certify and provide to the Office evidence consistent with Federal Communications Commission attestation that either speeds greater than those identified in the application guidelines or the proposed minimum upstream and minimum downstream broadband speeds identified in the application guidelines, and for which a base speed multiplier was awarded pursuant to subdivision (6) of subsection (g) of this section, are available throughout the project area prior to any end user connections. A single grant award shall not exceed two million dollars (\$2,000,000). No more than one grant may be awarded per fiscal year for a project in any one eligible economically distressed county; except that if funds remain available after all top scoring projects have been awarded a grant, then the next highest scoring projects may be awarded a grant even if the project is located in a county where a grant has been awarded in that fiscal year provided the total award associated with that county does not exceed two million dollars (\$2,000,000) in that fiscal year.

(j) Grant recipients are required to provide matching funds based upon the application scoring pursuant to this section in the following minimum amounts:

Score	Matching Requirement
7.0-12.0 points or less	55%
Greater than 7.0, 12.0 points, but less than 14.0-17.5 points	50%
Greater than 14.0, but less than 21.0-17.5 points, up to 22.0 points	45%
21.0 points or greater	35%
Greater than 22.0 points	

Up to fifty percent (50%) of matching funds paid by the grant recipient may be comprised of third-party funding and other grant programs. Universal Service Fund, or Connect America Fund, or other grants awarded for broadband expansion through a separate State or federal program Phase II Fund shall not be used for the required matching funds. Any other current or future federal funds may be used, including any future phase of the Connect America Fund, for the required matching funds within the parameters of this program.

...."

SECTION 2. G.S. 143B-1373(a)(5) reads as rewritten:

"(5) Eligible economically distressed county. – A county designated as a development tier one or tier two area, as defined in G.S. 143B-473.08."

SECTION 3. G.S. 143B-1373(i), as amended by Section 1 of this act, reads as rewritten:

"(i) Applications receiving the highest score shall receive priority status for the awarding of grants pursuant to this section. As a means of breaking a tie for applications receiving the same score, the Office shall give priority to the application proposing to serve the highest number of new households at the lowest cost per household. Applicants awarded grants pursuant to this section shall enter into an agreement with the Office. The agreement shall contain all of the elements outlined in subsection (d) of this section and any other provisions the Office may require. The agreement shall contain a provision governing the time line and minimum requirements and thresholds for disbursement of grant funds measured by the progress of the project. Grant funds shall be disbursed only upon verification by the Office that the terms of the agreement have been fulfilled according to the progress milestones contained in the agreement. At project completion, the grant recipient shall certify and provide to the Office evidence consistent with Federal Communications Commission attestation that either speeds greater than those identified in the application guidelines or the proposed upstream and downstream broadband speeds identified in the application guidelines, and for which a base speed multiplier was awarded pursuant to subdivision (6) of subsection (g) of this section, are available throughout the project area prior to any end user connections. A single grant award shall not exceed two million dollars (\$2,000,000). No more than one grant may be awarded per fiscal year for a project in any one eligible economically distressed county; except that if funds remain available after all top scoring projects have been awarded a grant, then the next highest scoring projects may be

awarded a grant even if the project is located in a county where a grant has been awarded in that fiscal year provided the total award associated with that county does not exceed two million dollars (\$2,000,000) in that fiscal year.

No more than one-third of the funds appropriated to the fund established in subsection (b) of this section shall be disbursed for projects located in a development tier two county."

SECTION 4. G.S. 143B-1373(i), as amended by Sections 1 and 3 of this act, reads as rewritten:

"(i) Applications receiving the highest score shall receive priority status for the awarding of grants pursuant this section. As a means of breaking a tie for applications receiving the same score, the Office shall give priority to the application proposing to serve the highest number of new households at the lowest cost per household. Applicants awarded grants pursuant to this section shall enter into an agreement with the Office. The agreement shall contain all of the elements outlined in subsection (d) of this section and any other provisions the Office may require. The agreement shall contain a provision governing the time line and minimum requirements and thresholds for disbursement of grant funds measured by the progress of the project. Grant funds shall be disbursed only upon verification by the Office that the terms of the agreement have been fulfilled according to the progress milestones contained in the agreement. At project completion, the grant recipient shall certify and provide to the Office evidence consistent with Federal Communications Commission attestation that either speeds greater than those identified in the application guidelines or the proposed upstream and downstream broadband speeds identified in the application guidelines, and for which a base speed multiplier was awarded pursuant to subdivision (6) of subsection (g) of this section, are available throughout the project area prior to any end user connections. A single grant award shall not exceed two million dollars (\$2,000,000). No more than one grant may be awarded per fiscal year for a project in any one eligible economically distressed county; except that if funds remain available after all top scoring projects have been awarded a grant, then the next highest scoring projects may be awarded a grant even if the project is located in a county where a grant has been awarded in that fiscal year provided the total award associated with that county does not exceed two million dollars (\$2,000,000) in that fiscal year.

No more than one third~~one-half~~ of the funds appropriated to the fund established in subsection (b) of this section shall be disbursed for projects located in a development tier two county. If the Office has not received enough grant applications for projects located in a development tier one county to disburse one-half of the funds appropriated to the fund established in subsection (b) of this section as of March 1 of each year, then the Office may allocate any unencumbered funds in the fund for projects located in a development tier two county."

SECTION 5. G.S. 143B-1373 is amended by adding a new subsection to read:

"(p) The Department may use up to one percent (1.0%) of the appropriated funds to administer the GREAT program."

SECTION 6. The Department of Administration, in collaboration with the Broadband Infrastructure Office within the Department of Information Technology shall develop, by soliciting stakeholder input, a streamlined approval process for the negotiation and execution of lease agreements for collocation, installation, and operation of broadband equipment on State-owned property pursuant to G.S. 146-29.2. In developing the approval process, the Office shall involve representatives from at least all of the following:

- (1) The land grant universities.
- (2) The Office of Attorney General.
- (3) A telecommunications provider based in this State.
- (4) An electric membership cooperative.
- (5) A fixed wireless company.
- (6) A cable provider.
- (7) At least two regional or national Internet service providers.

The Broadband Infrastructure Office shall develop a streamlined approval process of no more than 270 days from the date the formal lease proposal is submitted to a State agency. The recommended process shall focus on significantly reducing or eliminating the need for renegotiating primary lease terms, including lease amounts, once those terms have been initially agreed upon by the provider and the State agency. In addition, the Department of Administration shall establish a market-based rate for lease amounts that can be used as a basis for similar agreements across the State.

The Department of Administration shall implement the streamlined approval process on or before December 1, 2019, and shall submit a report detailing the streamlined approval process, along with a list of the stakeholders and their input, to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division on or before December 1, 2019.

SECTION 7.(a) There is transferred from the General Fund to the State Capital and Infrastructure Fund the sum of fifteen million dollars (\$15,000,000) for each fiscal year from the 2019-2020 fiscal year through the 2028-2029 fiscal year.

SECTION 7.(b) There is appropriated from the State Capital and Infrastructure Fund to the Growing Rural Economies with Access to Technology Fund the sum of fifteen million dollars (\$15,000,000) for each fiscal year from the 2019-2020 fiscal year through the 2028-2029 fiscal year.

SECTION 8.(a) The appropriations and the authorizations to allocate and spend funds which are set out in this act shall remain in effect until the Current Operations Appropriations Act for the applicable fiscal year becomes law, at which time that act shall become effective and shall govern appropriations and expenditures. When the Current Operations Appropriations Act for that fiscal year becomes law, the Director of the Budget shall adjust allotments to give effect to that act from July 1 of the fiscal year.

SECTION 8.(b) If House Bill 966, 2019 Regular Session, becomes law, then this act is repealed.

SECTION 9. Sections 2 and 3 of this act become effective July 1, 2020. Section 4 of this act becomes effective July 1, 2021. The remainder of this act becomes effective July 1, 2019.

In the General Assembly read three times and ratified this the 9th day of October, 2019.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:25 a.m. this 14th day of October, 2019