
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2071 Session of
2021

INTRODUCED BY CAUSER, SNYDER, OWLETT AND MARSHALL,
NOVEMBER 9, 2021

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, NOVEMBER 9, 2021

AN ACT

1 Amending Title 64 (Public Authorities and Quasi-Public
2 Corporations) of the Pennsylvania Consolidated Statutes,
3 establishing the Pennsylvania Broadband Development Authority
4 to provide broadband Internet access to unserved residents;
5 and providing for powers and duties of the authority and for
6 grant awards.

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

9 Section 1. Title 64 of the Pennsylvania Consolidated
10 Statutes is amended by adding a chapter to read:

11 CHAPTER 61

12 PENNSYLVANIA BROADBAND DEVELOPMENT AUTHORITY

13 Subchapter

14 A. General Provisions

15 B. Structure and Governance

16 C. Powers and Duties

17 SUBCHAPTER A

18 GENERAL PROVISIONS

19 Sec.

20 6101. Scope of chapter.

1 6102. Definitions.

2 § 6101. Scope of chapter.

3 This chapter relates to the development and expansion of
4 broadband services to unserved areas of this Commonwealth.

5 § 6102. Definitions.

6 The following words and phrase as used in this chapter shall
7 have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Applicant." A nongovernmental entity that submits an
10 application for a grant under section 6124 (relating to grant
11 applications and process).

12 "Authority." The Pennsylvania Broadband Development
13 Authority established under section 6111(a) (relating to
14 authority).

15 "Board." The board of directors of the Pennsylvania
16 Broadband Development Authority established under section 6112
17 (relating to board).

18 "Department." The Department of Community and Economic
19 Development.

20 "Eligible cost." The cost of all labor, materials, machinery
21 and equipment, land, property, rights and easements, plans and
22 specifications, surveys or estimates of costs and revenues,
23 prefeasibility studies, engineering and legal services and all
24 other expenses necessary or incident to the acquisition,
25 construction, improvement, expansion, extension, repair or
26 rehabilitation of all or part of a project.

27 "High-speed broadband service." Wireless, wireline or fixed
28 wireless technology having the capacity to reliably and
29 consistently transmit data from or to the Internet at:

30 (1) minimum speeds of at least 100 megabits per second

1 downstream and 20 megabits per second upstream; or
2 (2) minimum speeds adopted by the Federal Communications
3 Commission, whichever is greater.

4 "Overbuild." The deployment of high-speed broadband service
5 infrastructure in an area that is not unserved.

6 "Program." The grant program established under section
7 6123(a) (relating to grant awards generally).

8 "Statewide broadband plan." The Statewide broadband plan
9 developed under section 6122(g) (relating to specific powers and
10 duties).

11 "Unserved area." A project area without access to wireline
12 or fixed wireless broadband service at the greater of:

13 (1) minimum speeds of at least 100 megabits per second
14 downstream and 20 megabits per second upstream; or

15 (2) minimum speeds adopted by the Federal Communications
16 Commission.

17 "Wireless infrastructure program manager." An entity
18 currently contracted with to do any of the following:

19 (1) Analyze, market, manage the occupancy of or handle
20 revenues relating to Commonwealth-owned assets or neutral
21 host systems for revenue-generating purposes.

22 (2) Construct, retrofit, upgrade or, through agreement
23 with other providers, facilitate the construction of new
24 telecommunications equipment on Commonwealth-owned land,
25 facilities or rights-of-way.

26 (3) Enter into site-occupancy agreements for assets and
27 telecommunications equipment with service providers that will
28 facilitate the deployment of broadband services to consumers.

29 SUBCHAPTER B

30 STRUCTURE AND GOVERNANCE

1 Sec.

2 6111. Authority.

3 6112. Board.

4 6113. Audits.

5 6114. Annual report.

6 6115. Trust accounts.

7 6116. Use of money of authority.

8 § 6111. Authority.

9 (a) Establishment.--The Pennsylvania Broadband Development
10 Authority is established as an independent authority. The
11 authority shall be an instrumentality of the Commonwealth and a
12 body corporate and politic, with corporate succession. The
13 exercise by the authority of the powers conferred on the
14 authority by this chapter shall be deemed and held to be a
15 public and essential government function.

16 (b) Governance.--The authority shall be governed by a board
17 of directors as provided in section 6112 (relating to board).
18 The powers of the authority shall be exercised by the board.

19 (c) Fiscal year.--The fiscal year of the authority shall be
20 the same as the fiscal year of the Commonwealth.

21 (d) Dissolution.--Upon dissolution of the authority, all
22 property, money and assets of the authority shall be vested in
23 the Commonwealth. The authority shall dissolve upon the elapse
24 of six years from the effective date of this section.

25 (e) Procurement.--The authority shall be considered an
26 independent agency for purposes of 62 Pa.C.S. Pt. I (relating to
27 Commonwealth Procurement Code).

28 (f) Applicability.--The following acts shall apply to the
29 authority and the board:

30 (1) The act of July 19, 1957 (P.L.1017, No.451), known

1 as the State Adverse Interest Act.

2 (2) The act of February 14, 2008 (P.L.6, No.3), known as
3 the Right-to-Know Law.

4 (3) The provisions of 65 Pa.C.S. Chs. 7 (relating to
5 open meetings) and 11 (relating to ethics standards and
6 financial disclosure).

7 § 6112. Board.

8 (a) Composition.--

9 (1) The board of directors of the authority shall
10 consist of members selected as follows:

11 (i) The Secretary of Agriculture or a designee.

12 (ii) The Secretary of Community and Economic
13 Development or a designee.

14 (iii) The Secretary of Education or a designee.

15 (iv) The chair of the Center for Rural Pennsylvania
16 or a designee.

17 (v) The chair of the Pennsylvania Public Utility
18 Commission or a designee.

19 (vi) The executive director of the Governor's Office
20 of Broadband Initiatives or a designee.

21 (vii) One individual appointed by the Governor.

22 (viii) One individual appointed by the President pro
23 tempore of the Senate.

24 (ix) One individual appointed by the Minority Leader
25 of the Senate.

26 (x) One individual appointed by the Speaker of the
27 House of Representatives.

28 (xi) One individual appointed by the Minority Leader
29 of the House of Representatives.

30 (2) A member appointed under paragraph (1)(viii), (ix),

1 (x) or (xi) may be a member or employee of the General
2 Assembly.

3 (b) Organization.--The Governor shall select a member of the
4 board to serve as chairperson. The members shall select from
5 among themselves such officers as they deem necessary.

6 (c) Quorum and meetings.--

7 (1) Five members of the board shall constitute a quorum.
8 The following shall apply:

9 (i) The consent of no fewer than five members of the
10 board, with four of the consenting members being
11 appointed under subsection (a) (1) (vii), (viii), (ix), (x)
12 or (xi), shall be necessary to take action on or make a
13 commitment on behalf of the authority for any of the
14 following:

15 (A) Disbursing, encumbering, obligating or
16 otherwise committing funds of any nature.

17 (B) Adopting a Statewide broadband plan.

18 (C) A legal binding or commitment of the
19 authority.

20 (D) Adopting guidelines, issuing directives,
21 declaring policy goals or publishing documents or
22 statements on the authority's behalf.

23 (E) Scheduling meetings of the board.

24 (F) Extending a moratorium on a wireless tower
25 sitting on property owned or controlled by the
26 Department of Conservation and Natural Resources.
27 During the period when the authority is in existence,
28 a current moratorium or effective moratorium shall
29 not be valid on or after the effective date of this
30 section unless explicitly approved by the authority

1 in accordance with this chapter. Any revenues derived
2 by the Commonwealth or a State agency from a contract
3 for a wireless tower sitting shall be used for the
4 program or transferred by the State Treasurer into
5 the General Fund upon the dissolution of the
6 authority under section 6111(d) (relating to
7 authority).

8 (G) Authorizing an agreement between the
9 Commonwealth or a Commonwealth agency or department
10 with a wireless infrastructure program manager. A
11 contract affected by the provisions of this clause
12 shall be unenforceable after the effective date of
13 this section and construed based on a change in
14 applicable State law.

15 (ii) A majority of the board shall be necessary to
16 take any other action not specified under subparagraph
17 (i) on behalf of the authority.

18 (2) The board shall meet to conduct official business no
19 less than once a month.

20 (d) Designees.--A public officer member of the board may
21 designate an officer or employee of the Commonwealth to
22 represent the public officer member at meetings of the board.
23 Each designee may lawfully vote and otherwise act on behalf of
24 the public officer member. The designation shall be in writing
25 delivered to the authority and shall continue in effect until
26 revoked or amended in writing delivered to the authority.

27 (e) Services.--

28 (1) The department shall provide administrative services
29 and staff, including legal counsel staff, to the authority
30 and the board. The authority shall reimburse the department

1 for the cost of providing the administrative services and
2 staff under this paragraph.

3 (2) The authority may enter into an agreement with the
4 department specifying the rights and obligations that the
5 authority and department have in administering their duties
6 required under this chapter to implement the purposes of this
7 chapter.

8 (f) Compensation.--The members of the board shall not be
9 entitled to compensation for service. The members of the board
10 shall be entitled to reimbursement for all necessary and
11 reasonable expenses incurred in connection with the performance
12 of their duties.

13 (g) Fiduciary relationship.--The members of the board and
14 the professional personnel of the board shall stand in a
15 fiduciary relationship with the Commonwealth and the authority
16 as to the money and investments of the authority.

17 § 6113. Audits.

18 The accounts and books of the authority, including its
19 receipts, disbursements, contracts, mortgages, investments and
20 other matters relating to its finances, operations and affairs,
21 shall be examined and audited by the Auditor General.

22 § 6114. Annual report.

23 The board shall provide the Governor and the General Assembly
24 with an annual report by December 31 of each year detailing all
25 high-speed infrastructure projects funded under section 6123
26 (relating to grant awards generally). The annual report shall be
27 published and maintained on the authority's publicly accessible
28 Internet website and may be submitted to the Governor and the
29 General Assembly by electronic mail.

30 § 6115. Trust accounts.

1 The authority may establish trust accounts for the deposit of
2 money available to the authority for the purposes of this
3 chapter.

4 § 6116. Use of money of authority.

5 (a) Use.--The board shall use the money available to the
6 authority to fund the program as necessary.

7 (b) Administrative expenses.--The authority may use the
8 money available to the authority to pay the administrative
9 expenses of the department and the authority incurred under this
10 chapter.

11 SUBCHAPTER C

12 POWERS AND DUTIES

13 Sec.

14 6121. Corporate powers and duties in general.

15 6122. Specific powers and duties.

16 6123. Grant awards generally.

17 6124. Grant applications and process.

18 § 6121. Corporate powers and duties in general.

19 The authority shall have and may exercise all powers
20 necessary or appropriate to carry out and effectuate disbursal
21 as the fiscal agent for grants under this chapter and shall
22 receive and review grant applications, award grants and develop
23 a Statewide broadband plan under section 6122(g) (relating to
24 specific powers and duties).

25 § 6122. Specific powers and duties.

26 (a) Single point of contact.--The authority shall aim to
27 serve as a single point of contact for entities wishing to
28 engage in broadband development and deployment in this
29 Commonwealth, including coordination of public and private
30 efforts to avoid overbuilding of capacity in any given

1 geographic area and to efficiently utilize existing
2 infrastructure.

3 (b) Funding resource base.--In addition to providing the
4 financial assistance authorized by this chapter to support
5 broadband deployment, the authority shall identify and promote
6 opportunities to access Federal funding, nongovernmental
7 organization funding and other funding opportunities to
8 eliminate duplicative funding requests and synthesize multiple-
9 provider joint efforts in any given geographic area.

10 (c) Cooperation of other Commonwealth entities.--All
11 Commonwealth agencies and departments charged with specific
12 aspects of broadband development and deployment shall
13 communicate and cooperate with the authority so that the
14 authority can maintain a centralized database of all broadband
15 deployment activities occurring within this Commonwealth to
16 avoid duplication of efforts as well as provide consultation on
17 their respective areas of expertise.

18 (d) Educational materials.--The authority may develop
19 educational materials and engage in public information campaigns
20 to encourage adoption of broadband where currently available and
21 increase consumer understanding of the need for broadband access
22 for all Commonwealth residents.

23 (e) Municipal guidance.--The authority may develop
24 guidelines for municipalities to assist in streamlining zoning
25 processes in order to expedite broadband deployment.

26 (f) Letters of intent and proposals.--The authority shall be
27 responsible for drafting and filing all letters of intent,
28 initial and final proposals or other correspondence as required
29 to maximize access to the Broadband Equity, Access, and
30 Deployment Program as administered by the United States

1 Department of Commerce.

2 (g) Broadband plan.--The authority shall develop an
3 enforceable Statewide broadband plan in collaboration with local
4 and regional entities to advance broadband buildout for the
5 benefit of residents of this Commonwealth and as necessary to
6 facilitate access of nongovernmental entities to funding
7 opportunities from the Federal Government. The Statewide
8 broadband plan shall inure as expeditiously as possible and no
9 later than one year from the effective date of this section. A
10 political subdivision shall have the opportunity to submit a
11 localized broadband plan to the authority and comment upon an
12 initial Statewide broadband plan proposal of the authority.

13 § 6123. Grant awards generally.

14 (a) Authorization.--The authority shall award grants under a
15 program established by the authority, and the amount of the
16 grants shall be limited to the money available to the authority.
17 The authority shall aim to disburse all money available before
18 dissolution under section 6111(d) (relating to authority).

19 (b) Eligible entities.--A nongovernmental entity with the
20 technical, managerial and financial expertise to design, build
21 and operate high-speed broadband service infrastructure within
22 this Commonwealth shall be eligible to receive a grant from the
23 authority for the deployment of the high-speed broadband service
24 infrastructure. In order to qualify for a grant from the
25 authority, the nongovernmental entity shall commit to investing
26 a minimum of 25% of the entity's private capital to finance a
27 proposed high-speed broadband service infrastructure project.

28 (c) Other funding sources.--A Federal, State or local
29 government grant, loan or subsidy received by a nongovernmental
30 entity to finance a proposed high-speed broadband service

1 infrastructure project shall not be counted toward the private
2 capital investment requirement under subsection (b). A
3 nongovernmental entity may use a Federal, State or local
4 government grant, loan or subsidy to finance a proposed high-
5 speed broadband service infrastructure project under subsection
6 (b) if the entity satisfies the private capital investment
7 requirement under subsection (b).

8 (d) Ineligible projects.--Proposed projects that will result
9 in overbuild or are to be managed or operated by a Federal,
10 State or local government entity shall be ineligible to receive
11 a grant from the authority under this section.

12 § 6124. Grant applications and process.

13 (a) Application period.--The authority shall establish an
14 annual application period during which applications for grants
15 under section 6123 (relating to grant awards generally) may be
16 submitted to the authority. The annual application period under
17 this subsection shall be for a period of no less than 90 days
18 and no longer than 150 days.

19 (b) Form and contents.--An application for a grant under
20 section 6123 shall be submitted to the authority and shall
21 include all of the following information:

22 (1) Evidence demonstrating the applicant's experience
23 and ability in building, operating and managing high-speed
24 broadband network service or utility service serving
25 households and businesses.

26 (2) A description of the proposed high-speed broadband
27 service infrastructure project area, including a list of
28 census blocks covered by the proposed deployment. If a census
29 block included in an application is currently partially
30 served by a provider of high-speed broadband service, the

1 application shall describe the portions of the census block
2 that are already served by the provider and the portions that
3 constitute an unserved area.

4 (3) A certification that none of the grant funds for the
5 proposed high-speed broadband service infrastructure project
6 will be used to extend or deploy high-speed broadband service
7 infrastructure to areas with access to high-speed broadband
8 service at the time of the submission of the application and
9 acknowledgment that grant funds utilized for overbuilding may
10 be subject to refund or clawback by the authority and the
11 Auditor General, regardless of the dissolution of the
12 authority under section 6111(d) (relating to authority).
13 Grant funds that are subject to repayment shall be made
14 available for the Unserved High-Speed Broadband Funding
15 Program.

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

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

23 (6) The total cost of the proposed high-speed broadband
24 service infrastructure project and the proposed completion
25 date of the project.

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

1 (8) Evidence demonstrating the economic and commercial
2 feasibility of the proposed high-speed broadband service
3 infrastructure project.

4 (9) A list of each Federal, State or local government
5 authorization, permit or other required approval to deploy
6 high-speed broadband service infrastructure and a timetable
7 for the applicant's acquisition of each authorization, permit
8 or other required approval.

9 (10) Any other information required by the authority.

10 (c) Availability for review.--Within five business days
11 after the expiration of the application period under subsection
12 (a), the authority shall make the applications received
13 available for review on the authority's publicly accessible
14 Internet website.

15 (d) Overbuild challenges.--Within 45 days of the authority
16 making the applications available on the authority's publicly
17 accessible Internet website under subsection (c), a broadband
18 service provider providing high-speed broadband service to
19 households and businesses within a proposed high-speed broadband
20 service infrastructure project area may challenge an application
21 on the grounds that awarding a grant under section 6123 to the
22 applicant will result in an overbuild. A broadband service
23 provider shall submit a challenge under this subsection in
24 writing to the authority, and the challenge shall include all of
25 the following information:

26 (1) A declaration disputing that the proposed high-speed
27 broadband service infrastructure project area is unserved.

28 (2) An affidavit from the broadband service provider of
29 the provider's existing or planned provision of high-speed
30 broadband service within the proposed high-speed broadband

1 service infrastructure project area.

2 (e) Review.--In reviewing an application and any
3 accompanying challenge under this section, the authority shall
4 ensure that the grant award under section 6123 is used to deploy
5 high-speed broadband service infrastructure to unserved areas.
6 The authority may not award a grant under section 6123 to fund
7 deployment of high-speed broadband service infrastructure for a
8 project area that results in an overbuild.

9 (f) Criteria.--The authority shall award grants under
10 section 6123 for proposed high-speed broadband service
11 infrastructure projects based upon a scoring system, which shall
12 be released to the public at least 30 days before the beginning
13 of the application period under subsection (a). The authority
14 shall consider all of the following criteria when weighing or
15 scoring an application for a grant under section 6123:

16 (1) The size and scope of the unserved area to be
17 deployed.

18 (2) The experience, technical ability and financial
19 capability of the applicant to successfully deploy high-speed
20 broadband service infrastructure and provide high-speed
21 broadband service.

22 (3) The length of time which the applicant has been
23 providing high-speed broadband or utility service.

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

28 (5) The proportion of the private capital pledged by the
29 applicant to finance the proposed high-speed broadband
30 service infrastructure project under subsection (b).

1 (6) The high-speed broadband service speed thresholds
2 proposed in the application and the scalability of the high-
3 speed broadband service infrastructure proposed to be
4 deployed to provide high-speed broadband service to
5 households and businesses.

6 (7) An affidavit that no grant funding shall be used to
7 overbuild an area that is already served with high-speed
8 broadband service.

9 (8) Other factors which the authority determines to be
10 reasonable and appropriate for the purposes of this chapter.

11 (g) Regulatory obligations.--In awarding grants under
12 section 6123, except as required under applicable Federal or
13 State law, the authority shall not consider any additional
14 regulatory obligations, including open-access network
15 requirements, or any rate, service or other obligation beyond
16 the speed requirements set forth in the definition of "high-
17 speed broadband service."

18 (h) Time for project completion.--Applicants shall be
19 afforded a reasonable length of time to complete proposed high-
20 speed broadband service infrastructure projects selected for
21 grants under section 6123. Grant funds awarded to an applicant
22 who fails to complete a proposed high-speed broadband service
23 infrastructure project within a reasonable length of time may be
24 subject to refund or clawback by the authority and the Auditor
25 General, regardless of the dissolution of the authority under
26 section 6111(d). Grant funds that are subject to repayment shall
27 be made available for the Unserved High-Speed Broadband Funding
28 Program.

29 Section 2. This act shall take effect in 60 days.