

UNSERVED HIGH-SPEED BROADBAND FUNDING PROGRAM ACT - ENACTMENT
Act of Nov. 25, 2020, P.L. 1253, No. 132 **Cl. 66**
An Act

Providing for funding of high-speed broadband service infrastructure deployment in unserved areas of this Commonwealth and for powers and duties of the Commonwealth Financing Authority; establishing the Unserved High-speed Broadband Funding Program Account; making an appropriation; and making a related repeal.

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

Section 1. Short title.

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

Section 2. Declaration of policy.

The General Assembly finds and declares as follows:

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

(2) The economic and business incentives to deploy high-speed broadband service infrastructure may be insufficient to ensure full access to high-speed broadband services in low-density, rural locations and other areas of this Commonwealth where the unit costs of providing service may not provide an adequate return on investment for private companies.

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

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

Section 3. Definitions.

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

"Account." The Unserved High-speed Broadband Funding Program Account established under section 7(c).

"Authority." The Commonwealth Financing Authority.

"Board." The board of directors of the authority.

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

(1) minimum speeds of at least 25 megabits per second downstream and three megabits per second upstream; or

(2) minimum speeds adopted by the Federal Communications Commission, whichever is greater.

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

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

"Program." The Unserved High-Speed Broadband Funding Program established under section 4.

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

"Unserved area." A project area without access to wireline or fixed wireless broadband service with minimum speeds of at least 25 megabits per second downstream and 3 megabits per second upstream.

Section 4. Establishment.

The Unserved High-Speed Broadband Funding Program is established. The authority shall administer and act as the fiscal agent for the program and shall be responsible for receiving and reviewing all grant applications and awarding grants.

Section 5. Grant awards generally.

(a) General rule.--Grant awards shall be at the discretion of the authority and shall be limited to amounts annually allocated to the authority for the program.

(b) Eligible entities.--A nongovernmental entity with the technical, managerial and financial expertise to design, build and operate a high-speed broadband service infrastructure within this Commonwealth is eligible to receive grant funding for the deployment of high-speed broadband service infrastructure. The nongovernmental entity must commit to using a minimum of 25% of the entity's private capital to finance a proposed project.

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

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

Section 6. Application process.

(a) Application period.--The authority shall establish an annual application period during which applications for grant funding under the program may be submitted. The annual application period shall be no fewer than 90 days and no longer than 150 days.

(b) Form and contents.--An application shall be submitted to the authority. An application shall include the following information:

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

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

(3) A certification that none of the grant money provided by the program for the proposed project will be used to extend or deploy high-speed broadband service

infrastructure to areas with access to high-speed broadband service at the time of submitting a grant application.

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

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

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

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

(8) Evidence demonstrating the economic and commercial feasibility of the proposed project.

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

(10) Any other information required by the authority.

(c) Publication.--Within five business days following the close of the application period, the authority shall make the applications received available for review on the authority's publicly accessible Internet website.

(d) Overbuild challenge.--Within 45 days of the authority making the applications available on the authority's publicly accessible Internet website, a broadband service provider providing high-speed broadband service to households and businesses within a proposed project area may challenge an application on the grounds that granting an award to the applicant will result in an overbuild. The challenge must be submitted in writing to the authority and include the following:

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

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

(e) Review.--In reviewing an application and any accompanying challenge, the authority shall conduct a review of the proposed project areas to ensure that all grants awarded are used to deploy high-speed broadband service infrastructure to unserved areas. The authority may not award a grant to fund deployment of high-speed broadband service infrastructure for any project area that results in an overbuild.

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

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

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

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

(4) The extent to which Federal, State or local government funding support is necessary to deploy high-speed

broadband service network infrastructure in an economically feasible manner in the proposed project area.

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

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

(7) An affidavit that no project grant awards are to be used to overbuild an area that is already served with high-speed broadband service.

(8) Other factors which the authority determines to be reasonable and appropriate, consistent with the purposes of this act.

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

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

Section 7. Implementation.

(a) Requirements.--The following apply:

(1) The requirements for the administration of the program shall be as follows:

(i) An application for a grant under this section must be received by a deadline established by the authority under section 6.

(ii) The authority shall execute a grant agreement between the board and a grant recipient before the payment of a grant award.

(iii) A grant recipient shall maintain full and accurate records for the project.

(iv) A grant recipient shall submit to the authority copies of all canceled checks or other records verifying expenditures of grant money.

(v) A grant recipient shall submit to the authority a final report of the project, including any information as required by the board.

(2) The authority may establish additional requirements for the program as the authority deems necessary to administer the program.

(b) Restrictions and limitations.--The following apply:

(1) A grant recipient may not commence work on a project before receiving authority approval of the grant under section 6. Commencement of work prior to receiving authority approval will result in a project application being ineligible for funding consideration.

(2) A grant recipient may not make a substantial change to an approved project without first obtaining authority consent in writing.

(3) Any unused portion of a grant award shall be returned to the authority.

(4) Grant money may only be used for new projects approved by the board.

(5) Grant money may not be used for any of the following:

(i) Paying fees for securing financing.

(ii) Paying interest on borrowed money.

- (iii) Refinancing existing debt.
- (iv) Paying for lobbying services.
- (v) Paying fines.
- (vi) Application preparation fees.

(6) The authority may establish additional restrictions and limitations as the authority deems necessary to administer the program.

(c) Account.--The authority shall establish the Unserved High-Speed Broadband Funding Program Account. The following shall apply:

(1) The purpose of the account is to award grants under this act.

(2) The following shall be sources of funding for the account:

(i) Appropriations, including Federal money.

(ii) Return on the money in the account.

(3) Money in the account is continuously appropriated to the account. This appropriation shall not lapse at the end of a fiscal year.

(d) Guidelines.--Within 180 days of the effective date of this section, the board shall adopt guidelines to implement this section. The guidelines shall include provisions for submission, review and approval of applications, award of grants and administration of projects funded under the program, including a provision for reasonable oversight and reporting to ensure that project grant awards are used as intended.

(e) Construction.--Nothing in this section shall be construed to preclude the authority from considering an applicant's financial ability to complete a proposed project or making reasonable requests for information necessary for the oversight and administration of projects awarded grant funding.

Section 8. Effect on grant recipients.

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

Section 9. Appropriation.

The sum of \$5,000,000 is hereby appropriated to the authority from the General Fund for the 2020-2021 fiscal year for purposes of the program.

Section 10. Prohibition and repeals.

(a) Prohibition.--The Department of Revenue may not award a tax credit under Article XVIII-E of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, after June 30, 2020.

(b) Repeals.--Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate this act.

(2) Sections 1804-E and 1805-E of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, are repealed.

Section 11. Effective date.

This act shall take effect immediately.