

PUBLIC AUTHORITIES AND QUASI-PUBLIC CORPORATIONS (64 PA.C.S.)  
- PENNSYLVANIA BROADBAND DEVELOPMENT AUTHORITY  
Act of Dec. 22, 2021, P.L. 459, No. 96 Cl. 64  
Session of 2021  
No. 2021-96

HB 2071

AN ACT

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

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

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

**CHAPTER 61**

**PENNSYLVANIA BROADBAND DEVELOPMENT AUTHORITY**

**Subchapter**

- A. General Provisions
- B. Structure and Governance
- C. Powers and Duties

**SUBCHAPTER A**

**GENERAL PROVISIONS**

**Sec.**

6101. Scope of chapter.

6102. Definitions.

§ 6101. Scope of chapter.

This chapter relates to the development and expansion of broadband services, including to unserved and underserved areas of this Commonwealth.

§ 6102. Definitions.

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

"Applicant." An entity that submits an application for a grant under section 6124 (relating to grant applications and process), including, but not limited to, a cooperative, nonprofit organization, public-private partnership, private company, public or private utility, public utility district, council of governments, local government or any other entity approved by the board, subject to section 6112(c)(1)(i) (relating to board).

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

"Board." The board of directors of the Pennsylvania Broadband Development Authority established under section 6112.

"Community anchor institution." An entity, including any school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization or community support organization, that facilitates greater use of broadband service by vulnerable populations, including low-income individuals,

unemployed individuals and aged individuals, that lack access to gigabit-level broadband service.

"Department." The Department of Community and Economic Development of the Commonwealth.

"High-speed broadband service." Wireless, wireline or fixed wireless technology having a latency sufficient to support real-time, interactive applications and the capacity to reliably and consistently transmit data from or to the Internet at:

(1) minimum speeds of at least 100 megabits per second for downloads and 20 megabits per second for uploads;

(2) minimum speeds adopted by the Federal Communications Commission; or

(3) minimum speeds otherwise required to comply with funding opportunities from the Federal Government, whichever is greater.

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

"Program." The grant program or programs established under section 6123(a) (relating to grant awards generally) to fund projects.

"Project." A high-speed broadband service infrastructure project or other broadband project allowable under Federal law or guidance.

"Reliable broadband service." Broadband service that meets performance criteria for service availability, adaptability to changing end-user requirements, length of serviceable life or other criteria, other than upload and download speeds, as determined by the authority to comply with Federal law or guidance.

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

"Underserved area." A project area that is not an unserved area and lacks access to reliable broadband service offered with a speed of not less than 100 megabits per second for downloads and 20 megabits per second for uploads and a latency sufficient to support real-time, interactive applications.

"Unserved area." A project area that has no access to broadband service or lacks access to reliable broadband service with a speed of not less than 25 megabits per second for downloads and three megabits per second for uploads and a latency sufficient to support real-time, interactive applications.

## SUBCHAPTER B STRUCTURE AND GOVERNANCE

Sec.

6111. Authority.

6112. Board.

6113. Audits.

6114. Annual report.

6115. Accounts.

6116. Use of money of authority.

§ 6111. Authority.

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

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

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

(d) Dissolution.--Upon dissolution of the authority, all property, money and assets of the authority shall be vested in the Commonwealth. The authority shall dissolve upon the later of:

(1) ten years from the effective date of this section;

or

(2) all Federal funds available for the purposes of this chapter have been exhausted and all applicable duties and responsibilities under Federal law or guidance have been completed.

(d.1) Notice.--Prior to dissolution under subsection (d), the authority shall transmit notice of the dissolution to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

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

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

(1) The act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act.

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

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

#### § 6112. Board.

(a) Composition.--The board shall consist of members selected as follows:

(1) The Secretary of Agriculture or a designee who shall be an employee of the Department of Agriculture.

(2) The Secretary of Community and Economic Development or a designee who shall be an employee of the Department of Community and Economic Development.

(3) The Secretary of Education or a designee who shall be an employee of the Department of Education.

(4) The Executive Director of the Center for Rural Pennsylvania or a designee who shall be an employee of the Center for Rural Pennsylvania.

(5) The chair of the Pennsylvania Public Utility Commission or a designee who shall be an employee of the Pennsylvania Public Utility Commission.

(6) The Secretary of General Services or a designee who shall be an employee of the Department of General Services.

(7) The Secretary of the Budget or a designee who shall be an employee of the Office of the Budget.

(8) One member of the Senate appointed by the President pro tempore of the Senate or a designee who shall be an employee of the Senate.

(9) One member of the Senate appointed by the Minority Leader of the Senate or a designee who shall be an employee of the Senate.

(10) One member of the House of Representatives appointed by the Speaker of the House of Representatives or a designee who shall be an employee of the House of Representatives.

(11) One member of the House of Representatives appointed by the Minority Leader of the House of Representatives or a designee who shall be an employee of the House of Representatives.

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

(c) Quorum and meetings.--

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

(i) The consent of no fewer than six members of the board, with five of the consenting members as specified under subsection (a) (7), (8), (9), (10) and (11), shall be necessary to take action on and make a commitment on behalf of the authority under section 6121(1), (2), (3), (4), (5) and (6) (relating to corporate powers and duties in general).

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

(2) The board shall meet to conduct official business no less than on a quarterly basis.

(d) Initial appointment and vacancy.--An appointing authority shall appoint initial members to the board within 30 days of the effective date of this chapter. Whenever a vacancy occurs on the board, the appointing authority shall appoint a successor member within 30 days of the vacancy.

(e) Services.--

(1) The department shall provide administrative services and staff, including counsel and legal staff, to the authority and the board. The authority shall reimburse the department for the cost of providing the administrative services and staff under this paragraph.

(2) The authority shall enter into an agreement with the department specifying the rights and obligations that the authority and department have in administering their duties required under this chapter.

(f) Compensation.--The members of the board shall not be entitled to compensation for service.

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

§ 6113. Audits.

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

§ 6114. Annual report.

The board shall provide the Governor and the General Assembly with an annual report by March 31 of each year detailing all projects funded under section 6123 (relating to grant awards generally). The annual report shall be published and maintained on the authority's publicly accessible Internet website and may be submitted to the Governor and the General Assembly by electronic mail.

§ 6115. Accounts.

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

§ 6116. Use of money of authority.

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

(b) Administrative expenses.--The authority shall use the money available to the authority to pay the administrative expenses of the department and the authority incurred under this chapter.

SUBCHAPTER C  
POWERS AND DUTIES

Sec.

6121. Corporate powers and duties in general.

6122. Specific powers and duties.

6123. Grant awards generally.

6124. Grant applications and process.

§ 6121. Corporate powers and duties in general.

The authority shall have and may exercise all powers necessary or appropriate to carry out and effectuate the authority's purposes under this chapter, including the following:

(1) Adopt bylaws, if necessary.

(2) Make and execute contracts, grants and other instruments.

(3) Apply for and receive money from any source consistent with the purposes of this chapter, including letters of intent and proposals under section 6122(f) (relating to specific powers and duties).

(4) Establish priorities for and allocate and disburse money received consistent with the purposes of this chapter.

(5) Establish subcommittees composed of members of the board or nonmembers of the board to consult with and advise the authority.

(6) Adopt a Statewide broadband plan.

(7) Perform other operational activities necessary or appropriate to further the purposes of this chapter.

§ 6122. Specific powers and duties.

(a) Single point of contact.--The authority shall aim to serve as a single point of contact for entities wishing to engage in broadband development and deployment in this Commonwealth, including coordination of public and private efforts to avoid overbuild in any given geographic area and to efficiently utilize existing infrastructure.

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

(c) Cooperation of other Commonwealth entities.--The authority shall maintain a centralized database of all broadband deployment activities occurring within Commonwealth agencies and departments. All Commonwealth agencies and departments charged with specific aspects of broadband development and deployment shall communicate and cooperate with the authority regarding the authority's development and maintenance of the centralized database to avoid duplication of efforts as well as provide consultation on their respective areas of expertise.

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

(e) Municipal best practices.--The authority may develop best practices for municipalities in order to expedite broadband development and deployment.

(f) Letters of intent and proposals.--The authority shall be responsible for drafting and filing all letters of intent, initial and final proposals or other correspondence as required to maximize access to Federal funding for broadband development and deployment.

(g) Broadband plan.--The authority shall develop a Statewide broadband plan in collaboration with local and regional entities to advance broadband buildout, including equitable access and digital literacy components, for the benefit of residents of this Commonwealth and as necessary to facilitate access of applicants to funding opportunities from the Federal Government. The Statewide broadband plan shall also incorporate opportunities to utilize Commonwealth assets to the extent practicable. The Statewide broadband plan shall inure as expeditiously as possible and no later than one year from the effective date of this section. A political subdivision shall have the opportunity to comment upon an initial Statewide broadband plan proposal of the authority.

§ 6123. Grant awards generally.

(a) Authorization.--The authority shall award grants under one or more programs established by the authority to fund projects, and the amount of the grants shall be limited to the money available to the authority. The authority shall aim to disburse all money available before dissolution under section 6111(d) (relating to authority).

(b) Eligible entity.--The following shall apply:

(1) For projects related to high-speed broadband service infrastructure, an applicant with the technical, managerial and financial expertise to design, build and operate high-speed broadband service infrastructure within this Commonwealth shall be eligible to apply for a grant from the authority for the development and deployment of the high-speed broadband service infrastructure. In order to qualify for a grant from the authority, the applicant shall commit to investing a minimum amount of the entity's capital to finance a proposed high-speed broadband service infrastructure project as determined by the authority in accordance with Federal law or guidance.

(2) For all other projects, eligible entities and minimum investment requirements shall be determined by the authority in accordance with Federal law or guidance.

(c) Other funding sources.--A Federal, State or local government grant, loan or subsidy received by an applicant to finance a proposed project shall not be counted toward the capital investment requirement under subsection (b) unless otherwise determined by the authority. An applicant may use a Federal, State or local government grant, loan or subsidy to finance a proposed project under subsection (b) if the entity satisfies the capital investment requirement under subsection (b).

(d) Ineligible projects.--Proposed projects that will result in overbuild in which less than 80 percent of broadband-serviceable locations served by the proposed project are unserved or underserved or are to be managed or operated by a Federal or State entity shall be ineligible to receive a grant from the authority under this section.

§ 6124. Grant applications and process.

(a) Application period.--The authority shall establish an application period during which applications for grants under section 6123 (relating to grant awards generally) may be submitted to the authority. The application period under this

subsection shall be for a period of no less than 60 days and no longer than 120 days.

(b) Form and contents.--An application for a grant under section 6123 shall be submitted to the authority and shall include information required by Federal law or guidance and any other information required by the authority. The authority shall develop an application form and post and make the application form available on the authority's publicly accessible Internet website.

(c) Availability for review.--Within 10 business days after the expiration of the application period under subsection (a), the authority shall make the proposed unserved areas, underserved areas and the community anchor institutions available for review on the authority's publicly accessible Internet website.

(d) Overbuild challenges.--Before awarding grant funds for the development and deployment of broadband networks under section 6123, the authority shall ensure a transparent, evidence-based and expeditious challenge process under which an entity eligible to be an applicant may challenge a proposed project on the grounds that awarding a grant under section 6123 to the applicant will result in an overbuild. After resolving each challenge under this subsection, and not later than 60 days before awarding grant funds for the development and deployment of broadband networks under section 6123, the authority shall provide public notice of the final classification of each unserved area, underserved area and community anchor institution within the Commonwealth. If an entity eligible to be an applicant submits a challenge under this subsection, the challenge shall be in writing and on a form developed by the authority and shall include all of the following information:

(1) A declaration disputing the eligibility of the proposed project, including whether a particular location is in an unserved area or underserved area.

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

(e) Review.--In reviewing an application and any accompanying challenge under this section, the authority shall ensure that the grant award under section 6123 for the development and deployment of broadband networks is used to deploy high-speed broadband service to unserved or underserved areas as required by Federal law or guidance. The authority may not award a grant under section 6123 to fund deployment of high-speed broadband service for a project area that results in an overbuild.

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

(1) The size and scope of the unserved or underserved 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) The extent to which Federal, State or local government funding support is necessary to develop and

deploy high-speed broadband service infrastructure in an economically feasible manner in the proposed project area.

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

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

(6) An affidavit that no grant funding shall be used in such a manner as to result in an overbuild.

(7) An affidavit that an applicant shall ensure that a contractor or subcontractor performing construction, reconstruction, demolition, repair or maintenance work on a high-speed broadband service infrastructure project developed and deployed under this chapter meets all of the following requirements:

(i) Maintains all valid licenses, registrations or certificates required by the Federal Government, the Commonwealth or a local government entity that are necessary to do business or perform applicable work.

(ii) Maintains compliance with the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act, the act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment Compensation Law, and bonding and liability insurance requirements as specified in the contract for the project.

(iii) Has not defaulted on a project, declared bankruptcy, been debarred or suspended on a project by the Federal Government, the Commonwealth or a local government entity within the previous three years.

(iv) Has not been convicted of a misdemeanor or felony relating to the performance or operation of the business of the contractor or subcontractor within the previous 10 years.

(v) Has completed a minimum of the United States Occupational Safety and Health Administration's 10-hour safety training course or similar training sufficient to prepare workers for any hazards that may be encountered during their work on the high-speed broadband service infrastructure.

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

(f.1) Other project criteria.--The board shall award grants under section 6123 for all other projects based upon a scoring system, which shall be released to the public at least 30 days before the beginning of the application period under subsection (a). The authority shall determine the criteria when weighing or scoring an application for a grant under section 6123 based on Federal law or guidance and other factors which the authority determines to be reasonable and appropriate for the purposes of this chapter.

(g) Regulatory obligations.--In awarding grants under section 6123, the authority shall not consider any additional regulatory obligations, except as required under applicable Federal or State law.

(h) Time for project completion.--Applicants shall deploy the broadband network and begin providing service to each customer that desires service not later than four years after the date in which the applicant receives a grant unless



otherwise extended by the authority and allowed by Federal law or guidance. Grant funds awarded to an applicant who fails to complete a proposed project within four years, unless otherwise extended by the authority, may be subject to refund or clawback by the authority.

Section 2. This act shall take effect immediately.

APPROVED--The 22nd day of December, A.D. 2021.

TOM WOLF