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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 835 Session of  
2019

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INTRODUCED BY LANGERHOLC, PITTMAN, STEFANO, ARGALL, MENSCH,  
J. WARD, STREET, BREWSTER, YUDICHAK AND BROOKS,  
AUGUST 26, 2019

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AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,  
OCTOBER 21, 2020

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AN ACT

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

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

9 Section 1. Short title.

10 This act shall be known and may be cited as the Unserved  
11 High-Speed Broadband Funding ~~Pilot~~ Program Act. <--

12 Section 2. Declaration of policy.

13 The General Assembly finds and declares as follows:

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

17 (2) The economic and business incentives to deploy high-  
18 speed broadband service infrastructure may be insufficient to

1 ensure full access to high-speed broadband services in low-  
2 density, rural locations and other areas of this Commonwealth  
3 where the unit costs of providing service may not provide an  
4 adequate return on investment for private companies.

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

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

14 Section 3. Definitions.

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

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

20 "Authority." The Commonwealth Financing Authority.

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

22 "High-speed broadband service." ~~Any wireline or fixed~~ <--  
23 ~~wireless technology having the capacity to transmit data from or~~  
24 ~~to the Internet at minimum speeds of at least 25 megabits per~~  
25 ~~second downstream and 3 megabits per second upstream.~~ WIRELESS, <--  
26 WIRELINE OR FIXED WIRELESS TECHNOLOGY HAVING THE CAPACITY TO  
27 TRANSMIT DATA FROM OR TO THE INTERNET AT:

28 (1) MINIMUM SPEEDS OF AT LEAST 25 MEGABITS PER SECOND  
29 DOWNSTREAM AND THREE MEGABITS PER SECOND UPSTREAM; OR

30 (2) MINIMUM SPEEDS ADOPTED BY THE FEDERAL COMMUNICATIONS

1 COMMISSION, WHICHEVER IS GREATER.

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

6 "Overbuild." The deployment of high-speed broadband service  
7 infrastructure in an area ~~where high speed broadband service~~ <--  
8 ~~infrastructure has been deployed and high speed broadband~~  
9 ~~services are offered to the public at the time of submitting a~~  
10 ~~grant application~~ THAT IS NOT UNSERVED. <--

11 "Program." The Unserved High-Speed Broadband Funding ~~Pilot~~ <--  
12 Program established under section 4(a).

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

17 "Unserved area." A project area without access to WIRELINE <--  
18 OR FIXED WIRELESS broadband service with minimum speeds of at  
19 least 25 megabits per second downstream and 3 megabits per  
20 second upstream.

21 Section 4. Establishment.

22 The Unserved High-Speed Broadband Funding ~~Pilot~~ Program is <--  
23 established. The authority shall administer and act as the  
24 fiscal agent for the program and shall be responsible for  
25 receiving and reviewing all grant applications and awarding  
26 grants.

27 Section 5. Grant awards generally.

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

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

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

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

22 Section 6. Application process.

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

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

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

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

12           (3) A certification that none of the grant money  
13 provided by the program for the proposed project will be used  
14 to extend or deploy high-speed broadband service  
15 infrastructure to areas with access to high-speed broadband  
16 service at the time of submitting a grant application.

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

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

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

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

30           (8) Evidence demonstrating the economic and commercial

1 feasibility of the proposed project.

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

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

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

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

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

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

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

1 any project area that results in an overbuild.

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

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

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

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

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

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

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

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

29 (8) Other factors which the authority determines to be  
30 reasonable and appropriate, consistent with the purposes of

1 this act.

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

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

11 Section 7. Implementation.

12 (a) Requirements.--The following apply:

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

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

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

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

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

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

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



1 administer the program.

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

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

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

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

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

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

17 (i) Paying fees for securing financing.

18 (ii) Paying interest on borrowed money.

19 (iii) Refinancing existing debt.

20 (iv) Paying for lobbying services.

21 (v) Paying fines.

22 (vi) Application preparation fees.

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

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

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

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

3 (i) Appropriations, including Federal money.

4 (ii) Return on the money in the account.

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

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

15 ~~(e) Prohibition. The authority may not provide, by~~ <--  
16 ~~regulation or otherwise, for third party audit requirements,~~  
17 ~~liquidated damages provisions or provisions that are not~~  
18 ~~reasonably related to the deployment of high speed broadband~~  
19 ~~service infrastructure by an applicant in accordance with the~~  
20 ~~purposes and provisions of this act.~~

21 ~~(f)~~ (E) Construction.--Nothing in this section shall be <--  
22 construed to preclude the authority from considering an  
23 applicant's financial ability to complete a proposed project or  
24 making reasonable requests for information necessary for the  
25 oversight and administration of projects awarded grant funding.  
26 Section 8. Effect on grant recipients.

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

1 otherwise apply to the grant recipient.

2 Section 9. Appropriation.

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

6 Section 10. Prohibition and repeals.

7 (a) Prohibition.--The Department of Revenue may not award a  
8 tax credit under Article XVIII-E of the act of March 4, 1971  
9 (P.L.6, No.2), known as the Tax Reform Code of 1971, after June  
10 30, 2020.

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

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

14 (2) Sections 1804-E and 1805-E of the act of March 4,  
15 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, are  
16 repealed.

17 Section 11. Effective date.

18 This act shall take effect immediately.