

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H

1

HOUSE BILL 1059

Short Title: GREAT Broadband Expansions. (Public)

Sponsors: Representatives Arp, Saine, Paré, and Goodwin (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Appropriations, if favorable, Rules, Calendar, and Operations of the House

May 26, 2022

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS CHANGES TO THE STATE'S BROADBAND
INFRASTRUCTURE GRANT PROGRAMS.

The General Assembly of North Carolina enacts:

PART I. EXPAND G.R.E.A.T. FOR WIRELESS BROADBAND

SECTION 1.1.(a) Article 15 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"§ 143B-1373.3. Wireless broadband grants.

(a) As used in this section, the definitions contained in G.S. 143B-1373(a) apply, with the exception of the following:

- (1) Broadband service. – For the purposes of this section, wireless Internet access service with transmission speeds of at least 25 megabits per second (Mbps) download and at least 3 megabits per second upload (25:3), and a latency sufficient to support real-time, interactive applications. The term does not include satellite-based Internet access service.
- (2) Eligible project. – An eligible project is a discrete and specific project located in an unserved economically distressed area seeking to provide broadband service to homes, businesses, and community anchor points not currently served. 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. End users that are capable of receiving broadband service outside of the project area shall not be counted for purposes of scoring project applications.
- (3) Infrastructure. – All equipment, machinery, supplies, or other tangible real or personal property used in connection with the provision of broadband service to end users. The term also includes easements, rights-of-way, and buildings or structures owned or leased by the entity that are made available for location or collocation purposes.
- (4) 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, backhaul infrastructure, and testing costs. The term also includes engineering and any other costs associated with the initial procurement of a location or collocation



* H 1 0 5 9 - V - 1 *

site for the purpose of installing infrastructure on public or private property and costs required to be paid during the construction period of the project to secure leased location or collocation facilities to be used for the delivery of broadband to an end user. The term does not include overhead or administrative costs, annual lease payments for location or collocation sites that are (i) outside of the project area or (ii) within the project area but paid after construction is completed.

(5) Unserved area. – A designated geographic area in which eighty percent (80%) or more of homes, businesses, and community anchor points lack access to broadband service. Areas where a private provider has been designated to receive funds through other State- or federally funded programs designed specifically for broadband deployment shall be considered served if such funding is intended to result in construction of broadband in the area within 18 months or for the duration of the federal funding program for that area, or if the funding recipient is otherwise in good standing with the funding agency's regulations governing the funding program.

(b) The Office shall accept and score applications and award grants for eligible projects under this section in the manner prescribed in G.S. 143B-1373, with the exception of the following:

(1) Protests of applications made under this section may be submitted in accordance with the provisions in G.S. 143B-1373(e), except that a provider may protest that a proposed project area does not meet the definition of unserved provided in this section.

(2) Cost per household or business. – The Office shall give additional points to projects that minimize the infrastructure cost of the proposed project per household or business, based upon information available to the Office. Points shall be given to projects based upon the estimated cost per household or business as follows:

a. For projects proposed in the Piedmont or Coastal Plain Regions:

<u>Est. Cost per Household/Business</u>	<u>Points</u>
<u>Up to \$1,000</u>	<u>9</u>
<u>\$1,000, up to \$2,000</u>	<u>8</u>
<u>\$2,000, up to \$3,500</u>	<u>7</u>
<u>\$3,500, up to \$5,000</u>	<u>6</u>
<u>\$5,000, up to \$6,000</u>	<u>5</u>
<u>\$6,000 and over</u>	<u>0</u>

b. For projects located in the Mountain Region:

<u>Est. Cost per Household/Business</u>	<u>Points</u>
<u>Up to \$1,500</u>	<u>9</u>
<u>\$1,500, up to \$2,500</u>	<u>8</u>
<u>\$2,500, up to \$4,500</u>	<u>7</u>
<u>\$4,500, up to \$6,000</u>	<u>6</u>
<u>\$6,000, up to \$7,000</u>	<u>5</u>
<u>\$7,000 and over</u>	<u>0</u>

(3) Speed to market. – The Office shall give additional points to projects that minimize the time to begin providing broadband service to end users. Points shall be given to projects based upon the estimated speed to market as follows:

<u>Service Time to End Users</u>	<u>Points</u>
<u>Up to six months</u>	<u>9</u>

1	<u>Six months, up to one year</u>	<u>8</u>
2	<u>One year, up to two years</u>	<u>7</u>
3	<u>Two years and over</u>	<u>0</u>
4	(4) <u>The Office shall give additional points to projects as follows:</u>	
5	a. <u>Four points for a project that also provides customers mobile</u>	
6	<u>broadband within the same project area.</u>	
7	b. <u>Ten points for projects that do not require new tower construction.</u>	
8	c. <u>Five points for projects (i) constructing up to four new towers and that</u>	
9	<u>(ii) have an estimated cost per household or business under three</u>	
10	<u>thousand five hundred dollars (\$3,500) in the Piedmont or Coastal</u>	
11	<u>Plain Region or under six thousand dollars (\$6,000) in the Mountain</u>	
12	<u>Region."</u>	

13 **SECTION 1.1.(b)** The Office may allocate up to five million dollars (\$5,000,000)
 14 each fiscal year in State funds for grants under this section. The Office may exceed the
 15 five-million-dollar (\$5,000,000) cap in this subsection with State funds appropriated for
 16 broadband grants if available State funds exceed grant awards for terrestrially based projects.

17 **SECTION 1.2.(a)** Section 7 of S.L. 2019-230 reads as rewritten:

18 "SECTION 7.(a) There is transferred from the General Fund to the State Capital and
 19 Infrastructure Fund the sum of ~~fifteen~~twenty million dollars (~~\$15,000,000~~)(\$20,000,000) for
 20 each fiscal year from the 2019-2020 fiscal year through the 2028-2029 fiscal year.

21 "SECTION 7.(b) There is appropriated from the State Capital and Infrastructure Fund to
 22 the Growing Rural Economies with Access to Technology Fund the sum of ~~fifteen~~twenty million
 23 dollars (~~\$15,000,000~~)(\$20,000,000) for each fiscal year from the 2019-2020 fiscal year through
 24 the 2028-2029 fiscal year."

25 **SECTION 1.2.(b)** This section becomes effective July 1, 2022, and applies only to
 26 fiscal years occurring on or after that date.

27 **SECTION 1.3.** Except as otherwise provided, this Part becomes effective July 1,
 28 2022.

29 **PART II. RAISE COUNTY CAP ON GRANT FUNDS**

30 **SECTION 2.1.** Section 38.4(a)(12) of S.L. 2021-180 reads as rewritten:

31 "(12) The grant limitation amounts in G.S. 143B-1373(i) are changed as follows:
 32 A single grant award shall not exceed ~~four~~eight million dollars (~~\$4,000,000~~).
 33 (~~\$8,000,000~~). No combination of grant awards involving any single county
 34 may exceed ~~eight~~thirty-two million dollars (~~\$8,000,000~~)(\$32,000,000) in a
 35 fiscal year. Any project that is applied for and not funded in an award round
 36 under this section shall be eligible for funding under the Completing Access
 37 to Broadband program pursuant to G.S. 143B-1373.1."

38 **SECTION 2.2.** This Part is effective when it becomes law.

39 **PART III. RECONFIGURE COUNTY MATCH REQUIREMENTS AND SCORING**

40 **METRICS**

41 **SECTION 3.1.** Section 38.4(a)(11) of S.L. 2021-180 reads as rewritten:

42 "(11) Additional points shall be awarded to counties providing a portion of a
 43 project's matching funds entirely from federal American Rescue Plan Act
 44 (P.L. 117-2) funds the county received directly from the federal government.
 45 For counties that received an aggregate of eight million dollars (\$8,000,000)
 46 or more directly from the federal government, the following points shall be
 47 added to the application score:

County Match	Points
<u>\$200,000, up to \$1,000,000</u>	<u>1</u>

1	\$1,000,000, up to \$2,000,000	<u>42</u>
2	\$2,000,000, up to \$4,000,000	<u>23</u>
3	\$4,000,000, up to \$6,000,000	<u>34</u>
4	\$6,000,000, up to \$8,000,000	<u>45</u>
5	\$8,000,000, or greater	<u>56</u>
6	For counties that (i) received less than an aggregate of eight million dollars	
7	(\$8,000,000) directly from the federal government from the American Rescue	
8	Plan Act (P.L. 117-2) and (ii) are providing a portion of a project's matching	
9	funds using the entirety of the federal funds the county received, together with	
10	any other unrestricted general fund monies, if needed, the following points	
11	shall be added to the application score:	

County Match**Points**~~\$250,000, \$100,000, up to \$6,000,000~~

6

\$6,000,000, up to \$8,000,000

7"

SECTION 3.2. Section 38.4(a)(13) of S.L. 2021-180 reads as rewritten:

(13) The provisions of G.S. 143B-1373(j) are replaced with the following:

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**

12.0 points or less

50%

Greater than 12.0 points, but less than 17.5 points

45%

17.5 points, up to 22.0 points

40%

Greater than 22.0 points

30%

Up to fifty percent (50%) of matching funds paid by the grant recipient may be comprised of third-party funding, including funds from other grant programs or federal funds, to the extent applicable rules permit. ~~A grant recipient receiving a portion of matching funds from a county, where the county portion of matching funds is partially comprised of federal American Rescue Plan Act (P.L. 117-2) funding, may have the grant recipient's portion of the matching requirement imposed under this subdivision reduced to a maximum of twenty five percent (25%). A grant recipient receiving a portion of matching funds from a county, where the county portion of matching funds is entirely comprised of federal American Rescue Plan Act (P.L. 117-2) funding, may have the grant recipient's portion of the matching requirement imposed under this subdivision reduced to a maximum of fifteen percent (15%).~~"

SECTION 3.3. This Part becomes effective July 1, 2022.**PART IV. NON-DEPLOYMENT ACCESS TO PROJECT AREAS****SECTION 4.1.** G.S. 143B-1373 reads as rewritten:**"§ 143B-1373. Growing Rural Economies with Access to Technology (GREAT) program.**

...

(c) A private provider receiving State or federal funds to deploy broadband service in unserved areas may qualify such area for protection by submitting a listing of the census blocks, or portions thereof, comprising the State- or federally funded project areas in a manner prescribed by the Office. 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 subsequent program years. The Office shall use the census block data provided only for mapping of unserved areas. A project area shall remain protected

for a period of 18 months from the submission of the listing information required under this subsection; provided, however, a private provider that has received protection for a project area shall submit written documentation by April 30 of the year following the program year that broadband deployment has begun or been completed, or is otherwise in good standing, in the census blocks, or portions thereof, that have been deemed ineligible by the Office under this subsection. For a proposed project with a completion time line of greater than two years, the private provider shall disclose written documentation justifying the time line. Upon submission of documentation satisfactory to the Office, a protected project area shall remain protected until project ~~completion~~ completion or three years, whichever is lesser. A project area where a private provider has forfeited or otherwise defaulted on an agreement in connection with receipt of funds to deploy broadband service shall be eligible for inclusion in this program in subsequent program years. The project area protection described in this subsection shall not prohibit another eligible project from deploying broadband infrastructure in a protected project area if that broadband infrastructure deployment is necessary to provide broadband service to the unserved area identified in a grant application submitted under this section. Information provided to the Office pursuant to this subsection is not a public record, as that term is defined in G.S. 132-1.

...

(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 20 days prior to award. During the 20-day period, any interested party may submit comments to the Secretary concerning any pending application. A broadband service provider currently providing broadband service in a project area proposed in an application may submit a protest of any application on the grounds the proposed project covers an area that is a protected area under subsection (c) of this section, or that the proposed project area contains ten percent (10%) or more of total households with access to broadband service as defined in this section. Protests of applications proposing deployment of broadband infrastructure in a protected project area, as described in subsection (c) of this section, are not authorized under this subsection. Protests shall be submitted in writing, accompanied by all credible and relevant supporting documentation, including specific addresses, and detailed mapping demonstrating that the protesting broadband provider has installed infrastructure sufficient to provide broadband service to the specific addresses provided in the protest, along with an attestation that broadband service is available in the public right-of-way at the specific addresses indicated. The protest 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 a protected area or prospective broadband recipients that are presently 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; however, the Office may reject any amended application resulting in a lower application score to the extent that the lower score would have impacted the ranking of the application in the initial scoring process. 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

1 assess speed levels pursuant to this section. All decisions regarding the speed test to be utilized
2 and the manner by which the speed tests are applied shall be made by the Secretary or the
3 Secretary's designee.

4 ...

5 (h) The Office shall score applications based upon the metrics provided in subsection (g)
6 of this section. In awarding grants based upon the scoring metrics, the Office shall also award an
7 additional point to projects where a county has a Community Broadband Planning Playbook that
8 meets the guidelines established by the Office. An application proposing the deployment of
9 broadband infrastructure in a protected project area, as described in subsection (c) of this section,
10 shall not be awarded points for any portion of the application's proposed project area that is
11 situated within a protected project area. The Office may prioritize applications that do not exceed
12 the two-year time line referenced in subsection (c) of this section.

13"

14 **SECTION 4.2.** Section 38.4(a) of S.L. 2021-180 reads as rewritten:

15 "SECTION 38.4.(a) Of the funds appropriated in this act from the State Fiscal Recovery
16 Fund to the Department of Information Technology for broadband infrastructure grants, and in
17 accordance with applicable federal guidelines, the Department of Information Technology shall
18 administer broadband infrastructure grants through the Growing Rural Economies with Access
19 to Technology (G.R.E.A.T.) grant program. Grant applications shall be submitted and grant funds
20 shall be awarded pursuant to G.S. 143B-1373, with the exception of the following:

21 ...

22 (5) The provisions of G.S. 143B-1373(c) are replaced with the following:

23 A private provider receiving State or federal funds to deploy broadband
24 service in unserved areas may qualify such area for protection by submitting
25 a listing of the census blocks, or portions thereof, comprising the State- or
26 federally funded project areas in a manner prescribed by the Office. The
27 Office shall only utilize this data to update maps of census blocks to reflect
28 these census blocks, or portions thereof, as being served. Failure on the part
29 of a provider to submit the listing of census blocks by the cutoff date shall
30 result in those areas being eligible for inclusion under the G.R.E.A.T. grant
31 program during subsequent program years. The Office shall use the census
32 block data provided only for mapping of unserved areas. A project area shall
33 remain protected for a period of 18 months from the submission of the listing
34 information required under this subdivision; provided, however, a private
35 provider that has received protection for a project area shall submit written
36 documentation by April 30 of the year following the program year that
37 broadband deployment has begun, been completed, or is otherwise in good
38 standing, in the census blocks, or portions thereof, that have been deemed
39 ineligible by the Office under this subsection. Upon submission of
40 documentation satisfactory to the Office, a protected project area shall remain
41 protected until project completion. A project area where a private provider has
42 forfeited or otherwise defaulted on an agreement in connection with receipt of
43 funds to deploy broadband service shall be eligible for inclusion in this
44 program in subsequent program years. The project area protection described
45 in this subdivision shall not prohibit another eligible project from deploying
46 broadband infrastructure in a protected project area if that broadband
47 infrastructure deployment is necessary to provide broadband service to the
48 unserved area identified in a grant application submitted under this section.
49 Information provided to the Office pursuant to this subdivision is not a public
50 record, as that term is defined in G.S. 132-1.

51 ...

(7) The provisions in G.S. 143B-1373(e) are replaced with the following:
Applications shall be made publicly available by posting on the website of the Department of Information Technology for a period of at least 20 days prior to award. During the 20-day period, any interested party may submit comments to the Secretary concerning any pending application. A broadband service provider currently providing broadband service in a project area proposed in an application may submit a protest of any application on the grounds the proposed project covers an area that is a protected area under subsection (c) of this section or that the proposed project area contains ten percent (10%) or more of total households with access to broadband service as defined in this section. Protests of applications proposing deployment of broadband infrastructure in a protected project area, as described in subdivision (5) of this subsection, are not authorized under this subdivision. Protests shall be submitted in writing, accompanied by all credible and relevant supporting documentation, including specific addresses, and detailed mapping demonstrating that the protesting broadband provider has installed infrastructure sufficient to provide broadband service to the specific addresses provided in the protest, along with an attestation that broadband service is available to the exterior of the structure at the specific addresses indicated. The protest 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 a protected area or prospective broadband recipients that are presently 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; however, the Office may reject any amended application resulting in a lower application score to the extent that the lower score would have impacted the ranking of the application in the initial scoring process. 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.

...

(11a) The Office shall score applications based upon the metrics provided in G.S. 143B-1373(g), as modified by this section. In awarding grants based upon the scoring metrics, the Office shall also award an additional point to projects where a county has a Community Broadband Planning Playbook that

meets the guidelines established by the Office. An application proposing the deployment of broadband infrastructure in a protected project area, as described in subdivision (5) of this subsection, shall not be awarded points for any portion of the application's proposed project area that is situated within a protected project area.

...."

SECTION 4.3. Section 4.2 of this Part becomes effective July 1, 2022. The remainder of this Part is effective when it becomes law.

PART V. MISCELLANEOUS

SECTION 5.1. G.S. 143B-1373(g)(6) reads as rewritten:

"(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

Up to ~~100:10~~ 100:20 Mbps.

1.35

~~100:10~~ 100:20 Mbps. up to 200:20 Mbps.

1.75

200:20 Mbps. or greater.

2.00

100 Mbps., symmetrical.

3.00

Greater than 100:100 Mbps.

4.00"

SECTION 5.2. Notwithstanding any provision of Chapter 143C of the General Statutes to the contrary, the Office of State Budget and Management, in consultation with the Director of the Budget, may reallocate State Fiscal Recovery Fund funds appropriated by an act of the General Assembly under all of the following conditions only:

- (1) The appropriated funds were recouped or unallocated and are otherwise unexpended on December 31, 2022.
- (2) The reallocation is made to support broadband infrastructure project grants under Sections 38.4 and 38.6 of S.L. 2021-180 and the use of funds otherwise allowable under applicable federal regulations. Reallocated funds shall not be used for any new activity, purpose, or program.
- (3) To the extent that funds reallocated pursuant to this section are unappropriated, including interest accrual exceeding what is anticipated in this act, those funds are hereby appropriated and available for use pursuant to this section.
- (4) The Office of State Budget and Management shall report to the Fiscal Research Division on reallocations made pursuant to this section.

SECTION 5.3. Of the funds received by the State from the federal Infrastructure Investment and Jobs Act (P.L. 117-58) intended for broadband, it is the intent of the General Assembly to use those funds for the benefit of broadband infrastructure grants and those funds are hereby appropriated as follows:

- (1) Sixty percent (60%) of federal Infrastructure Investment and Jobs Act (P.L. 117-58) broadband funds to the Department of Information Technology to be used in accordance with Section 38.4 of S.L. 2021-180, as amended.
- (2) Forty percent (40%) of federal Infrastructure Investment and Jobs Act (P.L. 117-58) broadband funds to the Department of Information Technology to be used in accordance with Section 38.6 of S.L. 2021-180, as amended.

SECTION 5.4. This Part is effective when it becomes law.

PART VI. EFFECTIVE DATE

1 **SECTION 6.1.** Except as otherwise provided, this act is effective when it becomes
2 law.