

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023**

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**SENATE BILL 743
Health Care Committee Substitute Adopted 4/20/23
House Committee Substitute Favorable 6/27/24**

Short Title: Broadband/Grant Changes.

(Public)

Sponsors:

Referred to:

April 10, 2023

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS BROADBAND CHANGES AND TO DIRECT CERTAIN
GRANT FUNDS TO THE HOUSING TRUST FUND.

The General Assembly of North Carolina enacts:

BEAD GRANT PROGRAM

SECTION 1.1.(a) Definitions. – As used in this section, the following definitions
apply:

- (1) BEAD. – Broadband Equity, Access, and Deployment.
- (1a) Broadband service. – For the purposes of this section, a terrestrially deployed mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service.
- (2) Broadband serviceable location (BSL). – A location where broadband service is or could be installed, as identified by the Federal Communications Commission for purposes of its Broadband DATA Maps.
- (3) Community anchor institution (CAI). – A 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, but not limited to, low-income individuals, unemployed individuals, and aged individuals.
- (4) Department. – The Department of Information Technology.
- (5) Eligible location. – An unserved or underserved BSL not located in a protected area or a CAI where qualifying broadband service is not available.
- (6) Eligible project. – A discrete and specific project intended to construct and deploy qualifying broadband service to an eligible location or to a combination of eligible locations. A "project" may constitute a single unserved or underserved BSL, or a grouping of BSLs in which not less than eighty percent (80%) of BSLs served by the project are unserved or underserved locations, provided that the Office may not award funding under this section to construct and deploy infrastructure for the provision of qualifying broadband service to any served BSL.



- (7) Extremely high cost per location threshold. – A BEAD subsidy cost per location above which the Office may decline to select a proposal if use of an alternative technology meeting the BEAD program's technical requirements is necessitated by the fact that selection of an eligible project proposing to provision service via end-to-end fiber-optic facilities to each end-user premises would be cost prohibitive. The Office will develop a methodology for calculating this threshold in a manner that maximizes use of the best available technology while ensuring that the program can, at a minimum, meet the prioritization requirements. The Office will post the methodology for public comment before implementation. The Office shall not, unless it is determined that it does not have sufficient funding to select each highest-scoring application in the initial round described in this section, utilize the extremely high cost per location threshold in the initial round.
- (7a) FCC. – The Federal Communications Commission.
- (8) High-cost outlier. – Any unserved or underserved location that an applicant identifies as a risk to disproportionately affect the cost of an applicant's project budget.
- (9) IIA. – Infrastructure Investment and Jobs Act (P.L. 117-58).
- (9a) Infrastructure. – Facilities, equipment, materials, and structures that an entity installs either for its core business or public enterprise purposes. Examples include, but are not limited to, copper wire, coaxial cable, optical cable, loose tube cable, communication huts, conduits, vaults, patch panels, mounting hardware, poles, generators, battery and cabinet, network nodes, network routers, network switches, microwave relay, microwave receivers, site routers, outdoor cabinets, towers, easements, rights-of-way, and buildings or structures owned by the entity that are made available for location or collocation purposes.
- (10) Infrastructure costs. – Costs 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 securing a lease to locate or collocate infrastructure on public or private property or structures, but not including the actual monthly lease payment. The term does not include overhead or administrative costs.
- (11) Low-cost broadband service option. – A broadband service offered to low-income households that meets the eligibility requirements for the federal Affordable Connectivity Program, or similar replacement program, in the project area for at least the length of time defined by federal requirements. A low-cost broadband service option must be made available and include the following elements:
- a. Provide typical download speeds of at least 100 Mbps and typical upload speeds of at least 20 Mbps.
 - b. Provide typical latency measurements of no more than 100 milliseconds.
 - c. Not be subject to nongovernmental imposed surcharges and be subject only to the same acceptable use policies to which subscribers to all other broadband internet access service plans offered to home subscribers by the participating subgrantee must adhere.
 - d. Shall be offered at a price that does not exceed the highest price listed in the FCC's 2024 Urban Rate Survey data for Fixed Broadband

- Service for a service offering in North Carolina that provides a download speed of 100 Mbps, upload speed of 20 Mbps, and an unlimited capacity allowance. The price may be adjusted by the subgrantee based on the Consumer Price Index, as defined by the United States Bureau of Labor Statistics, beginning with an adjustment in the first new calendar year after the date of enactment of this section.
- e. In the event the provider later increases the speeds of one of its low-cost plans, it will permit eligible subscribers that are subscribed to that plan to upgrade to those new speeds at no more than a commensurate change in cost.
- (12) Multi-dwelling units (MDUs). – Multiple separate residential units within a single or several buildings.
- (13) NTIA. – The National Telecommunications and Information Administration of the United States Department of Commerce.
- (14) Office. – The Broadband Infrastructure Office in the Department of Information Technology.
- (15) Protected areas. – BSLs subject to an enforceable commitment as defined in the NTIA Notice of Funding Opportunity or where a broadband service provider has been designated to receive funds through other State- or federally funded programs designed specifically for the deployment of qualifying broadband service if such funding is intended to result in construction of broadband to the location within 18 months or for the duration of the federal funding program, or if the broadband service provider is otherwise in good standing with the funding agency's regulations governing the funding program. Any CAI where a private provider submits documentation satisfactory to the Department that such provider currently offers broadband service that will be scalable to a qualifying broadband service after the conclusion of the challenge process shall be also considered protected. Upon submission of documentation satisfactory to the Office, a protected area shall remain protected until project completion.
- (16) Qualifying broadband service. – A reliable broadband service meeting the following criteria:
- a. To a location that is not a CAI with a speed of not less than 100 Mbps for downloads and not less than 20 Mbps for uploads.
- b. To a CAI with a speed of not less than 1 Gbps for downloads and uploads.
- (17) Reliable broadband service. – Terrestrial-based broadband service (i) with ninety-five percent (95%) of latency measurements during testing windows falling at or below 100 milliseconds round-trip time and (ii) which is designed to ensure that network outages should not exceed, on average, 48 hours over any 365-day period except in the case of natural disasters or other force majeure occurrences. Locations served exclusively by satellite, terrestrial fixed wireless services utilizing entirely licensed spectrum, using a hybrid of licensed and unlicensed spectrum, or a technology not specified by the FCC for purposes of its Broadband DATA Maps, do not meet the definition of "reliable broadband service" and will be considered "unserved" for the purposes of determining eligible locations.
- (18) Secretary. – The Secretary of Information Technology.
- (19) Subgrantee. – An eligible recipient who receives BEAD funds for an eligible project.

(20) Underserved. – A BSL that has access to reliable broadband service equal to or greater than 25 Mbps download and 3 Mbps upload but less than 100 Mbps download and 20 Mbps upload. Unless otherwise determined by the Department based on competent findings of fact, locations that the FCC's Broadband DATA Maps show to have available qualifying broadband service delivered via (i) DSL or (ii) terrestrial fixed wireless services utilizing entirely licensed spectrum, or using a hybrid of licensed and unlicensed spectrum, shall be considered "underserved" for the purpose of determining eligible locations.

(21) Unserved. – A BSL that does not have access to reliable broadband service with transmission speeds of at least 25 Mbps download and at least 3 Mbps upload.

SECTION 1.1.(b) Consistency With Federal Law. – Except as defined in this section, terms in this section shall have the meaning prescribed to them in the IJJA and in the Notice of Funding Opportunity for the BEAD Program (BEAD NOFO) published by NTIA on May 13, 2022, including any subsequent guidance issued by NTIA with respect to the program after the issuance of the BEAD NOFO. In the event of any actual conflict between this section and legal requirements contained in the IJJA, the provisions of the IJJA shall take precedence. Should any instances of actual conflict arise, the Department shall report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division any actions taken to conform with federal law.

SECTION 1.1.(c) Consistency With State Policy. – Consistent with the policy of the State, the Office shall not prescribe the rates of service which applicants may deliver, nor shall the Office indirectly regulate the rates of service which applicants may deliver by affording any preference or differentiated scoring weight based on the specific rate of service which an applicant may deliver. The Office shall not make mandatory any optional conditions contained in Section IV.C.1.e. of the BEAD NOFO.

SECTION 1.1.(d) GREAT 3.0 Fund. – The Growing Rural Economies with Access to Technology for Broadband Equity, Access, and Deployment Fund (GREAT 3.0 Fund) is established as a special revenue fund in the Department of Information Technology. The Secretary may award subgrants from the GREAT 3.0 Fund to eligible recipients for eligible projects. The State shall not be obligated for funds committed for project costs from the GREAT 3.0 Fund in excess of those sums appropriated by the General Assembly to the GREAT 3.0 Fund. The funds shall be used by the eligible recipient to pay for infrastructure costs associated with an eligible project. State and federal funds appropriated to this Fund shall be considered an information technology project within the meaning of G.S. 143C-1-2. The grants shall be considered fixed amount subawards for purposes of the federal requirements within the meaning of the Policy Notice on Tailoring the Application of the Uniform Guidance to the BEAD Program issued by the NTIA. The Office shall further make available to awardees all options available under the BEAD Letter of Credit Waiver issued by NTIA.

SECTION 1.1.(e) Priority. – The Office shall prioritize projects proposed to address the following in order:

- (1) Unserved BSLs.
- (2) Underserved BSLs.
- (3) Community anchor institutions.

SECTION 1.1.(f) Project Proposals; Use of Funds. – The Office may seek proposals to serve unserved BSLs, underserved BSLs, and community anchor institutions collectively or separately, provided that it prioritizes awarding projects that address, at minimum, all unserved BSLs. Once the Office reports that projects will address all unserved BSLs, it shall prioritize projects that address, at minimum, all underserved BSLs. If the Department has entered into subgrant agreements for deployment of service to all unserved and underserved locations in the

1 State, it may use any remaining funds in the GREAT 3.0 Fund for digital literacy and awareness
2 or other purposes consistent with nondeployment activities described in the BEAD NOFO.

3 **SECTION 1.1.(g) Challenge Process.** – The Office shall develop and implement a
4 formal challenge process that conforms with the published regulations and guidelines of the
5 BEAD program, including the requirement that challenges based upon speed tests must be
6 conducted and submitted in conformance with the specifications of the NTIA's speed test
7 guidance and may not be submitted by an individual subscriber. In developing the challenge
8 process, the Office shall solicit input from stakeholders and consider the adaptability of the
9 challenge process to fit existing State broadband grant programs and all applicable federal
10 requirements. The challenge process shall be open to submissions from internet providers, county
11 and municipal government entities, and community anchor institutions and shall establish
12 procedures that allow a period of at least 30 calendar days of the opening of the challenge window
13 to submit challenges, and a period of at least 30 calendar days from notification of any challenge
14 to the classification of a location determined to be valid by the Office during the challenge phase
15 for the submission of rebuttal evidence. Prior to selecting subgrantees, the Office shall publish a
16 statewide map indicating eligible locations that may be included in an eligible project.

17 **SECTION 1.1.(h) Prequalification.** – The Office shall develop a prequalification
18 process to identify potential subgrantees with the financial, managerial, operational, and
19 technical capacity to complete an eligible project. The Office shall prequalify broadband service
20 providers based on the minimum eligibility criteria in the GREAT 3.0 program. Information
21 submitted by a broadband service provider as part of the prequalification process may be
22 considered during the subgrantee selection process. Information contained in an application that
23 is identified as proprietary by an applicant for a subgrant pursuant to the prequalification process
24 shall not be considered a public record.

25 **SECTION 1.1.(i) Applications.** – The Office shall develop a subgrantee selection
26 process that shall be administered in multiple rounds. Applications for subgrants will be
27 submitted at times designated by the Office and will include, at a minimum, the following
28 information:

- 29 (1) The identity of the applicant and its qualifications and experience with
30 broadband deployment and administration of federal subgrants.
- 31 (2) The total cost and duration of the proposed project.
- 32 (3) The amount to be funded by the applicant. The applicant shall fund a
33 minimum of twenty-five percent (25%) of the cost of the project unless the
34 project is in an NTIA-defined high-cost area or a waiver is granted pursuant
35 to the BEAD Program guidelines as set forth by NTIA.
- 36 (4) A list of the eligible locations that will have access to qualifying broadband
37 service as a result of the project.
- 38 (5) The proposed construction time line, not to exceed four years, unless the
39 Department extends the four-year deadline if (i) the subgrantee has a specific
40 plan for use of the grant funds, with project completion expected by a specific
41 date not more than one year after the four-year deadline, (ii) the construction
42 project is underway, or (iii) extenuating circumstances require an extension of
43 time to allow the project to be completed.
- 44 (6) A description of the services to be provided, including the proposed upload
45 and download broadband speeds to be delivered.
- 46 (7) A description of proposed cost tiers available to customers upon completion
47 of the proposed project.
- 48 (8) A description of the applicant's proposed low-cost broadband service option
49 applicable to eligible subscribers in BEAD-funded areas. The Office may not
50 impose additional requirements on qualifying low-cost service options as a
51 condition of grant eligibility.

(9) Technology type of the proposed service.

(10) Any other information or supplementary documentation requested by the Office. The Office shall ensure that subgrant applications contain sufficient information to allow the Office to reasonably evaluate subgrantees' ability to comply with all program requirements, including all subgrantee qualifications and conditions required under federal law.

SECTION 1.1.(j) Competitive Subgrantee Selection Process. – The Office shall implement a competitive subgrantee selection process that conforms with published regulations and guidelines under the BEAD Program under the IJA. Applications receiving the highest score shall receive priority status for the awarding of subgrants pursuant to this section. As a means of breaking a tie for applications receiving the same score, the Office shall give priority to the application proposing to serve the highest number of new unserved and underserved locations. Applications shall be scored on an objective 100-point scale that is published prior to the submission of applications for subgrants. The Office shall determine whether or not a subgrantee has the capacity to perform multiple projects and shall not be required to award multiple projects to a prequalified subgrantee that has failed to demonstrate its ability to perform.

SECTION 1.1.(k) Subgrant Award Agreements. – Applicants awarded subgrants pursuant to this section shall enter into an agreement with the Office. Selections are contingent until an agreement is executed. The agreement shall contain all of the elements outlined in subsection (i) of this section and any other provisions the Office may require; provided, however, the Department may not impose requirements or contract conditions requiring that broadband service be offered at a specific price or that otherwise constitutes rate regulation. The agreement shall contain a provision governing the time line, milestones, and minimum requirements and thresholds for disbursement of grant funds measured by the progress of the project or disbursed on any other basis that may be necessary to effectuate every option made available in the BEAD Letter of Credit Waiver issued by NTIA on November 1, 2023. If applicable, the agreement shall identify the amount of matching funds the subgrantee must contribute to the project. The Office shall monitor the project to ensure (i) that the subgrantee is making adequate progress towards project completion by the required deadline, (ii) compliance with all relevant and applicable federal, State, and local laws, rules, and regulations, and (iii) compliance with all NTIA guidelines for the BEAD Program and any guidelines developed by the Office.

SECTION 1.1.(l) Letter of Credit. – The Office shall require a letter of credit or an alternative form of satisfactory performance security, such as a performance bond, from the subgrantee to secure the subgrantee's performance of its obligations under the grant contract consistent with the federal requirements. The Office shall give full effect to the NTIA BEAD Letter of Credit Waiver as a means of enabling a subgrantee to satisfy the requirements of this subsection. Subject to further waiver from NTIA to the extent the same may be required, the Office shall permit an alternative means of satisfying the requirement of this subsection for a subgrantee that demonstrates that it has more than one hundred million dollars (\$100,000,000) in telecommunications or electric plant in production in the State.

SECTION 1.1.(m) Annual Report. – The Department of Information Technology shall submit an annual report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division upon completion of each funding round. The report shall contain at least all of the following:

- (1) The number of subgrant projects applied for and the number of grant agreements entered into.
- (2) A time line for each subgrant agreement and the number of households and businesses expected to benefit from each agreement.
- (3) The amount of matching funds required for each agreement and the total amount of investment.

- (4) A summary of areas receiving subgrants that are now being provided broadband service and the advertised broadband speeds for those areas.
- (5) Any breaches of agreements, grant fund forfeitures, or subsequent reductions or refunds of matching funds.
- (6) Any recommendations for the GREAT 3.0 program, including better sources and methods for improving outcomes and accountability.

SECTION 1.1.(n) Progress Report. – Upon completion of two rounds of subgrantee selection, the Department shall report to the Joint Legislative Oversight Committee on Information Technology and the Fiscal Research Division the following:

- (1) The number of remaining unserved and underserved locations in the State.
- (2) The amount of remaining funding for the GREAT 3.0 program.
- (3) The estimated amount of subgrant funding needed to award projects serving all remaining unserved and underserved locations in the State.
- (4) The amount of funding available for nondeployment activities.

SECTION 1.1.(o) Retention of Funds. – In administering the IJA for the BEAD Program, the Department may utilize up to two percent (2%) of allocated BEAD grant funds for planning and administrative purposes.

SECTION 1.1.(p) Section 38.10(p) of S.L. 2021-180 reads as rewritten:

"SECTION 38.10.(p) This section is effective when it becomes law. ~~Subsections (b) through (k) of this section expire December 31, 2024.~~"

SECTION 1.1.(q) The State Controller shall establish a Broadband Equity, Access, and Deployment Reserve (Reserve) in the General Fund to maintain federal funds received from the federal Infrastructure Investment and Jobs Act (P.L. 117-58) for the Broadband Equity, Access, and Deployment Program. The State Controller shall transfer funds to the Growing Rural Economies with Access to Technology for Broadband Equity, Access, and Deployment Fund established in subsection (d) of this section only as needed to meet the appropriations set out in subsequent legislation. Funds reserved in the Reserve do not constitute an "appropriation made by law," as that phrase is used in Section 7(1) of Article V of the North Carolina Constitution.

COMPLETING ACCESS TO BROADBAND PROGRAM CHANGES

SECTION 2.1.(a) Notwithstanding the county project cost responsibility in G.S. 143B-1373.1(d) and (e), of the funds appropriated to the Department of Information Technology (Department) from the State Fiscal Recovery Fund and the Coronavirus Capital Projects Fund for projects under the Completing Access to Broadband grant program (Program) in G.S. 143B-1373.1, the Department shall utilize up to one hundred ninety million dollars (\$190,000,000) to provide the county project cost responsibility required in G.S. 143B-1373.1(e) and the State project cost responsibility for the 37 counties that have committed to the Department to participate in the Program and provide the county match as of May 1, 2024. A county may decline to accept any portion of the county project cost responsibility funding from the Department described in this subsection by notifying the Department within 30 days of the effective date of this section.

SECTION 2.1.(b) G.S. 143B-1373.1 reads as rewritten:

"§ 143B-1373.1. Completing Access to Broadband program.

...

(d) A broadband service provider selected for a project under this section ~~may~~ shall provide ~~up to at least~~ thirty percent (30%) of the total estimated project cost. The Office ~~may~~ shall commit up to ~~thirty-five-seventy percent (35%)–(70%)~~ of the total estimated project cost from monies in the CAB Fund. ~~The county requesting the project shall be responsible for at least thirty-five percent (35%) of the total estimated project cost and shall utilize federal American Rescue Plan Act (P.L. 117-2) funds or nonrestricted general funds for that purpose. In the event CAB Fund monies are insufficient to fund a project, a county may increase its share of the total~~

estimated project cost, or the Office may adjust the scope of the project to meet the level of available funding. No county may receive more than eight million dollars (\$8,000,000) in aggregate funding from the CAB Fund in any single fiscal year.

(e) ~~Notwithstanding the project cost responsibility allocations in subsection (d) of this section, for a county receiving from the federal government less than an aggregate of eight million dollars (\$8,000,000) in federal American Rescue Plan Act (P.L. 117-2) funds, a broadband service provider selected for a project shall provide not less than fifteen percent (15%) of the total estimated project cost. If a broadband service provider provides more than fifteen percent (15%) of the total estimated project cost, the State and county cost responsibilities shall be equally apportioned. The following cost responsibility allocations for counties meeting the requirements of this subsection and the State apply:~~

Direct Federal Funds Received	County Responsibility	State Responsibility
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\$250,000, up to \$4,000,000	5%, minimum	Up to 80%
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\$4,000,000, up to \$8,000,000	10%, minimum	Up to 75%
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(f) A broadband service provider selected for a project under this section shall enter into an agreement with the Office that shall include the project description, time lines, benchmarks, proposed broadband speeds, and any other information and documentation the Office deems necessary. All proposed broadband speeds must meet or exceed the federal guidelines for use of American Rescue Plan Act (P.L. 117-2) funds. ~~Upon execution of an agreement, the county shall provide its portion of the total estimated project costs to the Office to be combined with CAB Funds awarded for the project and placed in a separate project account. The Office shall provide project oversight, and, upon completion of established benchmarks in the project agreement, the Office shall disburse funds from the project account to the broadband service provider. The forfeiture provisions in G.S. 143B-1373(l) shall apply to agreements entered into under this section."~~

SECTION 2.1.(c) Subsection (b) of this section becomes effective July 1, 2024, and applies to grant funding requests submitted on or after that date.

REVERSION OF DARE COUNTY AFFORDABLE HOUSING FUNDS

SECTION 3.1.(a) Notwithstanding any provision of S.L. 2022-74 or the Committee Report referenced in Section 43.2 of that act or any other provision of law to the contrary, the directed grant in the sum of thirty-five million dollars (\$35,000,000) in nonrecurring funds for the 2022-2023 fiscal year to be provided by the Office of State Budget and Management – Special Appropriations to Dare County to construct affordable housing shall not be used for that purpose but shall instead revert to the Housing Trust Fund on June 30, 2024. The authority granted to Dare County to use the funds to construct affordable housing was repealed in Section 6.5 of S.L. 2024-1.

SECTION 3.1.(b) This section becomes effective June 30, 2024.

EFFECTIVE DATE

SECTION 4.1. Except as otherwise provided, this act becomes effective July 1, 2024.