

SENATE BILL NO. 297

INTRODUCED BY J. ELLSWORTH

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR BROADBAND INFRASTRUCTURE DEPLOYMENT LAWS; ESTABLISHING THE MONTANA BROADBAND INFRASTRUCTURE ACCOUNT; ESTABLISHING THE MONTANA BROADBAND DEPLOYMENT GRANT PROGRAM; PROVIDING AN APPLICATION PROCESS; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short Title.** [Sections 1 through 10] may be cited as the "ConnectMT Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 10], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Broadband service" means any wireline or fixed wireless technology having the capacity to transmit data from or to the internet at minimum speeds of at least 100 megabits a second downstream and 20 megabits a second upstream.

(2) "Broadband service infrastructure" means the signal transmission facilities and associated network equipment proposed to be deployed in a project area used for the provision of broadband service to residential customers.

(3) "Department" means the department of commerce.

(4) "Eligible applicant" means an entity that:

(a) has authorization to do business in the state; and

(b) has demonstrated that it has the technical, financial, and managerial resources and experience to provide broadband service or other communications service to customers in the state.

(5) "FCC" means the federal communications commission.

(6) "Project" means a proposed deployment of broadband service infrastructure set forth in an application for grant funding authorized under [sections 1 through 10].

(7) "Project area" means a shapefile area in an unserved area where the proposed broadband service infrastructure would be built as described in an application for grant funding authorized under [sections 1 through 10].

(8) "Shapefile" means a GIS file format for storing, depicting, and analyzing geospatial data depicting broadband coverage. It is made up of several component files, such as a main file (.shp), an index file (.shx), and a dBASE table (.dbf).

(9) "Unserved area" means a project area without access to broadband service with minimum speeds of at least 25 megabits a second downstream and 3 megabits a second upstream.

NEW SECTION. Section 3. Establishment of program -- administration and funding. (1) The department shall establish the broadband infrastructure deployment grant program and shall administer and act as the fiscal agent for the grant program and shall be responsible for receiving and reviewing grant applications and awarding grants.

(2) Funding for the grant program established under this section is subject to appropriations from general fund revenue or from bonds issued by the department.

NEW SECTION. Section 4. Eligible projects. (1) An eligible applicant may seek funding under this section for a project in a project area that, as of the date the application is filed, constitutes an unserved area as defined in [section 2]. Funds may not be used to support noncapital expenses, including general operations of an eligible applicant, nonbroadband services, marketing, or advertising.

(2) The project area to be served by a project funded under the program must be described on a shapefile basis.

(3) An eligible project area may not include any location for which federal government funding has been awarded specifically to support the expansion of broadband networks by the federal communications commission through the rural digital opportunity fund.

1 **NEW SECTION. Section 5. Eligible applicants.** (1) Applicants for grants:

2 (a) may not receive funds under any other federal or state government grant or loan program
3 specifically for the broadband project covered by an application;

4 (b) may not receive funds to support a project in an area where broadband service is already offered;

5 (c) shall commit to paying a minimum of 20% of the project costs and may not provide a minimum
6 matching amount from any funds derived from government grants, loans, or subsidies. Priority will be given to
7 the applicant who contributes the largest percentage of costs from its own funds.

8 (d) may only be a nongovernment entity with demonstrated experience in providing broadband
9 service or other communications services to end-user residential or business customers in the state.

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11 **NEW SECTION. Section 6. Applications.** (1) The department shall establish an annual timeframe
12 commencing an open process for submission of applications for funding under the grant program established in
13 [sections 1 through 10]. The window for submission may not be less than 60 days and not more than 90 days.

14 (2) An eligible applicant shall submit an application to the department on a form prescribed by the
15 department. An application for a grant must include the following information:

16 (a) evidence demonstrating the applicant's technical, financial, and managerial resources and
17 experience to provide broadband service or other communications services to customers in the state, and the
18 ability to build, operate, and manage broadband service networks serving residential customers in the state;

19 (b) a description of the project area, including shapefiles, that the eligible applicant proposes to build
20 or serve;

21 (c) a description of the broadband service infrastructure that is proposed to be deployed, including
22 facilities, equipment, and network capabilities that include minimum speed thresholds;

23 (d) evidence, including a certification from the application signatory, demonstrating the unserved
24 nature of the project area to the best of the applicant's knowledge;

25 (e) the number of households, businesses, and public institutions or entities that would have new
26 access to broadband service as a result of the grant;

27 (f) the total cost of the proposed project and the timeframe in which it will be completed;

28 (g) the amount of matching funds the eligible applicant proposes to contribute and a certification that

no portion of the funds are derived from any federal or state grant or loan program; and

(h) a preliminary list of all government authorizations, permits, and other approvals required in connection with the proposed deployment, and an estimated timetable for the acquisition of the approvals and the completion of the proposed project.

(3) The department shall treat any information that is not publicly available as confidential and subject to the trade secrets protections of state law on an applicant's request for confidential treatment, except that the proposed project area must be publicly disclosed in sufficient detail to enable a challenging provider to identify the area covered by the applicant.

NEW SECTION. Section 7. Review of application challenges -- approval. (1) Five business days following the closing of the submission window, the department shall make the applications available for review in a publicly available electronic file, subject to the confidentiality provisions of [section 6(3)].

(2) A broadband service provider that provides service within or directly adjacent to a proposed project area may submit, within 45 days of the release of the applications, a written challenge to the applications. This challenge may include:

(a) (i) information disputing an applicant's certification that a proposed project area is an unserved area;

(ii) that no other federal funding has been awarded to support broadband deployment in the project area pursuant to [section 5(3)]; or

(iii) that no federal funding has been awarded to support the specific deployment proposed in the application pursuant to [section 9(1)(a)]; and

(b) evidence of broadband network deployment in the project area.

(3) Public shapefile data that includes the project area created under the federal communications commission's rules for shapefiles must constitute evidence of broadband deployment sufficient to show that a challenged project area is served.

(4) On a challenging provider's request for confidential treatment, the department shall treat any information that is not publicly available as confidential and subject to the trade secrets protections of state law as provided in 30-14-401 through 30-14-409.

(5) If a broadband service provider submits a challenge to a proposed project area that is directly adjacent to its service area but that it does not currently serve, the challenging broadband service provider shall commit to complete construction of broadband infrastructure without the use of funding through [sections 1 through 10] and provide broadband service in the proposed project area at speeds equal to or greater than the speeds proposed in the application no later than 36 months after the funding determinations are to be made under this section for the application submitted. The department may extend this deadline. A broadband service provider that fails to offer broadband service by that deadline shall be ineligible for a grant under [sections 1 through 10] for a period of 5 years.

(6) In reviewing applications and any accompanying challenge, the department shall conduct its own review of the proposed project areas to ensure that all awarded funds are used to deploy broadband service infrastructure to unserved areas. The department may not award a grant to fund deployment of broadband service infrastructure for a project area that fails to meet any of the criteria provided in [sections 1 through 10] for being an unserved area.

(7) The department shall award funding support for projects set forth in applications based on a scoring system that must be released to the public at least 30 days prior to the window for submission of applications. The weighting scheme employed by the department must give the highest weight or priority to the following specific criteria:

(a) whether the proposed project area lacks broadband service with maximum speeds of at least 10 megabits a second downstream;

(b) the size and scope of the unserved area proposed to be served;

(c) the experience, technical ability, and financial soundness of the eligible applicant in successfully deploying and providing broadband service;

(d) the length of time the applicant has been providing broadband service in the state;

(e) the extent to which government funding support is necessary to deploy broadband network infrastructure in the proposed project area;

(f) the size and proportion of the matching funds proposed to be committed by the applicant;

(g) the service speed thresholds proposed in the application and the scalability of the broadband service infrastructure proposed to be deployed to speeds higher than 100 megabits a second downstream and

1 20 megabits a second upstream;

2 (h) the applicant's ability to leverage its own nearby or adjacent broadband service infrastructure to
3 facilitate the proposed deployment and provision of service to households;

4 (i) the extent to which the project does not duplicate any existing broadband service infrastructure in
5 the proposed project area; and

6 (j) any other factors the department determines to be reasonable and appropriate, consistent with the
7 purpose of facilitating the economic deployment of broadband service infrastructure to unserved areas.

8 (8) In awarding grants, the department may not include consideration of any new or additional
9 regulatory obligations beyond those required under applicable law, including but not limited to open access
10 network requirements or any rate, service, or other obligations beyond the speed requirements as provided in
11 [sections 1 through 10]. The criteria may not consider factors that would constrain an awardee from offering or
12 providing broadband service in the same manner as the service is offered without funding support by the
13 provider in other areas of the state.

14 (9) The department shall set a reasonable timeframe to complete projects selected for funding
15 approval. The department may, in consultation with the applicant, set reasonable milestones regarding this
16 completion. The department shall create procedures associated with any failure to meet milestones without
17 reasonable cause.

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19 **NEW SECTION. Section 8. Implementation.** (1) Consistent with the provisions of [sections 1
20 through 10], the department shall adopt rules within 180 days in accordance with this section that implement
21 the requirements of [sections 1 through 10] and govern the submission, review, and approval of applications
22 and the administration of projects funded by [sections 1 through 10], including rules for grant agreements
23 memorializing the award of funds.

24 (2) These rules must include reasonable oversight and reporting provisions to ensure that project
25 funds are used as intended. These rules may not include third-party audit requirements, a letter of credit or
26 performance bond obligations, financial penalty or liquidated damages provisions, or provisions that are not
27 reasonably related to the deployment of broadband service infrastructure by an applicant in accordance with
28 the purposes and provisions of [sections 1 through 10].

(3) This section may not be construed to preclude the department from considering an applicant's financial ability to complete the project proposed in an application or making reasonable requests for information necessary for the oversight and administration of projects funded under this section.

(4) This section may not be construed to empower the department to adopt any new rules or additional regulatory obligations or to impose any new or additional regulatory requirements on funding recipients, through grant agreements or any other mechanism, other than the program implementation rules expressly authorized in [sections 1 through 10].

NEW SECTION. Section 9. Montana broadband infrastructure account. (1) There is created a Montana broadband infrastructure account.

(a) All money in the account is allocated to the department of commerce to be used solely for the purposes of [sections 1 through 10]. Interest earned on funds in the account must be deposited in the account.

(b) The governor may accept, and shall deposit to the account any gifts, contributions, donations, grants, or federal funds specifically designated for broadband infrastructure deployment for use under the provisions of [sections 1 through 10].

(c) Notwithstanding any other provision of law, funds allocated under this section may not be transferred or expended for any purpose other than to provide funding for projects authorized pursuant to [sections 1 through 10].

NEW SECTION. Section 10. Funds transfer. The state treasurer shall transfer \$2 million from the state general fund to the Montana broadband infrastructure account by August 1, 2021.

NEW SECTION. Section 11. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 90, chapter 1, and the provisions of Title 90, chapter 1, apply to [sections 1 through 10].

NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

1 NEW SECTION. **Section 13. Termination.** [This act] terminates 10 years from [the effective date of
2 this act].

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