SENATE BILL No. 461

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-4.

Synopsis: Broadband development funding. Provides that a state agency that awards a grant to a broadband service provider for purposes of extending broadband service to unserved areas must follow procedures established and guidelines adopted by the office of community and rural affairs for the award of such grants. Provides that a state agency may not award a grant of more than $5,000,000 for any one qualified broadband project. Establishes the rural broadband fund (fund) for the purpose of awarding grants for funding of deployment of broadband infrastructure in unserved areas. Provides that the office of community and rural affairs may make grants from the fund for the purpose of awarding grants for funding of deployment of broadband infrastructure in unserved areas. Makes technical corrections.

Effective: July 1, 2019.

Messmer

January 14, 2019, read first time and referred to Committee on Utilities.
SENATE BILL No. 461

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-4-9.7-9, AS AMENDED BY P.L.177-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 9. (a) The rural economic development fund is established for the purpose of enhancing and developing rural communities. The fund shall be administered by the office.
(b) The expenses of administering the fund shall be paid from the money in the fund.
(c) Notwithstanding IC 5-13, the treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund under IC 5-10.3-5. The treasurer of state may contract with investment management professionals, investment advisers, and legal counsel to assist in the management of the fund and may pay the state expenses incurred under those contracts.
(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.
(e) Money in the fund may be used for the following purposes:
   (1) To create, assess, and assist a pilot project to enhance the
economic and community development in a rural area.

(2) To establish a local revolving loan fund for:

(A) an industrial;
(B) a commercial;
(C) an agricultural; or
(D) a tourist;
venture.

(3) To provide a loan for an economic development project in a rural area.

(4) To provide technical assistance to a rural organization.

(5) To assist in the development and creation of a rural cooperative.

(6) To address rural workforce development challenges.

(7) To assist in addressing telecommunications needs in a rural area. including the awarding of grants under IC 4-4-38.

(8) To provide funding for rural economic development projects concerning the following issues:

(A) Infrastructure, including water, wastewater, and storm water infrastructure needs.
(B) Housing.
(C) Health care.
(D) Local planning.
(E) Land use.
(F) Other rural economic development issues, as determined by the office.

(9) To provide funding for the establishment of new regional rural development groups and the operation of existing regional rural development groups.

(f) Expenditures from the fund are subject to appropriation by the general assembly and approval by the office.

SECTION 2. IC 4-4-38-4, AS ADDED BY P.L.177-2018, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. As used in this chapter, "qualified broadband service provider" means any company, firm, corporation, partnership, or association that, at the time of submission of a grant application under this chapter:

(1) either:

(A) has been providing in the ordinary course of business, provides qualified broadband service; to at least one hundred (100) residences and businesses in Indiana for at least three (3) consecutive years; or

(B) (2) is:
(i) (A) a corporation organized under IC 8-1-13; or
(ii) (B) a corporation organized under IC 23-17 that is an
electric cooperative and that has at least one (1) member that
is a corporation organized under IC 8-1-13;
that provides or will provide, alone or in conjunction with one (1)
or more other legal entities, qualified broadband service within
the corporation's electric service territory. and
(2) has demonstrated, to the satisfaction of the office:
   (A) financial;
   (B) technical; and
   (C) operational;
   capability in building and operating a broadband network.

SECTION 3. IC 4-4-38-5.5 IS ADDED TO THE INDIANA CODE
AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2019]: Sec. 5.5. As used in this chapter, "state agency" means an
authority, board, branch, commission, committee, department,
division, or other instrumentality of the executive, including the
administrative, department of state government. Except as
provided in subdivision (4), the term does not include the judicial
or legislative departments of state government. The term includes
the following:
(1) A state elected official's office.
(2) A state educational institution.
(3) A body corporate and politic of the state created by state
statute.
(4) The Indiana lobby registration commission established by
IC 2-7-1.6-1.

SECTION 4. IC 4-4-38-6.4 IS ADDED TO THE INDIANA CODE
AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2019]: Sec. 6.4. A state agency may award a grant under this
chapter only to a qualified broadband service provider that
demonstrates, to the satisfaction of the state agency:
(1) that the qualified broadband service provider has the:
   (A) financial;
   (B) technical; and
   (C) operational;
   capability to build and operate a broadband network; and
(2) if the qualified broadband service provider is described in
section 4(1) of this chapter, that the qualified broadband
service provider has been providing qualified broadband
service:
   (A) in the ordinary course business; and
(B) to at least one hundred (100) residences and businesses in Indiana; for at least three (3) consecutive years at the time the qualified broadband service provider applies for the grant.

SECTION 5. IC 4-4-38-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6.5. A state agency shall follow:

(1) the procedures established under section 7 of this chapter; and

(2) any guidelines adopted under section 9 of this chapter; before awarding a grant to a qualified broadband service provider for qualified broadband project expenses incurred in connection with a qualified broadband project.

SECTION 6. IC 4-4-38-7, AS ADDED BY P.L.215-2018(ss), SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) Subject to:

(1) subsection (b); and

(2) section 8 of this chapter; and

(3) IC 4-4-9.7-9(f);

the office shall establish procedures for awarding the award of grants from the rural economic development fund established by IC 4-4-9.7-9 by state agencies to qualified broadband service providers for qualified broadband project expenses incurred in connection with qualified broadband projects.

(b) In awarding grants under this chapter, the office shall: The procedures established under subsection (a) must establish the following priorities:

(1) First, extending the deployment of qualified broadband service to areas in which:

(A) Internet connections are unavailable; or

(B) the only available Internet connections provide capacity for transmission at an actual speed of less than ten (10) megabits per second downstream.

(2) Second, extending the deployment of high speed Internet service to areas in which the only available Internet connections provide capacity for transmission at an actual speed of:

(A) not less than ten (10) megabits; and

(B) not more than twenty-five (25) megabits;

per second downstream.

(c) Subject to section 11 of this chapter, the office a state agency shall publish on the office's state agency's Internet web site all grant applications received by the office state agency for a grant under this
chapter. For each grant application received, the **office state agency** shall establish a period of at least thirty (30) days from the date the application is published on the **office's state agency's** Internet web site under this subsection, during which time the **office with state agency** shall accept comments or objections concerning the application. The **office state agency** shall consider all comments or objections received under this subsection in making a determination as to whether to award a grant to an applicant under this chapter.

SECTION 7. IC 4-4-38-8, AS ADDED BY P.L.177-2018, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. (a) In determining whether to award a grant under this chapter in connection with a proposed qualified broadband project, the **office a state agency** shall consider the following:

1. Awarding grants under this chapter with a preference for funding proposed qualified broadband projects that will provide Internet connections to the most unserved areas at the highest speeds for the lowest grant amount per area.
2. The community's need for, and the likely economic impact of, the proposed qualified broadband project in the unserved area.
3. Demonstrated community support for the proposed qualified broadband project, including the certification of one (1) or more communities to be served by the project as broadband ready communities under IC 5-28-28.5.
4. The likelihood that the unserved area will not be served with qualified broadband service without state grant funding.
5. Whether funding has been allocated for the unserved area from the federal Connect America Fund or from any other similar federal funding program.
6. Whether the broadband infrastructure proposed in connection with the qualified broadband project is scalable to higher download and upload speeds.
7. Awarding grants for qualified broadband projects that will serve a larger unserved area or a greater number of locations within an unserved area.
8. The useful life of the broadband network proposed to be deployed.
9. The technical, managerial, and financial capabilities of the applicant.
10. The ability of the applicant to commit to providing at least twenty percent (20%) of the cost to deploy the proposed broadband infrastructure. When multiple applicants apply for a grant to provide broadband service to the same census block...
within an unserved area, the office state agency may establish a
give preference for approving to applications with a greater
capital contribution by the applicant.

(11) Any proposed plans to encourage the adoption and use of
broadband services within the unserved area.

(12) Any other factors the office considers appropriate to enable
the deployment of broadband infrastructure to provide qualified
broadband service in unserved areas in Indiana:

(b) The following conditions apply to the awarding of grants under
this chapter:

(1) The office A state agency shall not award a grant with respect
to any geographic area if information made available to the office;
state agency, through comments or objections received under
section 7(c) of this chapter or otherwise, indicates any of the
following:

(A) The area is already being served by at least one (1)
provider offering qualified broadband service in the area.
However, any person may, in a petition filed with the office;
state agency, provide evidence that one (1) or more locations
within one (1) or more census blocks in the area are unserved
areas. Upon receiving a petition described in this clause, the
office state agency shall notify all broadband providers
operating in all census blocks included in the petition. Those
broadband providers may in turn demonstrate to the office
state agency that the locations included in the petition:

(i) are already served with qualified broadband service; or
(ii) will be served with qualified broadband service not later
than eighteen (18) months after the date of the application
for a grant under this chapter.

(B) The area is currently being built out for qualified
broadband service by a qualified broadband service provider,
and the construction is scheduled to be completed within one
(1) year of the date of an application under this chapter.

(C) The area is currently planned for qualified broadband
service expansion by a qualified broadband service provider:

(i) without state grant funding; and
(ii) with project completion forecast not later than eighteen
(18) months after the date of an application under this
chapter.

If the office state agency denies a grant on the basis of clause
(A)(ii), (B), or (C), the qualified broadband service provider
involved in the current or planned project, as applicable, shall
provide the office state agency with a schedule for completion of
the current or planned build out. The qualified broadband service
provider shall also provide the office state agency with quarterly
status updates, beginning three (3) months after the office's state
agency's decision denying a grant for the area, concerning any
work done toward completion of the project described in clause
(A)(ii), (B), or (C). If the qualified broadband service provider
fails to provide a schedule for completion or a status report by the
date required by the office state agency, or if the office state
agency determines that the time frame for project completion
described in clause (A)(ii), (B), or (C), as applicable, will likely
not be met, the office state agency may award a grant under this
chapter with respect to the area and shall provide notice of that
fact to all former applicants that were previously denied a grant
under this chapter with respect to the area on the basis of clause
(A)(ii), (B), or (C). The qualified broadband service provider that
failed to provide a schedule or report, or that failed to meet the
time frame for project completion described in clause (A)(ii), (B),
or (C), may not use this subdivision to subsequently challenge the
awarding of a grant under this chapter with respect to the same
area.

(2) The office A state agency shall not award a grant to any
applicant that is receiving for the same unserved area for which
a grant is sought under this chapter:

(A) a federal grant; or

(B) another state grant;

to provide qualified broadband service to the area under a grant
program the express purpose of which is to provide broadband
service to unserved areas.

(3) The office A state agency shall not discriminate between
different types of technology used to provide qualified broadband
service in connection with proposed qualified broadband projects.

(4) The office A state agency shall seek any assurances that may
be necessary or appropriate to ensure that proposed qualified
broadband projects will be substantially completed within the
time period set forth in a grant application under this chapter.

(5) The office A state agency shall condition the release of any
grant funds awarded under this chapter on:

(A) the progressive completion, as measured on a not more
than quarterly basis, of the approved qualified broadband
project; and

(B) operational testing, when possible, to confirm the level of
service proposed in the grant application.
Once funds have been released in accordance with this
subdivision, all authority and ownership of the broadband
infrastructure vests with the qualified broadband service provider
that built the infrastructure.
(6) A state agency may not award a grant of more than five
million dollars ($5,000,000) for any one qualified broadband project.

SECTION 8. IC 4-4-38-9, AS ADDED BY P.L.177-2018,
SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2019]: Sec. 9. (a) The office shall adopt guidelines to
implement this chapter, including guidelines governing:
(1) the form and content of requests to provide qualified
broadband service to an unserved area;
(2) the form and content of applications for grants under this
chapter;
(3) a competitive bidding process or a process for requests for
proposals for qualified broadband projects;
(4) a process by which a broadband provider may challenge the
designation of an area as unserved; and
(5) a process by which:
(A) a person may, in a petition filed with the office, a state
agency, provide evidence that one or more locations within
one or more census blocks are unserved areas; and
(B) upon the filing of a petition described in clause (A):
(i) the office state agency notifies all broadband providers
operating in all census blocks included in the petition; and
(ii) those broadband providers have the opportunity to
demonstrate to the office state agency that the locations
included in the petition are already served with qualified
broadband service or will be served with qualified
broadband service not later than eighteen (18) months after
the date of the application for a grant under this chapter.

(b) In adopting the guidelines described in subsection (a) or in
otherwise administering this chapter, the office may collaborate with
or seek guidance from:
(1) the Indiana economic development corporation established by
IC 5-28-3-1;
(2) the broadband ready communities development center
established by IC 5-28-28.5-5;
(3) the Indiana department of transportation established by
IC 8-23-2-1; and
(4) any other agencies of the state or of political subdivisions of the state.

SECTION 9. IC 4-4-38-10, AS ADDED BY P.L.177-2018, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 10. (a) Not later than August 1 of each year, the office shall submit to the general assembly a report on the office's activities award of grants under this chapter during the most recent state fiscal year, including the following:

(1) The number, amounts, and recipients of grants awarded under this chapter.
(2) The status of any funded qualified broadband projects.
(3) Expenses incurred and funds spent by the office in administering this chapter.
(4) A list of the entities, if any, that the office collaborated with in administering this chapter.
(5) An accounting of funds in the rural economic development broadband fund established by IC 4-4-9.7-9; section 12 of this chapter, including funds awarded as grants under this chapter.
(6) The number of locations in Indiana to which broadband infrastructure has been deployed with the use of grant funds under this chapter, including address-level information for newly connected locations.
(7) The overall progress of the deployment of broadband infrastructure for the provision of qualified broadband service in unserved areas in Indiana.

A report to the general assembly under this subsection must be in an electronic format under IC 5-14-6.

(b) Every three (3) years, beginning in 2021, the state board of accounts shall conduct an audit of the awarding of grants under this chapter during the most recent three (3) state fiscal years. A report of an audit conducted under this subsection shall be submitted to the general assembly in an electronic format under IC 5-14-6 not later than December 31 of the calendar year that includes the end of the third state fiscal year covered by the audit.

SECTION 10. IC 4-4-38-11, AS ADDED BY P.L.177-2018, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 11. The office, a state agency, and any agency or any political subdivision with which the office cooperates or consults in administering making a grant under this chapter:

(1) shall not disclose information designated as confidential or proprietary business information by a grant applicant or recipient; and
(2) shall execute appropriate nondisclosure agreements to prevent
the disclosure of confidential or proprietary business information
in connection with grants awarded under this chapter.
SECTION 11. IC 4-4-38-12 IS ADDED TO THE INDIANA CODE
AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2019]: Sec. 12. (a) The rural broadband fund is established for
the purpose of funding deployment of broadband infrastructure in
unserved areas.
(b) The office shall administer the fund.
(c) The fund consists of:
   (1) money appropriated by the general assembly;
   (2) money received from federal grants or programs for
       broadband infrastructure;
   (3) donations, gifts, and money received from any other
       source, including transfers from other funds or accounts; and
   (4) toll road revenues deposited in the fund by the department
       of transportation.
(d) The treasurer of state shall invest the money in the fund not
currently needed to meet the obligations of the fund in the same
manner as other public funds may be invested.
(e) Money in the fund at the end of a state fiscal year does not
revert to the state general fund but remains in the fund to be used
exclusively for the purposes of this chapter.
SECTION 12. IC 4-4-38-13 IS ADDED TO THE INDIANA CODE
AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2019]: Sec. 13. The office may award grants under this chapter
from the rural broadband fund established by section 12 of this
chapter to qualified broadband service providers for qualified
broadband project expenses incurred in connection with qualified
broadband projects.