

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 ACCOUNTS; ESTABLISHING THE MONTANA BROADBAND DEPLOYMENT GRANT PROGRAM; PROVIDING AN APPLICATION A PROPOSAL PROCESS; PROVIDING DEFINITIONS; PROVIDING FOR AN APPROPRIATION; AMENDING SECTION 2-17-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

NEW SECTION. Section 1. Short title. [Sections 1 through 9] may be cited as the "ConnectMT Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 9], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Broadband service" means any commercially mature, universally available, terrestrially deployed technology having the capacity to transmit data from or to the internet at minimum speeds downstream and upstream at low latency to accommodate adequate and commonly used internet-based applications for residential, commercial, or government use.

(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, business, and government customers.

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

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

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

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

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

5 (6) "Frontier area" means an area where there is no or extremely limited terrestrial broadband service.

6 (7) "Low latency" means latency that is sufficiently low to allow multiple, simultaneous, real-time
7 interactive applications.

8 (8) "Project" means a proposed deployment of broadband service infrastructure set forth in a proposal
9 for funding authorized under [sections 1 through 9].

10 (9) "Project area" means a shapefile area in an unserved or underserved area where the proposed
11 broadband service infrastructure would be built as described in a proposal for funding authorized under
12 [sections 1 through 9].

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

16 (11) "Underserved area" means an area where any of the delivery points have no access to broadband
17 service offered with a download speed range of less than 100 megabits per second and an upload speed of 20
18 megabits per second or less with low latency.

19 (12) "Unserved area" means a project area where at least 10% of delivery points have no access to
20 broadband service or have no access to services operating with a download speed of at least 25 megabits per
21 second and upload speed of at least 10 megabits per second with low latency.

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23 **NEW SECTION. Section 3. Establishment of program -- administration and funding.** (1) The
24 department shall establish the broadband infrastructure deployment program and shall administer and act as
25 the fiscal agent for the program and is responsible for receiving and reviewing responsive proposals and
26 awarding contracts after review by the communications advisory commission provided for in House Bill No. 632
27 and the governor's approval. A request for proposal may be canceled or any proposal may be rejected in whole
28 or in part when it is in the best interests of the state.

1 (2) Funding for the program established under this section is subject to appropriations from general
2 fund revenue, from bonds issued by the department, or federal broadband stimulus funds or other federal funds
3 appropriated by congress and allocated to the department for funding of broadband communications projects.
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5 **NEW SECTION. Section 4. Eligible projects.** (1) An eligible provider may be awarded funding under
6 this section for a project in a project area that, as of the date the proposal is filed, constitutes an unserved or
7 underserved area as defined in [section 2]. Funds may not be used to support noncapital expenses, including
8 general operations of an eligible provider, nonbroadband services, marketing, or advertising.

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

11 (3) The department may issue requests for proposals or accept proposals from eligible providers or
12 solicit proposals for specific eligible projects as designated by the department, which would be submitted as
13 proposals pursuant to [section 1 through 9].
14

15 **NEW SECTION. Section 5. Eligible proposals.** Eligible providers who submit responsive proposals:

16 (1) may not receive funds under any other federal or state government grant or loan program where
17 government funding supports 100% of the proposed project's capital costs;

18 (2) shall commit to paying a minimum of 20% of the project costs and may not provide a minimum
19 matching amount from any funds derived from government grants or subsidies, except for federal funds
20 designated for broadband deployment. Priority will be given to the eligible provider who contributes the largest
21 percentage of costs from its own funds. Local and tribal governments, in partnership with an eligible provider
22 may provide funding for broadband infrastructure projects consistent with the provisions of [section 1 through 9]
23 except that such funds may not be counted toward the minimum 20% matching amount from a provider.

24 (3) may only be a nongovernment entity with demonstrated experience in providing broadband
25 service or other communications services to end-user residential or business customers in the state.
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27 **NEW SECTION. Section 6. Proposals.** (1) The department shall establish a location prioritized
28 timeframe commencing an open process for submission of proposals for funding under the proposal program

1 established in [sections 1 through 9]. The window for submission must be at least 60 days and not more than
2 90 days for any shapefile area designation.

3 (2) An eligible provider shall submit a proposal to the department on a form prescribed by the
4 department. A responsive proposal must include the following information:

5 (a) evidence demonstrating the provider's technical, financial, and managerial resources and
6 experience to provide broadband service or other communications services to customers in the state, and the
7 ability to build, operate, and manage broadband service networks serving business and residential customers in
8 the state;

9 (b) a description of the project area, including shapefiles, that the eligible provider proposes to build or
10 serve and specific mapping of currently served areas, if any, including actual speed verification;

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

13 (d) evidence, including a certification from the proposal signatory, demonstrating the unserved or
14 underserved nature of the project area to the best of the provider's knowledge;

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

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

18 (g) the amount of matching funds, including funds from local or tribal governments, and except for
19 federal funds designated for broadband deployment, the eligible provider proposes to contribute and a
20 certification that no portion of the provider's matching funds are derived from any federal or state grant
21 program; and

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

25 (3) The department shall treat any information that is not publicly available as confidential and subject
26 to the trade secrets protections of state law upon an eligible provider's request for confidential treatment, except
27 that shapefile information depicting broadband coverage must be publicly disclosed in sufficient detail to enable
28 a challenging provider to identify the area covered by the provider.

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

(2) A broadband service provider that has timely submitted a proposal may submit to the department, within 30 days of the release of the proposals received, a written challenge to the proposals. The challenge must also include a new proposal that identifies improvements or increases in broadband speed, lower cost, area coverage, or completion date relative to the submitted proposals. Final response to challenges will be provided within 15 days of receipt of challenge for the purpose of expediting awarded projects or modifications accepted through the challenge process. This challenge may include:

(a) information irrefutably disputing a provider's certification that a proposed project area is an unserved or an underserved area supported by the department's verified independent analysis and testing;

(b) that no federal funding has been awarded to support the specific deployment proposed in the response pursuant to [section 5(1)]; and

(c) evidence of broadband service infrastructure meeting or exceeding minimum standards for competitive proposals in the project area under challenge.

(3) Public shapefile data that includes the project area created under the FCC's rules for shapefiles must constitute evidence of broadband service infrastructure sufficient to show that a challenged project area is served completely beyond minimum standards.

(4) In reviewing proposals 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 or underserved areas. The department may require a provider or challenging provider to submit additional information consistent with [section 1 through 9] to enable it to properly assess the proposal or challenge. The department may not award a contract to fund deployment of broadband service infrastructure for a project area that fails to meet any of the criteria provided in [sections 1 through 9] for being an unserved or underserved area. The department may require a provider to modify a proposal based on broadband access in the proposed area or other relevant factors.

(5) The department shall award funding support for projects set forth in responsive proposals based

1 on a scoring system that must be released to the public at least 30 days prior to the window for submission of
2 proposals. The weighting scheme employed by the department must give the highest weight or priority to the
3 following specific criteria:

4 (a) the amount of funds a local government and/or school district is contributing to the project relative
5 to the amount of federal funds received by that local government and/or school district from the American
6 Rescue Plan Act of 2021;

7 (b) whether the proposed project area is a frontier, unserved, or underserved area, with frontier and
8 unserved areas receiving greater weight;

9 (c) the size and scope of the frontier, unserved, or underserved area proposed to be served;

10 (d) the experience, technical ability, and financial soundness of the eligible provider in successfully
11 deploying and providing broadband service;

12 (e) the length of time the provider has been providing broadband service in the state;

13 (f) the extent to which government funding support is necessary to deploy broadband service
14 infrastructure in the proposed project area;

15 (g) the size and proportion of the matching funds proposed to be committed by the provider;

16 (h) the service speed thresholds proposed in the proposal and the scalability of the broadband service
17 infrastructure proposed to be deployed with higher speed thresholds receiving greater weight;

18 (i) the provider's ability to leverage its own nearby or adjacent broadband service infrastructure to
19 facilitate the cost-effective deployment of broadband service infrastructure in the proposed project area;

20 (j) the extent to which the project does not duplicate any existing broadband service infrastructure in
21 the proposed project area;

22 (k) the estimated time in which the provider proposes to complete the proposed project;

23 (l) the number of Montana jobs the provider proposes to create or maintain relative to the population
24 of the region where service is proposed; and

25 (m) any other factors the department determines to be reasonable and appropriate, consistent with
26 the purpose of facilitating the economic deployment of broadband service infrastructure to unserved or
27 underserved areas.

28 (6) Frontier areas will be considered for services to the extent terrestrial service is economically

1 viable.

2 (7) The department shall set a reasonable timeframe to complete projects selected for funding
3 approval. The department may, in consultation with the provider, set reasonable milestones regarding this
4 completion. The department shall create procedures including penalties associated with any failure to comply
5 with the provisions of the awarded contract without reasonable cause.

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7 **NEW SECTION. Section 8. Implementation.** (1) Consistent with the provisions of [sections 1
8 through 9], the department shall define criteria and implementation processes to ensure that project funds are
9 used as intended.

10 (2) This section may not be construed to preclude the department from considering a provider's
11 financial ability to complete the project proposed in a proposal or making reasonable requests for information
12 necessary for the oversight and administration of projects funded under this section.

13 (3) This section may not be construed to empower the department to adopt any additional regulatory
14 obligations or to impose any new or additional regulatory requirements on funding recipients, through proposal
15 agreements or any other mechanism, other than the program implementation procedures expressly authorized
16 in [section 1 through 9].

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18 **NEW SECTION. Section 9. Montana broadband infrastructure accounts.** (1) (a) There is a federal
19 special Montana broadband infrastructure account.

20 (b) All money in the account is allocated to the department of commerce to be used solely for the
21 purposes of [section 1 through 9]. Interest earned on funds in the account must be deposited in the account.

22 (c) The governor may accept and shall deposit into the account federal broadband stimulus funds or
23 other federal funds or other federal funds appropriated by congress and allocated to the department of
24 commerce for funding of broadband communications projects.

25 (d) Notwithstanding any other provision of law, funds allocated under this section may not be
26 transferred or expended for any purpose other than to provide funding for projects authorized pursuant to
27 [sections 1 through 9].

28 (2) (a) There is a state special Montana broadband infrastructure account.

1 (b) All money in the account is allocated to the department of commerce to be used solely for the
2 purposes of [sections 1 through 9]. Interest earned on funds in the account must be deposited in the account.

3 (c) The governor may accept and shall deposit to the account any penalties allocated to the
4 department of commerce for funding of broadband communications projects.

5 (d) Notwithstanding any other provision of law, funds allocated under this section may not be
6 transferred or expended for any purpose other than to provide funding for projects authorized pursuant to
7 [section 1 through 9].

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9 NEW SECTION. **Section 10. Appropriation.** For the biennium beginning July 1, 2021, there is
10 appropriated \$500,000 from the state special revenue account provided for in [section 9(2)] to the department
11 of commerce for enforcing the implementation of [this act].

12
13 NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 9] are intended to be
14 codified as an integral part of Title 90, chapter 1, and the provisions of Title 90, chapter 1, apply to [sections 1
15 through 9].

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

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19 NEW SECTION. **Section 13. Contingent termination.** [Sections 1 through 9] terminate when the
20 budget director certifies to the code commissioner that all funds received from the American Rescue Plan Act of
21 2021, Public Law 117-2, or subsequent funding pursuant to [section 3(2)] allocated to the department of
22 commerce for communications have been expended.

23 - END -