102ND GENERAL ASSEMBLY
State of Illinois
2021 and 2022
SB3683

Introduced 1/21/2022, by Sen. Patrick J. Joyce

SYNOPSIS AS INTRODUCED:

New Act
5 ILCS 140/7.5

Creates the Illinois Broadband Deployment, Equity, Access, and Affordability Act of 2022. Provides that access to affordable, reliable, high-speed broadband service is essential to full participation in modern life in the State and throughout the United States. Defines terms. Provides that the Department of Commerce and Economic Opportunity shall establish and implement a statewide broadband service grant program. Provides that the Department shall use money from the grant program only for the exclusive purpose of awarding grants to applicants for projects that are limited to the construction and deployment of broadband service into unserved areas in the State and for the Department's cost to administer the program. Provides that the Department shall not award grant money to a governmental entity or educational institution. Provides that the Department shall not, as a condition of an award of grant money, impose an open network architecture requirement, rate regulation, or other term or condition of service that differs from the applicant's terms or conditions of service in its other service areas. Includes provisions providing for the criteria for determining the award of funds, the priority by which the Department shall follow in granting awards, and when the Department shall not award a grant to an applicant. Provides that when a grant is awarded, the Department shall provide notice on its website of each application receiving a grant. Provides that the Department shall require an applicant awarded a grant to submit a semi-annual report from the time the applicant receives the grant to 3 years after completion of the project. Makes a conforming change in the Freedom of Information Act. Effective immediately.
AN ACT concerning regulation.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Illinois Broadband Deployment, Equity, Access, and Affordability Act of 2022.

Section 5. Findings. The General Assembly finds:

(1) that access to affordable, reliable, high-speed broadband service is essential to full participation in modern life in the State and throughout the United States;

(2) that the persistent "digital divide" in the State and in the United States is a barrier to the economic competitiveness in the economic distribution of essential public services, including health care and education;

(3) that the digital divide disproportionately affects communities of color, lower-income areas, and rural areas, and the benefits of broadband should be broadly enjoyed by all;

(4) that on November 15, 2021, the Infrastructure, Investment and Jobs Act was signed into law by President Biden which provides for historic levels of investment in the nation's infrastructure, including $65,000,000,000 to construct and upgrade networks used to provide high-speed
internet access, as well as making permanent a program that reduces the cost to low-income consumers purchasing these services;

(5) that federal funding from the Infrastructure Investment and Jobs Act for the construction and deployment of broadband infrastructure will primarily be disbursed in the form of one-time grants to states, territories, tribal organizations, and other governmental entities, in some instances for those entities to further distribute the funding to private industry through a subgrant process; and

(6) that in addition to the network and affordability funding provisions, the Infrastructure Investment and Jobs Act also establishes 2 grant programs to promote digital equity, which will provide up to $1,500,000,000 to states and territories, and entities such as nonprofit foundations and anchor institutions, to implement programs that promote digital equity and increase broadband adoption.

Section 10. Purpose. The purpose of this Act is to enact all necessary legal requirements, to adopt all required policies, and to establish the exclusive processes that the State will use to distribute and grant funds the State receives pursuant to the federal Infrastructure Investment and Jobs Act.
Section 15. Definitions. As used in this Act:

"Applicant" means a provider that submits an applicant for a grant after collaborating with the community in the unserved area.

"Broadband service" means a retail service, not including a satellite service, capable of delivering high-speed internet access at speeds of at least 100 megabits per second downstream and 20 megabits per second upstream.

"Department" means the Department of Commerce and Economic Opportunity.

"Deployed" means that a provider meets either of the following:

(1) currently provides broadband service of at least 100 megabits per second download and 20 megabits per second upload in the specific geographic area of the proposed project of the applicant; or

(2) is able to provide broadband service of at least 100 megabits per second download and 20 megabits per second upload in a specific geographic area of the proposed project of the applicant to a customer that requests that service not later than 30 days after the customer requests installation of that service and without an extraordinary commitment of resources or construction charges or fees exceeding an ordinary service activation fee. The 30-day period is extended to 60 days if permits
are needed before the broadband service is activated.

"Provider" means any of the following:

(1) an entity that is a holder under the Cable and Video Competition Law of 2007;

(2) an entity providing cable services or video services in a particular area under a franchise agreement with a unit of local government pursuant to Section 11-42-11 of the Illinois Municipal Code or Section 5-1095 of the Counties Code; or

(3) an entity currently providing broadband service in this State on a commercial basis to its subscribers.

"Person" includes an individual, community organization, cooperative association, corporation, federally recognized Indian tribe, limited liability company, nonprofit corporation, partnership, or political subdivision of this State.

"Unserved area" means an area lacking access to broadband service from at least one internet service provider according to the map provided by the Federal Communications Commission pursuant to 47 USC 641, the Broadband Deployment Accuracy and Technological Availability Act.

Section 20. Establishment of the statewide broadband service grant program. The Department shall establish and implement a statewide broadband service grant program. The program shall consist of all money designated, accepted, or
appropriated by the State for broadband deployment, all money received from the federal government awarded to or allocated by the State for broadband deployment, and donations, gifts, and money received from any other source, including transfers from other funds or accounts.

Section 25. Grants exclusive to unserved areas.

(a) The Department shall use money from the grant program only for the exclusive purpose of awarding grants to applicants for projects that are limited to the construction and deployment of broadband service into unserved areas in the State and for the Department's costs to administer the program.

(b) The Department shall not, directly or indirectly, award grant money to a governmental entity or educational institution or affiliate to own, purchase, construct, operate, or maintain a communications network, or to provide service to any residential or commercial premises.

(c) The Department shall not, as a condition of an award of grant money, impose an open network architecture requirement, rate regulation, or other term or condition of service that differs from the applicant's terms or conditions of service in its other service areas.

(d) An applicant shall not receive a grant for the same project or geographic area for which the applicant has obtained federal, State, or local government funding awarded
specifically to support the expansion of broadband networks. The Department shall not award more than $10,000,000 to any one project or to any one applicant. The Department shall award initial grant money within 270 days after the money is made available under this program.

Section 30. Competitive grant process.

(a) An award of funds must be issued by a competitive grant process. The grant process must be technology neutral and result in awards to applicants proposing projects based on objective and efficient procedures. The criteria for determining the award of funds must include the following:

1. the applicant's experience and financial wherewithal;
2. the readiness to build, operate, and maintain the project;
3. the long-term viability of the project;
4. the scalability of the network;
5. the applicant's ability to leverage broadband for community and economic development; and
6. the applicant's ability to provide discounted broadband service throughout the unserved area to low-income households.

(b) Priority must be given to projects that:

1. demonstrate collaboration to achieve community investment and economic development goals of the area
impacted;

(2) are able to demonstrate that they have the managerial, financial, and technical ability to build, operate, and manage a broadband network; and

(3) demonstrate that the project, to the greatest extent possible, hire women-owned, minority-owned, and veteran-owned businesses in the construction and completion of the project.

(c) Within 30 days after receiving an appropriation or federal funding to implement this Act, the Department shall establish and publish on the Department's website the criteria for competitively scoring applications. Within 60 days after the Department publishes the criteria, an applicant shall submit an application for funding of the proposed project.

Section 35. Application for a grant.

(a) An applicant for a grant under this Act shall provide the following information on the application:

(1) the location of the project in the unserved area described by either the specific street addresses to be served or a shapefile as that term is defined in 47 USC 641;

(2) the kind and amount of broadband infrastructure to be purchased for the project;

(3) evidence regarding the unserved nature of the community in which the project is to be located;
(4) the number of households that will have access to broadband service as a result of the project, or whose internet access service will be upgraded to broadband service as a result of the project;

(5) the significant community institutions that will benefit from the proposed project;

(6) evidence of community support for the project with a narrative on the impact that the investment will have on community and economic development efforts in the area;

(7) the total cost of the project and a detailed budget and schedule for the project;

(8) all sources of funding or in-kind contributions for the project in addition to any grant award; and

(9) the Internet service provider's experience and financial wherewithal.

(b) The applicant's trade secrets, financial information, and proprietary information submitted under this Act as part of an applicant are exempt from disclosure under the Freedom of Information Act.

(c) After scoring and considering all grant applications, the Department shall make grant award recommendations. The Department shall give priority in making grant award recommendations to applicants that demonstrate one or more of the following:

(1) collaboration to achieve community investment and economic development goals of an impacted area;
(2) the applicant has the managerial, financial, and technical ability to build, operate, and manage a broadband network;

(3) the likelihood that the unserved area will not be served without State grant funding;

(4) the project will serve a larger unserved area or a greater number of locations within an unserved area than other proposed applications; and

(5) the ability of the applicant to commit to providing at least 20% of the cost to deploy the project set forth in the applicant. This commitment must consist of actual capital contribution and is exclusive of in-kind contributions or sunk costs.

(d) Within 30 days after the award recommendations have been made, the Department shall publish on its website the grant applications, redacted and consistent with the Freedom of Information Act, the proposed geographic broadband service area, and the proposed broadband service speeds for each application that receives an award recommendation.

(e) Before granting an award to an applicant, the Department shall establish a period of at least 60 days after the date the award recommendations are published on the Department's website, during which time the Department shall accept comments or objections concerning each application. The Department shall consider all comments or objections received, and investigate them as needed, in deciding whether an
applicant is eligible for a grant. If an objection submitted by a provider contains information that requires an investigation and the objection is found to be inaccurate, the provider shall reimburse the Department for the cost of verifying the information.

(f) The Department shall not award a grant to an applicant if information made available to the Department through comments or objections received under Section 8 of this Chapter or otherwise indicate any of the following:

(1) the proposed project includes an area where at least one provider has deployed broadband service;

(2) the Department receives a sworn statement from an officer of an Internet service provider that the proposed project includes an area where construction of a network to provide broadband service is underway, and the construction is scheduled to be completed within one year after the date of the application; or

(3) the Department receives a sworn statement from an officer of an Internet service provider that the proposed project includes:

(A) a specific geographical area where an Internet service provider has been selected to receive, provisionally or otherwise, funding from the Federal Communications Commission or the United States Department of Agriculture specifically for the expansion of broadband services. This subparagraph
does not apply to an area once either of the following has occurred:

(i) the Internet service provider does not complete the requirements for obtaining the funding described in this subparagraph; or

(ii) the time period for the Internet service provider to meet its obligation described in this subparagraph has expired and the area remains unserved; or

(B) an area where the construction of a network to provide broadband service is to be completed no later than 2 years after the date of an application.

(g) The Department's decision to award or deny a grant application pursuant to this Act is a final administrative decision subject to the Administrative Review Law.

(h) Any entity or individual affiliated with an entity that has provided consulting services to or partnered with any State executive branch agency or department to conduct workshops in relation to the State's policies or programs impacting broadband service deployment, access, and infrastructure, regardless of whether the consulting services were provided to the State for compensation, is, for a period of 2 years after the conclusion of any engagement, prohibited from accepting employed or receiving compensation from any grantee, and is prohibited from accepting or benefiting from any grant funds awarded by the State pursuant to this Act. For
the purposes of this Act, "consulting services" do not include advice, consultation, or participation to or with the State on grant applications to the federal government. Acknowledgment of and compliance with the provisions of this Section must be certified to in writing by the applicant and by all subgrantees and subcontractors of the applicant. The Department shall not consider and shall deny any grant application that fails to include such written acknowledgments.

Section 40. Notice on Department website. At the time a grant is awarded to an applicant, the Department shall immediately provide notice on its website of each application receiving a grant, including the name of the entity, the amount of money being received, the broadband speed, and the unserved area for which the applicant is receiving the grant.

Section 45. Annual reports from applicants. The Department shall require an applicant awarded a grant to submit a semi-annual report from the time the applicant receives the grant to 3 years after completion of the project. The semi-annual reports must be made available on the Department's website with any proprietary information redacted. The reports must be in a format specified by the Department and give an accounting by the applicant of the use of the money received and the progress toward fulfilling the objectives for which
the money was granted, including:

(1) the number and location of residences and businesses that will have access to the broadband service;
(2) the speed of broadband service;
(3) the average price of broadband service; and
(4) the broadband service adoption rates.

Section 50. False statements. A person that files a false statement under this Act is ineligible to receive a grant under this Act.

Section 65. The Freedom of Information Act is amended by changing Section 7.5 as follows:

(5 ILCS 140/7.5)
Sec. 7.5. Statutory exemptions. To the extent provided for by the statutes referenced below, the following shall be exempt from inspection and copying:

(a) All information determined to be confidential under Section 4002 of the Technology Advancement and Development Act.
(b) Library circulation and order records identifying library users with specific materials under the Library Records Confidentiality Act.
(c) Applications, related documents, and medical records received by the Experimental Organ Transplantation
Procedures Board and any and all documents or other
records prepared by the Experimental Organ Transplantation
Procedures Board or its staff relating to applications it
has received.

(d) Information and records held by the Department of
Public Health and its authorized representatives relating
to known or suspected cases of sexually transmissible
disease or any information the disclosure of which is
restricted under the Illinois Sexually Transmissible
Disease Control Act.

(e) Information the disclosure of which is exempted
under Section 30 of the Radon Industry Licensing Act.

(f) Firm performance evaluations under Section 55 of
the Architectural, Engineering, and Land Surveying
Qualifications Based Selection Act.

(g) Information the disclosure of which is restricted
and exempted under Section 50 of the Illinois Prepaid
Tuition Act.

(h) Information the disclosure of which is exempted
under the State Officials and Employees Ethics Act, and
records of any lawfully created State or local inspector
general's office that would be exempt if created or
obtained by an Executive Inspector General's office under
that Act.

(i) Information contained in a local emergency energy
plan submitted to a municipality in accordance with a
local emergency energy plan ordinance that is adopted

(j) Information and data concerning the distribution
of surcharge moneys collected and remitted by carriers
under the Emergency Telephone System Act.

(k) Law enforcement officer identification information
or driver identification information compiled by a law
enforcement agency or the Department of Transportation
under Section 11-212 of the Illinois Vehicle Code.

(l) Records and information provided to a residential
health care facility resident sexual assault and death
review team or the Executive Council under the Abuse
Prevention Review Team Act.

(m) Information provided to the predatory lending
database created pursuant to Article 3 of the Residential
Real Property Disclosure Act, except to the extent
authorized under that Article.

(n) Defense budgets and petitions for certification of
compensation and expenses for court appointed trial
counsel as provided under Sections 10 and 15 of the
Capital Crimes Litigation Act. This subsection (n) shall
apply until the conclusion of the trial of the case, even
if the prosecution chooses not to pursue the death penalty
prior to trial or sentencing.

(o) Information that is prohibited from being
disclosed under Section 4 of the Illinois Health and
Hazardous Substances Registry Act.

(p) Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the Department of Transportation under Sections 2705-300 and 2705-616 of the Department of Transportation Law of the Civil Administrative Code of Illinois, the Regional Transportation Authority under Section 2.11 of the Regional Transportation Authority Act, or the St. Clair County Transit District under the Bi-State Transit Safety Act.

(q) Information prohibited from being disclosed by the Personnel Record Review Act.

(r) Information prohibited from being disclosed by the Illinois School Student Records Act.

(s) Information the disclosure of which is restricted under Section 5-108 of the Public Utilities Act.

(t) All identified or deidentified health information in the form of health data or medical records contained in, stored in, submitted to, transferred by, or released from the Illinois Health Information Exchange, and identified or deidentified health information in the form of health data and medical records of the Illinois Health Information Exchange in the possession of the Illinois Health Information Exchange Office due to its administration of the Illinois Health Information
Exchange. The terms "identified" and "deidentified" shall be given the same meaning as in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, or any subsequent amendments thereto, and any regulations promulgated thereunder.

(u) Records and information provided to an independent team of experts under the Developmental Disability and Mental Health Safety Act (also known as Brian's Law).

(v) Names and information of people who have applied for or received Firearm Owner's Identification Cards under the Firearm Owners Identification Card Act or applied for or received a concealed carry license under the Firearm Concealed Carry Act, unless otherwise authorized by the Firearm Concealed Carry Act; and databases under the Firearm Concealed Carry Act, records of the Concealed Carry Licensing Review Board under the Firearm Concealed Carry Act, and law enforcement agency objections under the Firearm Concealed Carry Act.

(v-5) Records of the Firearm Owner's Identification Card Review Board that are exempted from disclosure under Section 10 of the Firearm Owners Identification Card Act.

(w) Personally identifiable information which is exempted from disclosure under subsection (g) of Section 19.1 of the Toll Highway Act.

(x) Information which is exempted from disclosure under Section 5-1014.3 of the Counties Code or Section

(y) Confidential information under the Adult Protective Services Act and its predecessor enabling statute, the Elder Abuse and Neglect Act, including information about the identity and administrative finding against any caregiver of a verified and substantiated decision of abuse, neglect, or financial exploitation of an eligible adult maintained in the Registry established under Section 7.5 of the Adult Protective Services Act.

(z) Records and information provided to a fatality review team or the Illinois Fatality Review Team Advisory Council under Section 15 of the Adult Protective Services Act.

(aa) Information which is exempted from disclosure under Section 2.37 of the Wildlife Code.

(bb) Information which is or was prohibited from disclosure by the Juvenile Court Act of 1987.

(cc) Recordings made under the Law Enforcement Officer-Worn Body Camera Act, except to the extent authorized under that Act.

(dd) Information that is prohibited from being disclosed under Section 45 of the Condominium and Common Interest Community Ombudsperson Act.

(ee) Information that is exempted from disclosure under Section 30.1 of the Pharmacy Practice Act.

(ff) Information that is exempted from disclosure
under the Revised Uniform Unclaimed Property Act.

(gg) Information that is prohibited from being disclosed under Section 7-603.5 of the Illinois Vehicle Code.

(hh) Records that are exempt from disclosure under Section 1A-16.7 of the Election Code.

(ii) Information which is exempted from disclosure under Section 2505-800 of the Department of Revenue Law of the Civil Administrative Code of Illinois.

(jj) Information and reports that are required to be submitted to the Department of Labor by registering day and temporary labor service agencies but are exempt from disclosure under subsection (a-1) of Section 45 of the Day and Temporary Labor Services Act.

(kk) Information prohibited from disclosure under the Seizure and Forfeiture Reporting Act.

(ll) Information the disclosure of which is restricted and exempted under Section 5-30.8 of the Illinois Public Aid Code.

(mm) Records that are exempt from disclosure under Section 4.2 of the Crime Victims Compensation Act.

(nn) Information that is exempt from disclosure under Section 70 of the Higher Education Student Assistance Act.

(oo) Communications, notes, records, and reports arising out of a peer support counseling session prohibited from disclosure under the First Responders
Suicide Prevention Act.

(pp) Names and all identifying information relating to an employee of an emergency services provider or law enforcement agency under the First Responders Suicide Prevention Act.

(qq) Information and records held by the Department of Public Health and its authorized representatives collected under the Reproductive Health Act.

(rr) Information that is exempt from disclosure under the Cannabis Regulation and Tax Act.

(ss) Data reported by an employer to the Department of Human Rights pursuant to Section 2-108 of the Illinois Human Rights Act.

(tt) Recordings made under the Children's Advocacy Center Act, except to the extent authorized under that Act.

(uu) Information that is exempt from disclosure under Section 50 of the Sexual Assault Evidence Submission Act.

(vv) Information that is exempt from disclosure under subsections (f) and (j) of Section 5-36 of the Illinois Public Aid Code.

(ww) Information that is exempt from disclosure under Section 16.8 of the State Treasurer Act.

(xx) Information that is exempt from disclosure or information that shall not be made public under the Illinois Insurance Code.
(yy) Information prohibited from being disclosed under the Illinois Educational Labor Relations Act.

(zz) Information prohibited from being disclosed under the Illinois Public Labor Relations Act.

(aaa) Information prohibited from being disclosed under Section 1-167 of the Illinois Pension Code.

(bbb) (eee) Information that is prohibited from disclosure by the Illinois Police Training Act and the Illinois State Police Act.

(ccc) (ddd) Records exempt from disclosure under Section 2605-304 of the Illinois Department of State Police Law of the Civil Administrative Code of Illinois.

(ddd) (bbb) Information prohibited from being disclosed under Section 35 of the Address Confidentiality for Victims of Domestic Violence, Sexual Assault, Human Trafficking, or Stalking Act.

(eee) (ddd) Information prohibited from being disclosed under subsection (b) of Section 75 of the Domestic Violence Fatality Review Act.

(fff) Information prohibited from being disclosed under subsection (b) of Section 35 of the Illinois Broadband Deployment, Equity, Access, and Affordability Act of 2022.

(Source: P.A. 101-13, eff. 6-12-19; 101-27, eff. 6-25-19; 101-81, eff. 7-12-19; 101-221, eff. 1-1-20; 101-236, eff. 1-1-20; 101-375, eff. 8-16-19; 101-377, eff. 8-16-19; 101-452,
Section 99. Effective date. This Act takes effect upon becoming law.