

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 387
Committee Substitute Favorable 4/25/19
PROPOSED SENATE COMMITTEE SUBSTITUTE H387-PCS40522-MQa-4

Short Title: Growing G.R.E.A.T.

(Public)

Sponsors:

Referred to:

March 20, 2019

1 A BILL TO BE ENTITLED
2 AN ACT CONSISTENT WITH HOUSE BILL 966 TO ENACT CHANGES TO THE
3 GROWING RURAL ECONOMIES WITH ACCESS TO TECHNOLOGY PROGRAM
4 AND TO PROVIDE FUNDING FOR THAT PROGRAM.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 143B-1373 reads as rewritten:

7 "§ 143B-1373. **Growing Rural Economies with Access to Technology (GREAT) program.**

8 (a) As used in this section, the following definitions apply:

9 ...

10 (6) Eligible project. – An eligible project is a discrete and specific project located
11 in an unserved area of an economically distressed county seeking to provide
12 broadband service to homes, businesses, and community anchor points not
13 currently served. Eligible projects do not include middle mile, backhaul, and
14 other similar projects not directed at broadband service to end users. If a
15 contiguous project area crosses from one eligible county into one or more
16 eligible adjacent counties, for the purposes of this section, the project shall be
17 deemed to be located in the county where the greatest number of unserved
18 households are proposed to be served.

19 (7) Eligible recipient. – Eligible grant recipients are private providers of
20 broadband services, including cooperatively organized entities, or any
21 partnerships formed between cooperatively organized entities, private
22 providers, or any combination thereof, ~~on or after January 1, 2018.~~ thereof.

23 ...

24 (8a) Infrastructure. – Existing facilities, equipment, materials, and structures that
25 an entity has installed either for its core business or public enterprise purposes.
26 Examples include, but are not limited to, copper wire, coaxial cable, optical
27 cable, loose tube cable, communication huts, conduits, vaults, patch panels,
28 mounting hardware, poles, generators, battery and cabinet, network nodes,
29 network routers, network switches, microwave relay, microwave receivers,
30 site routers, outdoor cabinets, towers, easements, rights-of-way, and buildings
31 or structures owned by the entity that are made available for location or
32 collocation purposes.

33 (9) Infrastructure costs. – Costs directly related to the construction of broadband
34 infrastructure for the extension of broadband service for an eligible project,
35 including installation, acquiring or updating easements, ~~equipment, fiber,~~



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1 ~~construction~~, backhaul infrastructure, and testing costs. The term does not
2 include overhead or administrative costs.

3 ...

4 (11a) Partnership. – A project for which an Internet service provider affirms that a
5 formalized agreement exists between the provider and one or more
6 unaffiliated partners where the partner is one of the following:

7 a. A separate Internet service provider.

8 b. A nonprofit or not-for-profit, or a for-profit subsidiary of either, and
9 the Internet service provider is being allowed access and use of the
10 partner's infrastructure, on special terms and conditions designed to
11 facilitate the provision of broadband services in unserved areas, or is
12 utilizing a financial contribution provided by one or more partners
13 where the total contribution is not less than ten percent (10%), but not
14 more than forty-nine percent (49%), of the match required by this
15 section. A county that is not engaged in providing consumer
16 broadband service may qualify as a nonprofit for the purpose of this
17 section.

18 ...

19 (12a) Prospective broadband recipient. – A household, home, business, community
20 anchor point, agricultural operation, or agricultural processing facility that is
21 currently unserved and is identified in an application submitted in accordance
22 with this section.

23 ...

24 (c) Project areas comprised of census blocks, or portions thereof, within which a
25 broadband provider is receiving ~~State or federal~~ matching funds to deploy ~~technologically neutral~~
26 ~~scalable~~ broadband service within the next 18 months are ineligible for the GREAT program. It
27 is essential for the Office to know the location of census blocks, or portions thereof, comprising
28 these areas so it can determine project eligibility. A private provider receiving ~~State or federal~~
29 ~~matching~~ Universal Service or Connect America Phase II, or nonfederal funds to deploy
30 broadband service ~~within may qualify such an area shall, for protection by submitting~~ within 60
31 days of the ~~effective date of this section, submit only application period~~ a listing of the census
32 blocks, or portions thereof, comprising ~~each of its the~~ federally funded project areas meeting this
33 requirement and nothing more to the Office. In future program years, the cutoff date for
34 submitting this census block data shall be ~~May 15~~ established by the Office, but shall be not less
35 than 60 days prior to the beginning date of the application period. This will enable the office to
36 update maps and advise applicants as to the unserved areas of the State that are eligible for
37 consideration in that program year. The Office shall only utilize this data to update maps of
38 census blocks to reflect these census blocks, or portions thereof, as being served. Failure on the
39 part of a provider to submit the listing of census blocks by the cutoff date shall result in those
40 areas being eligible for inclusion under this program during the upcoming program year. The
41 Office shall use the census block data provided only for mapping of unserved areas. Upon
42 expiration of the 18-month reservation period described in this subsection, a private provider that
43 has received a reservation of census blocks shall submit written documentation by April 30 of
44 the year following the program year that broadband deployment has begun or been completed in
45 the census blocks, or portions thereof, that have been deemed ineligible by the Office due to the
46 existence of a federally funded project area. Information provided to the Office pursuant to this
47 subsection is not a public record, as that term is defined in G.S. 132-1.

48 (d) Applications for grants will be submitted at times designated by the Secretary and
49 will include, at a minimum, the following information:

50 ...

1 (5) An illustration or description of the area to be ~~served and~~ served, identifying
2 the number of homes, businesses, community anchor points, agricultural
3 operations, or agricultural processing facilities that will have access to
4 broadband as a result of the ~~project~~ project, including any available addresses,
5 or other identifying information satisfactory to the Office, for the foregoing.
6 In the event that the Office is unable to identify the proposed project area with
7 specificity, the Office may require the applicant to submit additional
8 information. If construction of the proposed project would result in the
9 provision of broadband service to areas that are not eligible for funding, those
10 ineligible areas should be identified in the application along with the eligible
11 areas.

12 ...

13 (d1) A provider submitting an application pursuant to this section shall bear the burden of
14 proof that the proposed area to be served can, in fact, be served using the proposed technology.
15 The burden of proof may be satisfied by the submission of data, maps, and any other information
16 satisfactory to the Office, demonstrating that the area and number of prospective broadband
17 recipients proposed to be served can be provided the minimum upload and download speeds
18 indicated in the application.

19 (e) Applications shall be made publicly available by posting on the Web site of the
20 Department of Information Technology for a period of at least 30 days prior to award. During
21 the 30-day period, any interested party may submit comments to the Secretary concerning any
22 pending application. A provider of broadband services may submit a protest of any application
23 on the grounds the proposed project covers an area that is not an eligible area under this section.
24 Protests shall be submitted in writing, accompanied by all relevant supporting documentation,
25 and shall be considered by the Office in connection with the review of the application. Upon
26 submission of evidence satisfactory to the Office that the proposed project area includes
27 prospective broadband recipients that are served, as measured using a methodology satisfactory
28 to the Office, the Office may work with an applicant to amend an application to reduce the
29 number of unserved prospective broadband recipients in the project area to reflect an accurate
30 level of current broadband service. The Office may revise application scores in accordance with
31 amended applications. For applications with filed protests, the Secretary shall issue a written
32 decision to the protesting party at least 15 days prior to the approval of that application. Following
33 a protest that is granted for a portion of the application, the Office may release to an applicant
34 the locations or areas declared ineligible. The information released to the applicant is not a public
35 record, as that term is defined under G.S. 132-1, and shall remain confidential. Any provider
36 submitting a protest shall verify that the information in the protest is accurate and that the protest
37 is submitted in good faith. The Office may deny any protest or application that contains
38 inaccurate information.

39 As a means of resolving a protest, the Office may utilize speed tests to determine if the
40 protested area or individual households or businesses currently have access to broadband service
41 as defined in this section. The Department shall publish the speed test methodology it uses to
42 assess speed levels pursuant to this section. All decisions regarding the speed test to be utilized
43 and the manner by which the speed tests are applied shall be made by the Secretary or the
44 Secretary's designee.

45 (f) The Office may consult with the Department of Commerce to determine if a
46 broadband project proposed under this section will benefit a potential economic development
47 project relevant to the proposed area outlined in the broadband project.

48 (g) Applications shall be scored based upon a system that awards a single point for criteria
49 considered to be the minimum level for the provision of broadband service with additional points
50 awarded to criteria that exceed minimum levels. The Office shall score project applications in
51 accordance with the following:

(1) Partnership. – Projects involving partnership ~~or affiliation by a private provider with a nonprofit or not for profit, or a for profit subsidiary of either that is required to enable certain partnership activities, or any combination thereof,~~ shall be given five points in their application score where it is documented to the satisfaction of the Office that the partnership or affiliation will facilitate deployment and reduce cost per housing unit by utilizing the resources, facilities, and infrastructure of the partner or where the nonprofit or not for profit partner provides only financial support. score. For the purposes of scoring under this subdivision, a county that provides a portion of the match required by this section or that has entered into an agreement with the applicant to make available its infrastructure that has been installed for the county's enterprise, nonconsumer broadband purposes, or any other property, buildings, or structures owned by the county, for a proposed project under this section shall be considered a partnership. A county may provide a portion of the match required by this section pursuant to G.S. 153A-349.60. Projects involving partnerships shall be given six points in their application score.

(2) Unserved households. – The Office shall give additional points to projects based upon the estimated number of unserved households within the eligible economically distressed county, as determined by the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that will be located in counties with estimated unserved households as follows:

Unserved Households	Points Given
700-500 or less	1
700-1999 501-1400	2
2000 and over Over 1400	3

(3) ~~Households~~ Unserved households to be served. – The Office shall give additional points to projects that will provide broadband service ~~to~~ based upon the percentage of the total unserved households within the eligible economically distressed county, as county that the project will serve. The number of unserved households shall be determined by using the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that will serve a percentage of unserved households within the project area as follows:

% Unserved Households To Be Served	Points Given
Under 150 <u>Less than 15%</u>	1
150-249 <u>15% to 25%</u>	2
250 and up <u>Over 25%</u>	3

...
(6) Base speed multiplier. – Projects that will provide minimum download and minimum upload speeds shall have the aggregate points given under subdivisions (1) through (5) of this subsection multiplied by a factor at the level indicated in the table below:

Minimum Download:	Minimum Upload	Score Multiplier
At least 10:1 Mbps <u>Mbps. up to 25:3 Mbps.</u>		0.95
25:3 Mbps. or greater <u>up to 100:10 Mbps.</u>		1.35
100:10 Mbps. or greater		<u>1.75</u>

...
(i) Applications receiving the highest score shall receive priority status for the awarding of grants pursuant this section. As a means of breaking a tie for applications receiving the same

1 score, the Office shall give priority to the application proposing to serve the highest number of
 2 new households at the lowest cost per household. Applicants awarded grants pursuant to this
 3 section shall enter into an agreement with the Office. The agreement shall contain all of the
 4 elements outlined in subsection (d) of this section and any other provisions the Office may
 5 require. The agreement shall contain a provision governing the time line and minimum
 6 requirements and thresholds for disbursement of grant funds measured by the progress of the
 7 project. Grant funds shall be disbursed only upon verification by the Office that the terms of the
 8 agreement have been fulfilled according to the progress milestones contained in the agreement.
 9 At project completion, the grant recipient shall certify and provide to the Office evidence
 10 consistent with Federal Communications Commission attestation that either speeds greater than
 11 those identified in the application guidelines or the proposed ~~minimum~~-upstream and ~~minimum~~
 12 downstream broadband speeds identified in the application guidelines, and for which a base speed
 13 multiplier was awarded pursuant to subdivision (6) of subsection (g) of this section, are available
 14 throughout the project area prior to any end user connections. A single grant award shall not
 15 exceed two million dollars (\$2,000,000). No more than one grant may be awarded per fiscal year
 16 for a project in any one eligible economically distressed ~~county-county;~~ except that if funds
 17 remain available after all top scoring projects have been awarded a grant, then the next highest
 18 scoring projects may be awarded a grant even if the project is located in a county where a grant
 19 has been awarded in that fiscal year provided the total award associated with that county does
 20 not exceed two million dollars (\$2,000,000) in that fiscal year.

21 (j) Grant recipients are required to provide matching funds based upon the application
 22 scoring pursuant to this section in the following minimum amounts:

Score	Matching Requirement
7.0-12.0 points or less	55%
Greater than 7.0-12.0 points, but less than 14.0-17.5 points	50%
Greater than 14.0, but less than 21.0-17.5 points, up to 22.0 points	45%
21.0 points or greater Greater than 22.0 points	35%

28 Up to fifty percent (50%) of matching funds paid by the grant recipient may be comprised of
 29 third-party funding and other grant programs. Universal Service Fund, or Connect America Fund,
 30 or other grants awarded for broadband expansion through a separate State or federal program
 31 Phase II Fund shall not be used for the required matching funds. Any other current or future
 32 federal funds may be used, including any future phase of the Connect America Fund, for the
 33 required matching funds within the parameters of this program.

34"

35 **SECTION 2.** G.S. 143B-1373(a)(5) reads as rewritten:

36 "(5) Eligible economically distressed county. – A county designated as a
 37 development tier one or tier two area, as defined in G.S. 143B-473.08."

38 **SECTION 3.** G.S. 143B-1373(i), as amended by Section 1 of this act, reads as
 39 rewritten:

40 "(i) Applications receiving the highest score shall receive priority status for the awarding
 41 of grants pursuant this section. As a means of breaking a tie for applications receiving the same
 42 score, the Office shall give priority to the application proposing to serve the highest number of
 43 new households at the lowest cost per household. Applicants awarded grants pursuant to this
 44 section shall enter into an agreement with the Office. The agreement shall contain all of the
 45 elements outlined in subsection (d) of this section and any other provisions the Office may
 46 require. The agreement shall contain a provision governing the time line and minimum
 47 requirements and thresholds for disbursement of grant funds measured by the progress of the
 48 project. Grant funds shall be disbursed only upon verification by the Office that the terms of the
 49 agreement have been fulfilled according to the progress milestones contained in the agreement.
 50 At project completion, the grant recipient shall certify and provide to the Office evidence
 51 consistent with Federal Communications Commission attestation that either speeds greater than

1 those identified in the application guidelines or the proposed upstream and downstream
2 broadband speeds identified in the application guidelines, and for which a base speed multiplier
3 was awarded pursuant to subdivision (6) of subsection (g) of this section, are available throughout
4 the project area prior to any end user connections. A single grant award shall not exceed two
5 million dollars (\$2,000,000). No more than one grant may be awarded per fiscal year for a project
6 in any one eligible economically distressed county; except that if funds remain available after all
7 top scoring projects have been awarded a grant, then the next highest scoring projects may be
8 awarded a grant even if the project is located in a county where a grant has been awarded in that
9 fiscal year provided the total award associated with that county does not exceed two million
10 dollars (\$2,000,000) in that fiscal year.

11 No more than one-third of the funds appropriated to the fund established in subsection (b) of
12 this section shall be disbursed for projects located in a development tier two county."

13 **SECTION 4.** G.S. 143B-1373(i), as amended by Sections 1 and 3 of this act, reads
14 as rewritten:

15 "(i) Applications receiving the highest score shall receive priority status for the awarding
16 of grants pursuant this section. As a means of breaking a tie for applications receiving the same
17 score, the Office shall give priority to the application proposing to serve the highest number of
18 new households at the lowest cost per household. Applicants awarded grants pursuant to this
19 section shall enter into an agreement with the Office. The agreement shall contain all of the
20 elements outlined in subsection (d) of this section and any other provisions the Office may
21 require. The agreement shall contain a provision governing the time line and minimum
22 requirements and thresholds for disbursement of grant funds measured by the progress of the
23 project. Grant funds shall be disbursed only upon verification by the Office that the terms of the
24 agreement have been fulfilled according to the progress milestones contained in the agreement.
25 At project completion, the grant recipient shall certify and provide to the Office evidence
26 consistent with Federal Communications Commission attestation that either speeds greater than
27 those identified in the application guidelines or the proposed upstream and downstream
28 broadband speeds identified in the application guidelines, and for which a base speed multiplier
29 was awarded pursuant to subdivision (6) of subsection (g) of this section, are available throughout
30 the project area prior to any end user connections. A single grant award shall not exceed two
31 million dollars (\$2,000,000). No more than one grant may be awarded per fiscal year for a project
32 in any one eligible economically distressed county; except that if funds remain available after all
33 top scoring projects have been awarded a grant, then the next highest scoring projects may be
34 awarded a grant even if the project is located in a county where a grant has been awarded in that
35 fiscal year provided the total award associated with that county does not exceed two million
36 dollars (\$2,000,000) in that fiscal year.

37 No more than ~~one-third~~ ~~one-half~~ of the funds appropriated to the fund established in
38 subsection (b) of this section shall be disbursed for projects located in a development tier two
39 county. If the Office has not received enough grant applications for projects located in a
40 development tier one county to disburse one-half of the funds appropriated to the fund established
41 in subsection (b) of this section as of March 1 of each year, then the Office may allocate any
42 unencumbered funds in the fund for projects located in a development tier two county."

43 **SECTION 5.** G.S. 143B-1373 is amended by adding a new subsection to read:

44 "(p) The Department may use up to one percent (1.0%) of the appropriated funds to
45 administer the GREAT program."

46 **SECTION 6.** The Department of Administration, in collaboration with the
47 Broadband Infrastructure Office within the Department of Information Technology shall
48 develop, by soliciting stakeholder input, a streamlined approval process for the negotiation and
49 execution of lease agreements for collocation, installation, and operation of broadband equipment
50 on State-owned property pursuant to G.S. 146-29.2. In developing the approval process, the
51 Office shall involve representatives from at least all of the following:

- 1 (1) The land grant universities.
- 2 (2) The Office of Attorney General.
- 3 (3) A telecommunications provider based in this State.
- 4 (4) An electric membership cooperative.
- 5 (5) A fixed wireless company.
- 6 (6) A cable provider.
- 7 (7) At least two regional or national Internet service providers.

8 The Broadband Infrastructure Office shall develop a streamlined approval process of
9 no more than 270 days from the date the formal lease proposal is submitted to a State agency.
10 The recommended process shall focus on significantly reducing or eliminating the need for
11 renegotiating primary lease terms, including lease amounts, once those terms have been initially
12 agreed upon by the provider and the State agency. In addition, the Department of Administration
13 shall establish a market-based rate for lease amounts that can be used as a basis for similar
14 agreements across the State.

15 The Department of Administration shall implement the streamlined approval process
16 on or before December 1, 2019, and shall submit a report detailing the streamlined approval
17 process, along with a list of the stakeholders and their input, to the Joint Legislative Oversight
18 Committee on Information Technology and the Fiscal Research Division on or before December
19 1, 2019.

20 **SECTION 7.(a)** There is transferred from the General Fund to the State Capital and
21 Infrastructure Fund the sum of fifteen million dollars (\$15,000,000) for each fiscal year from the
22 2019-2020 fiscal year through the 2028-2029 fiscal year.

23 **SECTION 7.(b)** There is appropriated from the State Capital and Infrastructure Fund
24 to the Growing Rural Economies with Access to Technology Fund the sum of fifteen million
25 dollars (\$15,000,000) for each fiscal year from the 2019-2020 fiscal year through the 2028-2029
26 fiscal year.

27 **SECTION 8.(a)** The appropriations and the authorizations to allocate and spend
28 funds which are set out in this act shall remain in effect until the Current Operations
29 Appropriations Act for the applicable fiscal year becomes law, at which time that act shall
30 become effective and shall govern appropriations and expenditures. When the Current
31 Operations Appropriations Act for that fiscal year becomes law, the Director of the Budget shall
32 adjust allotments to give effect to that act from July 1 of the fiscal year.

33 **SECTION 8.(b)** If House Bill 966, 2019 Regular Session, becomes law, then this
34 act is repealed.

35 **SECTION 9.** Sections 2 and 3 of this act become effective July 1, 2020. Section 4
36 of this act becomes effective July 1, 2021. The remainder of this act becomes effective July 1,
37 2019.