

SESSION OF 2020

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2618

As Amended by Senate Committee on Utilities

Brief*

HB 2618, as amended, would establish the State Broadband Deployment Grant Program (Grant Program) to be administered by the Office of Broadband Development (Office) in the Department of Commerce (Department). The purpose of the Grant Program would include development of a competitive grant program by the Office to award funding to applicants seeking to expand access to broadband internet service (broadband) in the state. Funding for the Grant Program would be subject to appropriation acts.

Declarations

The bill would adopt three declarations regarding the importance of broadband access, a statewide access goal, and the benefits of increased broadband deployment to the state.

Grant Program

The bill would require the Office to serve as the central office to lead a statewide effort to expand broadband coverage and capacity within Kansas. The Office would be required to serve as a point of contact for cities, counties, and federal programs regarding broadband deployment in the state and to work with any federal agencies or broadband programs to coordinate information, grant programs, and facilitate broadband deployment in the state.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would require applicants for a grant to apply to the Office in a form and manner established by the Office. The bill would require the application to include, but not be limited to, the following information:

- A description of the project area;
- A description of the broadband infrastructure that is proposed to be deployed;
- The number of locations that would obtain access to broadband or have service upgraded; and
- The total cost of the project and the time frame it would be completed in.

The Office would be required to publish on the Department website the criteria and quantitative weighting system or scoring system used to evaluate or rank grant applications for funding. This publication must occur each fiscal year, 30 days before the first day applications could be submitted.

Within 15 business days of the close of the grant application process, the Office would be required to publish the proposed coverage areas and speeds for each submitted application on the Department website. Upon request, the Office would be required to provide a copy of any submitted application.

Challenge Process

The bill would allow a broadband provider that provides existing service in or adjacent to proposed project areas to submit a written challenge to an application to the Office within 45 days of the publication of the proposed new coverage area and speed information on the Department website. The challenge would be required to contain the following information demonstrating the existing provider:

- Currently provides broadband to retail customers within the proposed area;
- Has begun construction to provide broadband to customers within the proposed area; or
- Has committed to providing broadband to retail customers within the proposed area within the time frame proposed by the application being challenged.

The Office must notify the applicant of a written challenge within three business days of the challenge submission.

The bill would require submitted challenges to be evaluated by the Office, and the Office would be required to deny a grant for a challenged project if it is determined that a provider is currently providing or has begun construction to provide broadband service in the proposed project area. The Office may deny a grant if the challenged project is located in an area where a provider has committed to providing broadband service.

If a grant would be denied to an applicant as a result of a challenge and the existing provider does not fulfill the obligations that resulted in the denial of the proposed project, the bill would require the Office to not consider another challenge from the existing provider for the next two grant cycles, unless the Office determines the failure to fulfill the commitment was due to circumstances beyond the provider's control.

Weighing and Scoring System

The bill would require the methodology adopted by the Office to review applications to evaluate, at a minimum, the following criteria:

- Financial, technical, and legal capability of the application to deploy and operate broadband service;
- The number of locations served in the most cost-efficient manner possible, considering the project area density;
- Available minimum broadband speeds;
- Ability of the infrastructure to be scalable to higher broadband speeds;
- Commitment to fund at least 50 percent of the project from sources other than funds provided by the Office;
- Length of time the provider has been operating, operating broadband, and where the provider has been operating;
- The offering of new or substantially upgraded broadband that is important to communities;
- Offering services to economically distressed areas, as measured by unemployment, poverty, or population loss that are significantly greater than the statewide average;
- The ability to provide technical support and training to residents, business, and institutions in the community of the proposed project to utilize broadband;
- Plans to actively promote the adoption of the newly available broadband in the community;
- Support for the proposed project from community members;

- Cooperation with cities and counties in the proposed deployment area; and
- Likelihood of cities or counties within the proposed deployment area to provide access to the public right-of-way.

Accountability

The bill would require the Office to endeavor to award grants to qualified applicants in all regions of the state and no grant awarded would be allowed to fund more than 50 percent of the total cost of a project.

The bill would require, as a condition of an award of a grant, a provider to meet reasonable deployment deadlines and other benchmarks throughout the deployment of the project. If a provider fails to meet such deadlines and benchmarks, the bill would require the Office to not consider another application for grant funding from the provider for the next two grant cycles.

Rules and Regulations

The bill would require the Department, in consultation with the Office, to promulgate any necessary rules and regulations to administer provisions of the bill.

Report to the Legislature

The bill would require the Department to publish on its website and provide a report to the Legislature with information pertaining to applications, challenges, and any other pertinent project or application activity on or before June 30 annually.

Sunset

The provisions of the bill would expire on July 1, 2025.

Background

The 2018 Legislature established the Statewide Broadband Expansion Planning Task Force (Task Force) via Senate Sub. for HB 2701. The Task Force and its subcommittees met several times throughout 2019. The final report of the Task Force contains recommendations to the Legislature regarding broadband expansion, some of which are contained in provisions of the bill.

HB 2618 was introduced by the House Committee on Energy, Utilities and Telecommunications (House Committee) at the request of Representative Seiwert.

In the House Committee hearing, representatives of AT&T Kansas, CenturyLink, the Department, IdeaTek, Kansas Electric Cooperatives (KEC), Kansas Farm Bureau (KFB), Kansas Municipal Utilities (KMU), Kansas Rural Independent Telecommunications Coalition (KRITC), League of Kansas Municipalities (LKM), and Pioneer Communications, provided proponent testimony on the bill. The proponents generally stated the bill is a good starting point for a broadband deployment grant program and provides sufficient guidance to the Department for establishing the program.

Written-only proponent testimony was provided by the Kansas Association of Counties (KAC) and the State Independent Telephone Association.

Neutral testimony was provided by a representative of the Kansas Cable Telecommunications Association (KCTA). The representative stated the House Committee should consider prioritizing unserved areas and the need for a strong challenge process. No opponent testimony was provided.

The House Committee amended the bill to require the Office to post on its website and report certain information to the Legislature by June 30 of each year.

In the Senate Committee on Utilities (Senate Committee) hearing, representatives of AT&T, Charter Communications, CenturyLink, the Department, IdeaTek, KCTA, and KRITC provided proponent testimony on the bill. The proponents generally stated that Kansas needs a broadband fund and the bill provides a good starting point. Representatives of Charter Communications and IdeaTek suggested possible amendments to the bill that would clarify the definition of unserved area and minimum download and upload speeds.

Written-only proponent testimony was provided by the KAC, Kansas Cooperative Council, KEC, KFB, KMU, LKM, and Sprint.

No neutral or opponent testimony was provided.

The Senate Committee amended the bill to:

- Sunset the provisions on July 1, 2025;
- Clarify the Office shall work with federal agencies or broadband programs to coordinate information, grant programs, and facilitate broadband deployment in the state; and
- Require the Office to deny a grant for a challenged project in an area where another provider has begun construction to provide broadband.

According to the fiscal note prepared by the Division of the Budget (Division) on the bill as introduced, the Department estimates additional expenditures of \$225,100 in FY 2020 and \$220,100 in FY 2021 from the State General Fund (SGF), along with an additional 2.0 FTE positions. The Division noted the Department would most likely not need the

full \$225,100 in FY 2020 due to the effective date of the bill (upon publication in the statute book). The Department did not estimate expenditures for grants; however, the Division assumes appropriations from the SGF would be utilized for grants. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.