

A-Engrossed
House Bill 3201

Ordered by the House March 23
Including House Amendments dated March 23

Sponsored by Representative MARSH, Senator WOODS, Representatives OWENS, NERON, Senator CAMPOS;
Representatives ANDERSEN, BYNUM, GAMBA, NOSSE, PHAM K

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires Oregon Business Development Department to provide financial assistance to support broadband access, affordability and adoption. Permits department to establish one or more programs to provide financial assistance. Requires that department, when evaluating proposed projects under program to support broadband service infrastructure, give preference to proposed projects that serve unserved areas or underserved areas. Requires department to establish by rule, for each program established, certain criteria, requirements and processes.

Makes Broadband Fund permanent. Expands permitted uses of moneys in Broadband Fund.

Removes requirements for Oregon Business Development Department to establish by rule certain criteria, requirements and processes for temporary program for providing grants or loans to support projects for planning and development of broadband service infrastructure and digital literacy, inclusion and adoption. Removes requirements for department to give certain preference in making grant or loan award decisions.

Requires Oregon Broadband Advisory Council to include in biennial report evaluation of continuing need for temporary program for providing grants or loans to support projects for planning and development of broadband service infrastructure and digital literacy, inclusion and adoption.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to broadband; creating new provisions; amending sections 4, 5, 6 and 9, chapter 17, Oregon
3 Laws 2020 (first special session); and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) The Oregon Business Development Department shall provide financial**
6 **assistance in the form of loans or grants for the purpose of supporting broadband access,**
7 **affordability and adoption.**

8 **(2) The department may establish one or more programs for providing financial assist-**
9 **ance under this section. For each program the department establishes, the department shall,**
10 **by rule, establish:**

11 **(a) Criteria for applications and for determining the eligibility of applicants and proposed**
12 **projects for a loan or grant;**

13 **(b) Criteria for the department to evaluate competitive applications and for awarding a**
14 **loan or grant;**

15 **(c) Reporting requirements for a loan or grant recipient; and**

16 **(d) A process for identifying and protecting from disclosure, except as permitted by state**
17 **and federal law, information or data that are submitted to the department by an applicant**
18 **or recipient and that may be subject to confidentiality protections provided by law or are**
19 **exempt from public records disclosure.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **(3)(a) In addition to the rules required under subsection (2)(a) to (d) of this section, for**
2 **each program the department establishes to support broadband service infrastructure, the**
3 **department shall, by rule, establish:**

4 **(A) Criteria for determining whether a geographic area qualifies as an unserved area or**
5 **underserved area for the purpose of giving preference to proposed projects that support**
6 **broadband service infrastructure in unserved areas or underserved areas in this state;**

7 **(B) Reporting requirements for a loan or grant recipient to identify the geographic area**
8 **served or that will be served by the project;**

9 **(C) A process for providing public notice of pending applications;**

10 **(D) A public process for interested persons to submit comments on pending applications;**
11 **and**

12 **(E) A process for challenging an application, including whether the geographic area**
13 **identified in an application qualifies as an unserved area or underserved area.**

14 **(b) When evaluating the geographic area that a proposed broadband service**
15 **infrastructure project will serve, the department shall give preference to proposed projects**
16 **that serve an unserved area or underserved area. The department shall use the goals for**
17 **broadband service speeds in this state established pursuant to subsection (5) of this section**
18 **to establish the criteria required under paragraph (a)(A) of this subsection.**

19 **(4)(a) The department shall comply with the provisions of ORS chapter 183 in adopting**
20 **rules and awarding loans or grants under a program. Final orders issued under a program**
21 **are subject to judicial review as provided in ORS chapter 183.**

22 **(b) When awarding a loan or grant under a program to support broadband service**
23 **infrastructure, the department shall provide a notice of award. The notice of award shall be**
24 **a final order in an other than contested case proceeding and reviewable pursuant to ORS**
25 **183.480 with jurisdiction for judicial review conferred by ORS 183.484.**

26 **(5) The department, in consultation with the Oregon Broadband Advisory Council, shall**
27 **establish goals for broadband service speeds provided in this state to be used when estab-**
28 **lishing criteria under subsection (3)(a)(A) of this section.**

29 **(6) The department shall define by rule the term “broadband service infrastructure pro-**
30 **gram” for purposes of implementing the provisions of this section.**

31 **(7) The department may adopt rules necessary to carry out the provisions of this section.**

32 **SECTION 2.** Section 4, chapter 17, Oregon Laws 2020 (first special session), as amended by
33 section 1, chapter 76, Oregon Laws 2022, is amended to read:

34 **Sec. 4. (1) The Broadband Fund is established, separate and distinct from the General Fund.**
35 **Interest earned by the Broadband Fund shall be credited to the fund. Moneys in the Broadband Fund**
36 **are continuously appropriated to the Oregon Business Development Department to be used [only for**
37 **providing grants or loans through, or for administering, the Oregon Broadband Office and the program**
38 **established by rule under section 5, chapter 17, Oregon Laws 2020 (first special session). The fund shall**
39 **consist of moneys deposited in the fund pursuant to ORS 759.425 and moneys appropriated or trans-**
40 **ferred to the fund by the Legislative Assembly.] by the Oregon Broadband Office for the following**
41 **purposes:**

42 **(a) Administering the office;**

43 **(b) Carrying out the duties of the office listed in ORS 285A.166;**

44 **(c) Providing grants or loans through the program established by rule under section 5,**
45 **chapter 17, Oregon Laws 2020 (first special session);**

1 (d) Providing financial assistance under section 1 of this 2023 Act; and

2 (e) Covering the administrative costs associated with the fund and with making grants,
3 loans and other distributions of moneys from the fund.

4 (2) The fund consists of:

5 (a) Moneys appropriated or transferred to the fund by the Legislative Assembly;

6 (b) Moneys transferred to the fund pursuant to ORS 759.425;

7 (c) Loans repaid to the fund and interest due on the loans;

8 (d) Amounts donated to the fund;

9 (e) Moneys transferred to the fund from the federal government, state agencies or local
10 governments;

11 (f) Lottery bond proceeds allocated by the Legislative Assembly for deposit in the fund;

12 (g) Earnings received on moneys in the fund; and

13 (h) Other amounts deposited in the fund from any sources.

14 (3) The Broadband Fund is established to provide a flexible funding source for financing
15 programs and projects that support broadband access, affordability or adoption in this state
16 and to support the office in carrying out the duties of the office listed under ORS 285A.166.
17 Notwithstanding ORS 279A.140, the department may enter into contracts as necessary or
18 appropriate to implement programs or projects determined by the department to further
19 broadband access, affordability or adoption.

20 (4) The department may:

21 (a) Adopt objective criteria and standards for the use and allocation of moneys in the
22 Broadband Fund.

23 (b) Establish accounts and subaccounts within the fund when the department determines
24 that accounts or subaccounts are necessary or desirable.

25 **SECTION 3.** Section 4, chapter 17, Oregon Laws 2020 (first special session), as amended by
26 section 1, chapter 76, Oregon Laws 2022, and section 2 of this 2023 Act, is amended to read:

27 **Sec. 4.** (1) The Broadband Fund is established, separate and distinct from the General Fund.
28 Interest earned by the Broadband Fund shall be credited to the fund. Moneys in the Broadband Fund
29 are continuously appropriated to the Oregon Business Development Department to be used by the
30 Oregon Broadband Office for the following purposes:

31 (a) Administering the office;

32 (b) Carrying out the duties of the office listed in ORS 285A.166;

33 [(c) Providing grants or loans through the program established by rule under section 5, chapter
34 17, Oregon Laws 2020 (first special session);]

35 [(d)] (c) Providing financial assistance under section 1 of this 2023 Act; and

36 [(e)] (d) Covering the administrative costs associated with the fund and with making grants,
37 loans and other distributions of moneys from the fund.

38 (2) The fund consists of:

39 (a) Moneys appropriated or transferred to the fund by the Legislative Assembly;

40 [(b) Moneys transferred to the fund pursuant to ORS 759.425;]

41 [(c)] (b) Loans repaid to the fund and interest due on the loans;

42 [(d)] (c) Amounts donated to the fund;

43 [(e)] (d) Moneys transferred to the fund from the federal government, state agencies or local
44 governments;

45 [(f)] (e) Lottery bond proceeds allocated by the Legislative Assembly for deposit in the fund;

1 [(g)] (f) Earnings received on moneys in the fund; and

2 [(h)] (g) Other amounts deposited in the fund from any sources.

3 (3) The Broadband Fund is established to provide a flexible funding source for financing pro-
4 grams and projects that support broadband access, affordability or adoption in this state and to
5 support the office in carrying out the duties of the office listed under ORS 285A.166.
6 Notwithstanding ORS 279A.140, the department may enter into contracts as necessary or appropri-
7 ate to implement programs or projects determined by the department to further broadband access,
8 affordability or adoption.

9 (4) The department may:

10 (a) Adopt objective criteria and standards for the use and allocation of moneys in the Broadband
11 Fund.

12 (b) Establish accounts and subaccounts within the fund when the department determines that
13 accounts or subaccounts are necessary or desirable.

14 **SECTION 4.** Section 5, chapter 17, Oregon Laws 2020 (first special session), is amended to read:

15 **Sec. 5.** [(1) As used in this section:]

16 [(a) “Underserved area” means, based on the most recent broadband deployment data published
17 by the Federal Communications Commission, other federal agencies or the State of Oregon, a ge-
18 ographic area within one or more census blocks, within which there is no service provider offering
19 residential wireline or wireless broadband service at a speed of at least 25 megabits per second for
20 downloads and three megabits per second for uploads.]

21 [(b) “Unserved area” means, based on the most recent broadband deployment data published by the
22 Federal Communications Commission, other federal agencies or the State of Oregon, a geographic area
23 within one or more census blocks, within which there is no service provider offering residential wireline
24 or wireless broadband service at a speed of at least 10 megabits per second for downloads and one
25 megabit per second for uploads.]

26 [(2)(a)] (1) The Oregon Business Development Department shall establish by rule a program for
27 providing grants or loans to assist eligible applicants with projects for:

28 [(A)] (a) The planning and development of broadband service infrastructure;

29 [(B)] (b) Digital literacy including cybersecurity;

30 [(C)] (c) Digital inclusion; and

31 [(D)] (d) Digital adoption.

32 (2) **The program shall be funded only by moneys transferred to the Broadband Fund es-**
33 **established under section 4, chapter 17, Oregon Laws 2020 (first special session), pursuant to**
34 **ORS 759.425.**

35 [(b)] (3) In establishing the program required by this section, the department shall take into
36 consideration all federal funding opportunities for the planning and development of broadband ser-
37 vice infrastructure and shall endeavor to administer the program in a manner that serves to maxi-
38 mize the total available state and federal support for broadband development and related planning.

39 [(3) Rules adopted under this section shall include but need not be limited to rules establishing:]

40 [(a) Criteria for applications and for establishing the eligibility of applicants and proposed projects
41 for a grant or loan under the program;]

42 [(b) A process for:]

43 [(A) Identifying broadband service providers that provide service within or near the geographic
44 area that would be benefited by a project proposed by an eligible applicant; and]

45 [(B) Notifying the identified broadband service providers of the pending application;]

1 [(c) Standards for the department to evaluate applications from eligible applicants;]
2 [(d) Criteria and procedures for broadband service providers to engage in a competitive bidding
3 process for contracts to complete projects pursuant to a grant or loan awarded under the program;]
4 [(e) Reporting requirements by grant or loan award recipients on the broadband service
5 infrastructure developed or planned for using grant or loan moneys and the locations served or that
6 will be served by the broadband service infrastructure;]
7 [(f) A public process for interested persons to submit comments on pending applications;]
8 [(g) A process for appealing grant or loan decisions by the department; and]
9 [(h) Procedures to ensure that any records or data submitted to the department pursuant to ad-
10 ministration of the program that relate to broadband, voice connections or subscriptions and that are
11 confidential, privileged or otherwise protected from disclosure are not disclosed, except as permitted by
12 state and federal law.]
13 [(4) In making broadband service infrastructure grant or loan award decisions under the program,
14 the department shall apply the following preferences:]
15 [(a) Regarding the geographic area that a proposed project will serve, the department shall:]
16 [(A) Give first preference to proposed projects that will serve unserved areas; and]
17 [(B) Give second preference to proposed projects that will serve underserved areas.]
18 [(b) Regarding the customers that a proposed project will serve, the department shall:]
19 [(A) Give first preference to proposed projects that are eligible to receive funds from the Connecting
20 Oregon Schools Fund established under ORS 276A.424;]
21 [(B) Give second preference to proposed projects that will provide broadband service access to
22 public libraries; and]
23 [(C) Give third preference to proposed projects that will provide broadband service access to resi-
24 dential customers.]
25 [(5) The department shall, as part of the program, establish procedures for distributing grant or
26 loan funds awarded for the purpose of providing broadband access to schools. Procedures established
27 under this subsection shall include procedures for transferring not more than 20 percent of the moneys
28 deposited in the Broadband Fund established under section 4 of this 2020 special session Act each
29 biennium from the Broadband Fund to the Connecting Oregon Schools Fund established under ORS
30 276A.424.]
31 [(6) The department may not award a grant or loan under the program for a proposed project
32 to:]
33 [(a) Develop broadband service infrastructure to serve residential locations that, at the time the
34 application for the proposed project is received by the department, have access to terrestrial wireline
35 or wireless broadband service at a speed of at least 25 megabits per second for downloads and three
36 megabits per second for uploads; or]
37 [(b) Develop broadband service infrastructure that will serve two or fewer residential locations.]
38 [(7)(a) If the department awards a grant or loan for a proposed project to develop broadband ser-
39 vice infrastructure that will serve nonresidential locations that, at the time the application for the pro-
40 posed project was received by the department, were served by terrestrial wireline or wireless broadband
41 service at a speed of at least 25 megabits per second for downloads and three megabits per second for
42 uploads, the broadband service providers identified pursuant to rules adopted under subsection (3)(b)
43 of this section shall be afforded a right of first refusal to contract for the development of broadband
44 service infrastructure as part of the project. If a broadband service provider exercises the right of first
45 refusal, the provider shall be awarded the contract to develop broadband service infrastructure as part

1 of the project, subject to the requirement that the provider must offer access to the completed broadband
2 service infrastructure:]

3 [(A) Beginning no later than one year after the date that the department awards the grant or loan
4 to develop the proposed project;]

5 [(B) At demonstrated download and upload speeds equal to or faster than the speeds indicated in
6 the application for the proposed project; and]

7 [(C) At a cost that is equal to or less than the cost indicated in the application for the proposed
8 project.]

9 [(b) This subsection does not apply to a grant or loan award for a proposed project described in
10 subsection (4)(b) of this section.]

11 **SECTION 5.** Section 6, chapter 17, Oregon Laws 2020 (first special session), is amended to read:

12 **Sec. 6.** [(1) Not later than September 15 of each year, the Oregon Business Development Depart-
13 ment shall report, in the manner provided in ORS 192.245, to an interim committee of the Legislative
14 Assembly related to telecommunications on the status of the Broadband Fund established under section
15 4 of this 2020 special session Act. The report required by this section shall include a description of:]

16 [(a) All loans and grants provided through the program adopted under section 5 of this 2020 spe-
17 cial session Act; and]

18 [(b) The status of the projects funded by the loans and grants.]

19 [(2) In addition to the information required in the report under subsection (1) of this section, the
20 report submitted on or before September 15, 2024, by the department pursuant to this section shall in-
21 clude an evaluation of the continuing need for the Broadband Fund, including but not limited to rec-
22 ommendations regarding the repeal, by section 9 of this 2020 special session Act, of the Broadband
23 Fund and the program adopted under section 5 of this 2020 special session Act.]

24 **The Oregon Broadband Advisory Council shall include in the biennial report required**
25 **under ORS 285A.160 an evaluation of the continuing need for the program established by rule**
26 **under section 5, chapter 17, Oregon Laws 2020 (first special session), including any recom-**
27 **mendations regarding the repeal, by section 9, chapter 17, Oregon Laws 2020 (first special**
28 **session), of the program established by rule under section 5, chapter 17, Oregon Laws 2020**
29 **(first special session).**

30 **SECTION 6.** Section 9, chapter 17, Oregon Laws 2020 (first special session), is amended to read:

31 **Sec. 9.** (1) Sections [4,] 5 and 6, **chapter 17, Oregon Laws 2020 (first special session)**, [of this
32 2020 special session Act] are repealed on January 2, 2030.

33 (2) Any moneys in the Broadband Fund established under section 4, **chapter 17, Oregon Laws**
34 **2020 (first special session)**, [of this 2020 special session Act] **that are from the universal service**
35 **fund established under ORS 759.425 and** that are unexpended and unobligated on January 2, 2030,
36 revert to the universal service fund established under ORS 759.425.

37 **SECTION 7.** The amendments to section 4, chapter 17, Oregon Laws 2020 (first special
38 session), by section 3 of this 2023 Act become operative on January 2, 2030.

39 **SECTION 8.** This 2023 Act being necessary for the immediate preservation of the public
40 peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect
41 on its passage.