

**Amendment - 1st Reading-white - Requested by: Daniel Salomon - (S) Business, Labor, and Economic Affairs**

- 2023

68th Legislature 2023

Drafter: Trevor Graff, 406-444-4975

SB0531.001.002

1 SENATE BILL NO. 531  
2 INTRODUCED BY D. SALOMON, E. BUTTREY, M. HOPKINS, S. FITZPATRICK, J. ELLSWORTH, K.  
3 BOGNER  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE COMMUNICATIONS ADVISORY COMMISSION;  
6 REVISING THE CHALLENGE PROCESS; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR AN  
7 APPLICATION FEE; PROVIDING DEFINITIONS; AMENDING SECTIONS 90-1-602, 90-1-603, 90-1-604, 90-1-  
8 605, 90-1-606, 90-1-607, 90-1-608, AND 90-1-609, MCA; AMENDING SECTION 13, CHAPTER 449, LAWS  
9 OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
12

13 **Section 1.** Section 90-1-602, MCA, is amended to read:

14 **"90-1-602. (Temporary) Definitions.** As used in this part, unless the context clearly indicates  
15 otherwise, the following definitions apply:

16 (1) (a) "Broadband" means a mass-market retail service by wire or radio that provides the  
17 capability to transmit data to and receive data from all or substantially all internet endpoints. The term includes  
18 capabilities that are incidental to and enable the operation of the communications service.

19 (b) The term does not include dial-up internet access service.

20 ~~(1)(2) "Broadband service" means any commercially mature, universally available, terrestrially~~  
21 ~~deployed technology having the capacity to transmit data from or to the internet at minimum speeds~~  
22 ~~downstream and upstream at low latency to accommodate adequate and commonly used internet-based~~  
23 ~~applications for residential, commercial, or government use. "Broadband equity, access, and deployment~~  
24 ~~program" means the program established by the Infrastructure Investment and Jobs Act, Public Law 117-58,~~  
25 ~~and implemented by the national telecommunications and information administration.~~

26 ~~(2)(3) "Broadband service infrastructure" means the signal transmission facilities and associated~~  
27 ~~network equipment proposed to be deployed in a project area used for the provision of broadband service to~~

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1           ~~(e)(iii)~~ a description of the broadband service infrastructure that is proposed to be deployed, including  
2 facilities, equipment, and network capabilities that include minimum speed thresholds;

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

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

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

8           ~~(g)(vii)~~ the amount of matching funds, including funds from local or tribal governments, ~~and except for~~  
9 ~~federal funds designated for broadband deployment, that the eligible provider proposes to contribute and a~~  
10 ~~certification that no portion of the provider's matching funds are derived from any federal or state grant program~~  
11 ~~or federal funds as allowed by the Infrastructure Investment and Jobs Act, Public Law 117-58, and the national~~  
12 ~~telecommunications and information administration; and~~

13           ~~(h)(viii)~~ a preliminary list of all government authorizations, permits, and other approvals required in  
14 connection with the proposed deployment, and an estimated timetable for the acquisition of the approvals and  
15 the completion of the proposed project.

16           ~~(b)~~ The department may request additional information as necessary to review the proposed  
17 application. Applications that fail to provide the requirements in this section must be submitted to the  
18 commission for review. The commission may review the applications and cancel those that do not meet the  
19 requirements of this section.

20           (3) The department shall treat any information that is not publicly available as confidential and  
21 subject to the trade secrets protections of state law upon an eligible provider's request for confidential  
22 treatment, except that shapefile information depicting broadband coverage in the proposal must be publicly  
23 disclosed in sufficient detail to enable a challenging provider to identify the project area proposed to be covered  
24 by the provider. (Terminates on occurrence of contingency--sec. 13, Ch. 449, L. 2021.)"

25

26           **Section 6.** Section 90-1-607, MCA, is amended to read:

27           **"90-1-607. (Temporary) Review of proposal challenges -- approval.** (1) ~~Five~~ Fourteen business

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SB0531.001.002

1 days following the closing of the submission window, the department shall make the proposals received  
2 available for review in a publicly available electronic file, subject to the confidentiality provisions of 90-1-606(3).

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

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

11 (b) ~~that no federal funding has been awarded to support the specific deployment proposed in the~~  
12 ~~response pursuant to 90-1-605(1); and~~

13 (c) ~~evidence of broadband service infrastructure meeting or exceeding minimum standards for~~  
14 ~~competitive proposals in the project area under challenge. The department shall develop criteria for a challenge~~  
15 ~~process and publish the criteria for public comment at least 14 days prior to the opening of the challenge~~  
16 ~~window. An entity does not have to submit a proposal for funding to challenge proposed projects with the~~  
17 ~~advice of the governor's chief economic development officer and the commission.~~ Final responses to  
18 ~~challenges must be provided within 30 days of receipt of a challenge for the purpose of expediting awarded~~  
19 ~~projects for modifications accepted through the challenge process.~~

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

23 (4)(3) In reviewing proposals and any accompanying challenge, the department shall conduct its own  
24 review of the proposed project areas to ensure that all awarded funds are used to deploy broadband service  
25 infrastructure to unserved or underserved areas. The department may require a provider or challenging  
26 provider to submit additional information consistent with this part to enable it to properly assess the proposal or  
27 challenge. The department may not award a contract to fund deployment of broadband service infrastructure for

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68th Legislature 2023

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SB0531.001.002

1 a project area that fails to meet any of the criteria provided in this part for being an unserved or underserved  
2 area. The department may require a provider to modify a proposal based on broadband access in the proposed  
3 area or other relevant factors.

4 ~~(5)(4)~~ The department shall award funding support for projects set forth in responsive proposals  
5 based on a scoring system, approved by the commission, that must be released to the public at least 30 days  
6 prior to the window for submission of proposals. The weighting scheme employed by the department must give  
7 the highest weight or priority to the ~~following specific criteria~~ provided by the national telecommunications and  
8 information administration and the following:

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

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

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

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

17 ~~(a) whether the proposed project area serves unserved or underserved areas, with unserved areas~~  
18 ~~receiving greater weight;~~

19 ~~(b) the number of households, businesses, farms, ranches, and community anchor institutions~~  
20 ~~served;~~

21 ~~(c) whether the proposed project qualifies as an extremely high cost per location threshold as~~  
22 ~~defined by the department and approved by the national telecommunications and information administration or~~  
23 ~~is a high-cost area as defined by the national telecommunications and information administration;~~

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

25 ~~(f)(e) the extent to which government funding support is necessary to deploy broadband service~~  
26 ~~infrastructure in the proposed project area;~~

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

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68th Legislature 2023

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- 1           ~~(h)~~(f) the service speed thresholds proposed in the proposal and the scalability of the broadband  
2 service infrastructure proposed to be deployed with higher speed thresholds receiving greater weight;
- 3           ~~(i)~~(g) the provider's ability to leverage its own nearby or adjacent broadband service infrastructure to  
4 facilitate the cost-effective deployment of broadband service infrastructure in the proposed project area;
- 5           ~~(j) the extent to which the project does not duplicate any existing broadband service infrastructure in  
6 the proposed project area;~~
- 7           ~~(k)~~(h) the estimated time in which the provider proposes to complete the proposed project;
- 8           ~~(l) the number of Montana jobs the provider proposes to create or maintain relative to the population  
9 of the region where service is proposed;~~
- 10           ~~(m)~~(i) any other factors the department, as recommended by the commission, determines to be  
11 reasonable and appropriate, consistent with the purpose of facilitating the economic deployment of broadband  
12 service infrastructure to unserved or underserved areas Infrastructure Investment and Jobs Act, Public Law  
13 117-58, and the national telecommunications and information administration; and
- 14           ~~(n)~~(j) broadband service providers who have broadband service infrastructure already deployed in  
15 the project area.
- 16           ~~(6)~~(5) Frontier High-cost areas will must be considered for services to the extent terrestrial service is  
17 economically viable.
- 18           ~~(7)~~(6) The department shall set a reasonable timeframe to complete projects selected for funding  
19 approval. The department may, in consultation with the provider, set reasonable milestones regarding this  
20 completion. The department shall create procedures including penalties associated with any failure to comply  
21 with the provisions of the awarded contract without reasonable cause. (Terminates on occurrence of  
22 contingency--sec. 13, Ch. 449, L. 2021.)"

23

24           **Section 7.** Section 90-1-608, MCA, is amended to read:

25           **"90-1-608. (Temporary) Implementation.** (1) Consistent with the provisions of this part, the  
26 department shall define criteria and implementation processes to ensure that project funds are used as  
27 intended.

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- 2023

68th Legislature 2023

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SB0531.001.002

1 transferred or expended for any purpose other than to provide funding for projects authorized pursuant to this  
2 part. (Terminates on occurrence of contingency--sec. 13, Ch. 449, L. 2021.)"

3

4 NEW SECTION. Section 9. Application fees. An eligible provider submitting an application shall  
5 include a completed form that must be accompanied by a nonrefundable \$100 application fee and all other  
6 required documents and information. The form must be approved by the governor's chief economic  
7 development and by the commission.

8

9 **Section 10.** Section 13, Chapter 449, Laws of 2021, is amended to read:

10 **"Section 13. Contingent termination.** [Sections 1 through 9] terminate when the budget director  
11 certifies to the code commissioner that all funds received from the American Rescue Plan Act of 2021, Public  
12 Law 117-2, the Infrastructure Investment and Jobs Act of 2021, Public Law 117-58, or subsequent funding  
13 pursuant to [section 3(2)] allocated to the department of ~~commerce~~ administration for communications until  
14 funds have been expended."

15

16 NEW SECTION. Section 11. Saving clause. [This act] does not affect rights and duties that  
17 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

18

19 NEW SECTION. Section 12. Notification to tribal governments. The secretary of state shall send a  
20 copy of [this act] to each federally recognized tribal government in Montana.

21

22 NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

23

- END -