ARTICLE 7

BROADBAND

Section 1. Minnesota Statutes 2020, section 116J.395, subdivision 7, is amended to read:

Subd. 7. Limitation. (a) No grant awarded under this section may fund more than 75 percent of the total cost of a project.

(b) Grants awarded to a single project under this section must not exceed $10,000,000.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. REPORT; GRANT AWARD CHANGES. No later than December 31, 2022, the Office of Broadband Development must submit a report to the chairs and ranking minority members of the senate and house of representatives committees with primary jurisdiction over broadband policy and finance analyzing the impacts of the statutory changes made in section 1 of this act on the number and amounts of grants awarded under Minnesota Statutes, section 116J.395.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. TRANSFER. $25,000,000 in fiscal year 2023 is transferred from the general fund to the border-to-border broadband fund account established in Minnesota Statutes, section 116J.396. This is a onetime transfer and remains available until expended.

EFFECTIVE DATE. This section is effective the day following final enactment.

ARTICLE 2

BROADBAND APPROPRIATIONS

Section 1. Laws 2021, First Special Session chapter 10, article 1, section 7, is amended to read:

Sec. 7. BROADBAND DEVELOPMENT; APPLICATION FOR FEDERAL FUNDING; APPROPRIATION. (a) The commissioner of employment and economic development must prepare and submit an application to the United States Department of the Treasury requesting that $70,000,000 of Minnesota's capital projects fund allocation under Public Law 117-2 be awarded to the state. The commissioner must submit the application required under this paragraph by the later of September 30, 2021, or 90 days after the date on which the United States Department of the Treasury begins accepting capital projects fund applications. The
commissioner must specify in the application that the award will be used for grants that satisfy the purposes specified under Minnesota Statutes, section 116J.395.

(b) Of the amount awarded to the state of Minnesota pursuant to the application required in paragraph (a), notwithstanding Minnesota Statutes, sections 3.3005 and 4.07, 50 percent in fiscal year 2022 and 50 percent in fiscal year 2023 are appropriated to the commissioner of employment and economic development. This is a onetime appropriation and must be used for grants that satisfy the purposes specified under Minnesota Statutes, section 116J.395. All money awarded under this section must be spent by December 31, 2026.

(c) The commissioner of employment and economic development may temporarily modify program standards under Minnesota Statutes, section 116J.395, to the degree necessary to comply with federal standards for funding received under this section.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. LOWER POPULATION DENSITY PILOT PROGRAM.

(a) The commissioner of employment and economic development must establish a pilot program to provide broadband service to unserved and underserved areas, as defined in Minnesota Statutes, section 116J.394, of the state where a 50 percent match formula is not adequate to make a business case for the extension of broadband facilities. Grants awarded under this section shall adhere to all other requirements of Minnesota Statutes, section 116J.395, subdivisions 1 to 6, and may fund up to 75 percent of the total cost of a project, notwithstanding Minnesota Statutes section 116J.395, subdivision 7. Grants awarded to a single project under this section may not exceed $5,000,000.

(b) The commissioner of employment and economic development may use up to $15,000,000 from the appropriations in sections 3 and 4 for the lower population density pilot program under paragraph (a).

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 3. BROADBAND DEVELOPMENT; APPLICATION FOR FEDERAL FUNDING; APPROPRIATION.

(a) The commissioner of employment and economic development must prepare and submit a grant plan application to the United States Department of the Treasury requesting that $110,703,000 of Minnesota's capital projects fund allocation under Public Law 117-2 be used for grants that satisfy the purposes specified under Minnesota Statutes, section 116J.395, and sections 2, 5, and 6 of this article. The commissioner must submit the application required under this paragraph by September 24, 2022.

(b) Notwithstanding Minnesota Statutes, sections 3.3005 and 4.07, the amount awarded to Minnesota pursuant to the application required in paragraph (a) is appropriated to the commissioner of employment and economic development. This appropriation (1) must be used only for grants that satisfy the purposes specified under Minnesota Statutes, section 116J.395, subdivisions 1 to 6, and may fund up to 75 percent of the total cost of a project; and (2) is not subject to Minnesota Statutes, section 3.3005, subdivision 5, or 4.07.
116J.395, and sections 2, 5, and 6 of this article, and (2) is available until December 31, 2026.

(c) The commissioner of employment and economic development may temporarily modify program standards under Minnesota Statutes, section 116J.395, and sections 2, 5, and 6 of this article to the extent necessary to comply with federal standards that apply to funding received under this section.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 4. BROADBAND DEVELOPMENT; APPROPRIATION.

(a) Notwithstanding Minnesota Statutes, sections 3.3005 and 4.07, if Minnesota receives federal money for broadband development under Public Law 117-58, the Infrastructure Investment and Jobs Act, the money is appropriated to the commissioner of economic development for grants that satisfy the purposes specified under Minnesota Statutes, section 116J.395, and sections 2, 5, and 6 of this article.

(b) The commissioner of employment and economic development may temporarily modify program standards under Minnesota Statutes, section 116J.395, and sections 2, 5, and 6 of this article to the extent necessary to comply with federal standards that apply to funding received under this section.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 5. BROADBAND LINE EXTENSION PROGRAM; APPROPRIATION.

The commissioner of employment and economic development may use up to $15,000,000 from the appropriations in sections 3 and 4 for the broadband line extension program in Minnesota Statutes, section 116J.3951.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 6. BROADBAND; MAPPING.

The commissioner of employment and economic development may use up to $15,000,000 from the appropriations in sections 3 and 4 for comprehensive statewide mapping if the commissioner determines that comprehensive statewide mapping is an eligible expense under federal law.

EFFECTIVE DATE. This section is effective the day following final enactment.

ARTICLE 4

BROADBAND POLICY

Section 1. [116J.3951] BROADBAND LINE EXTENSION PROGRAM.

Subdivision 1. Program established. A broadband line extension grant program is established in the Department of Employment and Economic Development. The purpose
of the broadband line extension grant program is to award grants to eligible applicants in
order to extend existing broadband infrastructure to unserved locations.

Subd. 2. Portal. No later than November 1, 2022, the department must develop and
implement a portal on the department's website that allows a person to report (1) that
broadband service is unavailable at the physical address of the person's residence or business,
and (2) any additional information that the department deems necessary to ensure that the
broadband line extension grant program functions effectively. The department must develop
a form that allows the information identified in this subdivision to be submitted on paper.

Subd. 3. Data sharing. (a) Beginning no later than six months after the date that the
portal is implemented and every six months thereafter, the department must send to each
broadband service provider serving Minnesota customers: (1) a list of addresses submitted
to the portal under subdivision 2 during the previous six months; and (2) any additional
information that the department deems necessary to ensure that the broadband line extension
grant program functions effectively. The department must send the information required
under this section via e-mail.

(b) No later than ten days after the date that the list in paragraph (a) is provided, a
broadband service provider may notify the department of any posted address at which the
broadband service provider's broadband service is available. The department must provide
persons residing or doing business at those addresses with contact information for:

(1) the broadband service provider with broadband service available at that address; and
(2) programs administered by government agencies, nonprofit organizations, or the
applicable broadband service provider that reduce the cost of broadband service and for
which the persons may be eligible.

Subd. 4. Reverse auction process. (a) No later than ten days after the date that the notice
requirement in subdivision 3, paragraph (b), expires, the department must notify each
broadband service provider that the broadband service provider may participate in the reverse
auction process under this subdivision. Within 60 days of the date that the notification is
received, a broadband service provider may submit a bid to the department to extend the
broadband service provider's existing broadband infrastructure to a location where broadband
service is currently unavailable:

(b) A bid submitted under this subdivision must include:

(1) a proposal to extend broadband infrastructure to one or more of the addresses on the
list sent by the department to the broadband service provider under subdivision 3, paragraph
(a), at which broadband service is unavailable;

(2) the amount of the broadband infrastructure extension's total cost that the broadband
service provider proposes to pay;
(3) the amount of the broadband infrastructure extension's total cost that the broadband
service provider proposes that the department is responsible for paying; and

(d) any additional information required by the department.

(c) Financial assistance that the department provides under this section must be in the
form of a grant issued to the broadband service provider. A grant issued under this section
must not exceed $25,000 per line extension.

(d) Within 60 days of the date that the bidding period closes, the department must review
the bids submitted and select the broadband service provider bids that request the least
amount of financial support from the state, provided that the department determines that
the selected bids represent a cost-effective expenditure of state resources.

Subd. 5. Line extension agreement. The department must enter into a line extension
agreement with each winning bidder identified under subdivision 4, except that the
department may not enter into a line extension agreement to serve any customer located
within an area that will be served by a grant already awarded by the department under section
116J.395.

Subd. 6. Contents of agreement. A line extension agreement under subdivision 5 must
contain the following terms:

(1) the broadband service provider agrees to extend broadband infrastructure to support
broadband service scalable to speeds of at least 100 megabits per second download and 100
megabits per second upload to each address included in the broadband service provider's
winning bid;

(2) the department agrees to pay the state's portion of the line extension cost in a grant
issued to the broadband service provider upon the completion of the broadband infrastructure
extension to each address in the broadband service provider's winning bid; and

(3) the winning bidder has an exclusive right to apply the grant to the cost of the
broadband infrastructure extension for a period of one year after the date that the agreement
is executed.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2020, section 116J.396, subdivision 2, is amended to read:

Subd. 2. Expenditures. Money in the account may be used only:

(1) for grant awards made under sections 116J.395 and 116J.3951, including
costs incurred by the Department of Employment and Economic Development to administer
that section;

(2) to supplement revenues raised by bonds sold by local units of government for
broadband infrastructure development; or
(3) to contract for the collection of broadband deployment data from providers and the
creation of maps showing the availability of broadband service.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

**Sec. 3.** [116J.399] BROADBAND EASEMENTS.

Subdivision 1. Definitions. For the purposes of this section, the following terms have
the meanings given:

(1) "broadband infrastructure" has the meaning given in section 116J.394, paragraph
(c);
(2) "broadband service" has the meaning given in section 116J.394, paragraph (b); and
(3) "provider" means a broadband service provider, but does not include an electric
cooperative association organized under chapter 308A that provides broadband service.

Subd. 2. Use of existing easements for broadband services. (a) A provider, provider's
affiliate, or another entity that has entered into an agreement with a provider, may use the
provider, affiliate, or entity's existing or subsequently acquired easements to install broadband
infrastructure and provide broadband service, which may include an agreement to lease
fiber capacity.

(b) Before exercising rights granted under this subdivision, a provider must provide
notice to the property owner on which the easement is located, as described in subdivision
3.

(c) Use of an easement to install broadband infrastructure and provide broadband service
vests and runs with the land beginning six months after the first notice is provided under
subdivision 3, unless a court action challenging the use of the easement has been filed before
that time by the property owner as provided under subdivision 4. The provider must also
file copies of the notices with the county recorder.

Subd. 3. Notice to property owner. (a) A provider must send two written notices to
impacted property owners declaring that the provider intends to use the easements to install
broadband infrastructure and provide broadband service. The notices must be sent at least
two months apart and must be sent by first class mail to the last known address of the owner
of the property on which the easement is located or, if the property owner is an existing
customer of the provider, by separate printed insertion in the property owner's monthly
invoice or included as a separate page on a property owner's electronic invoice.

(b) The notice must include:

(1) the provider's name and mailing address;
(2) a narrative describing the nature and purpose of the intended easement use:
(3) a description of any trenching or other underground work expected to result from
the intended use, and the anticipated time frame for the work;

(4) a phone number for an employee of the provider that the property owner may contact
regarding the easement; and

(5) the following statement, in bold red lettering: "It is important to make any challenge
by the deadline to preserve any legal rights you may have."

(c) The provider must file copies of the notices with the county recorder.

Subd. 4. Action for damages. (a) Notwithstanding any other law to the contrary, this
subdivision governs an action under this section and is the exclusive means to bring a claim
for compensation with respect to a notice of intent to use a provider's existing easement to
install broadband infrastructure and provide broadband service.

(b) Within six months after the date notice is received under subdivision 3, a property
owner may file an action seeking to recover damages for a provider's use of an existing
easement to install broadband infrastructure and provide broadband service. Claims for
damages under $15,000 may be brought in conciliation court.

(c) To initiate an action under this subdivision, a property owner must serve a complaint
upon the provider in the same manner as in a civil action and must file the complaint with
the district court for the county in which the easement is located. The complaint must state
whether the property owner:

(1) challenges the provider's right to use the easement for broadband services or
infrastructure as provided under subdivision 5, paragraph (a);

(2) seeks damages as provided under subdivision 5, paragraph (b); or

(3) seeks to proceed under both clauses (1) and (2).

Subd. 5. Deposit and hearing required. (a) If a property owner files a complaint
challenging a provider's right to use an easement to install broadband infrastructure and
provide broadband service, after the provider answers the complaint, the district court must
promptly hold a hearing on the complaint. If the district court denies the property owner's
complaint, the provider may proceed to use the easement to install broadband infrastructure
and provide broadband service, unless the complaint also seeks damages. If the complaint
seeks damages, the provider may proceed under paragraph (b).

(b) If a property owner files a claim for damages, a provider may, after answering the
complaint, deposit with the court administrator an amount equal to the provider's estimate
of damages. A provider's estimate of damages must be no less than $1. After the estimated
damages are deposited, the provider may use the existing easement to install broadband
infrastructure and provide broadband service, conditioned on an obligation, filed with the
court administrator, to pay the amount of damages determined by the court.
Subd. 6. Calculation of damages; burden of proof. (a) In an action under this section involving a property owner’s claim for damages:

(1) the property owner has the burden to prove the existence and amount of any net reduction in the fair market value of the property, considering the existence, installation, construction, maintenance, modification, operation, repair, replacement, or removal of broadband infrastructure in the easement, adjusted to reflect any increase in the property’s fair market value resulting from access to broadband service;

(2) a court is prohibited from awarding consequential or special damages; and

(3) evidence of estimated revenue, profits, fees, income, or similar benefits accruing to the provider, the provider’s affiliate, or a third party as a result of use of the easement is inadmissible.

(b) Any fees or costs incurred as a result of an action under this subdivision must be paid by the party that incurred the fees or costs, except that a provider is responsible for a property owner’s attorney fees if the final judgment or award of damages by the court exceeds 140 percent of the provider’s damage deposit made under subdivision 5, if applicable.

Subd. 7. No limits on existing easement. Nothing in this section limits in any way a provider’s existing easement rights.

Subd. 8. Local governmental right-of-way management preserved. The placement of broadband infrastructure to provide broadband service under subdivisions 2 to 7 is subject to local government permitting and right-of-way management authority under section 237.163, and must be coordinated with the relevant local government unit in order to minimize potential future relocations. The provider must notify a local government unit prior to placing infrastructure for broadband service in an easement that is in or adjacent to the local government unit’s public right-of-way.

Subd. 9. Railroad rights-of-way crossing. The placement of broadband infrastructure for use to provide broadband service under subdivisions 1 to 7 or section 308A.201, subdivision 12, in any portion of an existing easement located in a railroad right-of-way is subject to sections 237.84 and 237.845.

EFFECTIVE DATE. This section is effective the day following final enactment.