

HOUSE BILL 1328

C8, R2

11r2780
CF SB 824

By: **Delegate Feldmark**

Introduced and read first time: February 8, 2021

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Economic Development – Broadband Providers – Joint Trenching and Fee**
3 **(Building Out Broadband Act of 2021)**

4 FOR the purpose of declaring certain findings and the intent of the General Assembly;
5 renaming the Rural Broadband Assistance Fund to be the Maryland Digital
6 Connectivity Fund; altering the purpose of the Fund; providing that the Fund
7 consists of certain fees; altering the use of the Fund to include providing certain
8 financial assistance to authorities to expand high-speed Internet access in certain
9 areas of the State; requiring the Department of Commerce to submit a certain report
10 on or before a certain date; authorizing a county or municipal corporation to adopt
11 certain policies to advance progress of infrastructure, equipment, and systems
12 needed to extend certain broadband access; altering the duties of the Maryland Rural
13 Broadband Coordination Board; requiring the Department of Transportation and
14 units of local government to allow joint trenching by broadband providers in a certain
15 manner under certain circumstances; authorizing the Department of
16 Transportation, and units of local government under certain circumstances, to
17 charge a fee to certain broadband providers for joint trenching; requiring the
18 Department of Transportation and units of local government to maintain a certain
19 list of broadband providers that request to receive notice of certain trenching
20 projects; requiring the State or a unit of local government, except under certain
21 circumstances, to provide certain notice to broadband providers of certain trenching
22 projects in a certain manner; requiring the Department of Commerce and the
23 Department of Transportation to adopt certain regulations; defining certain terms;
24 and generally relating to broadband expansion.

25 BY repealing
26 Article – Economic Development
27 Section 5–1101
28 Annotated Code of Maryland
29 (2018 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Economic Development
3 Section 5–1101 and 5–1103 to be under the amended subtitle “Subtitle 11.
4 Maryland Digital Connectivity”
5 Annotated Code of Maryland
6 (2018 Replacement Volume and 2020 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article – Economic Development
9 Section 5–1102 and 13–504
10 Annotated Code of Maryland
11 (2018 Replacement Volume and 2020 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article – Transportation
14 Section 8–654
15 Annotated Code of Maryland
16 (2020 Replacement Volume)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
18 That Section(s) 5–1101 of Article – Economic Development of the Annotated Code of
19 Maryland be repealed.

20 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
21 as follows:

22 **Article – Economic Development**

23 Subtitle 11. [Rural Broadband Assistance Fund] **MARYLAND DIGITAL CONNECTIVITY.**
24 **5–1101.**

25 **THE GENERAL ASSEMBLY DECLARES THAT:**

26 **(1) THE AVAILABILITY OF HIGH-SPEED INTERNET ACCESS,**
27 **REFERRED TO AS “BROADBAND” AND INCLUDING BOTH WIRED AND WIRELESS**
28 **TECHNOLOGIES, IS ESSENTIAL 21ST-CENTURY INFRASTRUCTURE FOR ECONOMIC**
29 **COMPETITIVENESS AND QUALITY OF LIFE;**

30 **(2) ECONOMIC STUDIES CONFIRM THAT THE USE OF BROADBAND**
31 **TECHNOLOGIES INCREASES ECONOMIC PRODUCTIVITY AS A FOUNDATION FOR**
32 **INCREASED EFFICIENCY IN ORGANIZATIONAL OPERATIONS AND ENHANCED**
33 **PROFITABILITY IN BUSINESS;**

34 **(3) BROADBAND INFRASTRUCTURE IS ALSO VITAL TO THE**
35 **OPERATION AND MANAGEMENT OF OTHER CRITICAL INFRASTRUCTURE, INCLUDING**

1 ENERGY GENERATION SYSTEMS AND THE ELECTRICAL GRID, WATER SUPPLY
2 SYSTEMS, AND PUBLIC SAFETY AND EMERGENCY RESPONSE NETWORKS;

3 (4) THERE IS A NEED FOR WORLD-CLASS BROADBAND
4 INFRASTRUCTURE THROUGHOUT MARYLAND TO SUPPORT THESE MAJOR
5 INFRASTRUCTURE INVESTMENTS, AND THEREBY PROTECT LIVES, PROPERTY, AND
6 THE ENVIRONMENT;

7 (5) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT MARYLAND
8 BE A NATIONAL LEADER AND BE GLOBALLY COMPETITIVE IN THE DEPLOYMENT AND
9 THE ADOPTION OF BROADBAND TECHNOLOGY AND IN IMPLEMENTING QUALITY
10 UNIVERSAL ACCESS FOR ALL RESIDENTS; AND

11 (6) IT IS THE POLICY OF THE STATE TO ENCOURAGE COLLABORATION
12 AMONG STAKEHOLDERS AND TO PROMOTE PUBLIC-PRIVATE PARTNERSHIPS TO
13 HARNESS THE EXPERTISE AND STRENGTHS OF ALL PARTNERS TO SERVE THE
14 PUBLIC INTEREST.

15 5-1102.

16 (A) IN THIS SECTION, "FUND" MEANS THE MARYLAND DIGITAL
17 CONNECTIVITY FUND.

18 [(a)] (B) There is a [Rural Broadband Assistance] MARYLAND DIGITAL
19 CONNECTIVITY Fund in the Department.

20 [(b)] (C) The purpose of the Fund is to assist in the establishment AND
21 EXPANSION of AFFORDABLE broadband communication services in [rural and
22 underserved areas of] the State.

23 [(c)] (D) The Department shall administer the Fund.

24 [(d)] (E) (1) The Fund is a special, nonlapsing fund that is not subject to
25 reversion under § 7-302 of the State Finance and Procurement Article.

26 (2) The Treasurer shall hold the Fund separately, and the Comptroller
27 shall account for the Fund.

28 [(e)] (F) The Fund consists of:

29 (1) money appropriated in the State budget to the Fund;

30 (2) money appropriated in the State budget to the Maryland Economic
31 Development Assistance Fund under Subtitle 3 of this title for the purpose of assisting in

1 the establishment of broadband communication services in [rural and underserved areas
2 of] the State;

3 (3) federal money allocated or granted to the Fund; [and]

4 (4) ANY FEES CHARGED BY THE DEPARTMENT OF TRANSPORTATION
5 UNDER § 8-654 OF THE TRANSPORTATION ARTICLE; AND

6 [(4)] (5) any other money from any source accepted for the benefit of the
7 Fund.

8 [(f)] (G) The Fund may be used [only]:

9 (1) for planning, construction, and maintenance of broadband
10 communication services and equipment [in rural and underserved areas] and related
11 activities; AND

12 (2) TO PROVIDE FINANCIAL ASSISTANCE IN THE FORM OF GRANTS TO
13 AUTHORITIES TO EXPAND HIGH-SPEED INTERNET ACCESS IN UNDERSERVED AREAS
14 OF THE STATE, TO:

15 (I) FACILITATE DISTANCE LEARNING, INCLUDING
16 TECHNOLOGICAL IMPROVEMENT FOR DISTANCE LEARNING;

17 (II) ESTABLISH TELEMEDICINE SERVICES IN UNDERSERVED
18 AREAS OF THE STATE;

19 (III) IMPROVE TELEWORK CAPABILITIES FOR EMPLOYEES TO
20 ENABLE COMPLIANCE WITH COVID-19 PUBLIC HEALTH PRECAUTIONS; AND

21 (IV) SUPPORT BUSINESSES BY PROVIDING BETTER ACCESS TO
22 HIGH-SPEED INTERNET.

23 [(g)] (H) (1) The Treasurer shall invest the money in the Fund in the same
24 manner as other State money may be invested.

25 (2) Any investment earnings of the Fund shall be credited to the General
26 Fund of the State.

27 [(h)] (I) The Department shall [make payments from the Fund within 30 days
28 after notice of a decision of the Board under § 13-504(3) of this article] ADOPT
29 REGULATIONS ON:

1 **(1) PROCEDURES FOR AUTHORITIES TO APPLY FOR FINANCIAL**
2 **ASSISTANCE FROM THE FUND; AND**

3 **(2) PRIORITIES FOR ALLOCATING, SELECTING, AND DISTRIBUTING**
4 **FINANCIAL ASSISTANCE FROM THE FUND TO AUTHORITIES IN AREAS OF THE STATE**
5 **UNDERSERVED BY WIRELESS FACILITIES AND WIRELESS SERVICES.**

6 **(J) ON OR BEFORE SEPTEMBER 30, 2021, AND EACH SEPTEMBER 30**
7 **THEREAFTER, THE DEPARTMENT SHALL SUBMIT A REPORT TO THE GOVERNOR**
8 **AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE**
9 **GENERAL ASSEMBLY ON:**

10 **(1) THE STATUS OF THE FUND, INCLUDING ALL ALLOCATIONS AND**
11 **EXPENSES; AND**

12 **(2) RECOMMENDATIONS ON FUTURE FUNDING SOURCES FOR THE**
13 **FUND.**

14 **5-1103.**

15 **A COUNTY OR MUNICIPAL CORPORATION MAY ADOPT, BY ORDINANCE OR**
16 **RESOLUTION, LOCALLY APPROPRIATE POLICIES TO ADVANCE PROGRESS OF**
17 **INFRASTRUCTURE, EQUIPMENT, AND SYSTEMS NEEDED TO EXTEND BROADBAND**
18 **ACCESS TO UNDERSERVED AREAS, INCLUDING:**

19 **(1) EXPEDITED CONSIDERATION OF LOCALLY IMPOSED PERMITS OR**
20 **APPROVALS CUSTOMARILY APPLIED TO COMPARABLE PROJECTS;**

21 **(2) THE WAIVER OR REDUCTION OF FEES OR CHARGES CUSTOMARILY**
22 **ASSOCIATED WITH COMPARABLE PROJECTS;**

23 **(3) USING PROJECT-BASED OR REGION-BASED AUTHORITY FOR**
24 **PUBLIC-PRIVATE PARTNERSHIPS OF RELATED PROJECTS;**

25 **(4) MEASURES CONSISTENT WITH OTHER COUNTY LAWS, EFFECTED**
26 **TO ACCELERATE DEPLOYMENT OF INFRASTRUCTURE AND EQUIPMENT NECESSARY**
27 **OR DESIRABLE TO PROMOTE BROADBAND DEPLOYMENT INTO UNDERSERVED**
28 **AREAS.**

29 **13-504.**

30 The Board shall:

1 (1) assist in the deployment of broadband communication infrastructure in
2 rural and underserved areas of the State;

3 (2) cooperate with public, private, and nonprofit entities to obtain,
4 coordinate, and disseminate resources for the establishment of broadband communication
5 services in rural and underserved areas of the State; **AND**

6 [(3) review and approve the disbursement of funds under the Rural
7 Broadband Assistance Fund under § 5-1102 of this article and any other federal, State, and
8 private financial resources that may be provided to assist the establishment of broadband
9 communication services in rural and underserved areas of the State; and]

10 [(4) (3) perform other functions that are consistent with the intent of this
11 subtitle.

12 Article – Transportation

13 8-654.

14 **(A) (1) IN THIS SECTION, “TRENCHING” MEANS A CONSTRUCTION**
15 **PROJECT IN WHICH A HIGHWAY RIGHT-OF-WAY SURFACE IS OPENED OR REMOVED**
16 **FOR THE PURPOSE OF LAYING OR INSTALLING CONDUIT, FIBER, OR SIMILAR**
17 **INFRASTRUCTURE IN EXCESS OF 1 MILE IN LENGTH.**

18 **(2) “TRENCHING” DOES NOT INCLUDE A PROJECT FOR**
19 **CONSTRUCTION OR MAINTENANCE OF A HIGHWAY FACILITY, INCLUDING DRAINAGE**
20 **OR CULVERT WORK.**

21 [(a) (B) The following units of the State shall allow the use of any right-of-way
22 or easement for the installation of broadband communication infrastructure provided by
23 nonprofit telecommunications services providers in rural and underserved areas of the
24 State without imposition of any charge for the use of the right-of-way or the easement:

25 (1) The Department of Transportation, including the State Highway
26 Administration, the Maryland Transportation Authority, and the Maryland Transit
27 Administration;

28 (2) The Board of Public Works;

29 (3) The Department of Information Technology;

30 (4) The Department of Natural Resources; and

31 (5) The Department of the Environment.

1 **(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A**
2 **UNIT OF LOCAL GOVERNMENT AND THE DEPARTMENT OF TRANSPORTATION,**
3 **INCLUDING THE STATE HIGHWAY ADMINISTRATION, THE MARYLAND**
4 **TRANSPORTATION AUTHORITY, AND THE MARYLAND TRANSIT ADMINISTRATION,**
5 **SHALL ALLOW JOINT TRENCHING BY BROADBAND PROVIDERS ON A NONEXCLUSIVE**
6 **AND NONDISCRIMINATORY BASIS.**

7 **(2) THE DEPARTMENT OR A UNIT OF LOCAL GOVERNMENT MAY DENY**
8 **JOINT TRENCHING IF:**

9 **(I) JOINT TRENCHING WILL HINDER OR OBSTRUCT HIGHWAY**
10 **SAFETY OR THE CONSTRUCTION, MAINTENANCE, OPERATIONS, OR RELATED**
11 **REGULATION OF HIGHWAY FACILITIES; OR**

12 **(II) JOINT TRENCHING IS NOT FEASIBLE BECAUSE IT WILL**
13 **DELAY THE REPAIR OR CONSTRUCTION OF A COUNTY'S WATER, WASTEWATER,**
14 **ELECTRICITY, OR GAS LINES.**

15 **(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
16 **PARAGRAPH, THE DEPARTMENT OR A UNIT OF LOCAL GOVERNMENT MAY CHARGE A**
17 **FEE TO A BROADBAND PROVIDER THAT PARTICIPATES IN JOINT TRENCHING.**

18 **(II) THE DEPARTMENT OR A UNIT OF LOCAL GOVERNMENT MAY**
19 **NOT CHARGE A FEE TO A NONPROFIT BROADBAND PROVIDER THAT PARTICIPATES**
20 **IN JOINT TRENCHING.**

21 **(III) THE DEPARTMENT OR A UNIT OF LOCAL GOVERNMENT**
22 **SHALL DEPOSIT THE FEE INTO THE MARYLAND DIGITAL CONNECTIVITY FUND**
23 **ESTABLISHED UNDER § 5-1102 OF THE ECONOMIC DEVELOPMENT ARTICLE.**

24 **(D) (1) THE DEPARTMENT AND UNITS OF LOCAL GOVERNMENT SHALL**
25 **MAINTAIN A PUBLIC LIST OF ALL BROADBAND PROVIDERS THAT REQUEST TO**
26 **RECEIVE NOTICE OF A UTILITY TRENCHING PROJECT, INCLUDING THE PROVIDER'S**
27 **ADDRESS, ON THE DEPARTMENT'S WEBSITE.**

28 **(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION,**
29 **THE STATE OR A UNIT OF LOCAL GOVERNMENT SHALL PROVIDE NOTICE NOT LESS**
30 **THAN 14 DAYS BEFORE ANY TRENCHING PROJECT ON A COMPETITIVELY NEUTRAL**
31 **BASIS TO BROADBAND PROVIDERS ON THE DEPARTMENT'S WEBSITE.**

32 **(3) THE STATE OR A UNIT OF LOCAL GOVERNMENT IS NOT REQUIRED**
33 **TO PROVIDE NOTICE IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION**
34 **FOR EMERGENCY REPAIRS.**

1 **[(b)] (E)** This section may not be construed to limit or otherwise affect any right
2 granted to the State or a unit of the State under § 253 of the federal Telecommunications
3 Act of 1996 with regard to for profit telecommunications services providers.

4 **(F) THE DEPARTMENT SHALL ADOPT REGULATIONS FOR THE**
5 **IMPLEMENTATION OF THIS SECTION, INCLUDING PROCEDURES FOR CHARGING A**
6 **FEE TO A BROADBAND PROVIDER FOR JOINT TRENCHING.**

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
8 1, 2021.