

SENATE BILL 824

C8, R2

11r2195
CF HB 1328

By: **Senator Hester (Chair, Joint Cybersecurity, Information Technology, and Biotechnology Committee) and Senators Hayes, Hershey, and Ready**

Introduced and read first time: February 9, 2021

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 28, 2021

CHAPTER _____

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 Transportation to~~
23 ~~coordinate certain review of certain trenching with the Washington Suburban~~
24 ~~Sanitary District under certain circumstances; requiring certain revenues to be~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



distributed and used in a certain manner; requiring the Department of Commerce and the Department of Transportation to adopt certain regulations on or before a certain date; requiring the State to appropriate certain funds for a certain purpose, to the extent practicable; defining certain terms; and generally relating to broadband expansion.

BY repealing

Article – Economic Development

Section 5–1101

Annotated Code of Maryland

(2018 Replacement Volume and 2020 Supplement)

BY adding to

Article – Economic Development

~~Section 5–1101 and 5–1103 to be under the amended subtitle “Subtitle 11. Maryland Digital Connectivity”~~ Section 5–1101 and 5–1103

Annotated Code of Maryland

(2018 Replacement Volume and 2020 Supplement)

~~BY repealing and reenacting, with amendments,~~

~~Article – Economic Development~~

~~Section 5–1102 and 13–504~~

~~Annotated Code of Maryland~~

~~(2018 Replacement Volume and 2020 Supplement)~~

BY repealing and reenacting, with amendments,

Article – Transportation

Section 8–654

Annotated Code of Maryland

(2020 Replacement Volume)

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ASSEMBLY OF MARYLAND, That Section(s) 5–1101 of Article – Economic Development of the Annotated Code of Maryland be repealed.

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

Article – Economic Development

~~Subtitle 11. [Rural Broadband Assistance Fund] MARYLAND DIGITAL CONNECTIVITY.~~

5–1101.

THE GENERAL ASSEMBLY DECLARES THAT:

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

5 (2) ECONOMIC STUDIES CONFIRM THAT THE USE OF BROADBAND
6 TECHNOLOGIES INCREASES ECONOMIC PRODUCTIVITY AS A FOUNDATION FOR
7 INCREASED EFFICIENCY IN ORGANIZATIONAL OPERATIONS AND ENHANCED
8 PROFITABILITY IN BUSINESS;

9 (3) BROADBAND INFRASTRUCTURE IS ALSO VITAL TO THE
10 OPERATION AND MANAGEMENT OF OTHER CRITICAL INFRASTRUCTURE, INCLUDING
11 ENERGY GENERATION SYSTEMS AND THE ELECTRICAL GRID, WATER SUPPLY
12 SYSTEMS, AND PUBLIC SAFETY AND EMERGENCY RESPONSE NETWORKS;

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

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

21 (6) IT IS THE POLICY OF THE STATE TO ENCOURAGE COLLABORATION
22 AMONG STAKEHOLDERS AND TO PROMOTE PUBLIC-PRIVATE PARTNERSHIPS TO
23 HARNESS THE EXPERTISE AND STRENGTHS OF ALL PARTNERS TO SERVE THE
24 PUBLIC INTEREST.

25 ~~5-1102.~~

26 ~~(A) IN THIS SECTION, “FUND” MEANS THE MARYLAND DIGITAL~~
27 ~~CONNECTIVITY FUND.~~

28 ~~[(a)] (B) There is a [Rural Broadband Assistance] MARYLAND DIGITAL~~
29 ~~CONNECTIVITY Fund in the Department.~~

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

33 ~~[(e)] (D) The Department shall administer the Fund.~~

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

3 ~~(2) The Treasurer shall hold the Fund separately, and the Comptroller~~
 4 ~~shall account for the Fund.~~

5 ~~[(e)] (F) The Fund consists of:~~

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

7 ~~(2) money appropriated in the State budget to the Maryland Economic~~
 8 ~~Development Assistance Fund under Subtitle 3 of this title for the purpose of assisting in~~
 9 ~~the establishment of broadband communication services in [rural and underserved areas~~
 10 ~~of] the State;~~

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

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

14 ~~[(4)] (5) any other money from any source accepted for the benefit of the~~
 15 ~~Fund.~~

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

17 ~~(1) for planning, construction, and maintenance of broadband~~
 18 ~~communication services and equipment [in rural and underserved areas] and related~~
 19 ~~activities; AND~~

20 ~~(2) TO PROVIDE FINANCIAL ASSISTANCE IN THE FORM OF GRANTS TO~~
 21 ~~AUTHORITIES TO EXPAND HIGH-SPEED INTERNET ACCESS IN UNDERSERVED AREAS~~
 22 ~~OF THE STATE, TO:~~

23 ~~(I) FACILITATE DISTANCE LEARNING, INCLUDING~~
 24 ~~TECHNOLOGICAL IMPROVEMENT FOR DISTANCE LEARNING;~~

25 ~~(II) ESTABLISH TELEMEDICINE SERVICES IN UNDERSERVED~~
 26 ~~AREAS OF THE STATE;~~

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

29 ~~(IV) SUPPORT BUSINESSES BY PROVIDING BETTER ACCESS TO~~
 30 ~~HIGH-SPEED INTERNET.~~

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

3 ~~(2) Any investment earnings of the Fund shall be credited to the General~~
4 ~~Fund of the State.~~

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

8 ~~(1) PROCEDURES FOR AUTHORITIES TO APPLY FOR FINANCIAL~~
9 ~~ASSISTANCE FROM THE FUND; AND~~

10 ~~(2) PRIORITIES FOR ALLOCATING, SELECTING, AND DISTRIBUTING~~
11 ~~FINANCIAL ASSISTANCE FROM THE FUND TO AUTHORITIES IN AREAS OF THE STATE~~
12 ~~UNDERSERVED BY WIRELESS FACILITIES AND WIRELESS SERVICES.~~

13 ~~(J) ON OR BEFORE SEPTEMBER 30, 2021, AND EACH SEPTEMBER 30~~
14 ~~THEREAFTER, THE DEPARTMENT SHALL SUBMIT A REPORT TO THE GOVERNOR~~
15 ~~AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE~~
16 ~~GENERAL ASSEMBLY ON:~~

17 ~~(1) THE STATUS OF THE FUND, INCLUDING ALL ALLOCATIONS AND~~
18 ~~EXPENSES; AND~~

19 ~~(2) RECOMMENDATIONS ON FUTURE FUNDING SOURCES FOR THE~~
20 ~~FUND.~~

21 5-1103.

22 (A) A COUNTY OR MUNICIPAL CORPORATION MAY ADOPT, BY ORDINANCE
23 OR RESOLUTION, LOCALLY APPROPRIATE POLICIES TO ADVANCE PROGRESS OF
24 INFRASTRUCTURE, EQUIPMENT, AND SYSTEMS NEEDED TO EXTEND BROADBAND
25 ACCESS TO UNDERSERVED AREAS, INCLUDING:

26 (1) EXPEDITED CONSIDERATION OF LOCALLY IMPOSED PERMITS OR
27 APPROVALS CUSTOMARILY APPLIED TO COMPARABLE PROJECTS;

28 (2) THE WAIVER OR REDUCTION OF FEES OR CHARGES CUSTOMARILY
29 ASSOCIATED WITH COMPARABLE PROJECTS;

30 (3) USING PROJECT-BASED OR REGION-BASED AUTHORITY FOR
31 PUBLIC-PRIVATE PARTNERSHIPS OF RELATED PROJECTS;

1 (4) MEASURES CONSISTENT WITH OTHER COUNTY LAWS, EFFECTED
 2 TO ACCELERATE DEPLOYMENT OF INFRASTRUCTURE AND EQUIPMENT NECESSARY
 3 OR DESIRABLE TO PROMOTE BROADBAND DEPLOYMENT INTO UNDERSERVED
 4 AREAS.

5 (B) FOR A COUNTY OR MUNICIPAL CORPORATION WITHIN THE
 6 WASHINGTON SUBURBAN SANITARY COMMISSION'S JURISDICTION, THE POLICIES
 7 ADOPTED UNDER SUBSECTION (A) OF THIS SECTION SHALL PROVIDE FOR REVIEW
 8 BY THE WASHINGTON SUBURBAN SANITARY COMMISSION OF TRENCHING PLANS TO
 9 PREVENT WATER AND SEWER LINE CONFLICTS BEFORE A PERMIT IS ISSUED.

10 ~~13-504.~~

11 ~~The Board shall:~~

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

14 ~~(2) cooperate with public, private, and nonprofit entities to obtain,~~
 15 ~~coordinate, and disseminate resources for the establishment of broadband communication~~
 16 ~~services in rural and underserved areas of the State; AND~~

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

21 ~~[(4)] (3) perform other functions that are consistent with the intent of this~~
 22 ~~subtitle.~~

23 Article – Transportation

24 8-654.

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

29 (2) “TRENCHING” DOES NOT INCLUDE A PROJECT FOR
 30 CONSTRUCTION OR MAINTENANCE OF A HIGHWAY FACILITY, INCLUDING DRAINAGE
 31 OR CULVERT WORK.

32 [(a)] (B) The following units of the State shall allow the use of any right-of-way
 33 or easement for the installation of broadband communication infrastructure provided by

1 nonprofit telecommunications services providers in rural and underserved areas of the
2 State without imposition of any charge for the use of the right-of-way or the easement:

3 (1) The Department of Transportation, including the State Highway
4 Administration, the Maryland Transportation Authority, and the Maryland Transit
5 Administration;

6 (2) The Board of Public Works;

7 (3) The Department of Information Technology;

8 (4) The Department of Natural Resources; and

9 (5) The Department of the Environment.

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

16 (2) **WITHIN THE WASHINGTON SUBURBAN SANITARY DISTRICT'S**
17 **JURISDICTION, THE DEPARTMENT, OR A UNIT OF LOCAL GOVERNMENT SHALL**
18 **COORDINATE REVIEW OF JOINT TRENCHING WITH THE WASHINGTON SUBURBAN**
19 **SANITARY DISTRICT.**

20 (3) **THE DEPARTMENT, THE WASHINGTON SUBURBAN SANITARY**
21 **DISTRICT, OR A UNIT OF LOCAL GOVERNMENT MAY DENY JOINT TRENCHING IF:**

22 (I) **JOINT TRENCHING WILL HINDER OR OBSTRUCT HIGHWAY**
23 **SAFETY OR THE CONSTRUCTION, MAINTENANCE, OPERATIONS, OR RELATED**
24 **REGULATION OF HIGHWAY FACILITIES; OR**

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

28 ~~(3)~~ (4) (I) **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
29 **PARAGRAPH, THE DEPARTMENT OR A UNIT OF LOCAL GOVERNMENT MAY CHARGE A**
30 **FEE TO A BROADBAND PROVIDER THAT PARTICIPATES IN JOINT TRENCHING ON**
31 **REASONABLE FINANCIAL TERMS.**

1 (II) THE DEPARTMENT OR A UNIT OF LOCAL GOVERNMENT MAY
 2 NOT CHARGE A FEE TO A NONPROFIT BROADBAND PROVIDER THAT PARTICIPATES
 3 IN JOINT TRENCHING.

4 (III) ~~THE DEPARTMENT OR A UNIT OF LOCAL GOVERNMENT~~
 5 ~~SHALL DEPOSIT THE FEE INTO THE MARYLAND DIGITAL CONNECTIVITY FUND~~
 6 ~~ESTABLISHED UNDER § 5 1102 OF THE ECONOMIC DEVELOPMENT ARTICLE~~
 7 REVENUES GENERATED FROM FEES CHARGED BY THE DEPARTMENT UNDER THIS
 8 SECTION SHALL BE EVENLY DISTRIBUTED ACROSS FUNDS DESIGNED FOR
 9 INVESTMENT IN BROADBAND INFRASTRUCTURE.

10 (IV) REVENUES GENERATED FROM FEES CHARGED BY A UNIT OF
 11 LOCAL GOVERNMENT UNDER THIS SECTION SHALL BE USED TO IMPROVE
 12 BROADBAND ACCESS AND ADOPTION WITHIN THAT JURISDICTION.

13 ~~(D) (1) THE DEPARTMENT AND UNITS OF LOCAL GOVERNMENT SHALL~~
 14 ~~MAINTAIN A PUBLIC LIST OF ALL BROADBAND PROVIDERS THAT REQUEST TO~~
 15 ~~RECEIVE NOTICE OF A UTILITY TRENCHING PROJECT, INCLUDING THE PROVIDER'S~~
 16 ~~ADDRESS, ON THE DEPARTMENT'S WEBSITE.~~

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

21 ~~(3) THE STATE OR A UNIT OF LOCAL GOVERNMENT IS NOT REQUIRED~~
 22 ~~TO PROVIDE NOTICE IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION~~
 23 ~~FOR EMERGENCY REPAIRS.~~

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

27 ~~(F)~~ (E) THE ON OR BEFORE JANUARY 1, 2022, THE DEPARTMENT, AFTER
 28 CONSULTING WITH STAKEHOLDERS INCLUDING BROADBAND PROVIDERS, THE
 29 WASHINGTON SUBURBAN SANITARY DISTRICT, THE MARYLAND ASSOCIATION OF
 30 COUNTIES, AND THE MARYLAND MUNICIPAL LEAGUE, SHALL ADOPT REGULATIONS
 31 FOR THE IMPLEMENTATION OF THIS SECTION, INCLUDING:

32 (1) PROCEDURES FOR CHARGING A FEE TO A BROADBAND PROVIDER
 33 FOR JOINT TRENCHING ON REASONABLE FINANCIAL TERMS; AND

1 **(2) PROCEDURES FOR THE DEPARTMENT AND UNITS OF LOCAL**
2 **GOVERNMENT TO PROVIDE NOTICE OF UPCOMING TRENCHING PROJECTS TO**
3 **BROADBAND PROVIDERS.**

4 SECTION 3. AND BE IT FURTHER ENACTED, That, to the extent practicable, the
5 State shall appropriate federal funding for the purpose of improving broadband access and
6 adoption.

7 SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 July 1, 2021.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.