

Chapter 633

(Senate Bill 824)

AN ACT concerning

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

FOR the purpose of ~~declaring certain findings and the intent of the General Assembly; renaming the Rural Broadband Assistance Fund to be the Maryland Digital Connectivity Fund; altering the purpose of the Fund; providing that the Fund consists of certain fees; altering the use of the Fund to include providing certain financial assistance to authorities to expand high-speed Internet access in certain areas of the State; requiring the Department of Commerce to submit a certain report on or before a certain date; authorizing a county or municipal corporation to adopt certain policies to advance progress of infrastructure, equipment, and systems needed to extend certain broadband access; altering the duties of the Maryland Rural Broadband Coordination Board; requiring the Department of Transportation and units of local government to allow joint trenching by broadband providers in a certain manner under certain circumstances; authorizing the Department of Transportation, and units of local government under certain circumstances, to charge a fee to certain broadband providers for joint trenching; requiring the Department of Transportation and units of local government to maintain a certain list of broadband providers that request to receive notice of certain trenching projects; requiring the State or a unit of local government, except under certain circumstances, to provide certain notice to broadband providers of certain trenching projects in a certain manner; requiring the Department of Transportation to coordinate certain review of certain trenching with the Washington Suburban Sanitary District under certain circumstances; *exempting counties and municipal corporations within the jurisdiction of the Washington Suburban Sanitary District from certain requirements; requiring certain revenues to be 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 use certain funds funding for a certain purpose, to the extent practicable; defining certain terms; making a portion of this Act contingent on the taking effect of another Act;* 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 adding to

Article – Housing and Community Development

Section 6.5-108

Annotated Code of Maryland

(2019 Replacement Volume and 2020 Supplement)

(As enacted by Chapter 74 of the Acts of the General Assembly of 2021)

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

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

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

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

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

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

~~5-1102.~~

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

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

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

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

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

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

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

- ~~(1) money appropriated in the State budget to the Fund;~~
- ~~(2) money appropriated in the State budget to the Maryland Economic Development Assistance Fund under Subtitle 3 of this title for the purpose of assisting in the establishment of broadband communication services in [rural and underserved areas of] the State;~~
- ~~(3) federal money allocated or granted to the Fund; [and]~~
- ~~(4) ANY FEES CHARGED BY THE DEPARTMENT OF TRANSPORTATION UNDER § 8-654 OF THE TRANSPORTATION ARTICLE; AND~~
- ~~[(4)] (5) any other money from any source accepted for the benefit of the Fund.~~

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

- ~~(1) for planning, construction, and maintenance of broadband communication services and equipment [in rural and underserved areas] and related activities; AND~~
- ~~(2) TO PROVIDE FINANCIAL ASSISTANCE IN THE FORM OF GRANTS TO AUTHORITIES TO EXPAND HIGH-SPEED INTERNET ACCESS IN UNDERSERVED AREAS OF THE STATE, TO:~~
 - ~~(I) FACILITATE DISTANCE LEARNING, INCLUDING TECHNOLOGICAL IMPROVEMENT FOR DISTANCE LEARNING;~~
 - ~~(II) ESTABLISH TELEMEDICINE SERVICES IN UNDERSERVED AREAS OF THE STATE;~~
 - ~~(III) IMPROVE TELEWORK CAPABILITIES FOR EMPLOYEES TO ENABLE COMPLIANCE WITH COVID-19 PUBLIC HEALTH PRECAUTIONS; AND~~
 - ~~(IV) SUPPORT BUSINESSES BY PROVIDING BETTER ACCESS TO HIGH-SPEED INTERNET.~~

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

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

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

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

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

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

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

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

~~5-1103.~~

Article – Housing and Community Development

6.5-108.

(A) THIS SECTION DOES NOT APPLY TO A COUNTY OR MUNICIPAL CORPORATION WITHIN THE WASHINGTON SUBURBAN SANITARY DISTRICT.

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

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

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

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

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

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

~~13-504.~~

~~The Board shall:~~

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

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

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

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

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

Article – Transportation

8-654.

(A) (1) IN THIS SECTION, “TRENCHING” MEANS A CONSTRUCTION PROJECT IN WHICH A HIGHWAY RIGHT-OF-WAY SURFACE IS OPENED OR REMOVED

FOR THE PURPOSE OF LAYING OR INSTALLING CONDUIT, FIBER, OR SIMILAR INFRASTRUCTURE IN EXCESS OF 1 MILE IN LENGTH.

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

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

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

(2) The Board of Public Works;

(3) The Department of Information Technology;

(4) The Department of Natural Resources; and

(5) The Department of the Environment.

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

~~(2) WITHIN THE WASHINGTON SUBURBAN SANITARY DISTRICT’S JURISDICTION, THE DEPARTMENT, OR A UNIT OF LOCAL GOVERNMENT SHALL COORDINATE REVIEW OF JOINT TRENCHING WITH THE WASHINGTON SUBURBAN SANITARY DISTRICT.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) THIS SECTION DOES NOT APPLY TO A COUNTY OR MUNICIPAL CORPORATION WITHIN THE WASHINGTON SUBURBAN SANITARY DISTRICT.

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

SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall take effect July 1, 2021, contingent on the taking effect of Chapter 74 of the Acts of the General Assembly of 2021, and if Chapter 74 does not take effect, Section 1 of this Act, with no further action required by the General Assembly, shall be null and void.

SECTION ~~3~~ 4 5. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2021.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 30, 2021.