Information Related to FY2022 Broadband Expansion Grant Agreements

Here is what will be different in this year’s grant agreement related to the source of funds.

Source of Funding

- The State’s most recent budget bill includes authorization for the issuance of up to $125 million of general obligations to fund grants under the Broadband Expansion Grant program.
- Because of this source of funding, to comply with Constitutional and statutory requirements, the grant agreements need to include additional provisions to ensure the State has rights (as described below) with respect to the financed broadband facilities.
- These requirements are consistent with the State’s long-standing practice for bond-funded grants to private organizations.
- The State will issue public debt for this purpose and will repay this debt over a specific bond term. The Department of Administration will determine the term of general obligations issued for this purpose; current discussions include a bond term not exceeding five years. The bond term will be different from the grant performance period.

Lien on Financed Facilities

- The grant recipient must use funds awarded solely for the construction of broadband facilities described in the grant agreement.
- The obligations under the grant agreement will continue and survive the performance period of the grant agreement and will be in full force and effect for as long as the bonds that financed the grant are outstanding. The broadband infrastructure must continue to be used in operation in accordance with the grant agreement for this period of time.
- If the broadband provider defaults and a grant funded by bond proceeds is not used for the construction of broadband infrastructure that is in operation for the bond term, the State will have the right to obtain an ownership interest in the broadband project.
- The grant recipient will have the opportunity to cure its violation of the agreement.
- If the grant recipient fails to cure, the State can require the grant recipient to transfer an ownership interest in the broadband facility, including any grant-funded real property and personal property.
- To secure the recipient’s obligations to build and operate the broadband facility in accordance with the grant agreement, and to transfer an ownership interest to the State if it fails to do so, the State will be granted a lien on the property financed with the grant proceeds.
- If the grant recipient were to be required to transfer an ownership interest to the State, and should fail to do so, the State could foreclose on its lien and obtain an ownership interest in the property.

Other Liens

- The grant agreement will prohibit other liens on the broadband facilities funded by the grant that are senior to the State’s lien.
- If the grant recipient’s lenders have “all asset” liens, or other liens that would cover the facilities financed by the grant, subordination agreements would need to be obtained.
- If the grant recipient is subject to agreements with its lenders, or others, that prohibit liens such as that granted to the State, waivers would need to be obtained.