

2019 DRAFTING REQUEST

Bill

For: **Administration-Budget** Drafter: **emueller**
 By: **Sherwin** Secondary Drafters:
 Date: **2/11/2019** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email:
 Carbon copy (CC) to: **doasbostatlanguage@wisconsin.gov**
eric.mueller@legis.wisconsin.gov
marc.shovers@legis.wisconsin.gov
mark.kunkel@legis.wisconsin.gov

Pre Topic:

DOA:.....Sherwin, BB0325 -

Topic:

Municipal broadband service

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	emueller 2/12/2019				
/P1	emueller 2/18/2019	ccarmich 2/14/2019	lparisi 2/14/2019		Local
/P2	emueller 2/20/2019	ccarmich 2/18/2019	dwalker 2/18/2019		Local
/P3		ccarmich	dwalker		Local

Vers. Drafted

Reviewed
2/20/2019

Submitted
2/20/2019

Jacketed

Required

FE Sent For:

<END>

Mueller, Eric

From: Hanaman, Cathlene
Sent: Monday, February 11, 2019 11:00 AM
To: Mueller, Eric; Shovers, Marc
Subject: FW: Statutory Language Drafting Request - 2019-21

From: Sherwin, Derek - DOA <Derek.Sherwin@wisconsin.gov>
Sent: Monday, February 11, 2019 10:56 AM
To: Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>
Cc: Kraus, Jennifer - DOA <Jennifer.Kraus@wisconsin.gov>; Sherwin, Derek - DOA <Derek.Sherwin@wisconsin.gov>
Subject: Statutory Language Drafting Request - 2019-21

Biennial Budget: 2019-21

Topic: Municipal Broadband Service

Tracking Code: BB0325

SBO Team: GGCF

SBO Analyst: Derek Sherwin
Phone: 608-266-3382
E-mail: derek.sherwin@wisconsin.gov

Agency Acronym: 155

Agency Number: 155

Priority: High

Intent:

Adjust s. 66.0422 to reduce several roadblocks to municipalities providing broadband service. Delete provision within s. 66.0422 (2)(c) that specifies the types of costs required to be discussed within the report produced by a municipality. Adjust s. 66.0422 (3d) to specify adjust provision that local governments may bypass public hearing/report requirements if they survey whether each person providing broadband in area "actively plans" (as opposed to "intends") within 3 months (as opposed to 9 months). Delete s. 66.0422 (3m)(b) and s. 66.0422 (3m)(c).

Attachments: False

Please send completed drafts to SBOSatlanguage@spsmail.enterprise.wistate.us



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1944/P1
EVM:cdc

RMR

DOA:.....Sherwin, BB0325 - Municipal broadband service

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

2/13/19

sub-sub Municipality construction, ownership, or operation of broadband facilities

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1 AN ACT ^o relating to: the budget_A

Analysis by the Legislative Reference Bureau

LOCAL GOVERNMENT

Current law prohibits, with several exceptions, a municipality from constructing, owning, or operating a facility for providing video service, telecommunications service, or broadband service to the public unless 1) the municipality holds a public hearing on the proposed action, 2) notice of the public hearing is given, and 3) the municipality prepares and makes available for public inspection a report estimating the total costs of, and revenues derived from, constructing, owning, or operating the facility for a period of at least ^{three} years. Current law specifies the costs that must be estimated under item 3). This bill eliminates that specification.

Currently, under one of the exceptions, the ^{public and} hearing cost report ~~procedure~~ ^{do} does not apply to a facility for providing broadband service if 1) the municipality offers use of the facility on a nondiscriminatory basis to persons who provide broadband service to end users of the service, 2) the municipality itself does not use the facility to provide broadband service to end users, and 3) the municipality determines that, at the time of authorization, the facility does not compete with more than one provider of broadband service. This bill eliminates requirements 2) and 3). That is, under this bill, the ^{public and} hearing cost report ~~procedure~~ ^{do} would not apply to a facility for providing broadband service if the municipality offers use of the facility on a nondiscriminatory basis to persons who provide broadband service to end users of the service.

public and do

do
~~does~~ Currently, under another of the exceptions, the hearing ^{and} cost report procedure ^{public} ~~procedure~~ does not apply to a facility for providing broadband service to an area within the boundaries of a municipality if the municipality asks, in writing, each person that provides broadband service within the boundaries of the municipality whether the person currently provides broadband service to the area or intends to provide broadband service to the area within ^{nine} 9 months and 1) does not receive an affirmative response within 60 days, 2) the municipality determines that a person who ^{does} responded ~~that the person currently provides broadband service to the area did not~~ actually do so, and no other person makes the response to the municipality, or 3) the municipality determines that a person who responded that the person intended to provide broadband service to the area within 9 months did not actually provide the service within 9 months and no other person makes the response to the municipality.

currently provide broadband service to the area

Under this bill, for this exception, rather than asking whether a person plans to provide broadband service to the area within 9 months, the municipality must ask whether the person actively plans to provide broadband service to the area within ^{three} 3 months.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0422 (2) (c) of the statutes is amended to read:
 2 66.0422 (2) (c) No less than 30 days before the public hearing, the local
 3 government prepares and makes available for public inspection a report estimating
 4 the total costs of, and revenues derived from, constructing, owning, or operating the
 5 facility and including a cost-benefit analysis of the facility for a period of at least 3
 6 years. The costs that are subject to this paragraph include personnel costs and costs
 7 of acquiring, installing, maintaining, repairing, or operating any plant or
 8 equipment, and include an appropriate allocated portion of costs of personnel, plant,
 9 or equipment that are used to provide jointly both telecommunications services and
 10 other services.

History 2003 a. 278, 327; 2007 a. 42.

11 **SECTION 2.** 66.0422 (3d) (intro.) of the statutes is amended to read:

1 66.0422 (3d) (intro.) Subsection (2) does not apply to a facility for providing
2 broadband service to an area within the boundaries of a local government if the local
3 government asks, in writing, each person that provides broadband service within the
4 boundaries of the local government whether the person currently provides
5 broadband service to the area or actively plans to provide broadband service to the
6 area within 3 months and any of the following are satisfied:

History: 2003 a. 278, 327; 2007 a. 42.

7 **SECTION 3.** 66.0422 (3d) (a) of the statutes is amended to read:

8 ~~66.0422 (3d) (a) The local government asks, in writing, each person that~~
9 ~~provides broadband service within the boundaries of the local government whether~~
10 ~~the person currently provides broadband service to the area or intends to provide~~
11 ~~broadband service within 9 months to the area and within 60 days after receiving the~~
12 ~~written request no person responds in writing to the~~ The local government does not
13 ~~receive a response in writing that the~~ a person currently provides broadband service
14 ~~to the area or intends~~ actively plans to provide broadband service to the area within
15 ~~9~~ 3 months.

History: 2003 a. 278, 327; 2007 a. 42.

16 **SECTION 4.** 66.0422 (3d) (b) of the statutes is amended to read:

17 66.0422 (3d) (b) The local government determines that a person who responded
18 ~~to a written request under par. (a) that the person currently provides broadband~~
19 ~~service to the area did not actually provide broadband service to the area and no other~~
20 ~~person makes the response~~ responds to the local government described in par. (a).

History: 2003 a. 278, 327; 2007 a. 42.

21 **SECTION 5.** 66.0422 (3d) (c) of the statutes is amended to read:

22 66.0422 (3d) (c) The local government determines that a person who responded
23 ~~to a written request under par. (a) that the person intended~~ actively planned to



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1944/P1 02
EVM:cdc

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DOA:.....Sherwin, BB0325 - Municipal broadband service

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

INSERT

2/18/19

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

LOCAL GOVERNMENT

1. Municipality construction, ownership, or operation of broadband facilities

Current law prohibits, with several exceptions, a municipality from constructing, owning, or operating a facility for providing video service, telecommunications service, or broadband service to the public unless 1) the municipality holds a public hearing on the proposed action, 2) notice of the public hearing is given, and 3) the municipality prepares and makes available for public inspection a report estimating the total costs of, and revenues derived from, constructing, owning, or operating the facility for a period of at least three years. Current law specifies the costs that must be estimated under item 3). This bill eliminates that specification.

Currently, under one of the exceptions, the public hearing and cost report do not apply to a facility for providing broadband service if 1) the municipality offers use of the facility on a nondiscriminatory basis to persons who provide broadband service to end users of the service, 2) the municipality itself does not use the facility to provide broadband service to end users, and 3) the municipality determines that, at the time of authorization, the facility does not compete with more than one provider of broadband service. This bill eliminates requirements 2) and 3). That is, under this bill, the public hearing and cost report do not apply to a facility for providing

of costs when the facility is a broadband facility intended to serve an underserved or unserved area

for facilities that are intended to serve an underserved or unserved area.

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broadband service if the municipality offers use of the facility on a nondiscriminatory basis to persons who provide broadband service to end users of the service.

Currently, under another of the exceptions, the public hearing and cost report do not apply to a facility for providing broadband service to an area within the boundaries of a municipality if the municipality asks, in writing, each person that provides broadband service within the boundaries of the municipality whether the person currently provides broadband service to the area or intends to provide broadband service to the area within nine months and 1) does not receive an affirmative response within 60 days, 2) the municipality determines that a person who responded does not currently provide broadband service to the area, and no other person makes the response to the municipality, or 3) the municipality determines that a person who responded that the person intended to provide broadband service to the area within nine months did not actually provide the service within nine months and no other person makes the response to the municipality.

Under this bill, for this exception, rather than asking whether a person plans to provide broadband service to the area within nine months, the municipality must ask whether the person actively plans to provide broadband service to the area within three months.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0422 (2) (c) of the statutes is amended to read:

2 66.0422 (2) (c) No less than 30 days before the public hearing, the local
3 government prepares and makes available for public inspection a report estimating
4 the total costs of, and revenues derived from, constructing, owning, or operating the
5 facility and including a cost-benefit analysis of the facility for a period of at least 3
6 years. ~~The costs that are subject to this paragraph include personnel costs and costs~~
7 ~~of acquiring, installing, maintaining, repairing, or operating any plant or~~
8 ~~equipment, and include an appropriate allocated portion of costs of personnel, plant,~~
9 ~~or equipment that are used to provide jointly both telecommunications services and~~
10 ~~other services.~~

11 **SECTION 2.** 66.0422 (3d) (intro.) of the statutes is amended to read:

INS
2-10

1 66.0422 (3d) (intro.) Subsection (2) does not apply to a facility for providing
2 broadband service to an area within the boundaries of a local government if the local
3 government asks, in writing, each person that provides broadband service within the
4 boundaries of the local government whether the person currently provides
5 broadband service to the area or actively plans to provide broadband service to the
6 area within 3 months and any of the following are satisfied:

7 **SECTION 3.** 66.0422 (3d) (a) of the statutes is amended to read:

8 66.0422 (3d) (a) ~~The local government asks, in writing, each person that~~
9 ~~provides broadband service within the boundaries of the local government whether~~
10 ~~the person currently provides broadband service to the area or intends to provide~~
11 ~~broadband service within 9 months to the area and within 60 days after receiving the~~
12 ~~written request no person responds in writing to the~~ The local government does not
13 receive a response in writing that the a person currently provides broadband service
14 to the area or intends actively plans to provide broadband service to the area within
15 -9- 3 months.

16 **SECTION 4.** 66.0422 (3d) (b) of the statutes is amended to read:

17 66.0422 (3d) (b) The local government determines that a person who responded
18 ~~to a written request under par. (a) that the person currently provides broadband~~
19 ~~service to the area did not actually provide broadband service to the area and no other~~
20 ~~person makes the response~~ responds to the local government described in par. (a).

21 **SECTION 5.** 66.0422 (3d) (c) of the statutes is amended to read:

22 66.0422 (3d) (c) The local government determines that a person who responded
23 ~~to a written request under par. (a) that the person intended~~ actively planned to
24 provide broadband service to the area within -9- 3 months did not actually provide

1 broadband service to the area within ~~9~~ 3 months and no other person makes the
2 ~~response~~ responds to the local government ~~described in par. (a).~~

3 **SECTION 6.** 66.0422 (3m) (intro) and (a) of the statutes are consolidated,
4 renumbered 66.0422 (3m) and amended to read:

5 66.0422 (3m) Subsection (2) does not apply to a facility for providing broadband
6 service if all of the following apply:

7 (a) ~~The~~ the municipality offers use of the facility on a nondiscriminatory basis
8 to persons who provide broadband service to end users of the service.

9 **SECTION 7.** 66.0422 (3m) (b) of the statutes is repealed.

10 **SECTION 8.** 66.0422 (3m) (c) of the statutes is repealed.

11

(END)

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2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1944/P2ins
EVM:cdc

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3

SECTION 1. 66.0422 (1) (e) of the statutes is created to read:

4

66.0422 (1) (e) "Underserved area" means an area of this state in which households or businesses lack access to broadband service of at least 25 megabits per second download speed and 3 megabits per second upload speed.

7

SECTION 2. 66.0422 (1) (f) of the statutes is created to read:

8

66.0422 (1) (f) "Unserved area" means an area of this state in which households or businesses lack access to broadband service of at least 10 megabits per second download speed and one megabit per second upload speed.

11

SECTION 3. 66.0422 (2) (c) of the statutes is amended to read:

12

66.0422 (2) (c) No less than 30 days before the public hearing, the local government prepares and makes available for public inspection a report estimating the total costs of, and revenues derived from, constructing, owning, or operating the facility and including a cost-benefit analysis of the facility for a period of at least 3 years. The If the facility is other than a broadband facility that is intended to serve an underserved or unserved area, the costs that are subject to this paragraph include personnel costs and costs of acquiring, installing, maintaining, repairing, or operating any plant or equipment, and include an appropriate allocated portion of costs of personnel, plant, or equipment that are used to provide jointly both telecommunications services and other services.

22

History: 2003 a. 278, 327; 2007 a. 42.

23

1 INS 4-10

2

3 **SECTION 4.** 66.0422 (3m) (b) of the statutes is amended to read:

4 66.0422 **(3m)** (b) The municipality itself does not use the facility to provide
5 broadband service to end users. This paragraph does not apply to a facility that is
6 intended to serve an underserved or unserved area.

~~History:~~ 2003 a. 278, 327; 2007 a. 42.

7 **SECTION 5.** 66.0422 (3m) (c) of the statutes is amended to read:

8 66.0422 **(3m)** (c) The municipality determines that, at the time that the
9 municipality authorizes the construction, ownership, or operation of the facility,
10 whichever occurs first, the facility does not compete with more than one provider of
11 broadband service. This paragraph does not apply to a facility that is intended to
12 serve an underserved or unserved area.

~~History:~~ 2003 a. 278, 327; 2007 a. 42.

Mueller, Eric

From: Sherwin, Derek - DOA
Sent: Sunday, February 17, 2019 2:35 PM
To: Mueller, Eric
Subject: P-1944/P1

Hi Eric-

For the changes to municipal broadband restrictions, are we able to apply the statutory changes addressed in the draft only for areas defined as "underserved" or "unserved"?

Thanks,
Derek

2/18 Derek

- use attached defs.

- apply change to cost estimate change and
exception under 66.0422(3a)

- don't apply to exception under 66.0422(3b)

1 **SECTION 1.** 196.504 (1) (b) of the statutes is amended to read:

2 196.504 (1) (b) “Underserved” means ~~served by fewer than 2~~ broadband service
3 providers an area of this state in which households or businesses lack access to
4 broadband service of at least 25 megabits per second download speed and 3 megabits
5 per second upload speed.

6 **SECTION 2.** 196.504 (1) (c) (intro.) of the statutes is renumbered 196.504 (1) (c)
7 and amended to read:

8 196.504 (1) (c) “Unserved area” means an area of this state ~~that is not served~~
9 ~~by an Internet service provider offering Internet service that is all of the following:~~
10 in which households or businesses lack access to broadband service of at least 10
11 megabits per second download speed and one megabit per second upload speed.

12 **SECTION 3.** 196.504 (1) (c) 1. and 2. of the statutes are repealed.

13

(END)

Mueller, Eric

From: Sherwin, Derek - DOA
Sent: Wednesday, February 20, 2019 10:40 AM
To: Mueller, Eric
Subject: LRB-1944/P2

Hi Eric,

Can you adjust this draft to have the 3 month requirement under s. 66.0422(3d) apply for local governments defined as "underserved" or "unserved" and retain the 9 month requirement in current law for local governments not defined this way?

Additionally – two more minor questions for you – in order to bypass the requirements under s. 66.0422(2), may a local government satisfy any of the requirements under 3, 3d, 3m or 3n – (as opposed to being required to fulfill the requirements under all four of these headers)?

Also – please see s. 66.0422(3m)(a):

(3m) Subsection (2) does not apply to a facility for providing broadband service if all of the following apply:

66 **(a)** The municipality offers use of the facility on a nondiscriminatory basis to persons who provide broadband service to end users of the service.

What is your understanding of this provision? Is this saying that a municipality must offer the use of its broadband infrastructure facilities to telecommunications providers, in addition to using these facilities to provide broadband themselves?

Thanks for your help,

Derek Sherwin
Wisconsin Department of Administration
Division of Executive Finance & Budget
State Budget Office
Executive Policy & Budget Analyst
(608) 266-3382



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1944/P2 P3
EVM:cdc

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DOA:.....Sherwin, BB0325 - Municipal broadband service

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

INSERT

2/20/19

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau
LOCAL GOVERNMENT

1. Municipality construction, ownership, or operation of broadband facilities

Current law prohibits, with several exceptions, a municipality from constructing, owning, or operating a facility for providing video service, telecommunications service, or broadband service to the public unless 1) the municipality holds a public hearing on the proposed action, 2) notice of the public hearing is given, and 3) the municipality prepares and makes available for public inspection a report estimating the total costs of, and revenues derived from, constructing, owning, or operating the facility for a period of at least three years. Current law specifies the costs that must be estimated under item 3. This bill eliminates that specification of costs when the facility is a broadband facility intended to serve an underserved or unserved area.

Currently, under one of the exceptions, the public hearing and cost report do not apply to a facility for providing broadband service if 1) the municipality offers use of the facility on a nondiscriminatory basis to persons who provide broadband service to end users of the service, 2) the municipality itself does not use the facility to provide broadband service to end users, and 3) the municipality determines that, at the time of authorization, the facility does not compete with more than one provider of broadband service. This bill eliminates the requirements under items 2 and 3 for

in the case of an underserved or unserved area

facilities that are intended to serve an underserved or unserved area. That is, under the bill, for facilities that are intended to serve an underserved or unserved area, the public hearing and cost report do not apply to a facility for providing broadband service if the municipality offers use of the facility on a nondiscriminatory basis to persons who provide broadband service to end users of the service.

Currently, under another of the exceptions, the public hearing and cost report do not apply to a facility for providing broadband service to an area within the boundaries of a municipality if the municipality asks, in writing, each person that provides broadband service within the boundaries of the municipality whether the person currently provides broadband service to the area or intends to provide broadband service to the area within nine months and 1) does not receive an affirmative response within 60 days, 2) the municipality determines that a person who responded does not currently provide broadband service to the area, and no other person makes the response to the municipality, or 3) the municipality determines that a person who responded that the person intended to provide broadband service to the area within nine months did not actually provide the service within nine months and no other person makes the response to the municipality.

Under the bill, for this exception, rather than asking whether a person plans to provide broadband service to the area within nine months, the municipality must ask whether the person actively plans to provide broadband service to the area within three months.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The relevant time period

intends or

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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2 66.0422 (1) (e) "Underserved area" means an area of this state in which
3 households or businesses lack access to broadband service of at least 25 megabits per
4 second download speed and 3 megabits per second upload speed.

5 **SECTION 2.** 66.0422 (1) (f) of the statutes is created to read:
6 66.0422 (1) (f) "Unserved area" means an area of this state in which households
7 or businesses lack access to broadband service of at least 10 megabits per second
8 download speed and one megabit per second upload speed.

9 **SECTION 3.** 66.0422 (2) (c) of the statutes is amended to read:

1 66.0422 (2) (c) No less than 30 days before the public hearing, the local
2 government prepares and makes available for public inspection a report estimating
3 the total costs of, and revenues derived from, constructing, owning, or operating the
4 facility and including a cost-benefit analysis of the facility for a period of at least 3
5 years. The If the facility is other than a broadband facility that is intended to serve
6 an underserved or unserved area, the costs that are subject to this paragraph include
7 personnel costs and costs of acquiring, installing, maintaining, repairing, or
8 operating any plant or equipment, and include an appropriate allocated portion of
9 costs of personnel, plant, or equipment that are used to provide jointly both
10 telecommunications services and other services.

11 **SECTION 4.** 66.0422 (3d) (intro.) of the statutes is amended to read:

12 66.0422 (3d) (intro.) Subsection (2) does not apply to a facility for providing
13 broadband service to an area within the boundaries of a local government if the local
14 government asks, in writing, each person that provides broadband service within the
15 boundaries of the local government whether the person currently provides
16 broadband service to the area ^{or} actively plans to provide broadband service to the
17 area within 3 months and any of the following are satisfied:

18 **SECTION 5.** 66.0422 (3d) (a) of the statutes is amended to read:

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20 ~~provides broadband service within the boundaries of the local government whether~~
21 ~~the person currently provides broadband service to the area or intends to provide~~
22 ~~broadband service within 9 months to the area and within 60 days after receiving the~~
23 ~~written request no person responds in writing to the~~ The local government does not
24 receive a response in writing that the a person currently provides broadband service

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1 to the area or ~~intends~~ ^{Strike} ~~actively plans~~ ^{unstrike} to provide broadband service to the area within
 2 ~~9~~ ³ months. the relevant time period

3 SECTION 6. 66.0422 (3d) (b) of the statutes is amended to read:

4 66.0422 (3d) (b) The local government determines that a person who responded
 5 to a written request under par. (a) that the person currently provides broadband
 6 service to the area did not actually provide broadband service to the area and no other
 7 person makes the response responds to the local government described in par. (a).

8 SECTION 7. 66.0422 (3d) (c) of the statutes is amended to read:

9 66.0422 (3d) (c) The local government determines that a person who responded
 10 to a written request under par. (a) that the person ~~intended~~ ^{or} actively planned to
 11 provide broadband service to the area within ~~9~~ ³ months the relevant time period did not actually provide
 12 broadband service to the area within ~~9~~ ³ months the relevant time period and no other person makes the
 13 response responds to the local government described in par. (a).

14 SECTION 8. 66.0422 (3m) (b) of the statutes is amended to read:

15 66.0422 (3m) (b) The municipality itself does not use the facility to provide
 16 broadband service to end users. This paragraph does not apply to a facility that is
 17 intended to serve an underserved or unserved area.

18 SECTION 9. 66.0422 (3m) (c) of the statutes is amended to read:

19 66.0422 (3m) (c) The municipality determines that, at the time that the
 20 municipality authorizes the construction, ownership, or operation of the facility,
 21 whichever occurs first, the facility does not compete with more than one provider of
 22 broadband service. This paragraph does not apply to a facility that is intended to
 23 serve an underserved or unserved area.

**2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1944/P3ins
EVM:cde

1 and, if the area is not an underserved or unserved area, whether the person
2 intends to provide broadband service to the area within 9 months, or, if the area is
3 an underserved or unserved area, whether the person



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1944/P3
EVM:cdc

DOA:.....Sherwin, BB0325 - Municipal broadband service

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

LOCAL GOVERNMENT

1. *Municipality construction, ownership, or operation of broadband facilities*

Current law prohibits, with several exceptions, a municipality from constructing, owning, or operating a facility for providing video service, telecommunications service, or broadband service to the public unless 1) the municipality holds a public hearing on the proposed action, 2) notice of the public hearing is given, and 3) the municipality prepares and makes available for public inspection a report estimating the total costs of, and revenues derived from, constructing, owning, or operating the facility for a period of at least three years. Current law specifies the costs that must be estimated under item 3. This bill eliminates that specification of costs when the facility is a broadband facility intended to serve an underserved or unserved area.

Currently, under one of the exceptions, the public hearing and cost report do not apply to a facility for providing broadband service if 1) the municipality offers use of the facility on a nondiscriminatory basis to persons who provide broadband service to end users of the service, 2) the municipality itself does not use the facility to provide broadband service to end users, and 3) the municipality determines that, at the time of authorization, the facility does not compete with more than one provider of broadband service. This bill eliminates the requirements under items 2 and 3 for

facilities that are intended to serve an underserved or unserved area. That is, under the bill, for facilities that are intended to serve an underserved or unserved area, the public hearing and cost report do not apply to a facility for providing broadband service if the municipality offers use of the facility on a nondiscriminatory basis to persons who provide broadband service to end users of the service.

Currently, under another of the exceptions, the public hearing and cost report do not apply to a facility for providing broadband service to an area within the boundaries of a municipality if the municipality asks, in writing, each person that provides broadband service within the boundaries of the municipality whether the person currently provides broadband service to the area or intends to provide broadband service to the area within nine months and 1) does not receive an affirmative response within 60 days, 2) the municipality determines that a person who responded does not currently provide broadband service to the area, and no other person makes the response to the municipality, or 3) the municipality determines that a person who responded that the person intended to provide broadband service to the area within nine months did not actually provide the service within nine months and no other person makes the response to the municipality.

Under the bill, for this exception in the case of an underserved or unserved area, rather than asking whether a person plans to provide broadband service to the area within nine months, the municipality must ask whether the person intends or actively plans to provide broadband service to the area within the relevant time period.

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0422 (1) (e) of the statutes is created to read:

2 66.0422 (1) (e) “Underserved area” means an area of this state in which
3 households or businesses lack access to broadband service of at least 25 megabits per
4 second download speed and 3 megabits per second upload speed.

5 **SECTION 2.** 66.0422 (1) (f) of the statutes is created to read:

6 66.0422 (1) (f) “Unserved area” means an area of this state in which households
7 or businesses lack access to broadband service of at least 10 megabits per second
8 download speed and one megabit per second upload speed.

9 **SECTION 3.** 66.0422 (2) (c) of the statutes is amended to read:

1 66.0422 (2) (c) No less than 30 days before the public hearing, the local
2 government prepares and makes available for public inspection a report estimating
3 the total costs of, and revenues derived from, constructing, owning, or operating the
4 facility and including a cost-benefit analysis of the facility for a period of at least 3
5 years. The If the facility is other than a broadband facility that is intended to serve
6 an underserved or unserved area, the costs that are subject to this paragraph include
7 personnel costs and costs of acquiring, installing, maintaining, repairing, or
8 operating any plant or equipment, and include an appropriate allocated portion of
9 costs of personnel, plant, or equipment that are used to provide jointly both
10 telecommunications services and other services.

11 **SECTION 4.** 66.0422 (3d) (intro.) of the statutes is amended to read:

12 66.0422 (3d) (intro.) Subsection (2) does not apply to a facility for providing
13 broadband service to an area within the boundaries of a local government if the local
14 government asks, in writing, each person that provides broadband service within the
15 boundaries of the local government whether the person currently provides
16 broadband service to the area and, if the area is not an underserved or unserved area,
17 whether the person intends to provide broadband service to the area within 9
18 months, or, if the area is an underserved or unserved area, whether the person
19 actively plans to provide broadband service to the area within 3 months and any of
20 the following are satisfied:

21 **SECTION 5.** 66.0422 (3d) (a) of the statutes is amended to read:

22 ~~66.0422 (3d) (a) The local government asks, in writing, each person that~~
23 ~~provides broadband service within the boundaries of the local government whether~~
24 ~~the person currently provides broadband service to the area or intends to provide~~
25 ~~broadband service within 9 months to the area and within 60 days after receiving the~~

1 ~~written request no person responds in writing to the~~ The local government does not
2 receive a response in writing that the a person currently provides broadband service
3 to the area or intends or actively plans to provide broadband service to the area
4 within ~~9 months~~ the relevant time period.

5 SECTION 6. 66.0422 (3d) (b) of the statutes is amended to read:

6 66.0422 (3d) (b) The local government determines that a person who responded
7 ~~to a written request under par. (a)~~ that the person currently provides broadband
8 service to the area did not actually provide broadband service to the area and no other
9 person ~~makes the response~~ responds to the local government described in par. (a).

10 SECTION 7. 66.0422 (3d) (c) of the statutes is amended to read:

11 66.0422 (3d) (c) The local government determines that a person who responded
12 ~~to a written request under par. (a)~~ that the person intended or actively planned to
13 provide broadband service to the area within ~~9 months~~ the relevant time period did
14 not actually provide broadband service to the area within ~~9 months~~ the relevant time
15 period and no other person ~~makes the response~~ responds to the local government
16 described in par. (a).

17 SECTION 8. 66.0422 (3m) (b) of the statutes is amended to read:

18 66.0422 (3m) (b) The municipality itself does not use the facility to provide
19 broadband service to end users. This paragraph does not apply to a facility that is
20 intended to serve an underserved or unserved area.

21 SECTION 9. 66.0422 (3m) (c) of the statutes is amended to read:

22 66.0422 (3m) (c) The municipality determines that, at the time that the
23 municipality authorizes the construction, ownership, or operation of the facility,
24 whichever occurs first, the facility does not compete with more than one provider of

1 broadband service. This paragraph does not apply to a facility that is intended to
2 serve an underserved or unserved area.

3 (END)
