



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

May 13, 2013

Joint Committee on Finance

Paper #118

Broadband Expansion Grant Program (DOA -- Information Technology)

[LFB 2013-15 Budget Summary: Page 37, #6]

CURRENT LAW

The state administers a variety of programs relating to the accessibility and affordability of telecommunications services. These programs are funded through Public Service Commission (PSC) assessments on companies providing retail intrastate voice telecommunications services. The Commission is required to estimate the revenues needed to fund 10 specified Universal Service Fund (USF) appropriations and to assess the telecommunications providers for their share of program costs. Providers pay assessments monthly, based on an assessment rate that the PSC adjusts annually.

GOVERNOR

Provide \$4,700,000 SEG in 2013-14 from the USF for broadband expansion grants to increase broadband access and capacity in underserved areas of the state. Require the Department of Administration (DOA) to consult with the PSC to identify areas of the state that are served by fewer than two broadband service providers. Create a continuing appropriation to receive moneys from the USF for the broadband expansion grant program. Grants would be made in consultation with the PSC.

Define "eligible applicants" as: (a) a profit or not-for-profit organization, including a cooperative; (b) a telecommunications utility; or (c) a city, village, town, or county in partnership with an organization identified in (a) or (b).

Require that grant criteria be established to: (a) prohibit grants that have the effect of subsidizing the expenses of a telecommunication service provider or the monthly bills of telecommunications customers; and (b) give priority to projects that include matching funds,

involve public-private partnerships, affect areas with no broadband service providers, or affect a large geographic area or large number of underserved individuals or communities. Specify that an applicant must identify the area of the state that will be affected by the proposed project, and explain how the proposed project will increase broadband access.

DISCUSSION POINTS

1. Proponents of a broadband expansion program argue that public investments in high-speed Internet access are needed for economic development, education, access to health care, public safety, and the revitalization of rural communities. Federal initiatives such as the U.S. Department of Commerce Broadband Technology Opportunities Program (BTOP) offered funding for broadband expansion to entities such as public schools and libraries, and to underserved areas of the state. In August, 2012, the Federal Communications Commission estimated that 23% of households in rural Wisconsin do not have broadband Internet access.

2. In February, 2011, DOA returned to the U.S. Department of Commerce (USDOC) a \$23 million BTOP grant that had been awarded to the state, citing the "unacceptable risk" involved in meeting the various federal regulatory requirements attached to the funds which, if not met, would have resulted in the state reimbursing the full amount. Under DOA's grant award plan, all BTOP funds would have gone to public schools (including technical colleges) and libraries. [It should be noted that public schools (including technical colleges) and libraries would not qualify as eligible applicants for the USF-funded broadband expansion grant program under the bill.]

3. In coordination with USDOC, the PSC is the state's lead agency in conducting broadband mapping and planning activities. Federal law requires USDOC to develop and maintain a comprehensive, interactive, and searchable nationwide inventory map of available broadband service capability. Rather than undertaking the mapping project on its own, the National Telecommunications and Information Administration (NTIA) within USDOC has administered a grant program under which Wisconsin and other states have developed their own broadband maps, within NTIA specifications, with links to the federal map. In total, the State of Wisconsin has received \$4,540,152 in grant funding from NTIA within USDOC. Grant activities funded include broadband capacity building; technical assistance for broadband mapping; data collection, integration, and validation; and digital land information development, acquisition, and integration.

4. As required by federal law, the map indicates: (a) geographic areas in which broadband service is available; (b) the technologies used to provide broadband service in those areas; (c) the spectrum used for the provision of wireless broadband access; (d) the operational speeds of the broadband; and (e) broadband availability at schools, hospitals, libraries, colleges and universities, and all state and municipal public buildings. To assist in meeting the federal requirements, the PSC used much of the grant proceeds to contract with a vendor. However, in anticipation of the grant's expiration in 2014, maintenance of the state map has transitioned to the PSC. Maintenance activities include adding new providers, updating the database for existing providers, and twice-yearly data updates with NTIA.

5. The PSC's broadband planning efforts include working with a variety of

stakeholders to develop policies that encourage investment into new broadband facilities as well as the adoption and use of broadband resources for increased economic benefit. In March, 2013, the PSC released a report on its broadband investment initiative, LinkWisconsin, to "highlight specific replicable initiatives and actions that (1) are realistic and possible within available resources; (2) have enough consensus to be successfully implemented; and (3) are consistent with the needs of Wisconsin."

LinkWisconsin cites the example of Racine County, which partnered with an Internet service provider to provide fixed wireless access to subscribers in areas that did not have a broadband service option. The provider rents space on water towers and other tall assets owned by the County and municipalities in the County. LinkWisconsin, therefore, recommends that the state create an information database to "facilitate access to critical tower assets and right-of-way resources," which would include information regarding: (a) tall assets, poles, and open trenches that could be used by private providers; (b) model legislation from other states; (c) examples of best practices used to support broadband adoption and deployment; (d) model ordinances to facilitate sharing of tall assets, poles, open trenches, and other resources; and (e) typical terms, conditions, requirements, and fees for access to public facilities providing a baseline for both municipal authorities and providers.

6. The PSC, Department of Public Instruction, University of Wisconsin, and DOA administer a variety of programs relating to the accessibility and affordability of telecommunications service. These programs are funded through PSC assessments on companies providing retail intrastate voice telecommunications services. Providers pay assessments monthly based on an assessment rate that the PSC adjusts annually. State statutes permit providers to recover the amounts they are assessed from consumers. The assessments are deposited in the USF, which is administered by a private firm under contract with the PSC. Ten USF appropriations support 13 different programs, with 2012-13 appropriations totaling \$42.7 million.

7. Under the bill, the broadband expansion grant program appropriation is not included in the list of USF appropriations for which the PSC is required to assess telecommunications providers in the amounts needed to fund the programs.

8. Assessments to telecommunications providers for the USF must be sufficient to fund the 10 appropriations specified under s. 196.218(3). The greatest share of funds is spent on two of the programs: (a) the Educational Telecommunications Access Program (\$16,778,800 in 2011-12); and (b) Aid to Public Library Systems (\$15,013,100 in 2011-12). These programs accounted for 78.5% of USF expenditures in 2011-12. Of the \$42.7 million total, DOA administers educational telecommunications access programs for the following entities: (a) public school districts (\$11,105,100); (b) private and technical colleges and libraries (\$5,016,000); (c) private schools (\$694,300); (d) state schools for the blind and visually impaired and deaf and hard of hearing (\$82,500); and (e) juvenile correctional facilities (\$86,300).

9. In addition, the PSC must determine the method by which assessments are to be calculated and collected. The Legislative Audit Bureau (LAB) notes in its audit of the USF in April, 2013, that "the PSC has not always considered unspent revenues when establishing annual assessment rates for programs operated by other agencies." However, in conducting its audit, the

LAB inquired as to the use of the USF cash balance and the methodology for determining assessment rates. In response, the PSC applied \$4.3 million of the fund balance towards provider assessments in October, 2012, which lowered the rates providers paid to fund USF programs in 2012-13. Further, the LAB reports that the PSC "has indicated that it will evaluate the overall fund balance at the end of FY 2012-13 to determine if an additional offset of provider assessments is appropriate when setting the rates for FY 2013-14."

10. The April, 2013, audit also made note of an outstanding issue relating to administrative fees charged by DOA that are paid by the USF. According to the report, which references the previous USF audit of August, 2011, "the amount charged for administrative services was greater than the cost of providing the services and, in report 11-10, we recommended DOA review the fee to ensure it reflects only the actual costs of providing those services." The LAB estimates that \$4.3 million of the cash balance in the DOA appropriation, s. 20.505(1)(is), represents excess administrative service fees paid by the USF.

11. In April, 2013, subsequent to the release of the LAB report, the Secretary of DOA submitted an errata letter to the Joint Committee on Finance relating, in part, to the creation of the broadband expansion grant program in the budget. The Secretary indicated that the intent of the provision was "to use the unencumbered balance of the fund, which has subsequently been reestimated to \$500,000, and to not increase utility assessments or impact current law programs supported by the fund. The statutory language and appropriations should be modified to spend any unencumbered balance of the Universal Service Fund and not be limited to fiscal year 2013-14." [Note that in this paper, Alternative 1 is modified to reflect the intention of the administration in accordance with the errata submission. Therefore, no alternatives include \$4.7 million SEG in 2013-14.]

12. In light of the PSC's consideration of the USF balance in determining rates assessed to telecommunications providers, the budget provision and errata submission appear to be in conflict with the intent of the administration. The purpose of the provision and subsequent errata is to: (a) use the year-end balance of the USF to provide broadband expansion grants; (b) not increase assessments to utilities for programs funded from the USF; and (c) not have an effect on the programs currently funded by the USF.

13. However, under current law, the year-end unencumbered balance of the fund carries over to the following year. If the PSC uses the fund balance in determining future assessment rates, transferring the remaining balance for another use would result in rates that are higher than otherwise necessary since the balance would have been available for rate setting purposes.

14. In addition, excess balances in the USF can result for a number of reasons. With regard to expenditures, spending can decrease for reasons including: (a) a decrease in the cost of services; (b) lower program participation; or (c) a decision by the administering agency to reduce outreach efforts. The stated intent of the administration notwithstanding, it should be noted that the provision outlined in the errata letter could result in lower spending for other USF programs in order to produce a year-end balance to transfer to the broadband grant program.

15. In order to maximize program effectiveness, prevent rate increases, and minimize

any negative effect on other USF programs, the Committee may wish to consider a number of the following modifications.

16. Under the bill, DOA would administer the program in consultation with the PSC. However, as the state's lead agency in conducting broadband mapping and planning activities, in addition to its experience gathering input from various stakeholders relating to broadband expansion in particular, it could be argued that the PSC would be a better administering agency for the grant program than DOA. The Committee could, therefore, choose to specify that the program be administered by the PSC. [Alternative 2a]

17. To avoid or mitigate planned underutilization of funding for other USF programs in order to generate revenue for broadband grants, and to prevent rate increases, the Committee could modify the program to provide a fixed amount of funds to a biennial appropriation. This would limit the amount that could be expended from or transferred to the appropriation. Under this alternative, a biennial appropriation could be created and funded up to \$500,000 SEG annually from the unencumbered balance of the USF. A biennial appropriation would allow up to \$1,000,000 SEG to be expended over the biennium. Expenditures for the program would not be permitted to exceed \$1.0 million over the 2013-15 biennium. However, a biennial appropriation would provide more flexibility in expending the revenue than would an annual appropriation. Expenditure limits for the appropriation would be fixed at the biennial sum of the appropriation amounts in the schedule, as determined through the biennial budget process. [Alternative 2b]

18. However, relying on the unencumbered balance of the fund could make planning for broadband capital expenses unpredictable. To provide a more dependable source of funding for planning purposes, the Committee could add the program to the list of USF appropriations for which the PSC must assess telecommunications providers. Under this alternative, the PSC would be required to assess telecommunications providers a rate sufficient to produce revenue that would fund all 11 appropriations. [Alternative 2c]

19. It could be argued that the \$4.3 million PR in excess fees charged to the USF, which remains in the surplus cash balance of DOA's information technology (IT) and communications services to nonstate entities appropriation, should be returned to the fund or otherwise used for programs relating to the accessibility and affordability of telecommunications service. The Committee could, therefore, direct DOA to transfer \$4.3 million to the USF from its IT services to nonstate entities appropriation, on a one-time basis. No change would be made to the expenditure authority of the DOA appropriation. [Alternative 2d]

20. Alternatively, the Committee could provide the \$4.3 million PR to the broadband grant program directly. The Committee could modify the provision in the bill to create a biennial appropriation funded with \$500,000 PR annually, and direct DOA to transfer the funds to the broadband grant program appropriation. Under this alternative, the transferred funds would remain in the appropriation until fully expended. [Alternative 2e] If appropriated amounts remained at \$500,000 annually, grants could be provided over the next four biennia. Subsequent to the utilization of the \$4.3 million PR, funding would not be available for continuation of the grant program.

21. Other than the generally stated statutory guidelines of providing grants for broadband services in unserved or underserved areas of the state, not giving grants to subsidize service provision, and that grants may only go to certain entities, the details of how, to whom, and for what specific purposes grants may be made is left up to DOA. No legislative review is contemplated. If the Committee wishes to provide for legislative oversight of the parameters of the broadband grant program, it could require that the administering agency promulgate administrative rules for grant program design and administration to be approved by the appropriate standing committees of the Legislature. [Alternative 2f]

22. On the other hand, rates assessed to telecommunications providers could be lowered further by transferring the excess fee moneys to the USF and permitting the PSC to apply the full amount of funds to offset provider assessments. Under this alternative, the Committee could direct DOA to transfer \$4.3 million from its IT services to nonstate entities appropriation to the USF and delete the broadband expansion grant program provision. [Alternative 3]

ALTERNATIVES

1. Approve the Governor's recommendation, as modified by the errata, to reestimate expenditures in 2013-14 at \$500,000 SEG and use any unencumbered balance of the USF for broadband expansion grants to increase broadband access and capacity in underserved areas of the state.

ALT 1	Change to Bill Funding
SEG	- \$4,200,000

2. Modify the provision by adopting any of the following:

a. Specify that the grant program be administered by the PSC.

b. Create a biennial appropriation funded at \$500,000 SEG annually. Specify that the appropriation receive no more than \$500,000 SEG of the unencumbered balance of the USF annually. [Cannot be selected with Alternatives 2c or 2e.]

ALT 2b	Change to Bill Funding
SEG	- \$3,700,000

c. Create a biennial appropriation funded at \$500,000 SEG annually. Add the program to the list of appropriations funded by the USF under s. 196.218(3). Delete language utilizing the unencumbered balance of the USF. [Cannot be selected with Alternatives 2b or 2e.]

ALT 2c	Change to Bill Funding
SEG-REV	\$1,000,000
SEG	- \$3,700,000

d. Provide, on a one-time basis, \$4.3 million in revenue from DOA's IT and communications services to nonstate entities appropriation to the USF. [Cannot be selected with Alternative 2e.]

ALT 2d	Change to Bill Funding
SEG-REV	\$4,300,000

e. Create a biennial appropriation funded at \$500,000 PR annually. Provide, on a one-time basis, \$4.3 million PR from DOA's IT and communications services to nonstate entities appropriation to the broadband expansion grant appropriation. Delete the continuing SEG appropriation and language using the unencumbered balance of the USF. [Cannot be selected with Alternatives 2b, 2c, or 2d.]

ALT 2e	Change to Bill Funding
SEG	- \$4,700,000
PR	<u>1,000,000</u>
Total	- \$3,700,000

f. Require that the administering agency promulgate administrative rules for grant program design and administration to be approved by the appropriate standing committee of the Legislature. [Alternative 2f]

3. Delete provision. Direct DOA to transfer \$4.3 million PR from its IT and communications services to nonstate entities appropriation to the USF.

ALT 3	Change to Bill Funding
SEG-REV	\$4,300,000
SEG	- \$4,700,000

4. Delete provision.

ALT 4	Change to Bill Funding
SEG	- \$4,700,000

Prepared by: Rachel Johnson