



State of Wisconsin
2021 - 2022 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 365**

January 26, 2022 - Offered by Senator MARKLEIN.

1 **AN ACT** *to repeal* 196.504 (1) (b) and 196.504 (2) (d); *to renumber and amend*
2 196.504 (2) (c); *to amend* 24.40 (3), 86.16 (6), 196.504 (1) (c) 2., 196.504 (2) (a)
3 and 196.504 (3) (intro.); and *to create* 196.504 (2) (c) 1. b. and 196.504 (2t) of
4 the statutes; **relating to:** the broadband expansion grant program.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the broadband expansion grant program.

Current law requires the Public Service Commission to administer the broadband expansion grant program, under which PSC designates as “underserved” areas of the state that are served by fewer than two broadband service providers and awards grants to eligible applicants for the purpose of constructing broadband infrastructure in underserved areas. This bill changes the purpose of the grant program to constructing broadband infrastructure in “unserved areas.” Under current law, “unserved areas” are areas not served by an Internet service provider (ISP) that is a fixed wireless service or wired service and that provides service at actual speeds of at least 20 percent of the upload and download speeds for advanced telecommunications capability as designated by the Federal Communications Commission. The bill changes the speed standard for an unserved area to be at least actual download speeds of 100 megabits per second and upload speeds of 20 megabits per second.

Current law requires PSC to establish criteria for evaluating applications and awarding grants under the broadband expansion grant program and requires that the criteria give priority to projects meeting various standards, such as including matching funds and involving public-private partnerships. Under the bill, the criteria must require that projects serve unserved areas. The bill specifies that the criteria must prioritize projects with at least 50 percent matching funds and projects that are capable of offering service with either combined download speeds and upload speeds of 900 megabits per second or greater, or download speeds of 450 megabits per second or greater and upload speeds of 450 megabits per second or greater. When evaluating a grant application, the bill requires PSC to consider all federal broadband grant program project areas related to the proposed project.

The bill adds a procedure by which an ISP in or near to a project area proposed in an application for a broadband expansion grant may challenge the awarding of that grant. An ISP may challenge the grant if that ISP currently provides broadband service to that area at minimum download and upload speeds or if that ISP commits to completing construction of broadband infrastructure and providing broadband service to that area at minimum download and upload speeds no later than 24 months after the date grants are made for the grant cycle under which the application was submitted. The bill requires PSC to evaluate the challenge and prohibits it from funding the project if it determines as credible the challenging ISP's commitment to provide broadband service that meets the requirements.

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

1 **SECTION 1.** 24.40 (3) of the statutes is amended to read:

2 24.40 (3) Notwithstanding s. 28.02 (5) or any contrary rule promulgated by the
3 department, if the department grants an easement under sub. (1r) for the
4 construction of broadband infrastructure in ~~underserved~~ unserved areas, as
5 designated under s. 196.504 (2) ~~(d)~~ (e), the department may not require any appraisal
6 or the payment of any fee to grant the easement.

7 **SECTION 2.** 86.16 (6) of the statutes is amended to read:

8 86.16 (6) If the department consents under sub. (1) to the construction of
9 broadband infrastructure in ~~underserved~~ unserved areas, as designated under s.
10 196.504 (2) ~~(d)~~ (e), the department may not charge any fee for the initial issuance of

1 any permit necessary to construct broadband infrastructure along, across, or within
2 the limits of a highway.

3 **SECTION 3.** 196.504 (1) (b) of the statutes is repealed.

4 **SECTION 4.** 196.504 (1) (c) 2. of the statutes is amended to read:

5 196.504 (1) (c) 2. Provided at actual speeds of at least 20 percent of the upload
6 and download speeds for advanced telecommunications capability as designated by
7 the federal communications commission in its inquiries regarding advanced
8 telecommunications capability under 47 USC 1302 (b) download speeds of 100
9 megabits per second or greater and upload speeds of 20 megabits per second or
10 greater.

11 **SECTION 5.** 196.504 (2) (a) of the statutes, as affected by 2021 Wisconsin Act 58,
12 is amended to read:

13 196.504 (2) (a) To make broadband expansion grants to eligible applicants for
14 the purpose of constructing broadband infrastructure in underserved unserved
15 areas designated under par. (d) (e). Grants awarded under this section shall be paid
16 from the appropriations under ss. 20.155 (3) (r) and (rm) and 20.866 (2) (z), in the
17 amount allocated under s. 20.866 (2) (z) 5.

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

20 196.504 (2) (c) 1. To establish criteria for evaluating applications and awarding
21 grants under this section. The criteria shall ~~prohibit~~ do all of the following:

22 a. Prohibit grants that have the effect of subsidizing the expenses of a provider
23 of telecommunications service, as defined in s. 182.017 (1g) (cq), or the monthly bills
24 of customers of those providers. ~~The criteria shall give~~

1 c. Give priority to projects that include at least 50 percent matching funds; that
2 involve public-private partnerships, ~~that affect unserved areas;~~ that are scalable;
3 that promote economic development; that will not result in delaying the provision
4 of broadband service to areas neighboring areas to be served by the proposed project,
5 ~~or;~~ that affect a large geographic area or a large number of ~~underserved~~ unserved
6 individuals or communities; or that are capable of offering service with either
7 combined download speeds and upload speeds of 900 megabits per second or greater,
8 or download speeds of 450 megabits per second or greater and upload speeds of 450
9 megabits per second or greater.

10 2. When evaluating grant applications under this section, the commission shall
11 consider the degree to which the proposed projects would duplicate existing
12 broadband infrastructure, information about the presence of which is provided to the
13 commission by the applicant or another person within a time period designated by
14 the commission; the impacts of the proposed projects on the ability of individuals to
15 access health care services from home and the cost of those services; ~~and the impacts~~
16 of the proposed projects on the ability of students to access educational opportunities
17 from home; and all federal broadband grant program project areas related to the
18 proposed project.

19 **SECTION 7.** 196.504 (2) (c) 1. b. of the statutes is created to read:

20 196.504 **(2)** (c) 1. b. Require that projects serve unserved areas.

21 **SECTION 8.** 196.504 (2) (d) of the statutes is repealed.

22 **SECTION 9.** 196.504 (2t) of the statutes is created to read:

23 196.504 **(2t)** (a) Within 3 days of the close of the broadband expansion grant
24 application process, the commission shall publish on its Internet site the proposed

1 geographic broadband service area and the proposed broadband service speeds for
2 each application for a broadband expansion grant submitted.

3 (b) An Internet service provider in or proximate to the proposed project area
4 may, within 30 days of publication of the information under par. (a), submit in writing
5 to the commission a challenge to an application. A challenge must contain
6 information demonstrating one of the following:

7 1. The provider currently provides broadband service to the proposed project
8 area at download speeds of 100 megabits per second or greater and upload speeds of
9 20 megabits per second or greater.

10 2. The provider commits to complete construction of broadband infrastructure
11 and to provide broadband service in the proposed project area at speeds equal to or
12 greater than the speeds described under subd. 1. no later than 24 months after the
13 date broadband expansion grants are made for the grant cycle under which the
14 application was submitted. The provider shall submit documentation showing this
15 commitment, including engineering plans, invoices related to project materials,
16 permit applications, and a project timeline.

17 (c) The commission shall evaluate the information submitted in an Internet
18 service provider's challenge under this subsection, and is prohibited from funding a
19 project if the commission determines that the challenger's commitment to provide
20 broadband service that meets the requirements of par. (b) in the proposed project
21 area is credible.

22 (d) If the commission denies funding to an applicant as a result of an Internet
23 service provider's challenge made under this subsection, and the Internet service
24 provider does not fulfill its commitment to provide broadband service in the project
25 area, the commission is prohibited from denying funding to an applicant as a result

1 of a challenge by the same Internet service provider for the following 2 grant cycles,
2 unless the commission determines that the Internet service provider's failure to
3 fulfill its commitment was the result of factors beyond the Internet service provider's
4 control. The commission shall give priority scoring treatment to an application
5 targeting a grant project area that remains unserved as a result of a successful
6 challenge and an unfulfilled commitment.

7 **SECTION 10.** 196.504 (3) (intro.) of the statutes is amended to read:

8 196.504 (3) (intro.) The commission shall encourage the development of
9 broadband infrastructure in ~~underserved~~ unserved areas of the state and do all of the
10 following:

11 **SECTION 11. Initial applicability.**

12 (1) This act first applies to an application for a broadband expansion grant
13 submitted pursuant to s. 196.504 during the grant application period that begins
14 after March 17, 2022.

15 (END)