



2015 SENATE BILL 699

February 3, 2016 – Introduced by Senators MARKLEIN, HARSDORF, ROTH, GUDEx and TIFFANY, cosponsored by Representatives QUINN, E. BROOKS, TRANEL, VANDERMEER, BERNIER, KULP, MURSAU, NOVAK, KRUG, T. LARSON, NERISON, SPIROS, EDMING, RIPP, SWEARINGEN, PETRYK, CZAJA, KITCHENS, TAUCHEN, A. OTT and MACCO. Referred to Committee on Workforce Development, Public Works, and Military Affairs.

1 **AN ACT to amend** 196.504 (title), 196.504 (1) (a) 3., 196.504 (2) (c) and 196.85
2 (1m) (b); and **to create** 196.504 (1) (ae), 196.504 (3), 196.504 (4), 196.504 (5),
3 196.504 (6), 196.504 (7), 196.504 (8) and 196.504 (9) of the statutes; **relating**
4 **to:** duties of the Public Service Commission under the broadband expansion
5 grant program and certification of political subdivisions under that program.

Analysis by the Legislative Reference Bureau

This bill imposes certain duties on the Public Service Commission regarding broadband infrastructure. Current law requires the PSC to designate areas of the state that are served by fewer than two broadband service providers as underserved areas and make grants for constructing broadband infrastructure in those areas in accordance with specified priorities. The bill requires the PSC to encourage the development of broadband infrastructure in those areas. The bill also requires the PSC to provide comprehensive information concerning permits required for broadband network projects and related business activities in the state. In addition, the PSC must work with other state and local agencies to encourage timely and efficient issuance of permits and resolution of related issues, as well as encourage local and federal government agencies to coordinate activities related to approving applications and issuing permits related to broadband network projects.

The bill imposes additional priorities on the PSC in making the grants described above. Under the bill, the PSC must give priority to projects that promote economic development. Also, the PSC must give priority to projects in a city, village,

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town, or county (political subdivision) that the PSC has certified as a Broadband Forward! community. To be eligible for that certification, a political subdivision must enact an ordinance for reviewing applications and issuing permits related to broadband network projects. The ordinance must provide for all of the following: a single point of contact; specified deadlines on the political subdivision's consideration of applications; specified requirements on the denial and approval of applications; filing by electronic or another means authorized by the PSC; and reasonable fees. The bill allows the PSC to develop a model ordinance that complies with the bill's requirements. If a political subdivision enacts an ordinance that is different from a model ordinance, the bill requires the political subdivision, when applying for certification, to submit a written statement describing the ordinance and how it differs from the model ordinance.

The bill requires the PSC to prescribe the form and manner for political subdivisions to apply for certification. The PSC must also prescribe a process for public notice and comment on applications for a period of at least 30 days, and the PSC must consider any public comments before making a certification. However, the process for public notice and comment does not apply to an application by a political subdivision that enacts a model ordinance developed by the PSC or submits the written statement described above.

The bill imposes the following prohibitions on a political subdivision that the PSC certifies as a Broadband Ready! community: requiring designation of a final contractor to complete a broadband network project; imposing application fees that exceed \$100; imposing unreasonable fees; imposing moratoriums on applications, permits, or construction related to broadband network projects; discriminating among public utilities and certain other entities; requiring applicants to provide any service to the political subdivision, and, except for reasonable fees, requiring an applicant to make any payment to or on behalf of the political subdivision.

Also, the bill allows the PSC to decertify a political subdivision upon the request of a broadband service provider if the political subdivision fails to comply with an ordinance described above, modifies the ordinance, or violates a prohibition described above. In addition, the bill allows the PSC to hear complaints that a fee under an ordinance is unreasonable. In a proceeding on such a complaint, the bill specifies that a political subdivision has the burden of proving reasonableness.

For further information see the *state* 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.** 196.504 (title) of the statutes is amended to read:
- 2 **196.504** (title) **Broadband expansion grant program; Broadband**
- 3 **Forward! community certification.**

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1 **SECTION 2.** 196.504 (1) (a) 3. of the statutes is amended to read:

2 196.504 (1) (a) 3. A ~~city, village, town, or county~~ political subdivision that
3 submits an application in partnership with an eligible applicant under subd. 1. or 2.

4 **SECTION 3.** 196.504 (1) (ae) of the statutes is created to read:

5 196.504 (1) (ae) "Political subdivision" means a city, village, town, or county.

6 **SECTION 4.** 196.504 (2) (c) of the statutes, as affected by 2015 Wisconsin Act 55,
7 is amended to read:

8 196.504 (2) (c) To establish criteria for evaluating applications and awarding
9 grants under this section. The criteria shall prohibit grants that have the effect of
10 subsidizing the expenses of a ~~provider of telecommunication~~ provider
11 telecommunications service, as defined in s. 182.017 (1g) (cq), or the monthly bills of
12 telecommunications customers of those providers. The criteria shall give priority to
13 projects that include matching funds, that involve public-private partnerships, that
14 affect areas with no broadband service providers, that are scalable, that promote
15 economic development, that are in a political subdivision certified as a Broadband
16 Forward! community under sub. (4), or that affect a large geographic area or a large
17 number of underserved individuals or communities.

18 **SECTION 5.** 196.504 (3) of the statutes is created to read:

19 196.504 (3) The commission shall encourage the development of broadband
20 infrastructure in underserved areas of the state and do all of the following:

21 (a) Provide comprehensive information concerning permits required for
22 broadband network projects and related business activities in the state and make
23 this information available to any person.

SENATE BILL 699**SECTION 5**

1 (b) Work with other state and local government offices, departments, and
2 administrative entities to encourage timely and efficient issuance of permits and
3 resolution of related issues.

4 (c) Encourage local and federal government agencies to coordinate activities
5 related to approving applications and issuing permits related to broadband network
6 projects.

7 **SECTION 6.** 196.504 (4) of the statutes is created to read:

8 196.504 (4) A political subdivision may apply to the commission for
9 certification as a Broadband Forward! community. The commission shall prescribe
10 the form and manner for making an application. The commission shall prescribe a
11 process for public notice and comment on an application for a period of at least 30
12 days after the application is received, except that the process does not apply to an
13 application by a political subdivision that enacts a model ordinance developed under
14 sub. (9) (a) or submits a written statement under sub. (9) (b). The commission shall
15 approve an application and certify a political subdivision as a Broadband Forward!
16 community if the commission determines that the political subdivision has enacted
17 an ordinance that complies with sub. (5). If the process for public notice and comment
18 applies to an application, the commission shall, before approving the application,
19 consider any public comments made regarding the application.

20 **SECTION 7.** 196.504 (5) of the statutes is created to read:

21 196.504 (5) A political subdivision may not be certified as a Broadband
22 Forward! community under sub. (4) unless the political subdivision enacts an
23 ordinance for reviewing applications and issuing permits related to broadband
24 network projects that provides for all of the following:

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1 (a) Appointing a single point of contact for all matters related to a broadband
2 network project.

3 (b) Requiring the political subdivision to determine whether an application is
4 complete and notifying the applicant about the determination in writing within 10
5 days of receiving the application.

6 (c) If the political subdivision does not believe that an application is complete,
7 requiring the written notification under par. (b) to specify in detail the required
8 information that is incomplete.

9 (d) If the political subdivision does not make the written notification required
10 under par. (b), requiring the political subdivision to consider an application to be
11 complete.

12 (e) Allowing an applicant to resubmit an application as often as necessary until
13 the application is complete.

14 (f) Within 45 days of receiving an application that is complete, requiring the
15 political subdivision to approve or deny the application and provide the applicant
16 written notification of the approval or denial.

17 (g) If the political subdivision denies an application, requiring the political
18 subdivision to include in the written notification under par. (f) substantial evidence
19 that supports the denial.

20 (h) Requiring that an application is considered approved and any required
21 permit is issued if the political subdivision does not provide the written notification
22 under par. (f).

23 (i) Providing that any fee imposed by the political subdivision to review an
24 application, issue a permit, or perform any other activity related to a broadband
25 network project is reasonable.

SENATE BILL 699**SECTION 7**

1 (k) Allowing all forms, applications, and documentation related to a broadband
2 network project to be filed and signed by electronic or another means authorized by
3 the commission.

4 **SECTION 8.** 196.504 (6) of the statutes is created to read:

5 196.504 (6) A political subdivision that the commission has certified as a
6 Broadband Forward! community under sub. (4) may not do any of the following:

7 (a) Require an applicant to designate a final contractor to complete a
8 broadband network project.

9 (b) Impose an unreasonable fee to review an application or issue a permit for
10 a broadband network project application. Any application fee that exceeds \$100 is
11 considered unreasonable.

12 (c) Impose a moratorium of any kind on the approval of applications and
13 issuance of permits for broadband network projects or on construction related to
14 broadband network projects.

15 (d) Discriminate among providers of telecommunications service, as defined in
16 s. 182.017 (1g) (cq), or public utilities with respect to any action described in this
17 section or otherwise related to a broadband network project, including granting
18 access to public rights-of-way, infrastructure and poles, river and bridge crossings,
19 or any other physical assets owned or controlled by the political subdivision.

20 (e) As a condition for approving an application or issuing a permit for a
21 broadband network project or for any other purpose, require the applicant to do any
22 of the following:

23 1. Provide any service or make available any part of the broadband network
24 project to the political subdivision.

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1 2. Except for reasonable fees allowed under sub. (5) (i), make any payment to
2 or on behalf of the political subdivision.

3 **SECTION 9.** 196.504 (7) of the statutes is created to read:

4 196.504 (7) Upon the request of a broadband service provider, the commission
5 may decertify a political subdivision as a Broadband Forward! community if the
6 political subdivision fails to comply with or modifies the ordinance required for
7 certification under sub. (4) or violates sub. (6).

8 **SECTION 10.** 196.504 (8) of the statutes is created to read:

9 196.504 (8) Upon a complaint that an application fee under an ordinance
10 required for certification under sub. (4) is unreasonable, the commission shall
11 determine whether the fee is reasonable. In the proceeding for making that
12 determination, the political subdivision has the burden of proving the
13 reasonableness of any function undertaken by the political subdivision as part of the
14 application process and the reasonableness of the costs of those functions.

15 **SECTION 11.** 196.504 (9) of the statutes is created to read:

16 196.504 (9) (a) The commission may develop a model ordinance that complies
17 with sub. (5) for a political subdivision to review applications and issue permits
18 related to broadband network projects.

19 (b) If the commission develops a model ordinance under par. (a) and a political
20 subdivision enacts a different ordinance that complies with sub. (5), the political
21 subdivision shall, when applying for certification under sub. (4), provide the
22 commission with a written statement that describes the ordinance and how the
23 ordinance differs from the model ordinance.

24 **SECTION 12.** 196.85 (1m) (b) of the statutes is amended to read:

