



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1842/1
EHS:cdc

2021 SENATE BILL 365

May 25, 2021 - Introduced by Senators MARKLEIN, BALLWEG, BERNIER, COWLES, DARLING, FEYEN, NASS, WIMBERGER and FELZKOWSKI, cosponsored by Representatives SUMMERFIELD, OLDENBURG, ARMSTRONG, CABRAL-GUEVARA, CALLAHAN, DALLMAN, JAMES, MAGNAFICI, MOSES, PETRYK, PLUMER, PRONSCHINSKE, RAMTHUN, ROZAR, SCHRAA, SPIROS, SWEARINGEN, TAUCHEN, TRANEL, TUSLER, VANDERMEER and HORLACHER. Referred to Committee on Utilities, Technology and Telecommunications.

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., 196.504 (2) (c) 3.,
4 196.504 (2) (f), 196.504 (2e) and 196.504 (2t) of the statutes; **relating to:** the
5 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

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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 50 percent or more 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 prohibits PSC from awarding grants for projects that do not include at least 40 percent matching funds or for projects that are not capable of offering download speeds of 100 megabits per second or greater and upload speeds of 20 megabits per second or greater (minimum download and upload speeds).

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 or will complete construction to provide 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 bill allows PSC to require the recipient of a broadband expansion grant to submit a project completion final report before any withheld grant funds are disbursed. The bill requires the final report to include the number of customer locations passed, upgraded, or within range and how many actually ordered broadband service as a result of the project, as well as an official certification of speeds. The bill requires PSC to disburse any withheld grant funds to an eligible grantee no later than 30 days after the final report is submitted, and to submit the report to the joint committee on finance and to the appropriate standing committees of the legislature. The bill requires PSC to provide technical assistance and educational tools for broadband expansion grant project development.

The bill provides PSC a mechanism for annually collecting from ISP grantees the same broadband availability and speed data they must disclose to the Federal Communications Commission under the federal Broadband Deployment Accuracy and Technological Availability Act (BDATAA) and to use this information to develop and maintain broadband availability maps. However, the bill requires PSC to review the maps created by the FCC under BDATAA and, if they provide sufficient information to facilitate access to broadband service in unserved areas, eliminates the requirement that ISPs annually disclose this information to PSC.

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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.** 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
11 any permit necessary to construct broadband infrastructure along, across, or within
12 the limits of a highway.

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

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

15 196.504 (1) (c) 2. Provided at actual speeds of at least 20 percent of the upload
16 and download speeds for advanced telecommunications capability as designated by
17 the federal communications commission in its inquiries regarding advanced
18 telecommunications capability under 47 USC 1302 (b) download speeds of 100
19 megabits per second or greater and upload speeds of 20 megabits per second or
20 greater.

21 **SECTION 5.** 196.504 (2) (a) of the statutes is amended to read:

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1 196.504 (2) (a) To make broadband expansion grants to eligible applicants for
2 the purpose of constructing broadband infrastructure in ~~underserved~~ unserved
3 areas designated under par. (d) ~~(e)~~. Grants awarded under this section shall be paid
4 from the appropriations under s. 20.155 (3) (r) and (rm).

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

7 196.504 (2) (c) 1. To establish criteria for evaluating applications and awarding
8 grants under this section. The criteria shall ~~prohibit~~ do all of the following:

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

12 c. Give priority to projects that include matching funds, of 50 percent or more;
13 that involve public-private partnerships, that affect unserved areas;; that are
14 scalable;; that promote economic development; that will not result in delaying the
15 provision of broadband service to areas neighboring areas to be served by the
16 proposed project, ~~or~~; that affect a large geographic area or a large number of
17 underserved unserved individuals or communities; or that are capable of offering
18 service with either combined download speeds and upload speeds of 900 megabits per
19 second or greater, or download speeds of 450 megabits per second or greater and
20 upload speeds of 450 megabits per second or greater.

21 2. When evaluating grant applications under this section, the commission shall
22 consider the degree to which the proposed projects would duplicate existing
23 broadband infrastructure, information about the presence of which is provided to the
24 commission by the applicant or another person within a time period designated by
25 the commission; the impacts of the proposed projects on the ability of individuals to

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1 access health care services from home and the cost of those services; and the impacts
2 of the proposed projects on the ability of students to access educational opportunities
3 from home; and all federal broadband grant program project areas related to the
4 proposed project.

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

6 196.504 (2) (c) 1. b. Require that projects serve unserved areas.

7 **SECTION 8.** 196.504 (2) (c) 3. of the statutes is created to read:

8 196.504 (2) (c) 3. The commission may not award grants for any of the following:

9 a. Projects that do not include matching funds that make up at least 40 percent
10 of the total project cost.

11 b. Projects that are not capable of offering download speeds of 100 megabits per
12 second or greater and upload speeds of 20 megabits per second or greater.

13 **SECTION 9.** 196.504 (2) (d) of the statutes is repealed.

14 **SECTION 10.** 196.504 (2) (f) of the statutes is created to read:

15 196.504 (2) (f) To require that a grantee submit a project completion final report
16 before the commission disburses any withheld grant funds. A project completion
17 final report shall include the number of customer locations passed, upgraded, or
18 within range and how many actually ordered broadband service as a result of the
19 project, and an official certification of speeds performed by either the manufacturer
20 of the equipment or a professional engineer or by using federal communications
21 commission performance testing software. The commission shall disburse any
22 withheld grant funds to an eligible grantee no later than 30 days after a complete
23 project completion final report is submitted. The commission shall send the project
24 completion final report to the joint committee on finance and to the appropriate
25 standing committees of the legislature under s. 13.172 (3).

SENATE BILL 365**SECTION 11**

1 **SECTION 11.** 196.504 (2e) of the statutes is created to read:

2 196.504 **(2e)** In administering the broadband expansion grant program, the
3 commission shall do all of the following:

4 (a) Provide technical assistance and facilitate the development of rural
5 broadband expansion grant projects by connecting interested communities with
6 Internet service providers.

7 (b) Develop and provide educational tools for project creation, grant application
8 processes, and project completion reporting.

9 (c) 1. Subject to subd. 4., require each Internet service provider grant recipient
10 to disclose to the commission no later than April 1 of each year broadband availability
11 data for the provider's footprint in this state in the same manner in which it is
12 required to provide data to the federal communications commission pursuant to 47
13 USC 641 et. seq. and the maximum advertised download and upload speeds
14 associated with its broadband Internet access service available in the reported areas.

15 2. The commission may use the information disclosed under subd. 1. to develop
16 and maintain broadband maps and other geographic data regarding the availability
17 of broadband Internet service in this state. The map may include aggregated data
18 indicating service territories for Internet service providers.

19 3. Notwithstanding s. 19.35, the commission shall withhold from public
20 inspection any information disclosed to the commission under subd. 1. that would aid
21 a competitor of an Internet service provider in competing with the Internet service
22 provider.

23 4. Upon release of the first map created by the federal communications
24 commission pursuant to 47 USC 641 et. seq., the commission shall commence a
25 review of those federal communications commission maps and shall complete the

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1 review within 6 months of commencement. If the commission determines that those
2 maps provide information sufficient to facilitate access to broadband service in
3 unserved areas, subd. 1. no longer applies.

4 **SECTION 12.** 196.504 (2t) of the statutes is created to read:

5 196.504 (2t) (a) Within 3 days of the close of the broadband expansion grant
6 application process, the commission shall publish on its Internet site the proposed
7 geographic broadband service area and the proposed broadband service speeds for
8 each application for a broadband expansion grant submitted.

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

13 1. The provider currently provides or will complete construction to provide
14 broadband service to the proposed project area at download speeds of 100 megabits
15 per second or greater and upload speeds of 20 megabits per second or greater.

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

23 (c) The commission shall evaluate the information submitted in an Internet
24 service provider's challenge under this subsection, and is prohibited from funding a
25 project if the commission determines that the challenger's commitment to provide

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1 broadband service that meets the requirements of par. (b) in the proposed project
2 area is credible.

3 (d) If the commission denies funding to an applicant as a result of an Internet
4 service provider's challenge made under this subsection, and the Internet service
5 provider does not fulfill its commitment to provide broadband service in the project
6 area, the commission is prohibited from denying funding to an applicant as a result
7 of a challenge by the same Internet service provider for the following 2 grant cycles,
8 unless the commission determines that the Internet service provider's failure to
9 fulfill its commitment was the result of factors beyond the Internet service provider's
10 control. The commission shall give priority scoring treatment to an application
11 targeting a grant project area that remains unserved as a result of a successful
12 challenge and an unfulfilled commitment.

13 **SECTION 13.** 196.504 (3) (intro.) of the statutes is amended to read:

14 196.504 (3) (intro.) The commission shall encourage the development of
15 broadband infrastructure in ~~underserved~~ unserved areas of the state and do all of the
16 following:

17 (END)