



State of Wisconsin  
2023 - 2024 LEGISLATURE

LRB-2511/1

EHS:all

## 2023 ASSEMBLY BILL 303

June 2, 2023 - Introduced by Representatives SUMMERFIELD, SWEARINGEN, ARMSTRONG, BINSFELD, CALLAHAN, CONSIDINE, EDMING, GREEN, HURD, S. JOHNSON, KITCHENS, MAGNAFICI, MURSAU, NOVAK, O'CONNOR, PENTERMAN, PETRYK, PLUMER, PRONSCHINSKE, SAPIK, SCHMIDT, SCHRAA, TRANEL and TUSLER, cosponsored by Senators MARKLEIN, BALLWEG, FELZKOWSKI, FEYEN, JAMES, PFAFF, TESTIN, WANGGAARD and WIMBERGER. Referred to Committee on Energy and Utilities.

AN ACT *to repeal* 13.48 (30) (a) 1., 196.504 (1) (b) and 196.504 (2) (d); *to renumber and amend* 196.504 (1) (c) 2. and 196.504 (2) (c); *to consolidate, renumber and amend* 13.48 (30) (a) (intro.) and 2.; *to amend* 13.48 (30) (b), 24.40 (3), 86.16 (6), 196.504 (2) (a) and 196.504 (3) (intro.); and *to create* 196.504 (1) (c) 2. b., 196.504 (1) (c) 3., 196.504 (2) (c) 1. g., 196.504 (2) (c) 2. d. and 196.504 (2t) of the statutes; **relating to:** the broadband expansion grant program.

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### *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

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Internet service provider (ISP) that 1) is a fixed wireless service or wired service and 2) 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 adds that, in order to not be an unserved area, Internet service must be available and reliable, and provided at no less than actual download speeds of 100 megabits per second and upload speeds of 20 megabits per second. The bill also allows PSC to adjust those speed standards every two years by rule if it determines there is good cause to do so in order to align with changes in technology and actual market conditions, in which case it must publish the adjusted speed thresholds on its website.

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 applicants to participate in the FCC's Affordable Connectivity Program or any federally mandated successor program. Under the bill, the criteria must give priority to projects with at least 40 percent matching funds and higher priority to projects with more than 40 percent matching funds. The bill changes a requirement under current law that the criteria prioritize projects in a large geographic area to projects in a geographic area that is difficult to connect. The bill specifies that the criteria must give priority to projects that are capable of offering service at actual download speeds of 100 megabits per second or greater and upload speeds of 100 megabits per second or greater, and higher priority to projects capable of exceeding the minimum speeds just described.

Current law requires PSC to consider certain factors when evaluating an application under the broadband expansion grant program. This bill adds that PSC must consider whether the applicant offers a low-cost broadband service option in order to be eligible for funding under the federal Broadband Equity, Access, and Deployment program or participates in the FCC's Affordable Connectivity Program or any federally mandated successor program.

The bill adds a procedure by which an ISP in or near 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 available and reliable fixed wireless or wired broadband service to the project area at minimum download and upload speeds or if that ISP commits to completing construction of broadband infrastructure and providing available and reliable broadband service to the project area at minimum download and upload speeds no later than 24 months after the date of the PSC order awarding grants. The bill requires PSC to evaluate the challenge and prohibits it from funding any portion of a project relating to the area that is the subject of the challenge if it determines as credible the challenging ISP's commitment to provide broadband service that meets the requirements. If PSC denies funding as a result of such a challenge and the ISP does not fulfill its commitment, PSC is prohibited from awarding grant funding to that ISP and the

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ISP is prohibited from participating in the challenge process for the following two grant cycles.

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

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

**SECTION 1.** 13.48 (30) (a) (intro.) and 2. of the statutes are consolidated, renumbered 13.48 (30) (a) and amended to read:

13.48 (30) (a) In this section: ~~2. “Unserved,”~~ “unserved area” has the meaning given in s. 196.504 (1) (c).

**SECTION 2.** 13.48 (30) (a) 1. of the statutes is repealed.

**SECTION 3.** 13.48 (30) (b) of the statutes is amended to read:

13.48 (30) (b) The legislature finds and determines that the provision of broadband Internet access is essential to the welfare of the citizens of this state and to economic development in this state, and therefore the provision of broadband Internet access is a government function and a statewide responsibility of statewide dimension. The legislature further determines that sufficient private capital has been and continues to be unavailable to fulfill the need for the development of broadband Internet access in ~~underserved and~~ unserved areas in this state. It is therefore in the public interest, and it is the public policy of this state, to assist the public service commission in making broadband expansion grants under s. 196.504 (2) (a) for the purpose of constructing broadband infrastructure in ~~underserved and~~ unserved areas of this state.

**SECTION 4.** 24.40 (3) of the statutes is amended to read:

24.40 (3) Notwithstanding s. 28.02 (5) or any contrary rule promulgated by

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the department, if the department grants an easement under sub. (1r) for the construction of broadband infrastructure in ~~underserved~~ unserved areas, as designated under s. 196.504 (2) ~~(d)~~ (e), the department may not require any appraisal or the payment of any fee to grant the easement.

**SECTION 5.** 86.16 (6) of the statutes is amended to read:

86.16 **(6)** If the department consents under sub. (1) to the construction of broadband infrastructure in ~~underserved~~ unserved areas, as designated under s. 196.504 (2) ~~(d)~~ (e), the department may not charge any fee for the initial issuance of any permit necessary to construct broadband infrastructure along, across, or within the limits of a highway.

**SECTION 6.** 196.504 (1) (b) of the statutes is repealed.

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

196.504 **(1)** (c) 2. a. Provided 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 in its inquiries regarding advanced telecommunications capability under 47 USC 1302 (b)~~ download speeds of 100 megabits per second or greater and upload speeds of 20 megabits per second or greater.

**SECTION 8.** 196.504 (1) (c) 2. b. of the statutes is created to read:

196.504 **(1)** (c) 2. b. Beginning on July 1 of the 2nd calendar year beginning after the effective date of this subd. 2. b. .... [LRB inserts date], and on July 1 of each successive odd-numbered year thereafter, the commission may, by rule, adjust the

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threshold speeds designated in subd. 2. a. if, upon review, it determines there is good cause to do so in order to align with changes in technology and actual market conditions. If the commission adjusts these threshold speeds, it shall publicize the adjusted speed thresholds on its website.

**SECTION 9.** 196.504 (1) (c) 3. of the statutes is created to read:

196.504 (1) (c) 3. Available and reliable.

**SECTION 10.** 196.504 (2) (a) of the statutes, as affected by 2021 Wisconsin Act 58, is amended to read:

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

**SECTION 11.** 196.504 (2) (c) of the statutes is renumbered 196.504 (2) (c) 1. (intro.) and amended to read:

196.504 (2) (c) 1. (intro.) To establish criteria for evaluating applications and awarding grants under this section, which shall require applicants to participate in the federal communications commission's affordable connectivity program or any federally mandated successor program. The criteria shall prohibit grants that have the effect of subsidizing the expenses of a provider of telecommunications service, as defined in s. 182.017 (1g) (cq), or the monthly bills of customers of those providers. The criteria shall give-priority to ~~projects~~ all of the following:

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a. Projects that include at least 40 percent matching funds, and shall give higher priority to projects with more than 40 percent matching funds.

b. Projects that involve public-private partnerships, ~~that affect unserved areas,~~

c. Projects that are scalable,

d. Projects that promote economic development,

e. Projects that will not result in delaying the provision of broadband service to areas neighboring areas to be served by the proposed project, ~~or,~~

f. Projects that affect a large geographic area that is difficult to connect or a large number of ~~underserved~~ unserved individuals or communities.

2. When evaluating grant applications under this section, the commission shall consider ~~the~~ all of the following:

a. The degree to which the proposed projects would duplicate existing broadband infrastructure, information about the presence of which is provided to the commission by the applicant or another person within a time period designated by the commission; ~~the.~~

b. The impacts of the proposed projects on the ability of individuals to access health care services from home and the cost of those services; ~~and the.~~

c. The impacts of the proposed projects on the ability of students to access educational opportunities from home.

**SECTION 12.** 196.504 (2) (c) 1. g. of the statutes is created to read:

196.504 (2) (c) 1. g. Projects that are capable of offering service at actual download speeds of 100 megabits per second or greater and upload speeds of 100

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megabits per second or greater. Projects that are capable of exceeding the minimum speeds described in this subd. 1. g. shall be given higher priority than projects that are capable only of meeting the minimum speeds.

**SECTION 13.** 196.504 (2) (c) 2. d. of the statutes is created to read:

196.504 (2) (c) 2. d. Whether the applicant offers a low-cost broadband service option in order to be eligible for funding under the broadband equity, access, and deployment program administered by the federal department of commerce or participates in the federal communications commission's affordable connectivity program or any federally mandated successor program.

**SECTION 14.** 196.504 (2) (d) of the statutes is repealed.

**SECTION 15.** 196.504 (2t) of the statutes is created to read:

196.504 (2t) (a) Within 10 days of the close of the broadband expansion grant application process, the commission shall publish on its website the proposed geographic broadband service area and the proposed broadband service speeds for each application for a broadband expansion grant submitted.

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

1. The provider currently provides available and reliable fixed wireless or wired broadband service to the proposed project area at download speeds of 100 megabits per second or greater and upload speeds of 20 megabits per second or greater.

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2. The provider commits to complete construction of broadband infrastructure and to provide available and reliable fixed wireless or wired broadband service to the proposed project area at speeds equal to or greater than the speeds described under subd. 1. no later than 24 months after the date of the commission's order awarding broadband expansion grants. The provider shall submit documentation showing this commitment to the satisfaction of the commission, which may include engineering plans, invoices related to project materials, permit applications, and a project timeline.

(c) The commission shall evaluate an Internet service provider's challenge under this subsection, and is prohibited from funding any portion of a project relating to the area that is the subject of the challenge if the commission determines that the challenger's provision of or commitment to provide broadband service that meets the requirements of par. (b) in that area is credible.

(d) If the commission denies funding to an applicant as a result of an Internet service provider's challenge made under this subsection and the Internet service provider does not fulfill its commitment to provide available and reliable broadband service in the area that is the subject of the challenge, the commission is prohibited from awarding grant funding to that Internet service provider for the following 2 grant cycles and that Internet service provider is prohibited from participating in the challenge process under par. (b) for the following 2 grant cycles, unless the commission determines that the Internet service provider's failure to fulfill its commitment was the result of factors beyond the Internet service provider's control. The commission shall give priority scoring treatment to an application targeting a



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grant project area that remains unserved as a result of a successful challenge and an unfulfilled commitment.

**SECTION 16.** 196.504 (3) (intro.) of the statutes is amended to read:

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

**SECTION 17. Initial applicability.**

(1) BROADBAND EXPANSION GRANT PROGRAM. This act first applies to an application for a broadband expansion grant submitted pursuant to s. 196.504 during the grant application period that begins after the effective date of this subsection.

**(END)**