



WISCONSIN LEGISLATIVE COUNCIL  
STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE STUDY COMMITTEE ON RURAL BROADBAND

FROM: Zach Ramirez and Julia Norsetter, Staff Attorneys

RE: Committee Discussion of Bill Draft, LRB-0143/P3

DATE: September 23, 2016

The Study Committee on Rural Broadband has been directed to review the Wisconsin Broadband Expansion Grant Program (the "Grant Program") and to consider alternative methods for encouraging construction of broadband infrastructure in Wisconsin. In response to the committee's discussion of potential recommended legislative changes at its September 2016 meeting, Chair Marklein directed committee staff to prepare draft legislation to accomplish these changes. This Memo describes the changes to current law that are included in the bill draft, LRB-0143/P3.

**SUMMARY**

With regard to the **eligibility criteria** for the Grant Program, the bill draft:

- Expands the list of entities that are eligible to receive a grant, by adding school districts that submit an application in partnership with a telecommunications utility or a for-profit or not-for-profit organization.
- Does not make any changes to current law regarding the locations that are eligible for grant funding or activities for which grant funds may be used.

With regard to the **priority criteria** for the Grant Program, the bill draft:

- Clarifies how two priority criteria in current law should be applied by further defining projects that promote economic development and projects that affect areas with no broadband service providers.

- Creates two new priority criteria by specifying that priority shall be given to projects that do not duplicate broadband service infrastructure, and projects that will not result in delaying the provision of broadband service to areas neighboring areas to be served by a proposed project.
- Makes no changes to the current law requirement that priority shall be given to projects: that include matching funds; that involve public-private partnerships; that are scalable; or that affect a large geographic area or a large number of underserved individuals or areas.

With regard to the **funding** for the Grant Program, the bill draft:

- Requires the PSC to annually raise, through the Universal Service Fund (USF) assessment, \$1.5 million for the program, on an ongoing basis beginning in fiscal year (FY) 2019-20.

The bill draft also creates a requirement for the Public Service Commission (PSC), when evaluating grant applications, to consider certain project impacts.

More detailed information about each of these changes is provided below.

### **ELIGIBILITY CRITERIA**

The bill draft (LRB-0143/P3) makes changes to the entities that are eligible to receive a grant, but it does **not** make any changes to current law regarding the locations that are eligible for grant funding or activities for which grant funds may be used.

#### **Entities Eligible to Receive a Grant**

Under **current law**, to be eligible for a grant, the statutes require that an applicant must be either: (1) an organization operated for-profit or not-for-profit, including a cooperative; (2) a telecommunications utility; or (3) a city, village, town, or county that submits an application in partnership with a telecommunications utility or a for-profit or not-for-profit organization. [s. 196.504 (1) (a), Stats.]

The **bill draft** expands the list of entities that are eligible to apply for a grant by adding a school district that submits an application in partnership with a telecommunications utility or a for-profit or not-for-profit organization. [SECTION 4, page 2, lines 10-13.]

### **PRIORITY CRITERIA**

The bill draft clarifies how two of the priority criteria in current law should be applied, and it creates two new priority criteria.

#### **Economic Development**

**Current law** provides that priority shall be given to projects that promote economic development. [s. 196.504 (2) (c), Stats.] However, current law does not define “economic development” with regard to the Grant Program.

The PSC interprets this requirement by giving priority to projects that will result in business expansion or development. Specifically, the PSC gives a high degree of priority to applications that include one or more letters of support from businesses indicating imminent plans to build or expand the size of their operations in the project area due to improved broadband connectivity, and it gives a lesser degree of priority to applications that can reasonably demonstrate that improved broadband service in the project area could lead to additional business development in the future.

The **bill draft** addresses committee concerns regarding whether the PSC's interpretation of "economic development" disadvantages projects that provide residential broadband service by defining "economic development" to include projects that benefit residential development. Specifically, the bill draft defines "economic development" to mean development that is designed to promote job growth or retention, expand the property tax base or improve the overall economic vitality of a town, village, city, county or region. [SECTION 5, page 2, lines 14-16.]

### Areas With No Broadband Service Providers

**Current law** provides that priority shall be given to projects that affect areas with no broadband service providers. [s. 196.504 (2) (c), Stats.] However, the statutes do not define "broadband service." The PSC specifies the transmission speed and technology required for a type of service to qualify as "broadband service." Currently, the PSC specifies a transmission speed of 25 Mbps download / 3 Mbps upload. It specifies that the technology includes wired service or fixed wireless service, but excludes mobile and satellite service. Therefore, an area with a number of Internet service providers is given priority if none of its providers provide service at this speed.

The **bill draft** addresses committee comments regarding the importance of prioritizing projects that affect areas with no reasonably adequate Internet service by further defining the areas that shall be given priority.

The **bill draft** repeals the requirement that priority shall be given to projects that affect areas with no broadband service providers, and it replaces it with a requirement that priority shall be given to projects in "unserved areas." Under the bill draft, an area would currently qualify as "unserved" if it had no broadband service providers providing wired or fixed wireless service, at a reasonable price, at a speed of at least 3.75 Mbps download / 450 Kbps upload.

Specifically, the bill draft authorizes the PSC to designate areas of the state as "unserved," and it defines an "unserved area" to mean an area of this state that is **not** served by an Internet service provider offering Internet service that is **all** of the following:

- Wired service or fixed wireless service, which includes service that is a telecommunications service that provides radio communication between fixed points but which excludes mobile wireless service.

- Provided at actual speeds of at least 15% of the upload and download speeds for high-speed, switched, broadband telecommunications capability as designated by the Federal Communications Commission (FCC).
- Offered at a price that is reasonable, as determined by the PSC. [SECTION 7, page 2, line 21 – page 3, line 5.]

To address committee comments regarding the need for transmission speed standards set in statute to keep pace with the changing demands of technology, the transmission speed standard included in the definition of “unserved” will increase as the FCC increases its standard. Currently, the FCC’s standard for this purpose is 25 Mbps download / 3 Mbps upload. Therefore, the current speed specified in the bill draft’s definition of “unserved” is 3.75 Mbps download / 450 Kbps upload. This download speed meets or exceeds the minimum download speed recommended by the FCC for all but one of the activities listed in Table 1.

**Table 1: FCC Minimum Download Speed Recommendations<sup>1</sup>**

<b>Activity</b>	<b>Minimum Download Speed (Mbps)</b>
Email	0.5
Navigating government websites	0.5
Viewing interactive webpages and short videos	1.0
Basic video conferencing	1.0
Streaming feature movies	1.5
Telelearning	4.0

Under this provision, the “actual speed” of available Internet service is referenced with respect to whether an area is unserved. This phrase is currently undefined in the draft. As a result, the PSC will be responsible for determining which sources of information to use with respect to any particular application to evaluate actual speeds. This provision does not require the PSC to actively survey the actual speeds of Internet service available in an area that is the subject of a grant application.

### **Duplication of Broadband Service Infrastructure**

**Current law** does not directly address projects that duplicate broadband service infrastructure.

At the committee’s September meeting, the committee discussed concerns regarding instances in which grant funds are provided to construct broadband service infrastructure in areas where broadband service is not currently available but broadband service infrastructure is already present.

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<sup>1</sup> FCC Broadband Speed Guide (<http://www.fcc.gov/guides/broadband-speed-guide>), last accessed July 1, 2016.

To address the committee's comments, the **bill draft** requires that priority shall be given to projects that do not duplicate broadband service infrastructure. [SECTION 8, page 3, lines 13-14.]

### Delaying the Deployment of Broadband Service Infrastructure to Nearby Areas

**Current law** does not directly address projects that may result in delaying the provision of broadband service to areas neighboring areas to be served by a proposed project.

At the committee's September meeting, the committee discussed concerns regarding whether certain projects that receive grants have the indirect effect of delaying the provision of broadband service to nearby areas. The committee discussed a hypothetical situation in which a grant is awarded for a project to provide broadband service to a business park. The committee discussed whether, by providing financial support for the provision of broadband service to the most profitable customer in an area, a grant would eliminate the incentive for a broadband service provider to more broadly deploy infrastructure and provide service to less profitable residential customers.

To address the committee's comments, the **bill draft** requires that priority shall be given to projects that will not result in delaying the provision of broadband service to areas neighboring areas to be served by the proposed project. [SECTION 8, page 3, lines 14-16.]

### REQUIREMENT THAT THE PSC CONSIDER CERTAIN PROJECT IMPACTS

#### Health Care Services

Under **current law**, health care-related impacts are not factors that are required to be considered in evaluating grant applications.

The **bill draft** requires the PSC, when evaluating grant applications, to consider the impacts of a proposed project on the ability of individuals to access health care service from home and the cost of those services. [SECTION 8, page 3, lines 17-19.]

The bill draft **does not** require a project to be given priority as a result of demonstrating a positive impact on the ability of individuals to access health care services from home or the cost of those services.

#### Education

Under **current law**, education-related impacts are not required to be considered in evaluating grant applications.

The **bill draft** requires the PSC, when evaluating grant applications, to consider the impacts of a proposed project on the ability of students to access educational opportunities from home. [SECTION 8, page 3, lines 17-21.]

The bill draft **does not** require a project to be given priority as a result of demonstrating a positive impact on the ability of students to access educational opportunities from home.

## **FUNDING**

Under **current law**, funding for the Grant Program is limited to the unspent funds remaining from a total of \$6.0 million that was transferred from the Wisconsin USF in 2015 Wisconsin Act 55. [s. 196.504 (2) (a), Stats.] A total of approximately \$3 million remains for grants in FY 2017-18 and FY 2018-19. The PSC is not authorized to raise additional funding for the program through the assessment paid into the USF by telecommunications providers. [s. 196.218 (3) (a) 3., Stats.]

The **bill draft** requires the PSC to annually raise, through the USF assessment, \$1.5 million for the program, on an ongoing basis beginning in FY 2019-20. [SECTIONS 1, 2, 3, and 10; page 1, line 5 - page 2, line 9; and page 4, lines 1- 4.]

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