
Wisconsin Legislative Council

ACT MEMO



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2023 Wisconsin Act 77
[2023 Senate Bill 325]

**Broadband Expansion
Grant Program**

2023 Wisconsin Act 77 modifies the broadband expansion grant program administered by the Public Service Commission (PSC), as described below.

BROADBAND INFRASTRUCTURE IN UNSERVED AREAS

Prior law directed the PSC to administer the program to provide grants to construct broadband infrastructure in “underserved” areas, which was defined to mean areas of the state served by fewer than two broadband service providers. Act 77 changes the purpose of the program to providing grants to construct broadband infrastructure in “unserved” areas, which the act defines to mean an area of this state that is not served by an internet service provider (ISP) offering internet service that is all of the following:

- Fixed wireless service or wired service.
- Provided at actual download speeds of 100 megabits per second (mbps) or greater and upload speeds of 20 mbps or greater.
- Available and reliable.

Act 77 also provides that, beginning on July 1, 2026, and on July 1 of each successive odd-numbered year thereafter, the PSC may, by rule, adjust the above threshold speeds for “unserved” areas if, upon review, it determines there is good cause to do so in order to align with changes in technology and actual market conditions. The PSC must publicize any speed threshold adjustments on its website.

EVALUATING APPLICATIONS AND AWARDING GRANTS

Act 77 directs the PSC to include, among the criteria for evaluating applications and awarding grants under the program, a requirement to participate in the Federal Communication Commission’s (FCC’s) Affordable Connectivity Program or any federally mandated successor program.

Act 77 also requires the PSC to give priority to projects that meet certain criteria. Of these projects, Act 77 directs the PSC to give the highest priority to projects with more than 25 percent matching funds. The other projects that Act 77 directs the PSC to prioritize include the following:

- Projects that include at least 25 percent matching funds.
- Projects that involve public-private partnerships.
- Projects that are scalable.
- Projects that promote economic development.
- Projects that will not result in delaying the provision of broadband service to areas neighboring areas to be served by the proposed project.

- Projects that affect a large geographic area that is difficult to connect or a large number of unserved individuals or communities.
- Projects designed to provide fiber optic internet service directly to the end user in geographic areas where the cost to deploy fiber optic internet is below the extremely high cost per location threshold established by this state for the purpose of being eligible for federal funding under the broadband equity, access, and deployment (BEAD) program authorized under 47 U.S.C. s. 1702.
- Projects that affect a geographic area that has actual download speeds of 25 mbps or lower and upload speeds of three mbps or lower.

Act 77 requires the PSC to consider all of the following when evaluating applications for grants under the program:

- The degree to which the proposed projects would duplicate existing broadband infrastructure, information about the presence of which is provided to the PSC by the applicant or another person within a time period designated by the commission.
- The impacts of the proposed projects on the ability of individuals to access health care services from home and the cost of those services.
- The impacts of the proposed projects on the ability of students to access educational opportunities from home.
- Whether the applicant offers a low-cost broadband service option in order to be eligible for funding under the federal BEAD program or participates in the FCC's Affordable Connectivity Program or any federally mandated successor program.

PROCEDURE FOR CHALLENGING A GRANT

Act 77 creates a procedure to allow an ISP to challenge, within specified timelines, an application for a broadband expansion grant awarded under the program. The challenging ISP must do one of the following in order to use the procedure:

- Currently provide available and reliable fixed wireless or wired broadband service to the proposed project area at download speeds of 100 mbps or greater and upload speeds of 20 mbps or greater.
- Commit to completing construction of broadband infrastructure and providing available and reliable fixed wireless or wired broadband service to the proposed area, at speeds equal to or greater than the speeds described above, no later than 24 months after the date of the applicable PSC order, as specified in the act.

Act 77 requires the PSC to evaluate any such challenge, and it prohibits the PSC from funding any portion of a project relating to an area that is subject to challenge if the PSC determines the challenging ISP has made a credible commitment to provide the required service. However, if the PSC denies funding as a result of a challenge, and the challenging ISP fails to fulfill its commitment, then the PSC is prohibited from awarding grant funding to that ISP for the following two grant cycles, and that ISP is prohibited from participating in the challenge process during that time.

NONSTATUTORY PROVISION

Act 77 includes a nonstatutory provision specifying that the provisions of the broadband expansion grant program under statute do not apply to any grant program created with federal funding received under the BEAD program.

Effective date: December 8, 2023

For a full history of the bill, visit the Legislature's [bill history page](#).

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