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House Bill 4288 (Substitute H-4 as passed by the House)
Sponsor: Representative Michele Hoytenga
House Committee: Communications and Technology
Ways and Means
Senate Committee: Energy and Technology

Date Completed: 9-29-20

CONTENT

The bill would enact the "Broadband Expansion Act of Michigan" to do the following:

- Require Department of Technology, Management and Budget (DTMB) to implement the Broadband Expansion Act of Michigan Grant Program, within 60 days after receiving an appropriation or Federal funding to do so.
- Require the DTMB to use money from the grant program to award grants for projects that extended broadband service into unserved areas in the State and for administration costs.
- Prohibit the DTMB from awarding money to a governmental entity or educational institution, to own, purchase, construct, or operate a communications network or to provide service to a residential or commercial premises.
- Prohibit an applicant from receiving a grant for the same project or geographic area for which the applicant had obtained Federal, State, or local government funding awarded to support the expansion of broadband networks.
- Limit an award to not more than \$5.0 million for any one project or applicant.
- Require an award to be issued by a competitive grant process that would have to be technology neutral and result in awards to applicants proposing projects based on the criteria specified in the Act.
- Prioritize funding projects that demonstrated collaboration to achieve community investment and economic development goals of the affected area, and that were able to demonstrate that they had the managerial, financial, and technical ability to build, operate, and manage a broadband network.
- Require an applicant for a grant to provide specified information, such as location of the project in the unserved area and the kind and amount of broadband infrastructure to be purchased for the project.
- Require the DTMB to make grant award recommendations and specify criteria that the DTMB would have to prioritize in making the recommendations.
- Require the DTMB to establish a comment period of at least 60 days after the date of the award recommendations were published.
- Require an applicant awarded a grant to submit a semiannual report from when the applicant received the grant to three years after the project's completion.

Definitions

"Broadband service" would mean a retail service, not including a satellite service, capable of delivering high-speed internet access at speeds of at least 25 megabits per second (Mbps) downstream and three Mbps upstream.

"Deployed" would mean that a provider meets either of the following:

- Currently provides broadband service of at least 25 Mbps download and three Mbps upload in a specific geographic area of the proposed project of the applicant.
- Is able to provide broadband service at least 25 Mbps download and three Mbps upload in a specific geographic area of the proposed project of the applicant to a customer that requests that service not later than 30 days after the customer requests installation of that service and without an extraordinary commitment of resources or construction charges or fees exceeding an ordinary service activation fee, or not later than 60 days if permits are needed before the broadband service is activated.

"Internet service provider" would mean any of the following:

- An entity holding a license under the Michigan Telecommunications Act.
- An entity holding a franchise under the Uniform Video Services Local Franchise Act.

"Person" would include an individual, community organization, cooperative association, corporation, federal recognized Indian tribe, limited liability company, nonprofit corporation, partnership, or political subdivision of the State.

"Unserved area" would mean any of the following:

- A census block lacking access to broadband service from at least one internet service provider.
- An area lacking access to broadband service from at least one internet service provider according to the most accurate and granular data on the broadband map created by the Federal Communications Commission (FCC).
- An area delineated by the DTMB by the process established by the bill.

Grant Program

Under the bill, within 60 days after receiving an appropriation or Federal funding to implement the proposed Act, the DTMB would have to establish and implement a statewide broadband service grant program called the Broadband Expansion Act of Michigan Grant Program. Money for the Program would have to be provided by appropriation or by Federal funding as provided by law and managed by the DTMB. The DTMB could use money from the Program only to award grants to applicants for projects that exclusively extended broadband service into unserved areas in the State and for its costs to administer the Program.

The DTMB could not award grant money, directly or indirectly, to a governmental entity or educational institution or an affiliate, to own, purchase, construct, operate, or maintain a communications network, or to provide service to any residential or commercial premises. The DTMB also could not impose, as a condition of an award of grant money, an open network architecture requirement, rate regulation, or other term or condition of service that differed from the applicant's terms or conditions of service in its other service areas.

The Act would prohibit an applicant from receiving a grant for the same project or geographic area for which the applicant had obtained Federal, State, or local government funding awarded specifically to support the expansion of broadband networks. The DTMB could not award more than \$5.0 million to any one project or to any one applicant. The Department would have to award initial grant money within 270 days after the money was made available.

The Act would require an award of funds to be issued by a competitive grant process, which would have to be technology neutral and result in awards to applicants proposing projects

based on objective and efficient procedures. The criteria for determining the award of funds would have to include the following:

- The applicant's experience and financial wherewithal.
- The readiness to build, operate, and maintain the project.
- The long-term viability of the project.
- The scalability of the network.
- The applicant's ability to leverage broadband for community and economic development.
- The applicant's ability to provide discounted broadband for community and economic development.

Priority would have to be given to projects that demonstrated collaboration to achieve community investment and economic development goals of the affected area, and that were able to demonstrate that they had the managerial, financial, and technical ability to build, operate, and manage a broadband network.

Within 30 days after receiving an appropriation or Federal funding to implement the Act, the DTMB would have to establish and publish on its website the criteria for competitively scoring applications. Within 60 days after the DTMB published the criteria, applicants would have to submit their applications for funding.

Application Requirements

Under the bill, an applicant for a grant would have to provide the following information on the application:

- The location of the project in the unserved area described by either the specific street addresses to be served or a shapefile as that term is defined under 47 USC 641: a digital storage format containing geospatial or location-based data and attributable information regarding the availability of broadband internet access service that and that can be viewed, edited, and mapped in geographic information system software.
- The kind and amount of broadband infrastructure to be purchased for the project.
- Evidence regarding the unserved nature of the community in which the project was to be located.
- The number of households that would have access to broadband service as a result of the project, or whose internet access service would be upgraded to broadband service as a result of the project.
- The significant community institutions that would benefit from the proposed project.
- Evidence of community support for the project with a narrative on the impact that the investment would have on community and economic development efforts in the area.
- The total cost of the project and a detailed budget and schedule for the project.
- All sources of funding or in-kind contributions for the project in addition to any grant award.
- The internet service provider's experience and financial wherewithal.

The bill would exempt the applicant's trade secrets, financial information, and proprietary information submitted under an application from disclosure under the Freedom of Information Act. "Trade secrets" would mean trade secrets as that term is defined in Section 2 of the Uniform Trade Secrets Act: information, including a formula, pattern, compilation, program, device, method, technique, or process, that 1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and 2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The Act would allow an applicant, as part of an application, to request that the DTMB specifically delineate an area within a census block as being an unserved area. To tentatively establish an unserved area within a census block, an applicant would have to attest to all the following:

- The delineated area within the census block was unserved and did not have access to broadband service.
- To the best of the applicant's knowledge, no other internet service provider had plans to provide broadband service within the delineated area within three years after the application date.
- The delineated area was not within a census block that had been selected to receive, provisionally or otherwise, funding to support expansion of broadband networks from the FCC or the United States Department of Agriculture (USDA).

The Act specifies that if the DTMB tentatively determined a delineated area within a census block as an unserved area, the recommended grant award for the application would be subject to a challenge by internet service providers as described below.

The Act specifies that a person who filed a false statement under the proposed Act would be ineligible to receive a grant the next time grants were issued after filing the false statement.

Grant Award Recommendations

The Act would require the DTMB, after scoring and considering all grant applications, to make grant award recommendations. The DTMB would have to give priority in making grant award recommendations to applications that demonstrated one or more of the following:

- Collaboration to achieve community investment and economic development goals of an impacted area.
- The applicant had the managerial, financial, and technical ability to build, operate, and manage a broadband network.
- The likelihood that the unserved area would not be served without State grant funding.
- The project would serve a larger unserved area or a greater number of locations within an unserved area than other proposed applications.
- The ability of the applicant to commit to providing at least 50% of the cost to deploy the project set forth in the application.

Within 30 days after the award recommendations were made, the DTMB would have to publish on its website the grant applications, redacted according to Section 14 of the Freedom of Information Act, the proposed geographic broadband service area, and the proposed broadband service speeds for each application that received an award recommendation. (Section 14 of the Freedom of Information Act requires a public body to separate exempt and nonexempt material in a public record that contains both.)

Grant Award

Before granting an award to an applicant, the DTMB would have to establish a period of at least 60 days after the date the award recommendations were published on its website, during which time it would have to accept comments or objections concerning each application. The DTMB would have to consider all comments or objections received, and investigate them as needed, in deciding whether an applicant was eligible for a grant. If an objection contained information that required an investigation and the objection was found to be inaccurate, the provider would have to reimburse the DTMB for the cost of verifying the information.

The Act would prohibit the DTMB from awarding a grant to an applicant if verifiable information were made available that showed any of the following:

- The proposed project included an area where at least one provider had deployed broadband service.
- The DTMB received a sworn statement from an officer of an internet service provider that the proposed project included an area where construction of a network to provide broadband service was underway, and the construction was scheduled to be completed within one year after the date of the application.

In addition, the DTMB could not award a grant to an applicant if verifiable information from a sworn statement from an officer of an internet service provider that the proposed project included either of the following:

- A specific geographical area where an internet service provider had been selected to receive, provisionally or otherwise, funding from the FCC or the USDA specifically for the expansion of broadband services.
- An area where the construction of a network to provide broadband service was to be completed no later than two years after the date of the application.

The bill specifies that the provision related to an internet service provider being selected to receive funding from the FCC or USDA would not apply to an area once either the internet service provider did not complete the requirements for obtaining the funding or the time period of the internet service provider to meet its obligation had expired and the area remained unserved.

The proposed Act would require the DTMB, when a grant was awarded to an applicant, to provide immediately notice on its website of each application receiving a grant. The notice would have to include the name of the entity, the amount of money received, the broadband speed, and the unserved area for which the applicant was receiving the grant.

Reporting Requirements

Under the bill, the DMTB would have to require an applicant awarded a grant to submit a semiannual report from the time the applicant received the grant to three years after the project's completion. The DTMB would have to post the reports on its website with any proprietary information redacted. The reports would have to be in a format specified by the DTMB and would have given an accounting of the use of the money received and the progress toward fulfilling the objectives for which the money was granted, including all the following:

- The number and location of residences and businesses that would have access to the broadband service.
- The speed of broadband service.
- The average price of broadband service.
- The broadband service adoption rates.

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

The bill would have a negative fiscal impact on the DTMB and no fiscal impact on local units of government. The Conference Report for fiscal year 2020-21 includes the language of House Bill 4288 and provides one-time \$14,305,000 General Fund/General Purpose for the Connecting Michigan Communities Broadband Grant Program. The DTMB estimates that

personnel and contractual support related to the Program would cost approximately \$385,000 per year. The Program would require additional appropriations after the existing funds were spent on grants and administration.

Fiscal Analyst: Elizabeth Raczkowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.