

Legislative Analysis



MICHIGAN BROADBAND EXPANSION ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4288 as introduced
Sponsor: Rep. Michele Hoytenga
Committee: Communications and Technology
Complete to 9-8-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4288 would create a new act, the Michigan Broadband Expansion Act, to establish a statewide grant program to expand broadband service to unserved areas of Michigan. The bill would provide conditions, processes, and procedures for the grants, for grant recipients, and for the Michigan Department of Technology, Management, and Budget (DTMB).

Under the bill, DTMB would have to establish, implement, and manage a statewide grant program. Funds appropriated for the program could be used by DTMB only to administer the program and to award grants to *applicants* for projects that exclusively extend *broadband service* into *unserved areas* of the state.

Broadband service would mean a retail terrestrial service capable of delivering high-speed internet access at speeds of at least 10 megabits per second downstream and one megabit per second upstream.

Unserved area would mean either a *census block* without at least one provider providing broadband service or, as established as part the application process described below, a delineated area within a census block without at least one provider providing broadband service.

Census block would mean a geographic area defined as a census block by the Bureau of the Census in conducting the 2010 decennial census.

Applicant would mean an *internet service provider* that submits an application for a grant after having collaborated with other persons and the community in the unserved area.

Internet service provider would mean any of the following:

- A licensee under the Michigan Telecommunications Act.
- A franchisee under the Uniform Video Services Local Franchise Act.
- An entity currently providing broadband service in Michigan.

Application information

An applicant for a grant would have to provide the following information in the application:

- The location of the project by census block or a request to delineate an area within a census block as being unserved.
- Evidence regarding the unserved nature of the community where the project would be located.

- Evidence of the community support for the project with a narrative on the impact that the investment will have on community and economic development in the area.
- Significant community institutions that would benefit from the proposed project.
- The number of households that would have access to broadband service as a result of the project or whose internet access would be upgraded to broadband service.
- All sources of funding or in-kind contributions for the project in addition to the grant award.
- The total cost of the project and a detailed budget and schedule.
- The kind and amount of broadband infrastructure to be purchased for the project.
- The internet service provider's experience and financial resources.

An applicant could request, as part of an application, that DTMB specifically delineate an area within a census block as being an unserved area. For a delineated area to be tentatively established, an applicant would have to attest to all of the following:

- The delineated area is unserved and does not have access to broadband
- To the best of the applicant's knowledge, no other service provider has plans to provide broadband service to the delineated area within three years after the date of application
- The delineated area is not within a census block selected to receive Connect American Funds from the FCC.

If a delineated area was tentatively determined by DTMB to be an unserved area, the recommended grant award for the applications would remain subject to an objection by internet service providers.

Grant process

Funds awarded would have to be issued through a competitive and technologically neutral grant process that would result in awards to applicants proposing projects based on objective and efficient procedures.

Within 60 days after the effective date of the bill, and after notice and opportunity to comment, DTMB would have to establish and publish on its website its criteria for scoring applications.

Criteria for determining a grant award would have to include the following:

- The applicant's experience and financial resources.
- 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 demonstrate the community's ability to leverage broadband for community and economic development, such as rural development, tourism, new investment, or business attraction or retention.

Priority would have to be given to projects that exhibit collaboration to achieve the community investment and economic development goals of the impacted area and that are able to demonstrate that the applicant has the managerial, financial, and technical ability to build, operate, and manage a broadband network.

DTMB could not award a grant to an applicant if verifiable information showed any of the following:

- That the proposed project includes an area that is already being served by at least one provider offering broadband service.
- That the proposed project includes an area where construction of a network to provide broadband service is underway, and the construction is scheduled to be completed within one year after the date of application.
- That the proposed project includes an area where the construction of a network to provide broadband service is to be completed within three years after the date of an application. If an award is rejected because of this, the internet service provider installing the broadband service must provide notice to DTMB when the construction of the broadband service is completed. If no notice is received, or if the completion date is later than three years, then the internet service provider must reimburse DTMB for the cost of verifying the status of the provider's construction.
- The project includes an area that has been selected to receive (provisionally or otherwise) Connect America funds from the Federal Communications Commission (FCC).

Scoring and award recommendations

After scoring and considering all grant applications, DTMB would have to make grant award recommendations. Within 30 days after the recommendations have been made, DTMB would have to publish on its website, for each application that received an award recommendation, the grant applications (redacted according to the Freedom of Information Act¹), the proposed geographic broadband service area by census block or delineated area within a census block, and the proposed broadband service speeds.

Comments and objections

Before granting an award, DTMB would have to establish a period of at least 60 days from the date the award recommendations are published on its website during which it will accept comments or objections concerning any application. All comments or objections would have to be investigated by DTMB as needed when deciding an applicant's eligibility for a grant. If an objection submitted by a provider contained information requiring an investigation and was found to be inaccurate, the provider would have to reimburse DTMB for the cost of verifying the information.

Grant conditions

DTMB could not award more than \$5.0 million to any one project.

In making a grant, DTMB could not impose an open network architecture requirement, rate regulation, or other term or condition of service that differed from the terms or conditions in the applicant's other service areas.

Grant funds could not be directly or indirectly awarded to a government 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.

¹ See section 14 of that act: <http://legislature.mi.gov/doc.aspx?mcl-15-244>

The grant would have to contain conditions prohibiting an applicant from obtaining financing from any other government grants, loans, or subsidies that are offered to support deployment of broadband services in the same unserved areas.

Notice and reports

At the time of a grant award, DTMB would have to immediately provide notice on its website of each applicant receiving grant funds, including the name of the entity, the amount of the grant, the broadband speed, and the unserved area indicated by census block or delineated area.

DTMB would also have to require an applicant awarded funds to submit a semiannual report, in a format specified by DTMB, from the time the applicant receives the funds to five years after the project is completed. The reports would have to be made available on DTMB's website with any proprietary information redacted. The report would have to give an accounting by the applicant of the use of the funds and the progress toward fulfilling the objectives of the grant, including the number and location of residences and businesses that will receive broadband service, the speed of service, the average price of service, and the service adoption rates within each census block or delineated area.

FISCAL IMPACT:

House Bill 4288 would require the state to appropriate state funds to support grants to broadband service providers. The cost to the state would depend on the scope of the program and the dollar amount approved by the legislature.

2018 PA 618 appropriated \$20.0 million for a state broadband grant program, which was implemented as the Connecting Michigan Communities Grant Program (CMIC). Section 806 of the act contained language substantially similar to language in HB 4288 and provided guidance for administration of the grant program. There are currently 14 communities recommended to receive a grant from the \$20.0 million appropriation, with final award decisions due in September 2020. The amount necessary to support the extension of broadband services to all eligible rural areas is indeterminate but would greatly exceed \$20.0 million. HB 4288 would not require any minimum appropriation. All administrative costs to DTMB would be supported by the appropriation.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.