



**Illinois**  
**Department of Commerce**  
**& Economic Opportunity**

JB Pritzker, Governor

MEMORANDUM

TO: Kim Schultz, Executive Director  
Joint Committee on Administrative Rules

FROM: Sylvia Garcia, Director  
Department of Commerce and Economic Opportunity

RE: Second Notice

DATE: December 9, 2022

- 1) Name of Agency: Department of Commerce and Economic Opportunity
- 2) Title and Illinois Administrative Code Citation: Broadband Grant Programs (14 Ill. Adm. Code 548)
- 3) Date of First Notice: Published at 46 Ill. Reg. 16666 on October 7, 2022.
- 4) Text and Location of Any Changes During First Notice Period: See attached First Notice Changes document.
- 5) Response to Recommendations Made by the Administrative Code Unit: No recommendations were made during the first notice period.
- 6) Incorporation by Reference Pursuant to Section 5-75 of the Illinois Administrative Procedure Act: No.
- 7) Final Regulatory Flexibility and Small Business Analysis:
  - A) A summary of the issues raised by small businesses during the first notice period. No issues were raised by small businesses.
  - B) A description of actions taken on any alternatives to the proposed rulemaking suggested by small businesses during the first notice period, including reason for rejecting any alternatives not utilized. No actions were taken as no suggestions were received.

- 8) Consideration of Small Businesses, Not for Profit Corporations and Small Municipalities:  
The proposed rules concern the Connect Illinois Broadband Grant Program, through which the Department may issue grant awards on a competitive basis to businesses, not-for-profit corporations, and municipalities for the purpose of expanding affordable, reliable, high-performance broadband access
- 9) Evaluation of the Comments Received During the First Notice Period:
- A) A list of all persons or organizations making comments on the proposed rulemaking.  
DCEO received letters from the following:
- Rick Holzmacher, President Governmental & External Affairs, Board of Directors, Illinois Rural Broadband Association;
  - Richard L. Guebert, Jr. President, Illinois Farm Bureau;
  - Hal Woods, Chief of Policy, Kids First Chicago;
  - Jennie Huang Bennett, Chief Financial Officer, Office of the Mayor, City of Chicago;
  - Stephanie Cassioppi, Senior Director, Government Affairs, US Cellular;
  - Randy Nehrt, President, Illinois Broadband & Telecommunications Association.
- B) A list of specific criticisms, suggestions, and comments raised by interested persons, and the agency's analysis of each of these criticisms, suggestions and comments.
- **Criticism/Comment:** Support the proposed rules as written.
    - **DCEO Analysis:** The rules are consistent with the Capital Projects Fund and best practices.
  - **Criticism/Comment** Delete Section 548.50(c) in its entirety.
    - **DCEO Analysis:** DCEO agrees with this comment and will amend the rule accordingly.
  - **Criticism/Comment** The proposed rules requiring broadband speeds be 100 mbps download/ 100 mbps upload extends beyond the scope of the Illinois Broadband Infrastructure Advancement Act and the Federal Infrastructure Investment and jobs act.
    - **DCEO Analysis:** Due to differences in federal program requirements the proposed rules will apply to state funding sources and the Capital Projects Fund for round three of the Connect Illinois Grants. The Capital Projects Fund requires access to 100/100 Mbps service UPON DEPLOYMENT, without explicit prior approval from U.S. Treasury. Approval of the state's program plan for use of Capital Projects Fund dollars is contingent upon all Capital Projects Fund deployment providing access to 100/100 Mbps service upon deployment.

- **Criticism/Comment** The proposed broadband speeds are contrary to public policy.
  - **DCEO Analysis:** The proposed rule is consistent with the policy direction of the Capital Projects Fund and the Broadband Equity, Access, and Deployment (BEAD) program. The Capital Projects Fund requires access to 100/100 Mbps service upon deployment. The BEAD program is a generational investment in broadband infrastructure, and DCEO is committed to ensuring that all unserved locations and as many underserved locations as possible have access to the bandwidth needed today and throughout the lifespan of this historic investment
  
- **Criticism/Comment** The definitions of "economically distressed area", "unserved area", and "underserved area" do not reference federal laws, rules or mapping standards.
  - **DCEO Analysis:** Connect Illinois Broadband Grant Program is a state program supported, in part, with federal pass-through funding. These definitions are widely recognized, consistent with DCEO's use of the terms in other programing, and are not in conflict with the federal definitions, laws, rules or mapping standards.
  
- **Criticism/Comment** Sections 548.40 and 548.60 do not reference federal law or rules.
  - **DCEO Analysis:** Connect Illinois Broadband Grant Program is a state program supported, in part, with federal pass-through funding. These provisions do not conflict with federal law or rules.
  
- **Criticism/Comment** DCEO should use a two- tiered merit review process and the Program rules should require each NOFO to feature a specific, objective scoring system that identifies all categories and the maximum points awarded by category and subcategory.
  - **DCEO Analysis:** To ensure that its merit review team reviews only complete applications eligible for grant funding, DCEO applies a two-tiered merit review that (1) confirms application completeness and eligibility and (2) applies the full scoring system to the application. DCEO currently includes a detailed scoring system in the application packet that accompanies the NOFO and will include this with the NOFO going forward.
  
- **Criticism/Comment** The rule should prescribe a specific pre-award challenge process like the practice that has been followed in the Connect Illinois program.
  - **DCEO Analysis:** The challenge process is outside the scope of the Broadband Infrastructure Investment Act which identifies "program eligibility" and "selection criteria" only.

- **Criticism/Comment** The language in the rules relative to the nonstate match requirement may be confusing to eligible applicants relative to how the match is intended to work in practice.
  - **DCEO Analysis:** DCEO agrees with this comment and will amend the rule accordingly.
- **Criticism/Comment** DCEO should provide the terms of the grant agreement in the materials that are released in the NOFO.
  - **DCEO Analysis:** DCEO shares a copy of the grant agreement with applicants upon request. DCEO will post the standard grant agreement on its website at the time of NOFO publication.
- **Criticism/Comment:** The proposed rule should permit confidential treatment for confidential, proprietary or trade secret information included in grant applications if requested by the applicant.
  - **DCEO Analysis:** DCEO understands that sensitive information is often included with grant applications and does consider trade secrets, commercial and financial information furnished under a claim of confidentiality exempt from production under 7(1)(g) of FOIA and treats such information as confidential to extent permitted by state open records laws.

C) Any changes made to the rules by the agency as a result of criticisms, suggestions, and comments made by interested persons.

- DCEO will strike Subsection 548.30(b).
- DCEO will strike Subsection 548.50(c).
- DCEO will clarify rules relating to non-state mating funds by stating that there is no requirement for a nonstate match, however projects will be awarded a scoring preference on a tiered basis for applications providing for a higher nonstate match starting at 50 percent.

D) The names of all the persons or organizations requesting a public hearing and the date of any public hearings held on the proposed rulemaking. None.

10) Justification and Rationale for the Rulemaking:

- A) Citations to changes in Illinois laws that require the rulemaking. 220 ILCS 81/4-20 ((new) (P.A. 102-699)).
- B) Explanation of changes in agency policies and procedures that required the rulemaking. None.
- C) Citations to federal laws, rules or regulations, or funding requirements that required the rulemaking. None.
- D) Citations and copies of court orders or decisions that required the

rulemaking. None.

E) A complete explanation of any other reasons for the rulemaking. None.

11) Agency Respondent to Committee Questions:

Ms. Bridget Schutt

Rules Administrator

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12) State Mandates Act Analysis:

Please see the completed State Mandates Act Questionnaire. This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805].

13) Economic and Budgetary Effects of the Rulemaking:

Please see the completed Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking form.

14) Any New or Revised Forms:

None.

Attachments