

HOUSE BILL REPORT

ESHB 1673

As Passed House:
February 10, 2022

Title: An act relating to broadband infrastructure loans and grants made by the public works board.

Brief Description: Concerning broadband infrastructure loans and grants made by the public works board.

Sponsors: House Committee on Community & Economic Development (originally sponsored by Representatives Ryu, Donaghy, Leavitt, Boehnke, Eslick, Rule, Kloba, Wylie, Ortiz-Self, Dolan, Taylor and Frame; by request of Public Works Board).

Brief History:

Committee Activity:

Community & Economic Development: 1/11/22, 1/14/22 [DPS];
Capital Budget: 2/1/22, 2/4/22 [DPS(CED)].

Floor Activity:

Passed House: 2/10/22, 96-0.

Brief Summary of Engrossed Substitute Bill

- Modifies certain application and public notice requirements for the Public Works Board's broadband grant and loan program (Broadband Program).
- Creates a pre-application process for the Broadband Program.
- Eliminates a Broadband Program requirement for a Utilities and Transportation Commission consultation and technical feasibility study.
- Allows the Public Works Board to make low-interest or interest-free loans or grants for emergency public works broadband projects.
- Exempts from public disclosure financial and commercial information and records supplied by businesses or individuals during the application

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process for Broadband Program.

HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Ryu, Chair; Paul, Vice Chair; Boehnke, Ranking Minority Member; Chase, Assistant Ranking Minority Member; Corry, Donaghy, Frame, Jacobsen, Johnson, J., Rule and Taylor.

Minority Report: Without recommendation. Signed by 2 members: Representatives Kraft and Sutherland.

Staff: Cassie Jones (786-7303).

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The substitute bill by Committee on Community & Economic Development be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Tharinger, Chair; Callan, Vice Chair; Hackney, Vice Chair; Steele, Ranking Minority Member; Abbarno, Assistant Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Bateman, Eslick, Gilday, Kloba, Leavitt, Mosbrucker, Peterson, Riccelli, Rule, Santos, Sells, Shewmake and Volz.

Minority Report: Do not pass. Signed by 2 members: Representatives Dye and Kraft.

Minority Report: Without recommendation. Signed by 1 member: Representative MacEwen.

Staff: Richelle Geiger (786-7139).

Background:

Public Works Board.

The Public Works Board (PWB) administers the Public Works Assistance Account and provides financial and technical assistance to local governments in addressing local infrastructure and public works projects by making loans, grants, financing guarantees, and technical assistance available to local governments for these projects.

Emergency Loan Program.

The PWB may make low-interest or interest-free loans or grants to local governments for emergency public works projects. Emergency public works projects are public works projects made necessary by a natural disaster or an immediate and emergent threat to the

public health and safety due to unforeseen or unavoidable circumstances. The loans or grants may be used to help fund all or part of an emergency public works project less any reimbursement from certain specified sources.

Broadband Program.

The PWB administers a competitive grant and loan program (Broadband Program) to award funding to eligible applicants in order to promote the expansion of access to broadband service in unserved areas. Grants and loans may be awarded under the Broadband Program to assist in funding acquisition, installation, and construction of middle mile and last mile infrastructure that supports broadband services and to assist in funding strategic planning for deploying broadband service in unserved areas. Eligible applicants include local governments, tribes, nonprofit organizations, cooperative associations, multiparty entities comprised of public entities, limited liability corporations organized for the purpose of expanding broadband access, and incorporated businesses or partnerships.

An applicant for the Broadband Program must provide specific information to the PWB as part of the application process. For instance, an applicant is required to provide evidence that no later than six weeks before submission of the application, the applicant contacted all entities providing broadband service near the proposed project area to ask for each broadband service provider's plan to upgrade broadband service in the project area. Applicants must also provide the broadband service provider's response. Within 30 days of the close of the application process, the PWB must publish on its website the proposed geographic broadband service area and the proposed broadband speeds for each application submitted. An existing broadband service provider may object to an application within 30 days of the publication of the proposed geographic service area. An objection must contain information demonstrating that the provider currently provides, or has begun construction and commits to providing, broadband service to end users in the proposed project area at speeds equal to or greater than the statutory state speed goals (ranging from 25 megabits per second [mbps] download and 3 mbps upload by 2024 to 150 mbps download and upload by 2028).

Prior to awarding funds under the Broadband Program, the PWB must consult with the Utilities and Transportation Commission (UTC). The UTC must provide to the PWB a technical feasibility assessment for a proposed application. The PWB must consider the UTC's assessment as part of its evaluation of a proposed application.

Public Records.

The Public Records Act (PRA) requires state and local agencies to make all public records available for public inspection and copying unless a record falls within an exemption in the PRA or another statute that exempts or prohibits disclosure of specific information or records. There is an exemption under the PRA for certain financial, commercial, and proprietary information. For example, financial and commercial information and records supplied by businesses or individuals during application for certain loans or program services are exempt from disclosure.

Summary of Engrossed Substitute Bill:

A pre-application process is created for the Broadband Program. An applicant is required to provide the following information on a pre-application:

- the location and description of the project;
- evidence regarding the unserved nature of the community in which the project is to be located;
- evidence that proposed infrastructure will be capable of scaling to greater download and upload speeds;
- the number of households passed that will gain access to broadband service as a result of the project or whose broadband service will be upgraded as a result of the project;
- evidence that before submission of the application, the applicant contacted, in writing, all entities providing broadband service near the proposed project area to ask each broadband service provider's plan to upgrade broadband service in the project area;
- the proposed geographic broadband service area and the proposed broadband speeds;
- evidence of community support for the project; and
- any additional information requested by the PWB.

The requirement that an applicant to the Broadband Program contact existing broadband service providers is modified to remove the requirement that the contact occur no later than six weeks before submission of the application. The application must include documentation describing the outcome of the existing broadband service providers' written responses to the inquiry regarding their plans to upgrade broadband service made prior to or during the application process.

The PWB must publish on its website for at least 30 days the proposed geographic broadband service area and the proposed speeds for each proposed project during the pre-application period, instead of publishing the information within 30 days of the close of the grant and loan application process. The PWB must publish pre-applications on its website within three business days of the close of the pre-application cycle and set an objection period for at least 30 days. The requirement that an existing broadband service provider submit an objection within 30 days of publication of an application is removed. An existing provider objecting to an application must demonstrate that it provides, or has begun construction and commits to providing, broadband service in the project area at speeds equal to or greater than 25 mbps download and 3 mbps upload.

The following provisions related to the UTC are eliminated:

- the requirement that the PWB consult with the UTC prior to awarding funds; and
- the requirement that the UTC provide the PWB a technical feasibility assessment of proposed applications.

The PWB may make low-interest or interest-free loans or grants to eligible applicants for emergency public works broadband projects. The PWB must consider prioritizing broadband infrastructure projects that replace existing infrastructure impacted by an

emergency. Emergency public works broadband projects include construction, repair, reconstruction, replacement, rehabilitation, or improvement to critical broadband infrastructure that has been damaged by a natural disaster or unforeseen events. The loans or grants may be used to help fund all or part of an emergency public works broadband infrastructure project less any reimbursement from certain specified sources.

Financial and commercial information and records supplied by businesses or individuals during the application for loans or program services provided by the Broadband Program are exempt from disclosure under the PRA.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Community & Economic Development):

(In support) There has been tremendous attention to building out broadband infrastructure and much money dedicated to it. The PWB has done a lot of good work to check on how the process is going and make the system better. The PWB has done much work in traditional infrastructure. In 2019 the PWB was given authority to do broadband infrastructure. Broadband infrastructure is different than traditional infrastructure in terms of funding, applicants, and legislative intent. Looking for process improvements, the PWB conducted an after-action review, and this bill comes from that review. The PWB needs authority to fund emergency broadband projects. Repairing broadband is critical to the community after a disaster. There is appreciation for the creation of a pre-application period as a way to streamline the process and increase collaboration between applicants and internet service providers.

(Opposed) None.

(Other) The PWB process needs to be more transparent; the whole application should be posted online as some other states require. The PWB should require timely public notice of grant applications so the public can ensure that public funds are not being used to overbuild existing broadband service providers. Transparency is important in administering grant programs, especially those that have an appeal or challenge process. Public Works Board transparency should be expected by the original applicant.

The PWB will hopefully allow private companies to apply for federal grants as well so that federal funds will be spent appropriately and expeditiously. There are additional items that should be added to the pre-application process to make the objection process better. There needs to be a better definition of what constitutes an emergency to ensure that all

emergency management groups are working together to rebuild communities.

There is concern with the broad public disclosure exemption in the bill. Public disclosure is critical to public oversight of these projects and making sure that the projects will meet the state broadband speed goals. Funding should go to networks that can meet those speed goals today. The language could prevent the public from verifying that tax dollars are not wasted on inadequate networks. Objectors to applications should also be held publicly accountable.

Courts have been working very hard over the last two years to respond to COVID-19 and improve the ability to conduct operations remotely. There are great disparities in the ability of individuals to access remote services. Courts in urban centers have embraced remote proceedings but this is not happening in rural areas or areas with limited resources that do not have access to reliable broadband. Digital equity is an access to justice issue.

Staff Summary of Public Testimony (Capital Budget):

(In support) Broadband is an essential utility. The State Broadband Office, Community Economic Revitalization Board, and Public Works Board (PWB) are all working hard to ensure broadband is affordable and accessible across the state. This bill will help align these broadband funding programs. Together, they are a powerful force.

This is legislation requested by the PWB. It is based on an after action review that involved 100 participants. The PWB has already made all of the recommended changes that were within their power. These changes will continue to improve the PWB's processes and help connect Washington to broadband funding. The bill will continue to evolve in response to additional feedback.

This bill removes barriers and encourages more participation in the PWB broadband grant and loan program. It improves the application process by creating a pre-application phase and encouraging discussion between applicants and internet service providers, leading to stronger projects. Additionally, it protects sensitive information submitted by applicants by exempting it from the public disclosure requirements.

Permitting the PWB to issue emergency funding to local governments will allow the PWB to quickly respond to community needs and ensure the state's broadband infrastructure is resilient.

The state must be prepared to fully leverage federal funding opportunities for these important infrastructure investments.

(Opposed) None.

Persons Testifying (Community & Economic Development): (In support)

Representative Cindy Ryu, prime sponsor; Kathryn Gardow, Public Works Board; and Brandy DeLange, Association of Washington Cities.

(Other) Gail Long, Asotin Telephone Company, Lewis River Telephone Company, and McDaniel Telephone Company; Betty Buckley, Washington Independent Telecommunications Association; Mike Ennis, Association of Washington Business; Scott Shawcroft; and Judith Ramseyer, Superior Court Judges' Association.

Persons Testifying (Capital Budget): Representative Cindy Ryu, prime sponsor; Kathryn Gardow, Public Works Board; Ed Stern, City of Poulsbo and Association of Washington Cities; Scott Hutsell, Lincoln County; and Scott Richards.

Persons Signed In To Testify But Not Testifying (Community & Economic Development): None.

Persons Signed In To Testify But Not Testifying (Capital Budget): None.