
SENATE BILL 5188

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By Senators Wellman, Hansen, Lovick, Kauffman, Krishnadasan, Nobles, and Riccelli

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1 AN ACT Relating to broadband infrastructure repair loans; and
2 amending RCW 43.155.160.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 43.155.160 and 2022 c 201 s 1 are each amended to
5 read as follows:

6 (1) The board, in collaboration with the office, shall establish
7 a competitive grant and loan program to award funding to eligible
8 applicants in order to promote ~~((the expansion of))~~ access to
9 broadband service in unserved areas of the state.

10 (2)(a) To support broadband services and assist in funding
11 strategic planning for deploying broadband service in unserved areas,
12 the board may award:

13 (i) Grants and loans ~~((may be awarded under this section))~~ to
14 assist in funding acquisition, installation, and construction of
15 middle mile and last mile infrastructure ~~((that supports broadband~~
16 services and to assist in funding strategic planning for deploying
17 broadband service in unserved areas)); and

18 (ii) Loans to assist in funding repair and replacement of middle
19 mile and last mile infrastructure.

1 (b) The board may choose to fund all or part of an application
2 for funding, provided that the application meets the requirements of
3 subsection (11) of this section.

4 (3) Eligible applicants for grants and loans awarded under this
5 section include:

6 (a) Local governments;

7 (b) Tribes;

8 (c) Nonprofit organizations;

9 (d) Cooperative associations;

10 (e) Multiparty entities comprised of public entity members;

11 (f) Limited liability corporations organized for the purpose of
12 expanding broadband access; and

13 (g) Incorporated businesses or partnerships.

14 (4) (a) The board shall develop administrative procedures
15 governing the preapplication and award process. The board shall act
16 as fiscal agent for the program and is responsible for receiving and
17 reviewing applications and awarding funds under this section.

18 (b) At least sixty days prior to the first day preapplications
19 may be submitted each fiscal year, the board must publish on its
20 website the specific criteria and any quantitative weighting scheme
21 or scoring system that the board will use to evaluate or rank
22 applications and award funding.

23 (c) The board may maintain separate accounting in the statewide
24 broadband account created in RCW 43.155.165 as the board deems
25 necessary to carry out the purposes of this section.

26 (d) The board must provide a method for the allocation of loans,
27 grants, provision of technical assistance, and interest rates under
28 this section.

29 (5) An applicant for a grant or loan under this section must
30 provide the following information on the preapplication:

31 (a) The location and description of the project;

32 (b) Evidence regarding the unserved nature of the community in
33 which the project is to be located;

34 (c) Evidence that proposed infrastructure will be capable of
35 scaling to greater download and upload speeds;

36 (d) The number of households passed that will gain access to
37 broadband service as a result of the project or whose broadband
38 service will be upgraded or maintained as a result of the project;

39 (e) Evidence that before submission of the application, the
40 applicant contacted, in writing, all entities providing broadband

1 service near the proposed project area to ask each broadband service
2 provider's plan to upgrade broadband service in the project area to
3 speeds that meet or exceed the state's definition for broadband
4 service as defined in RCW 43.330.530, within the time frame specified
5 in the proposed grant or loan activities;

6 (f) If applicable, the broadband service providers' written
7 responses to the inquiry made under (e) of this subsection;

8 (g) The proposed geographic broadband service area and the
9 proposed broadband speeds in the form and manner prescribed by the
10 board;

11 (h) Evidence of community support for the project; and

12 (i) Any additional information requested by the board.

13 (6) An applicant for a grant or loan under this section must
14 provide the following information on the application:

15 (a) The final location and description of the project;

16 (b) Evidence that the proposed infrastructure will be capable of
17 scaling to greater download and upload speeds;

18 (c) The number of households passed that will gain access to
19 broadband service as a result of the project or whose broadband
20 service will be upgraded or maintained as a result of the project;

21 (d) The estimated cost of retail services to end users
22 facilitated by a project;

23 (e) The proposed actual download and upload speeds experienced by
24 end users;

25 (f) Evidence of significant community institutions that will
26 benefit from the proposed project;

27 (g) Anticipated economic, educational, health care, or public
28 safety benefits created by the project;

29 (h) If available, a description of the applicant's user adoption
30 assistance program and efforts to promote the use of newly available
31 broadband services created by the project;

32 (i) The estimated total cost of the project;

33 (j) Other sources of funding for the project that will supplement
34 any grant or loan award;

35 (k) A demonstration of the project's long-term sustainability,
36 including the applicant's financial soundness, organizational
37 capacity, and technical expertise;

38 (l) A strategic plan to maintain long-term operation of the
39 infrastructure;

1 (m) If applicable, documentation describing the outcome of the
2 broadband service providers' written responses to the inquiry made
3 prior to or during the preapplication phase; and

4 (n) Any additional information requested by the board.

5 (7)(a) The board shall publish on its website for at least 30
6 days the proposed geographic broadband service area and the proposed
7 broadband speeds for each proposed broadband project submitted in the
8 preapplication period.

9 (b) The board shall, within three business days following the
10 close of the preapplication cycle, publish on its website
11 preapplications as described in subsection (5) of this section.

12 (c) The board shall set an objection period of at least 30 days.

13 (8)(a) Any existing broadband service provider near the proposed
14 project area may submit in writing to the board an objection to a
15 proposed broadband project. An objection must contain information
16 demonstrating that:

17 (i) The project would result in overbuild, meaning that the
18 objecting provider currently provides, or has begun construction to
19 provide, broadband service to end users in the proposed project area
20 at speeds equal to or greater than the speeds contained in the
21 definition of broadband in RCW 43.330.530(~~((2))~~); or

22 (ii) The objecting provider commits to complete construction of
23 broadband infrastructure and provide broadband service to end users
24 in the proposed project area at speeds equal to or greater than the
25 speeds contained in the definition of broadband in RCW
26 43.330.530(~~((2))~~), no later than twenty-four months after the date
27 awards are made under this section for the grant and loan cycle under
28 which the preapplication was submitted.

29 (b) Objections submitted to the board under this subsection must
30 be certified by affidavit.

31 (c) The board may evaluate the information submitted under this
32 section by the objecting provider and must consider it in making a
33 determination on the proposed broadband project objected to. The
34 board may request clarification or additional information. The board
35 may choose to not fund a project if the board determines that the
36 objecting provider's commitment to provide broadband service that
37 meets the requirements of (a) of this subsection in the proposed
38 project area is credible. In assessing the commitment, the board may
39 consider whether the objecting provider has or will provide a bond,

1 letter of credit, or other indicia of financial commitment
2 guaranteeing the project's completion.

3 (d) If the board denies funding to an applicant as a result of a
4 broadband service provider's objection made under this section, and
5 the broadband service provider does not fulfill its commitment to
6 provide broadband service in the project area, then for the following
7 two grant and loan cycles, the board is prohibited from denying
8 funding to an applicant on the basis of a challenge by the same
9 broadband service provider, unless the board determines that the
10 broadband service provider's failure to fulfill the provider's
11 commitment was the result of factors beyond the broadband service
12 provider's control. The board is not prohibited from denying funding
13 to an applicant for reasons other than an objection by the same
14 broadband service provider.

15 (e) An applicant or broadband service provider that objected to
16 the application may request a debriefing conference regarding the
17 board's decision on the application. Requests for debriefing must be
18 coordinated by the office and must be submitted in writing in
19 accordance with procedures specified by the office.

20 (f) Confidential business and financial information submitted by
21 an objecting provider under this subsection is exempt from disclosure
22 under chapter 42.56 RCW.

23 (9) (a) In evaluating applications and awarding funds, the board
24 shall give priority to applications that are constructed in areas
25 identified as unserved or areas that would be unserved if repair or
26 replacement did not take place.

27 (b) In evaluating applications and awarding funds, the board may
28 give priority to applications that:

29 (i) Provide assistance to public-private partnerships deploying
30 broadband infrastructure from areas currently served with broadband
31 service to areas currently lacking access to broadband services;

32 (ii) Demonstrate project readiness to proceed;

33 (iii) Construct or repair infrastructure that is open access,
34 meaning that during the useful life of the infrastructure, service
35 providers may use network services and facilities at rates, terms,
36 and conditions that are not discriminatory or preferential between
37 providers, and employing accountable interconnection arrangements
38 published and available publicly;

- 1 (iv) Are submitted by tribal governments whose reservations are
2 in rural and remote areas where reliable and efficient broadband
3 services are unavailable to many or most residents;
- 4 (v) Bring broadband service to tribal lands, particularly to
5 rural and remote tribal lands or areas servicing rural and remote
6 tribal entities;
- 7 (vi) Are submitted by tribal governments in rural and remote
8 areas that have spent significant amounts of tribal funds to address
9 the problem but cannot provide or repair necessary broadband services
10 without either additional state support, additional federal support,
11 or both;
- 12 (vii) Serve economically distressed areas of the state as the
13 term "distressed area" is defined in RCW 43.168.020;
- 14 (viii) Offer new or substantially upgraded broadband service to
15 important community anchor institutions including, but not limited
16 to, libraries, educational institutions, public safety facilities,
17 and health care facilities;
- 18 (ix) Facilitate the use of telemedicine and electronic health
19 records, especially in deliverance of behavioral health services and
20 services to veterans;
- 21 (x) Provide technical support and train residents, businesses,
22 and institutions in the community served by the project to utilize
23 broadband service;
- 24 (xi) Include a component to actively promote the adoption of
25 newly available broadband services in the community;
- 26 (xii) Provide evidence of strong support for the project from
27 citizens, government, businesses, and community institutions;
- 28 (xiii) Provide access to broadband service to a greater number of
29 unserved households and businesses, including farms;
- 30 (xiv) Utilize equipment and technology demonstrating greater
31 longevity of service;
- 32 (xv) Seek the lowest amount of state investment per new location
33 served and leverage greater amounts of funding for the project from
34 other private and public sources;
- 35 (xvi) Include evidence of a customer service plan;
- 36 (xvii) Consider leveraging existing broadband infrastructure and
37 other unique solutions;
- 38 (xviii) Benefit public safety and fire preparedness; or
- 39 (xix) Demonstrate other priorities as the board, in collaboration
40 with the office, may prescribe by rule.

1 (c) The board shall endeavor to award funds under this section to
2 qualified applicants in all regions of the state.

3 (d) The board shall consider affordability and quality of service
4 to end users in making a determination on any application.

5 (e) The board, in collaboration with the office, may develop
6 additional rules for eligibility, project preapplications, project
7 applications, the associated objection process, and funding priority,
8 as provided under this subsection and subsections (3), (5), (6), (7),
9 and (8) of this section.

10 (f) The board, in collaboration with the office, may adopt rules
11 for a voluntary nonbinding mediation between incumbent providers and
12 applicants to the grant and loan program created in this section.

13 (10) To ensure a grant or loan to a private entity under this
14 section primarily serves the public interest and benefits the public,
15 any such grant or loan must be conditioned on a guarantee that the
16 asset or infrastructure to be developed will be maintained for public
17 use for a period of at least fifteen years.

18 (11)(a) No funds awarded under this section may fund more than
19 fifty percent of the total cost of the project, except as provided in
20 (b) of this subsection.

21 (b) The board may choose to fund up to ninety percent of the
22 total cost of a project in financially distressed areas as the term
23 "distressed area" is defined in RCW 43.168.020, and in areas
24 identified as Indian country as the term "Indian country" is defined
25 in WAC 458-20-192.

26 (c) Funds awarded to a single project under this section must not
27 exceed two million dollars, except that the board may choose to fund
28 projects qualifying for the exception in (b) of this subsection up
29 to, but not to exceed, five million dollars.

30 (12) The board shall have such rights of recovery in the event of
31 default in payment or other breach of financing agreement as may be
32 provided in the agreement or otherwise by law.

33 (13) The community economic revitalization board shall facilitate
34 the timely transmission of information and documents from its
35 broadband program to the board in order to effectuate an orderly
36 transition.

37 (14)(a) Subject to rules promulgated by the board, the board may
38 make low-interest or interest-free loans or grants to eligible
39 applicants for emergency public works broadband projects. While
40 developing rules, the board shall consider prioritizing broadband

1 infrastructure projects that replace existing infrastructure impacted
2 by an emergency, as described in (b) of this subsection.

3 (b) Emergency public works broadband projects include
4 construction, repair, reconstruction, replacement, rehabilitation, or
5 improvement to critical broadband infrastructure that has been made
6 necessary by a natural disaster or damaged by unforeseen events. To
7 ensure limited resources are provided as efficiently as possible, the
8 board shall grant priority to emergency public works projects that
9 replace existing infrastructure of the provider whose facilities were
10 damaged by the unforeseen event and shall not provide funds to a new
11 provider to overbuild the existing provider. The loans or grants may
12 be used to help fund all or part of an emergency public works
13 broadband infrastructure project less any reimbursement from any of
14 the following sources: (i) Federal disaster or emergency funds,
15 including funds from the federal emergency management agency; (ii)
16 state disaster or emergency funds; (iii) insurance settlements; and
17 (iv) litigation.

18 (c) Eligible applicants for grants and loans awarded under this
19 subsection are the same as those described in subsection (3) of this
20 section.

21 (15) The definitions in RCW 43.330.530 apply throughout this
22 section unless the context clearly requires otherwise.

23 (16) For purposes of this section, a "proposed broadband project"
24 means a project that has been submitted as a preapplication to the
25 public works board.

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