
**Innovation, Technology & Economic
Development Committee**

HB 2414

Brief Description: Concerning digital equity.

Sponsors: Representatives Gregerson, Hudgins, Callan, Frame, Peterson, Santos, Wylie, Doglio and Morgan.

Brief Summary of Bill

- Establishes and sets forth requirements for the Digital Equity Capacity Grant Program and Digital Equity Competitive Grant Program under the Department of Commerce (Department).
- Specifies parameters and eligibility criteria for selecting entities to administer each grant program.
- Requires local jurisdictions seeking capacity grants to develop a Digital Equity Plan (Plan) that identifies the barriers to digital equity faced by covered populations.
- Provides that the Department shall award capacity grants to support the implementation of the Plan and digital inclusion activities in those local jurisdictions.
- Provides that the Department shall award competitive grants to support efforts to achieve digital equity, promote digital inclusion activities, and spur greater adoption of broadband among covered populations.
- Requires Commerce to conduct evaluations of the activities carried out under covered programs and to submit an annual report of its finding to the Legislature.

Hearing Date: 1/17/20

Staff: Kyle Raymond (786-7190).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Department of Commerce (Department) is responsible for growing and improving jobs, as well as facilitating innovation in the state. The Department provides business assistance and economic development services primarily through sector-based and cluster-based regional organizations to: (1) generate greater local capacity to respond to economic growth and environmental challenges; (2) promote partnerships and the use of intermediaries to achieve the Department's goals; and (3) leverage state resources.

The Department is responsible for promoting community and economic development statewide by: (1) assisting communities to increase economic vitality and the quality of citizens' lives; and (2) assisting the state's businesses to maintain and increase economic competitiveness while maintaining a healthy environment. The Department's community and economic development efforts include managing growth through local planning, fostering the development of minority and women-owned businesses, facilitating technology development, and providing community services and advocacy for low-income persons.

Broadband Office.

The Governor's Statewide Broadband Office (SBO) was established in 2019 to serve as the central broadband planning body for the state. The SBO Director is appointed by the Governor, and the SBO may employ necessary staff to carry out the SBO duties.

The SBO powers and duties include: (1) coordinating with relevant parties to develop strategies and plans for deployment of broadband infrastructure; (2) reviewing existing broadband initiatives; (3) developing and implementing a statewide plan to encourage cost-effective broadband access and increased usage; (4) and encouraging public-private partnerships to increase deployment and adoption of broadband services and applications.

Universal Communications Services Program.

The Universal Communications Services (UCS) program was established in 2014 to provide temporary direct support to Washington's smaller incumbent communications service providers during certain changes in federal funding. In 2019, the purpose of the UCS program was expanded to include the provision, enhancement, and maintenance of broadband services.

Public Works Board.

The Public Works Board within the Department 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 government for these projects.

Summary of Bill:

Digital Equity Capacity Grant Program.

The Digital Equity Capacity Grant Program (Capacity Grant Program) is established under the Department of Commerce (Department). The Capacity Grant Program requires the Department to make grants to local jurisdictions to promote the achievement of digital equity, support digital inclusion activities, and build capacity for local jurisdictions relating to broadband adoption.

In establishing the Capacity Grant Program, the Department is required to consult with representatives from certain specified state agencies, including the Office of Minority and

Women's Business Enterprises, the Department of Veterans Affairs, the Office of Financial Management, Consolidated Technology Services, and agencies related to the provision of broadband.

The Department is directed to ensure the Capacity Grant Program complements, and does not conflict with, other broadband initiatives and programs. The Department may adopt rules as necessary to carry out the Capacity Grant Program.

Administering Entity. A local jurisdiction that wishes to be awarded a grant must select an administering entity to receive and administer any grant awarded to the local jurisdiction. In addition, the administering entity must manage the completion of the Digital Equity Plan, provide sub-grants to key stakeholders, and advocate for digital equity policy and digital inclusion activities, and serve as a repository of best practice materials regarding the policies and activities of the Capacity Grant Program.

The entities eligible to serve as the administering entity include the following entities or any partnership between the entities:

- the local jurisdiction, a political subdivision, agency, or other municipal or quasimunicipal corporation of the local jurisdiction, or an Indian tribe located in the local jurisdiction;
- a foundation, corporation, institution, association, or coalition that is a not-for-profit entity, located in the local jurisdiction and not a school;
- a community anchor institution, other than a school, that is located in the local jurisdiction;
- a local educational agency that is located in the local jurisdiction;
- an entity located in the local jurisdiction that carries out a workforce development program;
- an agency of the local jurisdiction that is responsible for administering or supervising adult education and literacy activities in the local jurisdiction; and
- a public housing authority that is located in the local jurisdiction.

Digital Equity Plan. To be eligible for a capacity grant, the local jurisdiction must develop a Digital Equity Plan (Plan) that identifies the barriers to digital equity faced by covered populations in the local jurisdiction to be eligible for a capacity grant. The Department shall award planning grants to local jurisdictions for the purpose of developing the Plans of those local jurisdictions beginning July 1, 2022.

The Plan must include certain specified measurable objectives related to broadband accessibility and availability, digital literacy, privacy, and cybersecurity among covered populations. This must include an assessment of how the objectives will impact and interact with the local jurisdiction, and a description of how the local jurisdiction plans to collaborate with specified key stakeholders to achieve the objectives.

The administering entity is required to make the Plan available for public comment for a minimum of 30 days before submitting the state capacity grant application to the Department. The administering entity must also consider all comments received and make any changes to the Plan that the entity determines to be worthwhile. When submitting the application, the

administering entity must describe any changes made in response to comments and include a written response to each comment received.

Digital Equity Planning Grants. A local jurisdiction that wishes to be awarded a planning grant must submit an application to the Department within 60 days of the funding availability notice. The application must contain a description of the local jurisdiction's administering entity, a certification to submit a Plan to the Department within one year, and agree to the assurances required under the Act.

Planning grants are awarded to an eligible local jurisdiction according to the grant award formula. The local jurisdiction must expend the grant funds within one year of the receipt of the grant award, which may be extended for up to 180 days. Eligible local jurisdictions may appeal or challenge the amount of the grant awarded to the Department in a timely fashion.

The planning grant funds can be used to develop the Plan of the local jurisdiction, or to provide sub-grants to assist in the development of the Plan of the local jurisdiction.

Capacity Grants. The Department shall, not later than two years after beginning to award planning grants, award annual capacity grants to eligible local jurisdictions. The capacity grants support the implementation of the Plan and digital inclusion activities in those local jurisdictions.

The local jurisdiction must submit an application to the Department within 60 days of the funding availability notice. The application materials must include a description of the local jurisdiction's administering entity, the local jurisdiction's Plan with any Plan amendments included, a certification to implement the Plan, and the assurances required under the Act.

The amount of a capacity grant awarded to an eligible local jurisdiction in a fiscal year shall be not less than one-half of one of the total amount made available to award grants to eligible local jurisdictions for that fiscal year.

After awarding planning grants and capacity grants to eligible local jurisdictions in a fiscal year, the Department must distribute any remaining amounts existing grantees for that fiscal year.

Capacity grant awardees must expend grant funds during the five-year period after receiving grant funds, and grant awardees may appeal or challenge the amount of the grant awarded to the Department in a timely fashion.

The administering entity for an eligible local jurisdiction use the capacity grant funds for the following purposes:

- To update or maintain the digital equity plan of the local jurisdiction, up to 20 percent of the total grant amount.
- To implement the Plan of the local jurisdiction.
- To award a grant eligible entities located in the local jurisdiction in order to assist in the implementation of the Plan, pursue digital inclusion activities consistent with the Plan, and report digital inclusion activities of the entity to the local jurisdiction.
- To evaluate the efficacy of the efforts funded by grants, up to 5 percent of the total grant amount.
- For the administrative costs incurred, up to 3 percent.

The administering entity must require the entity to which the grant is awarded to certify that the receipt of the grant shall not result in unjust enrichment of the entity and must cooperate with any evaluation carried out by the administering entity or the Department.

Termination of Grant. The Department may terminate a grant awarded if the Department: (1) clearly demonstrates the grant funds are not contributing to the development or execution of the Plan; (2) finds the local jurisdiction is not upholding assurances; or (3) determines the grant is no longer necessary. The Department must provide notice and an opportunity for a hearing to the local jurisdiction.

The Department must distribute any terminated grant funds to existing grantees for that fiscal year.

Reporting, Information, and Disclosure Requirements. The Department must require any entity that is awarded a planning or capacity grant to annually report the use of that grant, progress towards achieving the objective of the grant, and the implementation of the Plan.

The Department is required to establish mechanisms to ensure grants are used in an appropriate manner that complies with the terms of the grant.

The Department is required to create and maintain a fully searchable database that: (1) contains the application of each local jurisdiction that has applied for a grant; (2) the status of each application; (3) each report submitted by an entity; (4) a record of public comments made of the Plan; (5) any written responses to or actions taken as a result of those comments; (6) any other information that is sufficient to allow the public to understand and monitor grants awarded under this section. The database must be made accessible on the internet at no cost to the public.

Digital Equity Competitive Grant Program.

The Digital Equity Competitive Grant Program (Competitive Grant Program) is established under the Department. Under the Competitive Grant Program, the Department awards grants to certain entities to support efforts to achieve digital equity, promote digital inclusion activities, and spur greater adoption of broadband among covered populations.

The Department is required to consult with representatives from certain specified state agencies, including the Office of Minority and Women's Business Enterprises, the Department of Veterans Affairs, the Office of Financial Management, Consolidated Technology Services, and agencies related to the provision of broadband. The Department may also consult with local jurisdictions to identify covered populations located in that local jurisdiction and allocate grant funds for projects within that local jurisdiction.

The Department is directed to ensure the Competitive Grant Program complements, and does not conflict with, other broadband initiatives and programs. The Department may adopt rules as necessary to carry out the Competitive Grant Program.

Program Eligibility. The Department may award a grant to any of the following entities, or any partnerships between the entities:

- a political subdivision, agency, or other municipal or quasi-municipal corporation of the local jurisdiction, including an agency that is responsible for administering or supervising adult education and literacy activities in the local jurisdiction;
- an Indian tribe;
- a foundation, corporation, institution, or association that is a not-for-profit entity; a community anchor institution;
- a local educational agency; and an entity that carries out a workforce development program.

Competitive Grant Application. An entity that wishes to be awarded a grant under the program shall submit to the Department an application that:

- provides a detailed explanation of how the entity will use any grant amounts awarded under the program to carry out the purposes of the program in an efficient and expeditious manner;
- identifies the period in which the applicant will expend the grant funds awarded under the program;
- includes a justification for the amount of the grant that the applicant is requesting and an annual budget for the activities that the grant funds will support;
- discloses to the Department the source and amount of other funding sources received related to the to the application; and
- provides the assurances required under the Act.

The application materials must also demonstrate, to the satisfaction of the Department, that the entity is capable of carrying out the project, meeting the state share requirement, and lawfully carrying out the applicable reporting requirements.

Awarding Competitive Grants. In deciding whether to award a grant under the Competitive Grant Program, the Department shall, to the extent practicable, consider whether the application would:

- increase internet access and the adoption of broadband among covered populations to be served by the applicant;
- not result in unjust enrichment;
- contract or subcontract with a socially and economically disadvantaged small business concern; and
- differ in geographic diversity in relation to other eligible applications; and duplicate or conflict with another program.

An entity to which the Department awards a grant must use the grant amounts to support at least one of the following activities:

- to develop and implement digital inclusion activities that benefit covered populations;
- to facilitate the adoption of broadband by covered populations in order to provide educational and employment opportunities to those populations;
- to implement workforce development programs or other training programs for covered populations that cover basic, advanced, and applied skills;
- to make available equipment, instrumentation, networking capability, hardware and software, or digital network technology for broadband services to covered populations at low or no cost;

- to construct, upgrade, expend, or operate new or existing public access computing centers for covered populations through community anchor institutions; or
- to undertake any other project and activity that the Department finds to be consistent with the purposes for which the Competitive Grant Program is established.

No more than 10 percent of the grant amounts may be used for administrative costs in carrying out any of the above activities.

No more than 10 percent of the grant amounts may be used to measure and evaluate the activities supported with the grant. An annual report of the measure and evaluate the activities must be submitted to the Department.

An entity awarded a grant under this subsection shall expend the grant amounts during the four-year period beginning on the date on which the entity is awarded the grant amounts.

A grant or sub-grant awarded under this section shall supplement, not supplant, other federal or state funds that have been made available to carry out activities described in this section.

State Share. The state share of any project for which the Department awards a grant under the Competitive Grant Program may not exceed 90 percent. The Department may grant a waiver to this limit if the applicant with respect to the project petitions the department for the waiver and the Department determines that the applicant petition demonstrates financial need.

Termination of Grant. The Department may de-obligate or terminate a competitive grant awarded if the Department clearly demonstrates: (1) grant funds are not being used in a manner that is consistent with the application; (2) the entity is not upholding assurances; or (3) the grant is no longer necessary to achieve the original purpose.

The Department must provide notice of any grant de-obligation or termination to the applicable entity and provide an opportunity for a hearing.

The Department may competitively award de-obligated or terminated grant funds to another applicant in accordance with the grant award formula.

Reporting, Information, and Disclosure Requirements. The Department must require any entity that is awarded a capacity grant to annually report the amount and use of that grant, and the progress towards achieving the objective of the grant.

The Department is required to establish mechanisms to ensure grants are used in an appropriate manner that complies with all terms with respect to the use of the grant amounts.

The Department is required to create and maintain a fully searchable database that contains a list of each entity that has applied for a grant, the status of each application, each report submitted by an entity, and any other information that is sufficient to allow the public to understand and monitor grants awarded. The database must be made accessible on the internet at no cost to the public.

Grant Award Formula.

The Department must calculate the amount of a total grant awarded to an eligible local jurisdiction in accordance with the following criteria:

- 50 percent based on the population of the eligible local jurisdiction in proportion to the total population of all eligible local jurisdictions;
- 25 percent based on the number of individuals in the eligible local jurisdiction who are covered populations in proportion to the total number of individuals in all eligible local jurisdictions who are covered populations; and
- 25 percent of the total grant amount shall be based on the comparative lack of availability and adoption of broadband in the eligible local jurisdiction in proportion to the lack of availability and adoption of broadband of all eligible local jurisdictions.

The comparative lack of availability and adoption of broadband which must be determined according to data collected from the Federal Communications Commission, the American Community Survey or other Census data, the Internet and Computer Use Supplement to the Current Population Survey, and any other source the Department, after appropriate notice and opportunity for public comment, determines to be appropriate.

Grant Assurances.

When applying for a any grant under this act, an entity must include certain assurances in the application to provide that the entity will:

- use any grant funds in accordance with any applicable statute, regulation, and application procedure to the extent required under applicable law;
- cooperate with any grant related program evaluation by or for the Department or another state official;
- adopt and use proper methods of administering any grant that the entity is awarded;
- use fiscal control and fund accounting procedures that ensure the proper disbursement of, and accounting for, any state funds;
- submit to the Department any reports that may be necessary to enable the Department to perform the duties of the department under the applicable program; and
- maintain any records and provide any information to the Department, including those records that the Department determines is necessary to enable the Department to perform the duties of the Department under the applicable program.

Proper methods of administering grants includes enforcing legal obligations, correcting any grantee program operation deficiencies, and adopting written procedures for the receipt and resolution of complaints alleging a violation of law with respect to a program to which the grant relates.

Policy Research, Data Collection, Analysis and Modeling, Evaluation, and Dissemination.

Evaluation Requirement. The Department must conduct evaluations of the activities carried out under the covered programs. Not later than one year after the date on which the Department begins awarding capacity grants, and annually thereafter, the Department must submit to the appropriate committees of the Legislature a report that documents the findings of each evaluation.

The Department shall make each report submitted available in an online format that facilitates access and ease of use, is searchable, and is accessible including to individuals with disabilities and in languages other than English.

Contracting. The Department may award grants and enter into contracts, cooperative agreements, and other arrangements with state agencies, public and private organizations, and other entities with expertise that the Department determines appropriate in order to:

- evaluate the impact and efficacy of activities supported by grants awarded under the covered programs; and
- develop, catalog, disseminate, and promote the exchange of best practices, both with respect to an independent of the covered programs, in order to achieve digital equity.

Ongoing Collaboration. The Department shall conduct ongoing collaboration and consultation with: (1) certain state agencies and local jurisdiction officials; (2) entities serving as administering entities; (3) national, state, tribal, and local organizations that provide digital inclusion, digital equity, or digital literacy services; (4) researchers, academics, and philanthropic organizations; (5) and other agencies, organizations, entities, and community stakeholders, as determined appropriate by the Department.

Technological Support and Assistance. The Department shall provide technical support and assistance, assistance to entities to prepare the applications of those entities with respect to grants awarded under the covered programs, and other resources, to the extent practicable, to ensure consistency in data reporting and to meet certain specified objectives.

Additional Provisions.

The programs in this Act must be carried out in a manner that is consistent with Chapter 49.60 RCW, and no individual may, on the basis of actual or perceived race, color, religion, national origin, sex, gender identity, sexual orientation, age, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under this Act.

A grant or sub-grant shall supplement, not supplant, other federal or state funds that have been made available for this purpose.

The Department shall, to the extent practicable, carry out the Act in a technologically neutral manner.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on July 1, 2021.