

HOUSE BILL REPORT

HB 1263

As Reported by House Committee On:
Community & Economic Development

Title: An act relating to rural infrastructure.

Brief Description: Concerning rural infrastructure.

Sponsors: Representatives Abbarno, Barkis, Dent, McEntire, Mosbrucker, Ybarra, Eslick, Boehnke and Gilday.

Brief History:

Committee Activity:

Community & Economic Development: 1/27/21, 2/5/21 [DPS].

Brief Summary of Substitute Bill

- Requires the Department of Commerce (Department) to establish a competitive grant program to award funding to eligible public and private entities located in rural counties for public facilities.
- Requires the Department to prioritize applications according to specified factors.
- Establishes additional procedures for applications requesting funding for broadband infrastructure, including a process for existing entities providing broadband service in the proposed project area to object to the proposed broadband project.
- Requires the Department to report on the rural infrastructure grant program to the Office of Financial Management and the Legislature.
- Modifies provisions related to the System Improvement Team, including removing the Team expiration date and adding a Team reporting requirement to the Legislature.

HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT

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

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, Frame, Jacobsen, Johnson, J., Lovick, Rule and Taylor.

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

Staff: Kyle Raymond (786-7190).

Background:

Infrastructure Grants and Loans Programs.

State programs currently exist that generally provide financial support for infrastructure projects, including infrastructure related to the provision of communications and broadband services to end users.

Public Works Board. The Public Works Assistance Account (PWAA) was established, in part, to assist in financing critical infrastructure projects. The Public Works Board (Board) may make low-interest or interest-free loans from the PWAA to finance the acquisition, construction, repair, replacement, or improvement of the following local public works: bridges, streets, and roads; water systems; storm and sanitary sewage systems; and solid waste facilities, including recycling.

The Board may make loans for preconstruction, emergency, and capital facilities planning. Local governments and special purpose districts, except port and school districts, are eligible to apply for loans from the PWAA.

Community Economic Revitalization Board. The Community Economic Revitalization Board (CERB) provides financial assistance to local governments and federally recognized tribes for public infrastructure that encourages new business development and economic growth. The CERB is authorized to make direct loans and grants to political subdivisions of the state and to federally recognized Indian tribes to finance public facilities. Eligible projects for CERB financing include:

- development of land and improvements for public facilities;
- project-specific environmental, capital, land use, permitting, feasibility, and marketing studies and plans;
- project design, site planning, and analysis;
- project debt and revenue impact analysis; and
- construction, rehabilitation, alteration, expansion, or improvement of the facilities.

The 2018 Supplemental Capital Budget created the Broadband Infrastructure Program. The Legislature authorized the CERB to provide low-interest loans and grants to local governments and federally recognized Indian tribes, in rural and underserved communities, to finance infrastructure for high-speed, open-access broadband service.

System Improvement Team.

An interagency, multijurisdictional System Improvement Team (Team) was established in 2017 to identify, implement, and report on infrastructure system improvements. The membership of the Team consists of representatives from state infrastructure programs and other entities including the associations representing cities, counties, public utility districts, water and sewer districts, general contractors, and building trades.

Broadband Definition and Goals.

"Broadband" and "broadband service" are defined to mean any service providing advanced telecommunications capability and Internet access with a minimum of 25 megabits per second download speed and 3 megabits per second upload speed.

The statewide goals for access to broadband service and minimum download and upload speeds established in statute include that:

- by 2024, all businesses and residences have access to high-speed broadband that provides minimum download speeds of at least 25 megabits per second and minimum upload speeds of at least 3 megabits per second;
- by 2026, all communities have access to at least 1 gigabit per second symmetrical broadband service at anchor institutions like schools, hospitals, libraries, and government buildings; and
- by 2028, all businesses and residences have access to at least one provider of broadband with download speeds of at least 150 megabits per second and upload speeds of at least 150 megabits per second.

Distressed Areas.

Areas may be designated as "distressed areas" if they meet certain criteria set forth in statute. These criteria are based on, among other considerations, unemployment rate, median household income, and population.

Summary of Substitute Bill:

A competitive grant program is established under the Department of Commerce (Department) to award funding to eligible applicants located in rural counties for public facilities.

Eligible applicants for the grant program include: local governments; tribes; port districts; multiparty entities comprised of public entity members; limited liability corporations organized for the purpose of expanding broadband access; and incorporated businesses or partnerships.

The Department is required to develop administrative procedures governing the application and award process, act as fiscal agent for the program, and is responsible for receiving and

reviewing applications and awarding funds.

Application Prioritization.

The Department must develop a process to prioritize applications and funding of grants for public facilities submitted by local governments located in rural counties. The Department must publish on its website the specific criteria and any quantitative weighting scheme or scoring system that it will use to evaluate or rank applications and award funding at least 60 days prior to the first day applications may be submitted in each fiscal year.

The Department must consider the following factors in prioritizing projects:

- whether the project is critical in nature and would affect the health and safety of many people;
- the extent to which the project leverages other funds;
- the extent to which the project is ready to proceed to construction;
- whether the project is located in a distressed area;
- whether the project promotes the sustainable use of resources and environmental quality, as applicable;
- whether the project consolidates or regionalizes systems;
- whether the project encourages economic development through mixed-use and mixed-income development;
- whether the facility is being well managed in the present and for long-term sustainability;
- achieving equitable distribution of funds by geography and population;
- whether the applicant sought or is seeking funding for the project from other sources;
- whether the completion of the project will directly or indirectly achieve net negative greenhouse gas emissions; and
- whether the project will increase the opportunity for individuals to work from home.

In addition to the prioritization factors above, the Department must consider the extent to which the project meets the following state policy objectives:

- efficient use of state resources;
- reservation and enhancement of health and safety;
- abatement of pollution and protection of the environment;
- creation of new, family-wage jobs, and avoidance of shifting existing jobs from One Washington community to another;
- fostering economic development;
- efficiency in delivery of goods and services and transportation; and
- reduction of the overall cost of public infrastructure.

During the application review process, the Department may consult with local governments, port districts, associate development organizations, and economic development councils within the applicant's jurisdiction.

The Department must consult with the broadband office during the review of any

applications that request funding for broadband infrastructure.

Grant Awarding Requirements.

The Department may not award funds that total greater than 75 percent of the total cost of the project, except the Department may fund the total cost of a project located in a distressed area up to 90 percent. The maximum amount of total funding that the Department may provide for any jurisdiction is \$10 million per biennium. The maximum amount of funding that the Department may provide for preconstruction activities to any jurisdiction is \$1 million per biennium, except there is no maximum amount for: (1) preconstruction activities located in a distressed area; or (2) preconstruction activities necessary to determine whether the completion of the project will directly or indirectly achieve net negative greenhouse gas emissions.

Contracts for grants must include provisions that the asset or infrastructure to be developed will be maintained for public use for a period of at least 15 years. If the grantee is found to be out of compliance with provisions of the contract, the grantee is required to repay to the State General Fund the principal amount of the grant plus interest calculated at the rate of interest on State of Washington general obligation bonds issued most closely to the date of authorization of the grant.

Additional Procedures for Applications Requesting Broadband Infrastructure Funding.

For applications requesting funding for broadband infrastructure, the Department must require the applicant to provide documentation that 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 to speeds that meet or exceed 25 megabits per second and minimum upload speeds of at least 3 megabits per second within the time frame specified in the proposed grant activities; and
- the broadband service providers' written responses to the inquiry if applicable.

A broadband applicant must send the written contact to a registered agent of the provider, for any broadband service provider that is registered under the Uniform Business Organizations Code.

Applicants must contact the entities providing broadband service near the proposed project area no later than six weeks before submission of the application.

Within 30 days of the close of the grant application process, the Department is required to publish on its website the proposed geographic broadband service area and the proposed broadband speeds for each application submitted. Any existing broadband service provider near the proposed project area may, within 30 days of publication of the information, submit a written objection of the application, certified by affidavit, to the Department that must contain information demonstrating that:

- the project would result in overbuild, meaning that the objecting provider currently

- provides, or has begun construction to provide, broadband service to end users in the proposed project area at speeds equal to or greater than the state broadband speed goals; or
- the objecting provider commits to complete construction of broadband infrastructure and provide broadband service to end users in the proposed project area at speeds equal to or greater than the state broadband speed goals, no later than 24 months after the date awards are made for the grant cycle under which the application was submitted.

The Department must evaluate the information submitted by the objecting provider and must consider it in making a determination on the application objected to.

The Department may choose to not fund a project if the Department determines that the objecting provider's commitment to provide broadband service in the proposed project area is credible. In assessing the commitment, the Department may consider whether the objecting provider has or will provide a bond, letter of credit, or other indicia of financial commitment guaranteeing the project's completion.

If the Department denies funding to an applicant as a result of a broadband service provider's objection, and the broadband service provider does not fulfill its commitment to provide broadband service in the project area, then for the following two grant cycles, the Department is prohibited from denying funding to an applicant on the basis of a challenge by the same broadband service provider, unless the Department determines that the broadband service provider's failure to fulfill the provider's commitment was the result of factors beyond the broadband service provider's control. Confidential business and financial information submitted by an objecting provider is exempt from disclosure under the Public Records Act.

An applicant or broadband service provider that objected to the application may request a debriefing conference regarding the Department's decision on the application. Requests for debriefing must be coordinated by the Statewide Broadband Office (SBO) and must be submitted in writing in accordance with procedures specified by the SBO. The Department, in collaboration with the SBO, may adopt rules for a voluntary nonbinding mediation between incumbent providers and applicants to the grant program created. The Department is not prohibited from denying funding to an applicant for reasons other than an objection by the same broadband service provider.

Prior to awarding broadband infrastructure funds, the Department must consult with the Washington Utilities and Transportation Commission (UTC). The UTC must provide to the Department an assessment of the technical feasibility of a proposed application. The Department must consider the UTC's assessment as part of its evaluation of a proposed application.

Rural Infrastructure Assistance Account.

The Rural Infrastructure Assistance Account (Account) is created in the state treasury. All receipts must be deposited into the Account. Expenditures from the Account may be used only for grants to local governments located in rural counties for public facilities, including costs incurred by the Department to administer the grant program. The Department may not sign contracts or otherwise financially obligate funds from the Account before the Legislature has appropriated funds to the Department for the purpose of funding public facilities.

System Improvement Team.

Broadband programs are added to the existing list of infrastructure programs under the Team. In addition, the Team may invite representatives from other broadband infrastructure programs. The expiration date for the Team is removed.

Beginning September 1, 2022, biennially thereafter, the Team must submit a report to the Legislature that includes the following:

- a list of all projects funded by members of the Team;
- a description of the coordination the Team has completed with other grant programs and funds leveraged; and
- a description of regional planning that has occurred.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the underlying bill:

- expands the eligible applicants under the grant program to include tribes, multiparty entities comprised of public entity members, limited liability corporations organized for the purpose of expanding broadband access, and incorporated businesses or partnerships;
- provides that the Department may consult with local governments, port districts, associate development organizations, and economic development councils located within the applicant's jurisdiction during the application review process;
- requires the Department to consult with the SBO during the review of any applications that request funding for broadband infrastructure;
- raises the maximum amount of funding that the Department may provide for preconstruction activities in any jurisdiction from \$50,000 to \$1 million per biennium;
- provides that a preconstruction activity includes design, engineering, bid-document preparation, environmental studies, right-of-way, acquisition, value planning, and other preliminary phases of public works projects as determined by the Department;
- expands the time requirement under which a broadband applicant must contact the broadband service providers near the proposed project area to no later than 60 days, rather than no later than six weeks, before submission of the application;
- provides that a broadband applicant must send the required broadband service provider written contact to a registered agent of the provider, applicable to any broadband service provider that is registered under the Uniform Business

- Organizations Code;
- adds broadband programs to the existing list of infrastructure programs under the Team;
 - provides that the Team may invite representatives from other broadband infrastructure programs;
 - requires the Team to issue a biennial report to the Legislature regarding the projects funded by Team members, Team coordination efforts with other programs, and regional planning efforts that have occurred;
 - removes the expiration date for the Team under current statute; and
 - adds an emergency clause pertaining to the Team modifications.
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Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 5, relating to modifications to the system improvement team, which contains an emergency clause and takes effect June 20, 2021.

Staff Summary of Public Testimony:

(In support) This bill is an attempt to create a mechanism to invest more in infrastructure to create economic development opportunities and protect the environment.

Existing funding mechanisms for infrastructure exist, but this grant-based mechanism for rural infrastructure is needed to ensure that funds are being spent for their intended purpose. Also, larger infrastructure grants are needed to accomplish more comprehensive, regional projects. A program with lower match requirements is needed in distressed counties, so these counties do not have to continue to put projects on hold.

The bill includes overbuild provisions to allow existing businesses to object in cases where there are existing broadband projects in development. This will help prevent wasteful development or duplicative services.

Washington's Team is scheduled to sunset this year. The Team's regional planning has been helpful, particularly for large projects. The substitute bill extends the Team and expands their purpose to include broadband.

If a locality does not have basic infrastructure, economic development can not happen. Infrastructure investment is vital to supporting housing and broadband in communities. This growth will help keep youth in rural communities, rather than moving to larger cities.

There is a gap in infrastructure needs for rural areas to be successful in the digital age. This

bill could help fund projects for school districts that are not able to afford low-interest loans to expand Internet access by connecting to existing infrastructure.

The PWAA has the authority to fund many of the infrastructure types included in this bill.

However, for the smallest cities and towns with relatively limited rate bases, even low interest loans can be out of reach for their financial means.

(Opposed) None.

(Other) Tribes should be included under the grant program. The Hoh Tribe has been working for many years on connecting the tribe to the digital world.

The bill would add new sections to the Board statute, both expanding and contracting the Board's work in ways that need to be explored. The Board already administers a competitive grant program to award funding to local governments and port districts. The Board does not fund electrical transmission facilities, natural gas facilities, or port facilities. Additional revenue sources are needed, as there are limited dollars for infrastructure.

This bill recognizes the strain on rural Washington. Rural governments can not spread the costs of large projects across rate payers, even in a low interest rate environment.

The grant program is limited to public entities only and excludes private industry from participating. The goal should be to provide access to everyone, so the industry that provides broadband should not be excluded. The private broadband providers invest about \$2.5 billion expanding infrastructure every year and employ 22,000 Washingtonians with family wage jobs. To expand broadband in rural areas, private providers must be included. In addition, the focus should be on the unserved.

Persons Testifying: (In support) Representative Abbarno, prime sponsor; Lisa Striedinger, Friends Without Homes; Levi Rodriguez, Centralia School District; and Marian Dacca, Association of Washington Cities.

(Other) Peggen Frank, Hoh Tribe; Mike Ennis, Association of Washington Business; Erik Martin, Public Works Board; and Buck Lucas, Department of Commerce.

Persons Signed In To Testify But Not Testifying: None.