

SENATE BILL REPORT

SB 5580

As Reported by Senate Committee On:
Environment, Energy & Technology, January 20, 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: Senators Wellman, Mullet, Frockt, Kuderer, Nguyen, Warnick and Wilson, C.; by request of Public Works Board.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/12/22, 1/20/22 [DPS, DNP].

Brief Summary of First Substitute Bill

- Modifies certain application and notification requirements for the Public Works Board's (PWB) broadband service expansion grant and loan program (program).
- Creates a pre-application process for the program.
- Removes the requirement for the Utilities and Transportation Commission to provide an assessment of the technical feasibility of a proposed application.
- Authorizes the PWB to make low-interest or interest-free loans or grants for certain emergency public works broadband projects.
- Exempts financial and commercial information and records supplied in program pre-applications and applications from public disclosure.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

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: That Substitute Senate Bill No. 5580 be substituted therefor, and the substitute bill do pass.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Short, Ranking Member; Brown, Das, Fortunato, Liias, Lovick, Nguyen, Schoesler, Stanford and Wellman.

Minority Report: Do not pass.

Signed by Senator Sheldon.

Staff: Angela Kleis (786-7469)

Background: Public Works Board. *General.* The Public Works Board (PWB), within the Department of Commerce, 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.

Broadband Service Expansion Grant and Loan Program. The PWB administers the broadband service expansion grant and loan program (program), which awards funding to eligible applicants in order to promote the expansion of access to broadband service in unserved areas of the state.

Eligible applicants include local governments, tribes, nonprofit organizations, cooperative associations, multiparty entities comprised of public entity members, limited liability corporations organized for the purpose of expanding broadband access, and incorporated businesses or partnerships.

Program applications must include specified information such as:

- the location of the project;
- evidence the proposed infrastructure will be scalable;
- evidence regarding the unserved nature of the community in the project location; and
- evidence that no later than six weeks before submission of the application the applicant notified all entities providing broadband service near the proposed project area to ask if there were upgrade plans within the same time frame as the proposed project.

Except for during the 2021-2023 fiscal biennium, prior to awarding funds, the PWB must consult with the Utilities and Transportation Commission (UTC). The UTC must provide an assessment of the technical feasibility of a proposed application. The PWB must consider the UTC's assessment as part of its evaluation of a proposed application.

Utilities and Transportation Commission. The UTC is a three-member commission appointed by the Governor and confirmed by the Senate. The UTC regulates the rates, services, facilities, and practices of utilities and transportation services.

Public Records Act. Under the Public Records Act (PRA), all state and local agencies must

make all public records available for public inspection and copying, unless a specific exemption in the PRA or another statute applies. The PRA must be liberally construed and its exemptions narrowly construed to promote a general public policy favoring disclosure.

Summary of Bill (First Substitute): Broadband Service Expansion Grant and Loan Program Applications. A pre-application is created within the program. Pre-applications must include specified criteria such as the location and description of the project; evidence that before submission of the application, the applicant contacted all entities providing broadband service near the proposed project area to ask if there were plans to upgrade service within the time frame of the proposed project; and the proposed geographic broadband service area and the proposed broadband speeds in the form and manners prescribed by the PWB.

The PWB must publish on its website:

- for at least 30 days, the proposed geographic broadband service area and the proposed broadband speed for each proposed broadband project submitted in the pre-application period; and
- within three business days following the close of the pre-application cycle, pre-applications.

Application criteria are specified including, if applicable, providing documentation describing the outcome of the broadband service provider's written responses to the inquiry made prior to or during the pre-application process.

The requirements for the PWB to consult with the UTC, the UTC to provide an assessment of the technical feasibility of a proposed application, and the PWB to consider the UTC assessment as part of its evaluation of a proposed application are removed.

Low-interest or Interest-free Loans or Grants. Subject to rules published by the PWB, the PWB may make low-interest or interest-free loans or grants to eligible applicants for emergency public works broadband projects (projects). While developing rules, the PWB must consider prioritizing broadband infrastructure projects that replace existing infrastructure impacted by an emergency.

Projects include construction, repair, reconstruction, replacement, rehabilitation, or improvement to critical broadband infrastructure that has been made necessary by a natural disaster or damaged by unforeseen events. Priority must be granted to projects that replace existing infrastructure of the provider whose facilities were damaged by the unforeseen event and funds must not be provided to a new provider to overbuild the existing provider.

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 federal disaster or emergency funds, state disaster or emergency funds, insurance settlements, and litigation.

Public Disclosure. Financial and commercial information and records supplied by businesses or individuals in program applications are exempt from disclosure under the PRA.

EFFECT OF CHANGES MADE BY ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE (First Substitute):

- Establishes a pre-application process for the program.
- Specifies disclosure and objection period timelines.
- Adds to the application process a requirement that applicants provide, if applicable, documentation describing the outcome of the broadband service providers' written responses to the inquiry made prior to or during the pre-application process.
- Authorizes the PWB, in collaboration with Statewide Broadband Office, to also adopt rules regarding the publishing of pre-applications on its website and for the objection process.
- Requires the PWB, while developing rules for emergency public works broadband projects, to consider prioritizing broadband infrastructure projects that replace existing infrastructure impacted by an emergency.
- Specifies emergency public works broadband projects include projects made necessary by a natural disaster.
- Requires the PWB to grant priority to emergency public works projects that replace existing infrastructure of the provider whose facilities were damaged by the unforeseen event and shall not provide funds to a new provider to overbuild the existing provider.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The recommendations in this legislation are based on feedback from stakeholders after having gone through a couple cycles of the program. The intent of the changes is to improve the program and increase transparency. The public disclosure exemption addresses the issue with certain providers not applying to the program because sensitive information may be disclosed. We support the grants and loans for emergency construction because it helps address disasters from fires. We recommend adding a pre-application process, which will help improve mapping, and will work with the sponsor.

OTHER: We would like to see more transparency by disclosing certain elements in the

application process. We need more information to determine if a challenge to a proposed project is appropriate. Emergency should be defined, preferably tied to a declared emergency. We want to ensure that funds go to unserved areas.

Persons Testifying: PRO: Senator Lisa Wellman, Prime Sponsor; Kathryn Gardow, Public Works Board; Joe Poire.

OTHER: Betty Buckley, Washington Independent Telecommunications Association; Mike Ennis, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: No one.