
SENATE BILL 5580

State of Washington

67th Legislature

2022 Regular Session

By Senators Wellman, Mullet, Frockt, Kuderer, Nguyen, Warnick, and C. Wilson; by request of Public Works Board

Prefiled 12/22/21. Read first time 01/10/22. Referred to Committee on Environment, Energy & Technology.

1 AN ACT Relating to broadband infrastructure loans and grants made
2 by the public works board; and amending RCW 43.155.160 and 42.56.270.

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

4 **Sec. 1.** RCW 43.155.160 and 2021 c 332 s 7040 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 broadband
9 service in unserved areas of the state.

10 (2)(a) Grants and loans may be awarded under this section to
11 assist in funding acquisition, installation, and construction of
12 middle mile and last mile infrastructure that supports broadband
13 services and to assist in funding strategic planning for deploying
14 broadband service in unserved areas.

15 (b) The board may choose to fund all or part of an application
16 for funding, provided that the application meets the requirements of
17 subsection (9) of this section.

18 (3) Eligible applicants for grants and loans awarded under this
19 section include:

20 (a) Local governments;

21 (b) Tribes;

- 1 (c) Nonprofit organizations;
- 2 (d) Cooperative associations;
- 3 (e) Multiparty entities comprised of public entity members;
- 4 (f) Limited liability corporations organized for the purpose of
- 5 expanding broadband access; and
- 6 (g) Incorporated businesses or partnerships.

7 (4) (a) The board shall develop administrative procedures
8 governing the application and award process. The board shall act as
9 fiscal agent for the program and is responsible for receiving and
10 reviewing applications and awarding funds under this section.

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

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

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

22 (5) An applicant for a grant or loan under this section must
23 provide the following information on the application:

24 (a) The location of the project;

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

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

29 (d) The number of households passed that will gain access to
30 broadband service as a result of the project or whose broadband
31 service will be upgraded as a result of the project;

32 (e) The estimated cost of retail services to end users
33 facilitated by a project;

34 (f) The proposed actual download and upload speeds experienced by
35 end users;

36 (g) Evidence of significant community institutions that will
37 benefit from the proposed project;

38 (h) Anticipated economic, educational, health care, or public
39 safety benefits created by the project;

40 (i) Evidence of community support for the project;

1 (j) If available, a description of the applicant's user adoption
2 assistance program and efforts to promote the use of newly available
3 broadband services created by the project;

4 (k) The estimated total cost of the project;

5 (l) Other sources of funding for the project that will supplement
6 any grant or loan award;

7 (m) A demonstration of the project's long-term sustainability,
8 including the applicant's financial soundness, organizational
9 capacity, and technical expertise;

10 (n) A strategic plan to maintain long-term operation of the
11 infrastructure;

12 (o) Evidence that (~~no later than six weeks~~) before submission
13 of the application, the applicant contacted, in writing, all entities
14 providing broadband service near the proposed project area to ask
15 each broadband service provider's plan to upgrade broadband service
16 in the project area to speeds that meet or exceed the state's
17 definition for broadband service as defined in RCW 43.330.530, within
18 the time frame specified in the proposed grant or loan activities;

19 (p) If applicable, the broadband service providers' written
20 responses to the inquiry made under (o) of this subsection; (~~and~~)

21 (q) Evidence that no later than 30 days prior to submission of
22 the application, the applicant submitted the proposed geographic
23 broadband service area and the proposed broadband speeds to the
24 public works board; and

25 (r) Any additional information requested by the board.

26 (6) (a) (~~Within thirty days of the close of the grant and loan~~
27 ~~application process, the~~) The board shall publish on its website for
28 at least 30 days the proposed geographic broadband service area and
29 the proposed broadband speeds for each application submitted.

30 (b) Any existing broadband service provider near the proposed
31 project area may, within thirty days of publication of the
32 information under (a) of this subsection, submit in writing to the
33 board an objection to (~~an application~~) a proposed broadband
34 project. An objection must contain information demonstrating that:

35 (i) The project would result in overbuild, meaning that the
36 objecting provider currently provides, or has begun construction to
37 provide, broadband service to end users in the proposed project area
38 at speeds equal to or greater than the state speed goals contained in
39 RCW 43.330.536; or

1 (ii) The objecting provider commits to complete construction of
2 broadband infrastructure and provide broadband service to end users
3 in the proposed project area at speeds equal to or greater than the
4 state speed goals contained in RCW 43.330.536, no later than twenty-
5 four months after the date awards are made under this section for the
6 grant and loan cycle under which the application was submitted.

7 (c) Objections submitted to the board under this subsection must
8 be certified by affidavit.

9 (d) The board may evaluate the information submitted under this
10 section by the objecting provider and must consider it in making a
11 determination on the application objected to. The board may request
12 clarification or additional information. The board may choose to not
13 fund a project if the board determines that the objecting provider's
14 commitment to provide broadband service that meets the requirements
15 of (b) of this subsection in the proposed project area is credible.
16 In assessing the commitment, the board may consider whether the
17 objecting provider has or will provide a bond, letter of credit, or
18 other indicia of financial commitment guaranteeing the project's
19 completion.

20 (e) If the board denies funding to an applicant as a result of a
21 broadband service provider's objection made under this section, and
22 the broadband service provider does not fulfill its commitment to
23 provide broadband service in the project area, then for the following
24 two grant and loan cycles, the board is prohibited from denying
25 funding to an applicant on the basis of a challenge by the same
26 broadband service provider, unless the board determines that the
27 broadband service provider's failure to fulfill the provider's
28 commitment was the result of factors beyond the broadband service
29 provider's control. The board is not prohibited from denying funding
30 to an applicant for reasons other than an objection by the same
31 broadband service provider.

32 (f) An applicant or broadband service provider that objected to
33 the application may request a debriefing conference regarding the
34 board's decision on the application. Requests for debriefing must be
35 coordinated by the office and must be submitted in writing in
36 accordance with procedures specified by the office.

37 (g) Confidential business and financial information submitted by
38 an objecting provider under this subsection is exempt from disclosure
39 under chapter 42.56 RCW.

1 (7) (a) In evaluating applications and awarding funds, the board
2 shall give priority to applications that are constructed in areas
3 identified as unserved.

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

6 (i) Provide assistance to public-private partnerships deploying
7 broadband infrastructure from areas currently served with broadband
8 service to areas currently lacking access to broadband services;

9 (ii) Demonstrate project readiness to proceed;

10 (iii) Construct infrastructure that is open access, meaning that
11 during the useful life of the infrastructure, service providers may
12 use network services and facilities at rates, terms, and conditions
13 that are not discriminatory or preferential between providers, and
14 employing accountable interconnection arrangements published and
15 available publicly;

16 (iv) Are submitted by tribal governments whose reservations are
17 in rural and remote areas where reliable and efficient broadband
18 services are unavailable to many or most residents;

19 (v) Bring broadband service to tribal lands, particularly to
20 rural and remote tribal lands or areas servicing rural and remote
21 tribal entities;

22 (vi) Are submitted by tribal governments in rural and remote
23 areas that have spent significant amounts of tribal funds to address
24 the problem but cannot provide necessary broadband services without
25 either additional state support, additional federal support, or both;

26 (vii) Serve economically distressed areas of the state as the
27 term "distressed area" is defined in RCW 43.168.020;

28 (viii) Offer new or substantially upgraded broadband service to
29 important community anchor institutions including, but not limited
30 to, libraries, educational institutions, public safety facilities,
31 and health care facilities;

32 (ix) Facilitate the use of telemedicine and electronic health
33 records, especially in deliverance of behavioral health services and
34 services to veterans;

35 (x) Provide technical support and train residents, businesses,
36 and institutions in the community served by the project to utilize
37 broadband service;

38 (xi) Include a component to actively promote the adoption of
39 newly available broadband services in the community;

1 (xii) Provide evidence of strong support for the project from
2 citizens, government, businesses, and community institutions;

3 (xiii) Provide access to broadband service to a greater number of
4 unserved households and businesses, including farms;

5 (xiv) Utilize equipment and technology demonstrating greater
6 longevity of service;

7 (xv) Seek the lowest amount of state investment per new location
8 served and leverage greater amounts of funding for the project from
9 other private and public sources;

10 (xvi) Include evidence of a customer service plan;

11 (xvii) Consider leveraging existing broadband infrastructure and
12 other unique solutions;

13 (xviii) Benefit public safety and fire preparedness; or

14 (xix) Demonstrate other priorities as the board, in collaboration
15 with the office, may prescribe by rule.

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

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

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

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

27 (8) To ensure a grant or loan to a private entity under this
28 section primarily serves the public interest and benefits the public,
29 any such grant or loan must be conditioned on a guarantee that the
30 asset or infrastructure to be developed will be maintained for public
31 use for a period of at least fifteen years.

32 (9) (a) No funds awarded under this section may fund more than
33 fifty percent of the total cost of the project, except as provided in
34 (b) of this subsection.

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

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

5 ~~(10) ((Except for during the 2021-2023 fiscal biennium, prior to~~
6 ~~awarding funds under this section, the board must consult with the~~
7 ~~Washington utilities and transportation commission. The commission~~
8 ~~must provide to the board an assessment of the technical feasibility~~
9 ~~of a proposed application. The board must consider the commission's~~
10 ~~assessment as part of its evaluation of a proposed application.~~

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

14 ~~((12))~~ (11) The community economic revitalization board shall
15 facilitate the timely transmission of information and documents from
16 its broadband program to the board in order to effectuate an orderly
17 transition.

18 (12)(a) Subject to rules promulgated by the board, the board may
19 make low-interest or interest-free loans or grants to eligible
20 applicants for emergency public works broadband projects. Emergency
21 public works broadband projects include construction, repair,
22 reconstruction, replacement, rehabilitation, or improvement to
23 critical broadband infrastructure that has been damaged by unforeseen
24 events. The loans or grants may be used to help fund all or part of
25 an emergency public works broadband infrastructure project less any
26 reimbursement from any of the following sources: (i) Federal disaster
27 or emergency funds, including funds from the federal emergency
28 management agency; (ii) state disaster or emergency funds; (iii)
29 insurance settlements; and (iv) litigation.

30 (b) Eligible applicants for grants and loans awarded under this
31 subsection are the same as those described in subsection (3) of this
32 section.

33 (13) The definitions in RCW 43.330.530 apply throughout this
34 section unless the context clearly requires otherwise.

35 **Sec. 2.** RCW 42.56.270 and 2021 c 308 s 4 are each amended to
36 read as follows:

37 The following financial, commercial, and proprietary information
38 is exempt from disclosure under this chapter:

1 (1) Valuable formulae, designs, drawings, computer source code or
2 object code, and research data obtained by any agency within five
3 years of the request for disclosure when disclosure would produce
4 private gain and public loss;

5 (2) Financial information supplied by or on behalf of a person,
6 firm, or corporation for the purpose of qualifying to submit a bid or
7 proposal for (a) a ferry system construction or repair contract as
8 required by RCW 47.60.680 through 47.60.750; (b) highway construction
9 or improvement as required by RCW 47.28.070; or (c) alternative
10 public works contracting procedures as required by RCW 39.10.200
11 through 39.10.905;

12 (3) Financial and commercial information and records supplied by
13 private persons pertaining to export services provided under chapters
14 43.163 and 53.31 RCW, and by persons pertaining to export projects
15 under RCW 43.23.035;

16 (4) Financial and commercial information and records supplied by
17 businesses or individuals during application for loans or program
18 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
19 43.168 RCW and RCW 43.155.160, or during application for economic
20 development loans or program services provided by any local agency;

21 (5) Financial information, business plans, examination reports,
22 and any information produced or obtained in evaluating or examining a
23 business and industrial development corporation organized or seeking
24 certification under chapter 31.24 RCW;

25 (6) Financial and commercial information supplied to the state
26 investment board by any person when the information relates to the
27 investment of public trust or retirement funds and when disclosure
28 would result in loss to such funds or in private loss to the
29 providers of this information;

30 (7) Financial and valuable trade information under RCW 51.36.120;

31 (8) Financial, commercial, operations, and technical and research
32 information and data submitted to or obtained by the clean Washington
33 center in applications for, or delivery of, program services under
34 chapter 70.95H RCW;

35 (9) Financial and commercial information requested by the public
36 stadium authority from any person or organization that leases or uses
37 the stadium and exhibition center as defined in RCW 36.102.010;

38 (10)(a) Financial information, including but not limited to
39 account numbers and values, and other identification numbers supplied
40 by or on behalf of a person, firm, corporation, limited liability

1 company, partnership, or other entity related to an application for a
2 horse racing license submitted pursuant to RCW 67.16.260(1)(b),
3 marijuana producer, processor, or retailer license, liquor license,
4 gambling license, or lottery retail license;

5 (b) Internal control documents, independent auditors' reports and
6 financial statements, and supporting documents: (i) Of house-banked
7 social card game licensees required by the gambling commission
8 pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted
9 by tribes with an approved tribal/state compact for class III gaming;

10 (c) Valuable formulae or financial or proprietary commercial
11 information records received during a consultative visit or while
12 providing consultative services to a licensed marijuana business in
13 accordance with RCW 69.50.561;

14 (11) Proprietary data, trade secrets, or other information that
15 relates to: (a) A vendor's unique methods of conducting business; (b)
16 data unique to the product or services of the vendor; or (c)
17 determining prices or rates to be charged for services, submitted by
18 any vendor to the department of social and health services or the
19 health care authority for purposes of the development, acquisition,
20 or implementation of state purchased health care as defined in RCW
21 41.05.011;

22 (12)(a) When supplied to and in the records of the department of
23 commerce:

24 (i) Financial and proprietary information collected from any
25 person and provided to the department of commerce pursuant to RCW
26 43.330.050(8);

27 (ii) Financial or proprietary information collected from any
28 person and provided to the department of commerce or the office of
29 the governor in connection with the siting, recruitment, expansion,
30 retention, or relocation of that person's business and until a siting
31 decision is made, identifying information of any person supplying
32 information under this subsection and the locations being considered
33 for siting, relocation, or expansion of a business; and

34 (iii) Financial or proprietary information collected from any
35 person and provided to the department of commerce pursuant to RCW
36 43.31.625 (3)(b) and (4);

37 (b) When developed by the department of commerce based on
38 information as described in (a)(i) of this subsection, any work
39 product is not exempt from disclosure;

1 (c) For the purposes of this subsection, "siting decision" means
2 the decision to acquire or not to acquire a site;

3 (d) If there is no written contact for a period of sixty days to
4 the department of commerce from a person connected with siting,
5 recruitment, expansion, retention, or relocation of that person's
6 business, information described in (a)(ii) of this subsection will be
7 available to the public under this chapter;

8 (13) Financial and proprietary information submitted to or
9 obtained by the department of ecology or the authority created under
10 chapter 70A.500 RCW to implement chapter 70A.500 RCW;

11 (14) Financial, commercial, operations, and technical and
12 research information and data submitted to or obtained by the life
13 sciences discovery fund authority in applications for, or delivery
14 of, grants under RCW 43.330.502, to the extent that such information,
15 if revealed, would reasonably be expected to result in private loss
16 to the providers of this information;

17 (15) Financial and commercial information provided as evidence to
18 the department of licensing as required by RCW 19.112.110 or
19 19.112.120, except information disclosed in aggregate form that does
20 not permit the identification of information related to individual
21 fuel licensees;

22 (16) Any production records, mineral assessments, and trade
23 secrets submitted by a permit holder, mine operator, or landowner to
24 the department of natural resources under RCW 78.44.085;

25 (17)(a) Farm plans developed by conservation districts, unless
26 permission to release the farm plan is granted by the landowner or
27 operator who requested the plan, or the farm plan is used for the
28 application or issuance of a permit;

29 (b) Farm plans developed under chapter 90.48 RCW and not under
30 the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject
31 to RCW 42.56.610 and 90.64.190;

32 (18) Financial, commercial, operations, and technical and
33 research information and data submitted to or obtained by a health
34 sciences and services authority in applications for, or delivery of,
35 grants under RCW 35.104.010 through 35.104.060, to the extent that
36 such information, if revealed, would reasonably be expected to result
37 in private loss to providers of this information;

38 (19) Information gathered under chapter 19.85 RCW or RCW
39 34.05.328 that can be identified to a particular business;

1 (20) Financial and commercial information submitted to or
2 obtained by the University of Washington, other than information the
3 university is required to disclose under RCW 28B.20.150, when the
4 information relates to investments in private funds, to the extent
5 that such information, if revealed, would reasonably be expected to
6 result in loss to the University of Washington consolidated endowment
7 fund or to result in private loss to the providers of this
8 information;

9 (21) Market share data submitted by a manufacturer under RCW
10 70A.500.190(4);

11 (22) Financial information supplied to the department of
12 financial institutions, when filed by or on behalf of an issuer of
13 securities for the purpose of obtaining the exemption from state
14 securities registration for small securities offerings provided under
15 RCW 21.20.880 or when filed by or on behalf of an investor for the
16 purpose of purchasing such securities;

17 (23) Unaggregated or individual notices of a transfer of crude
18 oil that is financial, proprietary, or commercial information,
19 submitted to the department of ecology pursuant to RCW
20 90.56.565(1)(a), and that is in the possession of the department of
21 ecology or any entity with which the department of ecology has shared
22 the notice pursuant to RCW 90.56.565;

23 (24) Financial institution and retirement account information,
24 and building security plan information, supplied to the liquor and
25 cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and
26 69.50.345, when filed by or on behalf of a licensee or prospective
27 licensee for the purpose of obtaining, maintaining, or renewing a
28 license to produce, process, transport, or sell marijuana as allowed
29 under chapter 69.50 RCW;

30 (25) Marijuana transport information, vehicle and driver
31 identification data, and account numbers or unique access identifiers
32 issued to private entities for traceability system access, submitted
33 by an individual or business to the liquor and cannabis board under
34 the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and
35 69.50.345 for the purpose of marijuana product traceability.
36 Disclosure to local, state, and federal officials is not considered
37 public disclosure for purposes of this section;

38 (26) Financial and commercial information submitted to or
39 obtained by the retirement board of any city that is responsible for
40 the management of an employees' retirement system pursuant to the

1 authority of chapter 35.39 RCW, when the information relates to
2 investments in private funds, to the extent that such information, if
3 revealed, would reasonably be expected to result in loss to the
4 retirement fund or to result in private loss to the providers of this
5 information except that (a) the names and commitment amounts of the
6 private funds in which retirement funds are invested and (b) the
7 aggregate quarterly performance results for a retirement fund's
8 portfolio of investments in such funds are subject to disclosure;

9 (27) Proprietary financial, commercial, operations, and technical
10 and research information and data submitted to or obtained by the
11 liquor and cannabis board in applications for marijuana research
12 licenses under RCW 69.50.372, or in reports submitted by marijuana
13 research licensees in accordance with rules adopted by the liquor and
14 cannabis board under RCW 69.50.372;

15 (28) Trade secrets, technology, proprietary information, and
16 financial considerations contained in any agreements or contracts,
17 entered into by a licensed marijuana business under RCW 69.50.395,
18 which may be submitted to or obtained by the state liquor and
19 cannabis board;

20 (29) Financial, commercial, operations, and technical and
21 research information and data submitted to or obtained by the Andy
22 Hill cancer research endowment program in applications for, or
23 delivery of, grants under chapter 43.348 RCW, to the extent that such
24 information, if revealed, would reasonably be expected to result in
25 private loss to providers of this information;

26 (30) Proprietary information filed with the department of health
27 under chapter 69.48 RCW;

28 (31) Records filed with the department of ecology under chapter
29 70A.515 RCW that a court has determined are confidential valuable
30 commercial information under RCW 70A.515.130; and

31 (32) Unaggregated financial, proprietary, or commercial
32 information submitted to or obtained by the liquor and cannabis board
33 in applications for licenses under RCW 66.24.140 or 66.24.145, or in
34 any reports or remittances submitted by a person licensed under RCW
35 66.24.140 or 66.24.145 under rules adopted by the liquor and cannabis
36 board under chapter 66.08 RCW.

--- END ---