

WSR 25-18-101

PERMANENT RULES

DEPARTMENT OF COMMERCE

(Public Works Board)

[Filed September 3, 2025, 7:37 a.m., effective October 4, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule interprets when an application for emergency funding meets the requirements of RCW 43.155.160(14).

Citation of Rules Affected by this Order: Amending WAC 399-80-010(14).

Statutory Authority for Adoption: RCW 43.155.040(5).

Adopted under notice filed as WSR 25-09-162 on April 23, 2025.

Changes Other than Editing from Proposed to Adopted Version: The public works board (PWB) made the following substantive changes from the proposed to the adopted rules:

(1) Subsection [(14)](h):

- In the definition of "Damage," changed "service provider" to "eligible applicant" and added "and passings per mile" to the list of examples for how PWB would assess cost relative to size of applicant.
- In the definition of "Unforeseen Event," added "unplanned."

(2) Subsection [(14)](j):

- Changed "The board will not reimburse any funds spent on the approved emergency project before a funding agreement has been formally executed" to "The board will not process requests for reimbursement of eligible costs incurred to remedy the emergency as allowed by WAC 399-80-010 (14)(k) until a funding agreement has been formally executed."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 3, 2025.

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Rules Coordinator

RDS-6267.2

AMENDATORY SECTION (Amending WSR 23-05-098, filed 2/15/23, effective 3/18/23)

**WAC 399-80-010 Broadband service expansion grant and loan program.** (1) The board, in collaboration with the office, shall establish a competitive grant and loan program to award funding to eligible applicants in order to promote the expansion of access to broadband service in unserved areas of the state.

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

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

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

- (a) Local governments;
- (b) Tribes;
- (c) Nonprofit organizations;
- (d) Cooperative associations;
- (e) Multiparty entities comprised of public entity members;
- (f) Limited liability corporations organized for the purpose of expanding broadband access; and
- (g) Incorporated businesses or partnerships.

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

(b) At least 60 days prior to the first day preapplications may be submitted each fiscal year, the board must publish on its website the specific criteria and any quantitative weighting scheme or scoring system that the board will use to evaluate or rank applications and award funding.

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

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

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

- (a) The location and description of the project;
- (b) Evidence regarding the unserved nature of the community in which the project is to be located;
- (c) Evidence that proposed infrastructure will be capable of scaling to greater download and upload speeds;
- (d) The number of households passed that will gain access to broadband service as a result of the project or whose broadband service will be upgraded as a result of the project;
- (e) Evidence that before submission of the application, 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 the state's definition for broadband serv-

ice as defined in RCW 43.330.530, within the time frame specified in the proposed grant or loan activities;

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

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

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

(i) Any additional information requested by the board.

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

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

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

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

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

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

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

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

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

(i) The estimated total cost of the project;

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

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

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

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

(n) Any additional information requested by the board.

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

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

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

(d) The board shall publish objection information received during the objection period that includes: (i) The objecting provider; (ii) the reason for objection; (iii) a description of how the current or proposed infrastructure meets or exceeds speeds contained in the definition of broadband service in RCW 43.330.530; (iv) existing or planned service plans or tiers and associated speeds; and (v) information about the objector's project status including percentage completed.

(8) (a) Any existing broadband service provider near the proposed project area may, submit in writing to the board, an objection to a

proposed broadband project. An objection must contain information demonstrating that:

(i) 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 speeds contained in the definition of broadband in RCW 43.330.530(2); or

(ii) 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 speeds contained in the definition of broadband in RCW 43.330.530(2), no later than 24 months after the date awards are made under this section for the grant and loan cycle under which the preapplication was submitted.

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

(c) The board shall provide a period, as specified, for applicants to submit responses to posted objections.

(d) The board may evaluate the information submitted under this section by the objecting provider and applicant and must consider it in making a determination on the proposed broadband project objected to. The board may request clarification or additional information. The board may choose to not fund a project if the board determines that the objecting provider's commitment to provide broadband service that meets the requirements of (a) of this subsection in the proposed project area is credible. In assessing the commitment, the board 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.

(e) If the board denies funding to an applicant as a result of a broadband service provider's objection made under this section, and the broadband service provider does not fulfill its commitment to provide broadband service in the project area, then for the following two grant and loan cycles, the board is prohibited from denying funding to an applicant on the basis of a challenge by the same broadband service provider, unless the board 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. The board is not prohibited from denying funding to an applicant for reasons other than an objection by the same broadband service provider.

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

(g) An objecting provider may mark any proprietary business and financial information as confidential that the objecting provider is willing to defend in court as exempt under chapter 42.56 RCW.

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

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

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

(ii) Demonstrate project readiness to proceed;

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

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

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

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

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

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

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

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

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

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

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

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

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

(xvi) Include evidence of a customer service plan;

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

(xviii) Benefit public safety and fire preparedness; or

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

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

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

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

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

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

(11)(a) No funds awarded under this section may fund more than 50 percent of the total cost of the project, except as provided in (b) of this subsection.

(b) The board may choose to fund up to 90 percent of the total cost of a project in financially distressed areas as the term "distressed area" is defined in RCW 43.168.020, and in areas identified as Indian country as the term "Indian country" is defined in WAC 458-20-192.

(c) Funds awarded to a single project under this section must not exceed \$2,000,000, except that the board may choose to fund projects qualifying for the exception in (b) of this subsection up to, but not to exceed, \$5,000,000.

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

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

(14)(a) Emergency public works broadband 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. To ensure limited resources are provided as efficiently as possible, the board shall grant priority to emergency public works projects that replace existing infrastructure of the provider whose facilities were damaged by the natural disaster event or unforeseen event and shall not provide funds to a new provider to overbuild the existing provider unless the existing provider declines to continue operating broadband service to the area affected by the event. 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 any of the following sources: (i) Federal disaster or emergency funds, including funds from the federal emergency management agency; (ii) state disaster or emergency funds; (iii) insurance settlements; and (iv) litigation. Applicants must reimburse the department any moneys received from the above listed sources for four years after formal project closeout within 60 days of receipt. Applicants eligible to receive moneys must use their best efforts to seek reimbursement in a timely manner.

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

(c) The board has discretion to waive certain program requirements in subsections (4) through (8) of this section if the applicant seeking emergency funding is the existing provider proposing to replace existing infrastructure impacted by the emergency.

(d) The board allocates funds to the emergency program biennially and the program is open until funds are expended.

(e) Eligible applicants must apply using the application and process provided by the board.

(f) Board deliberations—Emergency loan applications. The board will consider and approve or disapprove all eligible applications for emergency financial assistance at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(g) The applicant must be able to demonstrate substantial fiscal need for the funding to pay for the emergency repair.

(h) Definitions for this subsection (14) are as follows:

"Natural disaster" means a major, nonroutine natural or weather event. Proclamations of emergency or major disasters by federal, state, and local governments are considered key indicators of natural disasters eligible for emergency broadband funding. An emergency or major disaster declaration is not necessarily required to make a project eligible for emergency funding.

"Damage" means extraordinary physical impacts to, and the associated costs to repair, an asset that impairs or impedes the ability to provide broadband service to a community. When assessing whether the damage is extraordinary, the board will consider the cost to repair to the eligible applicant relative to its size, which may include, but is not limited to, total system revenues, number of passings and passings per mile affected by the service interruption, and total estimated population served. Damage does not include revenue loss or physical decay due to age, poor maintenance, or wear from normal or abnormal use.

"Unforeseen event" means a nonroutine, unplanned, distinct force out of the direct control of the applicant, such as, but not limited to, earthquakes, ice storms, or arson, and is above and beyond what is typically planned for in operations and maintenance plans. Unforeseen events do not include reasonably predictable impacts from climate change, nonextreme temperature conditions, lightning, rodents, falling trees, and cyberattacks.

(i) Loans must not exceed 15 years, or the useful life of the improvements, whichever is shorter.

(j) The board will not process requests for reimbursement of eligible costs incurred to remedy the emergency as allowed by (k) of this subsection until a funding agreement has been formally executed.

(k) If there is an emergency or disaster declaration by a local, state, or federal government entity that includes the proposed project area, the board may approve reimbursement of eligible costs of correcting the damage incurred after an emergency or disaster was proclaimed to have begun. Any unreimbursed eligible costs for the project may be used toward local match requirements, if any.

(l) A recipient of emergency funding must agree to a scope of work within 90 days of award.

(m) Work must begin within 90 days after the emergency funding agreement is executed. The recipient of emergency funding must complete the scope of work within the time specified in the agreement unless the board approves a written request for extension.

(n) All emergency broadband projects must comply with competitive bid requirements to the extent feasible and practicable and are subject to all cultural and historic review requirements.

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

(16) A "proposed broadband project" in subsections (7) and (8) of this section means a project that has been submitted as a preapplication to the board.