SUBSTITUTE SENATE BILL 5580

State of Washington 67th Legislature 2022 Regular Session

By Senate Environment, Energy & Technology (originally sponsored by Senators Wellman, Mullet, Frockt, Kuderer, Nguyen, Warnick, and C. Wilson; by request of Public Works Board)

- 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 read as follows:
 - (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 (((9))) (11) of this section.
- 18 (3) Eligible applicants for grants and loans awarded under this 19 section include:
- 20 (a) Local governments;
- 21 (b) Tribes;

6

7

8

9

11

12

13

14

15

16

17

p. 1 SSB 5580

1 (c) Nonprofit organizations;

2

3

4

5

7

8

9

10 11

12

13

14

1516

17

18

1920

21

22

26

29

30

- (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 ((application)) 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 sixty days prior to the first day ((applications)) 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.
- 23 (5) An applicant for a grant or loan under this section must 24 provide the following information on the ((application)) 25 preapplication:
 - (a) The location and description of the project;
- 27 (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;
- 31 (d) The number of households passed that will gain access to 32 broadband service as a result of the project or whose broadband 33 service will be upgraded as a result of the project;
- 34 (e) The estimated cost of retail services to end users 35 facilitated by a project;
- 36 (f) The proposed actual download and upload speeds experienced by 37 end users;
- 38 (g) Evidence of significant community institutions that will 39 benefit from the proposed project;

p. 2 SSB 5580

- 1 (h) Anticipated economic, educational, health care, or public safety benefits created by the project; 2
 - (i) Evidence of community support for the project;
 - (j) 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;
 - (k) The estimated total cost of the project;

4

5 6

7

10

11 12

13 14

15 16

17

18 19

20 21

26

28

29

32

33 34

35 36

- (1) ((Other sources of funding for the project that will 8 9 supplement any grant or loan award;
 - (m) A demonstration of the project's long-term sustainability, including the applicant's financial soundness, organizational capacity, and technical expertise;
 - (n) A strategic plan to maintain long-term operation of the infrastructure;
 - (o))) Evidence that ((no later than six weeks)) 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 service as defined in RCW 43.330.530, within the time frame specified in the proposed grant or loan activities;
- $((\frac{p}{p}))$ If applicable, the broadband service providers' 22 23 written responses to the inquiry made under $((\frac{(0)}{(0)}))$ of this 24 subsection; ((and
- 25 (q)) (n) The proposed geographic broadband service area and the proposed broadband speeds in the form and manner prescribed by the 27 board;
 - (o) Evidence of community support for the project; and
 - (p) Any additional information requested by the board.
- (6) An applicant for a grant or loan under this section must 30 provide the following information on the application: 31
 - (a) ((Within thirty days of the close of the grant and loan application process, the)) 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 37 broadband service as a result of the project or whose broadband 38 39 service will be upgraded as a result of the project;

p. 3 SSB 5580

- 1 (d) The estimated cost of retail services to end users 2 facilitated by a project;
- 3 (e) The proposed actual download and upload speeds experienced by 4 end users;
- 5 (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;

8

9

1112

20

2122

23

24

25

26

27

28

2930

31

32

33

34

35

36

37

3839

- (j) Other sources of funding for the project that will supplement any grant or loan award;
- 15 <u>(k) A demonstration of the project's long-term sustainability,</u>
 16 <u>including the applicant's financial soundness, organizational</u>
 17 <u>capacity, and technical expertise;</u>
- 18 <u>(1) A strategic plan to maintain long-term operation of the</u> 19 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 ((application)) 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.
 - ((\(\frac{(b)}{(b)}\))) (8) (a) Any existing broadband service provider near the proposed project area may((\(\frac{\tau}{\tau}\) within thirty days of publication of the information under (a) of this subsection,)) submit in writing to the board an objection to ((\(\frac{an application}{\tau}\))) 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

p. 4 SSB 5580

at speeds equal to or greater than the state speed goals contained in RCW 43.330.536; 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 state speed goals contained in RCW 43.330.536, no later than twenty-four months after the date awards are made under this section for the grant and loan cycle under which the ((application)) preapplication was submitted.
- $((\frac{(c)}{(c)}))$ (b) Objections submitted to the board under this 11 subsection must be certified by affidavit.
 - ((\(\frac{(d)}{(d)}\)) (c) The board may evaluate the information submitted under this section by the objecting provider and must consider it in making a determination on the ((application)) 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 ((\((\frac{(b)}{(b)}\))) (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))) <u>(d)</u> 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.
 - $((\frac{f}{f}))$ (e) 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.

p. 5 SSB 5580

- ((-(g))) (f) Confidential business and financial information submitted by an objecting provider under this subsection is exempt from disclosure under chapter 42.56 RCW.
- $((\frac{(7)}{(7)}))$ (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;

2

3

4

5

7

8

9

10 11

12

1314

1516

17

18

19

2021

22

23

2425

26

27

28

- (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;
- 35 (ix) Facilitate the use of telemedicine and electronic health 36 records, especially in deliverance of behavioral health services and 37 services to veterans;
- 38 (x) Provide technical support and train residents, businesses, 39 and institutions in the community served by the project to utilize 40 broadband service;

p. 6 SSB 5580

- 1 (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;

- 13 (xvii) Consider leveraging existing broadband infrastructure and other unique solutions;
 - (xviii) Benefit public safety and fire preparedness; or
- 16 (xix) Demonstrate other priorities as the board, in collaboration 17 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, <u>project preapplications</u>, project applications, the associated objection process, and funding priority, as provided under this subsection and subsections (3), (5), ((and)) (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.
 - ((+8))) (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 fifteen years.
 - ((+9))) (11)(a) No funds awarded under this section may fund more than fifty 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 ninety 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

p. 7 SSB 5580

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 two million dollars, except that the board may choose to fund projects qualifying for the exception in (b) of this subsection up to, but not to exceed, five million dollars.
- (((10) Except for during the 2021-2023 fiscal biennium, prior to awarding funds under this section, the board must consult with the Washington utilities and transportation commission. The commission must provide to the board an assessment of the technical feasibility of a proposed application. The board must consider the commission's assessment as part of its evaluation of a proposed application.
- (11))) (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.
- (((12))) (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.
- (((13))) (14) (a) Subject to rules promulgated by the board, the board may make low-interest or interest-free loans or grants to eligible applicants for emergency public works broadband projects.

 While developing rules, the board shall consider prioritizing broadband infrastructure projects that replace existing infrastructure impacted by an emergency, as described in (b) of this subsection.
- (b) 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 unforeseen event and shall not provide funds 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 any of the following sources: (i) Federal disaster or emergency funds, including funds from the federal emergency management agency; (ii)

p. 8 SSB 5580

- 1 state disaster or emergency funds; (iii) insurance settlements; and
 2 (iv) litigation.
- 3 (c) Eligible applicants for grants and loans awarded under this 4 subsection are the same as those described in subsection (3) of this 5 section.
- 6 (15) The definitions in RCW 43.330.530 apply throughout this section unless the context clearly requires otherwise.
- 8 (16) For purposes of this section, a "proposed broadband project"
 9 means a project that has been submitted as a preapplication to the
 10 public works board.
- 11 **Sec. 2.** RCW 42.56.270 and 2021 c 308 s 4 are each amended to 12 read as follows:
- The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

16

17

18

1920

21

22

24

25

2627

28

2930

31

32

33

34

- (1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;
 - (2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750; (b) highway construction or improvement as required by RCW 47.28.070; or (c) alternative public works contracting procedures as required by RCW 39.10.200 through 39.10.905;
 - (3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;
 - (4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW and RCW 43.155.160, or during application for economic development loans or program services provided by any local agency;
- 35 (5) Financial information, business plans, examination reports, 36 and any information produced or obtained in evaluating or examining a 37 business and industrial development corporation organized or seeking 38 certification under chapter 31.24 RCW;

p. 9 SSB 5580

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

- (7) Financial and valuable trade information under RCW 51.36.120;
- (8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;
- (9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;
- (10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;
- (b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;
- (c) Valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services to a licensed marijuana business in accordance with RCW 69.50.561;
- (11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;
- 38 (12)(a) When supplied to and in the records of the department of commerce:

p. 10 SSB 5580

1 (i) Financial and proprietary information collected from any 2 person and provided to the department of commerce pursuant to RCW 3 43.330.050(8);

4

5

7

8

9

10

14

1516

17

18

19

2021

22

23

2425

2627

28

29

30 31

32

- (ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business; and
- (iii) Financial or proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.31.625 (3)(b) and (4);
 - (b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;
 - (c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;
 - (d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;
 - (13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70A.500 RCW to implement chapter 70A.500 RCW;
 - (14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under RCW 43.330.502, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;
- 33 (15) Financial and commercial information provided as evidence to 34 the department of licensing as required by RCW 19.112.110 or 35 19.112.120, except information disclosed in aggregate form that does 36 not permit the identification of information related to individual 37 fuel licensees;
- 38 (16) Any production records, mineral assessments, and trade 39 secrets submitted by a permit holder, mine operator, or landowner to 40 the department of natural resources under RCW 78.44.085;

p. 11 SSB 5580

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

- (b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;
- (18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;
- 14 (19) Information gathered under chapter 19.85 RCW or RCW 15 34.05.328 that can be identified to a particular business;
 - (20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;
- 24 (21) Market share data submitted by a manufacturer under RCW 25 70A.500.190(4);
 - (22) Financial information supplied to the department of financial institutions, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities;
 - (23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW 90.56.565(1)(a), and that is in the possession of the department of ecology or any entity with which the department of ecology has shared the notice pursuant to RCW 90.56.565;
- 38 (24) Financial institution and retirement account information, 39 and building security plan information, supplied to the liquor and 40 cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and

p. 12 SSB 5580

69.50.345, when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell marijuana as allowed under chapter 69.50 RCW;

- (25) Marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access, submitted by an individual or business to the liquor and cannabis board under the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345 for the purpose of marijuana product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;
- (26) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter 35.39 RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that (a) the names and commitment amounts of the private funds in which retirement funds are invested and (b) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;
- (27) Proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the liquor and cannabis board in applications for marijuana research licenses under RCW 69.50.372, or in reports submitted by marijuana research licensees in accordance with rules adopted by the liquor and cannabis board under RCW 69.50.372;
- (28) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed marijuana business under RCW 69.50.395, which may be submitted to or obtained by the state liquor and cannabis board;
- (29) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the Andy Hill cancer research endowment program in applications for, or delivery of, grants under chapter 43.348 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

p. 13 SSB 5580

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

- (31) Records filed with the department of ecology under chapter 70A.515 RCW that a court has determined are confidential valuable commercial information under RCW 70A.515.130; and
- (32) Unaggregated financial, proprietary, or commercial information submitted to or obtained by the liquor and cannabis board in applications for licenses under RCW 66.24.140 or 66.24.145, or in any reports or remittances submitted by a person licensed under RCW 66.24.140 or 66.24.145 under rules adopted by the liquor and cannabis board under chapter 66.08 RCW.

--- END ---

p. 14 SSB 5580