

HB 3201 FAQ

Q1: What process is in place to challenge grant applications in areas that are already highly served?

A1: HB 3201 ensures there is public notice and comments on grant applications to identify conflicts and address them early in the process, prior to awarding any grants. The bill utilizes the existing Oregon Administrative Procedures Act process outlined in existing state statute as a backup; an independent judicial review is part of that process. An aggrieved party would have 60 days to challenge the award with three possible outcomes: affirm the award, reverse the award, or remand the order. The Judicial Review Process is a standard mechanism to adjudicate disputes through an independent process.

Q2: Does it make sense to serve *all* “unserved” locations before “underserved” locations that are eligible for grant dollars?

A2: Federal funding expects both unserved and underserved projects to move forward at the same time as long as funding remains available to serve eligible unserved locations. It is Oregon law that currently limits us.

The challenge with serving all unserved locations first is that many of those locations lack the capacity, resources, and technical knowledge to be ready to apply for these grants. Meanwhile, there are underserved areas that could be using those funds to close gaps. Most unserved areas need to initiate the planning process for any projects before they can attempt the feasibility studies, engineering, and other technical aspects needed to apply for these federal grants. Due to these challenges, most unserved communities are not ready.

We also risk losing a critical workforce if we are unable to get broadband projects off the ground in Oregon. Allowing underserved locations to move forward in tandem with unserved locations ensures that projects can move forward, and we have a steady workforce built now and into the future.

Lastly, with supply and equipment challenges, allowing more projects to move forward early also ensures that Oregon can build up supplies and equipment to be ready for when unserved locations are prepared to move forward.

Q3: How will this bill address digital equity and serve historically underserved communities in Oregon?

A3: Currently, section 5 of SB 1603 severely limits how infrastructure funds are spent and conflicts with the digital equity goals of Broadband Equity, Access, and Deployment (BEAD) funding. The recent Oregon Secretary of State Audit report emphasizes the need to address the digital equity divide and serve historically underserved communities in urban and rural Oregon. While the many digital equity issues include a lack of access to devices, language barriers, and affordability, the State Audit also identified infrastructure as an important piece of our digital equity goals.

Q4: What happens if this bill doesn't pass?

A4: Based on feedback from the federal funding agencies, Oregon risks leaving critical broadband funding on the table. Specifically, the National Telecommunication and Information Administration (NTIA) says, *“NTIA strongly encourages Eligible Entities to waive all such laws for purposes of the Program. If an Eligible Entity does not do so, the Eligible Entity must identify all such laws in its Initial Proposal and describe how the laws will be applied in connection with the competition for subgrants. Such Eligible Entity must, in its Final Proposal, disclose each unsuccessful application affected by such laws and describe how those laws impacted the decision to deny the application.”*

Q5: Does removing the “right of first refusal” highlighted in SB 1603 pose a significant risk of infrastructure overbuilding?

A5: No, removing the “right of first refusal” simply removes a one-year process for incumbent providers to claim *unserved or underserved nonresidential* areas as ‘their territory’.

A “right of first refusal” has unintended consequences.

- Exercising a “right of first refusal” claim risks a community being compelled to sacrifice a willing Internet Service Provider’s demonstrated commitment to a community based on a stated, non-binding promise by an incumbent provider.
- If kept, there is significant potential for the abuse of this provision, as no mechanism exists to hold providers to their promises and could delay projects for an additional year. With supply challenges and the need to procure equipment, this could further exacerbate the digital divide and the ability for communities and businesses to be served within the timelines of the federal funding.
- It’s anti-competitive and goes against the market ethos.
- It could dissuade communities or other ISPs from applying for grants, knowing their time, resources, money, and effort may be lost due to a claim.

There is no need for this provision, given the different levels of checks and balances and the independent challenge process already established by the Oregon APA process.