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**SECOND SUBSTITUTE HOUSE BILL 1263**

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**State of Washington****67th Legislature****2021 Regular Session**

**By** House Capital Budget (originally sponsored by Representatives Abbarno, Barkis, Dent, McEntire, Mosbrucker, Ybarra, Eslick, Boehnke, and Gilday)

1       AN ACT Relating to rural infrastructure; amending RCW 43.155.150;  
2 adding new sections to chapter 43.330 RCW; providing an effective  
3 date; and declaring an emergency.

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

5       NEW SECTION.   **Sec. 1.**   The definitions in this section apply  
6 throughout this section and sections 2 through 4 of this act unless  
7 the context clearly requires otherwise.

8       (1) "Broadband infrastructure" means networks of deployed  
9 telecommunications equipment and technologies necessary to provide  
10 high-speed internet access and other advanced telecommunications  
11 services to end users.

12       (2) "Broadband office" means the governor's statewide broadband  
13 office established in RCW 43.330.532.

14       (3) "Local governments" means cities, towns, counties, special  
15 purpose districts, and any other municipal corporations or quasi-  
16 municipal corporations in the state excluding school districts and  
17 port districts.

18       (4) "Preconstruction activities" include design, engineering,  
19 bid-document preparation, environmental studies, right-of-way  
20 acquisition, value planning, and other preliminary phases of public  
21 works projects as determined by the department.

1       (5) "Public facilities" means a project of an eligible applicant  
2 under section 3(2) of this act for the planning, acquisition,  
3 construction, repair, reconstruction, replacement, rehabilitation, or  
4 improvement of domestic and industrial water systems, storm and  
5 sanitary sewage systems, solid waste facilities, including recycling  
6 facilities, telecommunications and broadband infrastructure,  
7 electrical transmission facilities, natural gas facilities, and port  
8 facilities.

9       (6) "Registered agent" has the meaning provided in RCW 23.95.105.

10      (7) "Rural county" means a county with a population density of  
11 fewer than 100 persons per square mile or a county smaller than 225  
12 square miles, as determined by the office of financial management  
13 pursuant to RCW 43.62.035.

14      NEW SECTION.    **Sec. 2.**    The rural infrastructure assistance  
15 account is created in the state treasury. All receipts from  
16 appropriations by the legislature, the proceeds of bond sales when  
17 authorized by the legislature, or any other source must be deposited  
18 into the account. Moneys in the account may be spent only after  
19 appropriation. Expenditures from the account may be used only for  
20 grants to eligible applicants under the competitive grant program in  
21 section 3(2) of this act located in rural counties for public  
22 facilities, including costs incurred by the department to administer  
23 the grant program.

24      NEW SECTION.    **Sec. 3.**    (1) The department shall establish a  
25 competitive grant program to award funding to eligible applicants  
26 located in rural counties for public facilities.

27      (2) Eligible applicants for grants awarded under this section  
28 include:

- 29       (a) Local governments;
- 30       (b) Federally recognized tribes;
- 31       (c) Port districts;
- 32       (d) School districts;
- 33       (e) Multiparty entities comprised of public entity members;
- 34       (f) Limited liability corporations organized for the purpose of  
35 expanding broadband access; and
- 36       (g) Incorporated businesses or partnerships.

37      (3) (a) The department shall develop administrative procedures  
38 governing the application and award process. The department shall act

1 as fiscal agent for the program and is responsible for receiving and  
2 reviewing applications and awarding funds under this section.

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

8 (c) The department may maintain separate accounting in the rural  
9 infrastructure account created in section 2 of this act as the  
10 department deems necessary to carry out the purposes of this section.

11 (4) The department must develop a process to prioritize  
12 applications and funding of grants for public facilities submitted by  
13 eligible applicants located in rural counties. The department must  
14 consider, at a minimum and in any order, the following factors in  
15 prioritizing projects:

16 (a) Whether the project is critical in nature and would affect  
17 the health and safety of many people;

18 (b) The extent to which the project leverages other funds;

19 (c) The extent to which the project is ready to proceed to  
20 construction;

21 (d) Whether the project is located in a distressed area as  
22 defined in RCW 43.168.020;

23 (e) Whether the project promotes the sustainable use of resources  
24 and environmental quality, as applicable;

25 (f) Whether the project consolidates or regionalizes systems;

26 (g) Whether the project encourages economic development through  
27 mixed-use and mixed-income development consistent with chapter 36.70A  
28 RCW;

29 (h) Whether the facility is being well managed in the present and  
30 for long-term sustainability;

31 (i) Achieving equitable distribution of funds by geography and  
32 population;

33 (j) The extent to which the project meets the following state  
34 policy objectives:

35 (i) Efficient use of state resources;

36 (ii) Preservation and enhancement of health and safety;

37 (iii) Abatement of pollution and protection of the environment;

38 (iv) Creation of new, family-wage jobs, and avoidance of shifting  
39 existing jobs from one Washington state community to another;

1       (v) Fostering economic development consistent with chapter 36.70A  
2 RCW;

3       (vi) Efficiency in delivery of goods and services and  
4 transportation; and

5       (vii) Reduction of the overall cost of public infrastructure;

6       (k) Whether the applicant sought or is seeking funding for the  
7 project from other sources;

8       (l) Whether the completion of the project will directly or  
9 indirectly achieve net negative greenhouse gas emissions; and

10      (m) Whether the project will increase the opportunity for  
11 individuals to work from home thereby reducing commute times to work  
12 and indirectly achieve net negative greenhouse gas emissions.

13      (5) During the application review process, the department may  
14 consult with local governments, port districts, school districts,  
15 associate development organizations, and economic development  
16 councils within the applicant's jurisdiction. The department must  
17 consult with the broadband office during the review of any  
18 applications that request funding for broadband infrastructure.

19      (6) (a) No funds awarded under this section may fund more than 75  
20 percent of the total cost of the project, except the department may  
21 fund up to 90 percent of the total cost of the project located in a  
22 distressed area as defined in RCW 43.168.020.

23      (b) The maximum amount of total funding that the department may  
24 provide for any jurisdiction is \$10,000,000 per biennium.

25      (c) The maximum amount of funding that the department may provide  
26 for preconstruction activities to any jurisdiction is \$1,000,000 per  
27 biennium, except there is no maximum amount for:

28       (i) Preconstruction activities located in a distressed area as  
29 defined in RCW 43.168.020; or

30       (ii) Preconstruction activities necessary to determine whether  
31 the completion of the project will directly or indirectly achieve net  
32 negative greenhouse gas emissions.

33      (7) The department may not sign contracts or otherwise  
34 financially obligate funds from the rural infrastructure assistance  
35 account before the legislature has appropriated funds to the  
36 department for the purpose of funding public facilities under  
37 sections 1 through 4 of this act.

38      (8) To ensure a grant under this section primarily serves the  
39 public interest and benefits the public, contracts for grants  
40 authorized under this section must include provisions that the asset

1 or infrastructure to be developed will be maintained for public use  
2 for a period of at least 15 years. If the grantee is found to be out  
3 of compliance with provisions of the contract, the grantee shall  
4 repay to the state general fund the principal amount of the grant  
5 plus interest calculated at the rate of interest on state of  
6 Washington general obligation bonds issued most closely to the date  
7 of authorization of the grant.

8 (9) For applications requesting funding for broadband  
9 infrastructure, the department must implement the following:

10 (a) (i) The department must require the applicant to provide  
11 documentation that no later than 60 days before submission of the  
12 application, the applicant contacted, in writing, all entities  
13 providing broadband service near the proposed project area to ask  
14 each broadband service provider's plan to upgrade broadband service  
15 in the project area to speeds that meet or exceed the state's  
16 definition for broadband service as defined in RCW 43.330.530, within  
17 the time frame specified in the proposed grant activities; and if  
18 applicable, the broadband service providers' written responses to the  
19 inquiry.

20 (ii) For any broadband service provider registered under chapter  
21 23.95 RCW, the applicant must provide the written contact required by  
22 the department under this subsection (9) (a) to the provider's  
23 registered agent.

24 (b) (i) Within 30 days of the close of the grant application  
25 process, the department shall publish on its website the proposed  
26 geographic broadband service area and the proposed broadband speeds  
27 for each application submitted.

28 (ii) Any existing broadband service provider near the proposed  
29 project area may, within 30 days of publication of the information  
30 under this subsection (9) (b), submit in writing to the department an  
31 objection to an application. Objections submitted to the department  
32 must be certified by affidavit and must contain information  
33 demonstrating that:

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

39 (B) The objecting provider commits to complete construction of  
40 broadband infrastructure and provide broadband service to end users

1 in the proposed project area at speeds equal to or greater than the  
2 state speed goals contained in RCW 43.330.536, no later than 24  
3 months after the date awards are made under this section for the  
4 grant cycle under which the application was submitted.

5 (c) The department must evaluate the information submitted by the  
6 objecting provider and must consider it in making a determination on  
7 the application objected to. The department may request clarification  
8 or additional information. The department may choose to not fund a  
9 project if the department determines that the objecting provider's  
10 commitment to provide broadband service in the proposed project area  
11 is credible. In assessing the commitment, the department may consider  
12 whether the objecting provider has or will provide a bond, letter of  
13 credit, or other indicia of financial commitment guaranteeing the  
14 project's completion.

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

27 (e) An applicant or broadband service provider that objected to  
28 the application may request a debriefing conference regarding the  
29 department's decision on the application. Requests for debriefing  
30 must be coordinated by the broadband office and must be submitted in  
31 writing in accordance with procedures specified by the broadband  
32 office.

33 (f) Confidential business and financial information submitted by  
34 an objecting provider under this subsection (9) is exempt from  
35 disclosure under chapter 42.56 RCW.

36 (g) The department, in collaboration with the broadband office,  
37 may adopt rules for a voluntary nonbinding mediation between  
38 incumbent providers and applicants to the grant program created in  
39 this section.

1       (h) Prior to awarding funds under this section, the department  
2 must consult with the Washington utilities and transportation  
3 commission. The commission must provide to the department an  
4 assessment of the technical feasibility of a proposed application.  
5 The department must consider the commission's assessment as part of  
6 its evaluation of a proposed application.

7       NEW SECTION.   **Sec. 4.**   (1) By November 1, 2022, and each year  
8 thereafter, the department must develop and submit a report regarding  
9 the rural infrastructure grant program to the office of financial  
10 management and appropriate fiscal committees of the senate and house  
11 of representatives. The report must include:

12       (a) The total number of applications and amount of funding  
13 requested for public facilities;

14       (b) A list and description of projects approved in the preceding  
15 fiscal year with project scores against the department's  
16 prioritization criteria;

17       (c) The total amount of grant disbursements made in the preceding  
18 fiscal year;

19       (d) The total amount of funds obligated and timing of when the  
20 funds were obligated in the preceding fiscal year; and

21       (e) For projects funded in the prior biennium, the outcomes  
22 achieved by the approved projects, including the reduction to net  
23 negative greenhouse gas emissions, where applicable.

24       (2) The department may gather data from the eligible applicants  
25 awarded the grant funding in order to develop the report.

26       **Sec. 5.**   RCW 43.155.150 and 2017 3rd sp.s. c 10 s 11 are each  
27 amended to read as follows:

28       (1) An interagency, multijurisdictional system improvement team  
29 must identify, implement, and report on system improvements that  
30 achieve the designated outcomes, including:

31       (a) Projects that maximize value, minimize overall costs and  
32 disturbance to the community, and ensure long-term durability and  
33 resilience;

34       (b) Projects that are designed to meet the unique needs of each  
35 community, rather than the needs of particular funding programs;

36       (c) Project designs that maximize long-term value by fully  
37 considering and responding to anticipated long-term environmental,  
38 technological, economic and population changes;

1       (d) The flexibility to innovate, including utilizing natural  
2 systems, addressing multiple regulatory drivers, and forming regional  
3 partnerships;

4       (e) The ability to plan and collaborate across programs and  
5 jurisdictions so that different investments are packaged to be  
6 complementary, timely, and responsive to economic and community  
7 opportunities;

8       (f) The needed capacity for communities, appropriate to their  
9 unique financial, planning, and management capacities, so they can  
10 design, finance, and build projects that best meet their long-term  
11 needs and minimize costs;

12       (g) Optimal use and leveraging of federal and private  
13 infrastructure dollars; and

14       (h) Mechanisms to ensure periodic, system-wide review and ongoing  
15 achievement of the designated outcomes.

16       (2) The system improvement team must consist of representatives  
17 of state infrastructure programs that provide funding for drinking  
18 water, wastewater, ((and)) stormwater, and broadband programs,  
19 including but not limited to representatives from the public works  
20 board, department of ecology, department of health, and the  
21 department of commerce. The system improvement team may invite  
22 representatives of other infrastructure programs, such as  
23 transportation ((and)), energy, and broadband, as needed in order to  
24 achieve efficiency, minimize costs, and maximize value across  
25 infrastructure programs. The system improvement team shall also  
26 consist of representatives of users of those programs,  
27 representatives of infrastructure project builders, and other parties  
28 the system improvement team determines would contribute to achieving  
29 the desired outcomes, including but not limited to representatives  
30 from a state association of cities, a state association of counties,  
31 a state association of public utility districts, a state association  
32 of water and sewer districts, a state association of general  
33 contractors, and a state organization representing building trades.  
34 The public works board, a representative from the department of  
35 ecology, department of health, and department of commerce shall  
36 facilitate the work of the system improvement team.

37       (3) The system improvement team must focus on achieving the  
38 designated outcomes within existing program structures and  
39 authorities. The system improvement team shall use lean practices to  
40 achieve the designated outcomes.

1       (4) The system improvement team shall provide briefings as  
2 requested to the public works board on the current state of  
3 infrastructure programs to build an understanding of the  
4 infrastructure investment program landscape and the interplay of its  
5 component parts.

6       (5) If the system improvement team encounters statutory or  
7 regulatory barriers to system improvements, the system improvement  
8 team must inform the public works board and consult on possible  
9 solutions. When achieving the designated outcomes would be best  
10 served through changes in program structures or authorities, the  
11 system improvement team must report those findings to the public  
12 works board.

13       (6) ~~((This section expires June 30, 2021.))~~ Beginning September  
14 1, 2022, and by September 1st each even-numbered year thereafter, in  
15 compliance with RCW 43.01.036, the system improvement team must  
16 submit a report to the appropriate committees of the legislature that  
17 includes the following:

18       (a) A list of all projects funded by members of the system  
19 improvement team;

20       (b) A description of the coordination the system improvement team  
21 has completed with other grant programs and funds leveraged; and

22       (c) A description of regional planning that has occurred.

23       NEW SECTION. **Sec. 6.** Sections 1 through 4 of this act are each  
24 added to chapter 43.330 RCW.

25       NEW SECTION. **Sec. 7.** Section 5 of this act is necessary for the  
26 immediate preservation of the public peace, health, or safety, or  
27 support of the state government and its existing public institutions,  
28 and takes effect June 30, 2021.

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