
SECOND SUBSTITUTE HOUSE BILL 1263

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.

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

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

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

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

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

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

- (a) Local governments;
- (b) Federally recognized tribes;
- (c) Port districts;
- (d) School districts;
- (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.

(3)(a) The department shall develop administrative procedures 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) To ensure a grant under this section primarily serves the public interest and benefits the public, contracts for grants 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.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Project designs that maximize long-term value by fully considering and responding to anticipated long-term environmental, 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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