PROPOSED SUBSTITUTE BILL MEMORANDUM

To: Members of the Community & Economic Development Committee

From: Kyle Raymond, Research Analyst

Re: **Proposed Substitute HB 1263 (H–0459.1)** - Rural Infrastructure

Sponsored by Representative Boehnke

Date: January 26, 2021

A brief summary of HB 1263:

- Requires the Department of Commerce (Department) to establish a competitive grant program to award funding to local governments located in rural counties for public facilities.
- Requires the Department to prioritize applications according to specified factors.
- Establishes funding limits for projects according to specified criteria.
- Establishes additional procedures for applications requesting funding for broadband infrastructure, including a process for existing entities providing broadband service in the proposed project area to object to the proposed broadband project.
- Requires the Department to report on the rural infrastructure grant program to OFM and the appropriate legislative fiscal committees.

The proposed substitute (H-0459.1) makes the following changes to HB 1263:

- Requires the Public Works Board (Board), rather than the Department, to establish and administer the rural infrastructure competitive grant program.
- Provides that the Board may consult with local governments, port districts, associate development organizations, and economic development councils located within the applicant's jurisdiction during the application review process.

AN ACT Relating to rural infrastructure; and adding new sections to chapter to 43.155 RCW.

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

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

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

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

(3) "Public facilities" means a project of a local government or port district 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.

(4) "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 and published each year by the board for the period from July 1st to June 30th.

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 local governments and port districts located in rural counties for public facilities, including costs incurred by the board to administer the grant program.

NEW SECTION. **Sec. 3.** (1) The board shall establish a competitive grant program to award funding to local governments and port districts located in rural counties for public facilities.

(2)(a) The board shall develop administrative procedures governing the application 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 applications 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 rural infrastructure account created in section 2 of this act as the board deems necessary to carry out the purposes of this section.

(3) The board must develop a process to prioritize applications and funding of grants for public facilities submitted by local governments and port districts located in rural counties. The board must consider, at a minimum and in any order, the following factors in prioritizing projects:

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

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

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

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

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

(f) Whether the project consolidates or regionalizes systems;

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

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

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

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

(i) Efficient use of state resources;

(ii) Preservation and enhancement of health and safety;

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

(iv) Creation of new, family-wage jobs, and avoidance of shifting 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.

(4) During the application review process, the board may consult with local governments, port districts, associate development organizations, and economic development councils within the applicant's jurisdiction.

(5)(a) No funds awarded under this section may fund more than 75 percent of the total cost of the project, except the board 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 board may provide for any jurisdiction is $10,000,000 per biennium.

(c) The maximum amount of funding that the board may provide for preconstruction activities to any jurisdiction is $50,000 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.

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

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

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

(a) The board must require the applicant to provide documentation 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 activities; and if applicable, the broadband service providers' written responses to the inquiry.

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

(ii) Any existing broadband service provider near the proposed project area may, within 30 days of publication of the information under this subsection (8)(b), submit in writing to the board an objection to an application. Objections submitted to the board must be certified by affidavit and must contain information demonstrating that:

(A) 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 state speed goals contained in RCW 43.330.536; or

(B) 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 24 months after the date awards are made under this section for the grant cycle under which the application was submitted.

(c) The board must evaluate the information submitted by the objecting provider and must consider it in making a determination on the application 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 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.

(d) 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 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.

(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 broadband office and must be submitted in writing in accordance with procedures specified by the broadband office.

(f) Confidential business and financial information submitted by an objecting provider under this subsection (8) is exempt from disclosure under chapter 42.56 RCW.

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

(h) 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.

NEW SECTION. **Sec. 4.** (1) By November 1, 2022, and each year thereafter, the board 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 board'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 board may gather data from the local governments and port districts awarded the grant funding in order to develop the report.

NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act are each added to chapter 43.155 RCW.

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