

HOUSE BILL REPORT

3SHB 1498

As Passed House:
March 8, 2019

Title: An act relating to expanding affordable, resilient broadband service to enable economic development, public safety, health care, and education in Washington's communities.

Brief Description: Expanding affordable, resilient broadband service to enable economic development, public safety, health care, and education in Washington's communities.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Hudgins, Dye, Tharinger, Maycumber, DeBolt, Wylie, Orcutt, Chapman, Kloba, Tarleton, Frame, Appleton, Smith, Shewmake, Doglio, Paul, Reeves, Stanford, Valdez, Leavitt, Macri and Steele; by request of Office of the Governor).

Brief History:

Committee Activity:

Innovation, Technology & Economic Development: 1/30/19, 2/15/19 [DPS];
Capital Budget: 2/25/19, 2/26/19 [DP2S(w/o sub ITED)];
Appropriations: 2/27/19, 2/28/19 [DP3S(w/o sub CB)].

Floor Activity:

Passed House: 3/8/19, 95-1.

Brief Summary of Third Substitute Bill

- Creates the Governor's Statewide Broadband Office.
- Requires the Public Works Board to establish a competitive grants and loans program for broadband.
- Authorizes public utility districts to temporarily provide retail Internet services.
- Authorizes port districts to provide wholesale Internet services outside of the district.
- Modifies and extends the Universal Communications Services program.

HOUSE COMMITTEE ON INNOVATION, TECHNOLOGY & ECONOMIC DEVELOPMENT

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hudgins, Chair; Kloba, Vice Chair; Smith, Ranking Minority Member; Boehnke, Assistant Ranking Minority Member; Slatter, Tarleton, Van Werven and Wylie.

Staff: Yelena Baker (786-7301).

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Innovation, Technology & Economic Development. Signed by 23 members: Representatives Tharinger, Chair; Doglio, Vice Chair; Peterson, Vice Chair; DeBolt, Ranking Minority Member; Smith, Assistant Ranking Minority Member; Steele, Assistant Ranking Minority Member; Callan, Corry, Davis, Dye, Eslick, Gildon, Irwin, Jenkin, Leavitt, Lekanoff, Maycumber, Morgan, Riccelli, Santos, Sells, Stonier and Walsh.

Staff: Melissa Palmer (786-7388).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The third substitute bill be substituted therefor and the third substitute bill do pass and do not pass the second substitute bill by Committee on Capital Budget. Signed by 31 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Minority Report: Do not pass. Signed by 1 member: Representative Kraft.

Staff: Jessica Van Horne (786-7288).

Background:

Broadband Office.

Until 2014, a Broadband Office within the Department of Commerce provided oversight and administration of a wide range of programs pertaining to high-speed Internet access, including mapping functions, coordination, and oversight of federally funded broadband programs for the state.

Public Works Board.

The Public Works Board (PWB) within the Department of Commerce administers the Public Works Assistance Account and provides financial and technical assistance to local

governments in addressing local infrastructure and public works projects by making loans, grants, financing guarantees, and technical assistance available to local governments for these projects.

Broadband Grants and Loans Programs.

A number of federal and state programs provide financial support to providers and end users of communications and broadband services.

At the federal level, the Federal Communications Commission regulates interstate and international advanced telecommunications and has set broadband benchmarks at 25 megabits per second download and three megabits per second upload speeds. Wireline and wireless-based providers receive funding from a number of federal government programs intended to spur broadband investment in unserved and underserved areas of the nation.

The federal programs are supplemented by two state-level programs in Washington: the Universal Communications Services (UCS) program and the Rural Broadband Infrastructure Program operated by the Community Economic Revitalization Board (CERB), which provides low-interest loans and grants to local governments and federally recognized Indian tribes in rural and underserved communities to finance infrastructure for high-speed, open-access broadband service. Each program differs with respect to eligibility, manners of support, definition of supported service, designation of supported areas, service characteristics, and funding requirements.

Port Districts and Public Utility Districts.

Port districts and public utility districts (PUDs) in existence on June 8, 2000, may acquire and operate telecommunication facilities within and outside of the district for their own internal telecommunications needs, and to provide wholesale telecommunications services within the district.

In providing wholesale services, port districts and PUDs must:

- ensure that the rates, terms, and conditions are not unduly or unreasonably discriminatory or preferential;
- keep accounting of revenues and expenditures of the wholesale telecommunications activities separate from the internal telecommunications operations;
- dedicate the revenues from the wholesale activities to paying off the costs incurred in building and maintaining the telecommunications facilities; and
- charge themselves the true and full value of telecommunications services provided by the separate telecommunications functions to the district.

Port districts and PUDs may not charge preferential or discriminatory rates for their nontelecommunications operations, or exercise powers of eminent domain to acquire telecommunications facilities or contractual rights to such facilities.

A port district exercising telecommunications authority for the first time must first develop a business case plan.

Universal Communications Services Program.

The UCS program was established in 2014 to provide temporary direct support to Washington's smaller incumbent communications service providers during certain changes in federal funding.

The UCS program is funded by a General Fund state appropriation to the UCS account. Expenditures from the account may be used only for the purposes of the UCS program. A maximum of \$5 million is appropriated each year, for a total of \$25 million over five years. Any unspent funds in a particular year may be carried over to subsequent years.

A communications provider is eligible to receive distributions under the UCS program if:

- the provider is an incumbent local exchange carrier and has fewer than 40,000 lines in the state;
- the customers of the provider are at risk of rate instability or service interruptions absent distributions to the provider; and
- the provider meets any other criteria established by the Utilities and Transportation Commission (UTC).

Distributions under the UCS program are based on a benchmark that the UTC determines is a reasonable amount customers should pay for basic service provided over the incumbent public network.

The UCS program expires in 2019 and the statutory sections establishing the program expire in 2020.

Summary of Third Substitute Bill:

Broadband Goals.

"Broadband" and "broadband service" are defined to mean any service providing advance telecommunications capability and Internet access with a minimum of 25 megabits per second download speed and three megabits per second upload speed.

Statewide goals for access to broadband service and minimum download and upload speeds are established.

Broadband Office.

The Governor's Statewide Broadband Office (SBO) is established to serve as the central broadband planning body for the state. The SBO director must be appointed by the Governor, and the SBO may employ necessary staff to carry out the SBO duties.

The SBO powers and duties include: coordinating with relevant parties to develop strategies and plans for deployment of broadband infrastructure; reviewing existing broadband initiatives; developing and implementing a statewide plan to encourage cost-effective broadband access and increased usage; and encouraging public-private partnerships to increase deployment and adoption of broadband services and applications.

When developing plans for broadband deployment, the SBO must consider a number of elements, including the coordination of public, private, state, and federal funding. The SBO may apply for federal funds and other grants, accept donations, collaborate with all relevant state agencies, and assist applicants to the grants and loans program within the Public Works Board with seeking federal funding and other grant opportunities.

Beginning January 1, 2021, and every two years thereafter, the SBO must report to the Legislature and include an analysis of the current availability and use of broadband, an overview of incumbent broadband infrastructure within the state, a summary of the SBO activities in coordinating broadband infrastructure development, and suggested policies and legislation to accelerate the achievement of statewide broadband goals.

Broadband Grants and Loans Programs.

The Community Economic Revitalization Board (CERB) must facilitate the timely transfer of information and documents from its broadband program to the Public Works Board (PWB), which must establish a competitive grants and loans program to assist eligible applicants in funding acquisition, installation, and construction of middle mile and last mile broadband infrastructure in unserved areas of the state.

Eligible applicants include local governments, tribes, nonprofit organizations, cooperative associations, multiparty entities comprised of public entity members, limited liability corporations organized for the purpose of expanding broadband access, and incorporated businesses or partnerships.

The application process is established. The PWB must develop administrative procedures governing the application and award process, and provide a method for the allocation of loans, grants, provisions of technical assistance, and interest rates. The PWB is responsible for reviewing applications and awarding funds.

Applicants for a grant or a loan must provide specific information relating to the project, including:

- location of the project;
- whether the proposed infrastructure will be capable of scaling to greater speeds;
- anticipated economic, educational, health care, or public safety benefits;
- estimated total costs and other available funding sources, if any; and
- evidence that the applicant contacted all broadband providers in the proposed project area to ask each for a plan to upgrade broadband speeds.

Any existing broadband service provider near the proposed project area may submit a certified affidavit objecting to an application on the grounds that the proposed project would result in overbuild or that the objecting provider commits to provide broadband services to end users in the project area at speeds greater or equal to the state speed goals. If the objecting provider fails to fulfill its commitment, the PWB is prohibited from denying funding to an applicant on the basis of a challenge from the same broadband service provider for two grant and loan cycles.

Specific criteria for evaluating applications and awarding funds are established. The PWB must give priority to applications for projects to be constructed in unserved areas. Funding priority may be given to applications that demonstrate project readiness to proceed, construct open-access infrastructure, offer new or substantially upgraded broadband service, utilize equipment and technology that demonstrate longer longevity of service, and seek the lowest amount of state investment.

The PWB must act as fiscal agent for the program. Prior to awarding funds, the Utilities and Transportation Commission (UTC) must provide the PWB an assessment of the economic and technical feasibility of a proposed application. The PWB must consider the UTC assessment as part of the evaluation of a proposed application.

The PWB may choose to fund all or part of an application that meets all the requirements. Funds awarded to a single project may neither exceed \$2 million nor fund more than 50 percent of the total cost of the project, except that the PWB may choose to fund up to 90 percent of the total cost of a project in financially distressed counties. As provided for in a financing agreement or by law, the PWB has the right of recovery in the event of default in payment or other breach of the financing agreement.

Any fund awards must be conditioned on a guarantee that the infrastructure to be developed will be maintained for public use for a period of at least 15 years.

Port Districts and Public Utility Districts.

Port districts may acquire and operate telecommunication facilities to provide wholesale telecommunications service outside of the district's limits. Port districts may select a telecommunications company to operate all or a portion of the port district's telecommunications facilities.

Public utility districts (PUDs) are authorized to provide temporary retail services if an Internet service provider (ISP) operating on PUD telecommunications facilities ceases to provide Internet access to end-use customers and no other retail service providers are willing to provide the service. Within 30 days of an ISP ceasing to provide services, the PUD must begin a process to find a replacement ISP. Until a replacement ISP is in operation and up to the maximum of five months from when the PUD begins the replacement search, whichever is earlier, the PUD may charge its retail customers to cover expenses for providing Internet access.

Existing requirements with regard to rates, terms, and conditions on wholesale services, as well as accounting and revenue commitments, are extended to temporary retail services. A recipient of temporary retail telecommunications services from a PUD may file a complaint with the district commission regarding the district's rates, terms, conditions, or services provided.

Universal Communications Services Program.

The expiration dates of the Universal Communications Services (UCS) program and the statutory sections establishing the program are extended to July 1, 2025.

The purpose of the UCS program is expanded to include the provision, enhancement, and maintenance of broadband services, and is no longer limited to the time period in which incumbent communications providers would be adapting to changes in federal funding. The requirement that customers must be at risk of rate instability or service interruptions is removed. Instead, a communications provider has to adopt a plan to provide, enhance, or maintain broadband services in its service area.

A provider who is not an incumbent local exchange company is eligible to receive distributions from the UCS account if the provider:

- demonstrates to the Utilities and Transportation Commission (UTC) the ability to provide the same or comparable services at the same or similar quality standards at a lower rate; and
- submits to UTC regulation of its services as if the provider was an incumbent local exchange company servicing the exchange for which the provider seeks distribution.

Distributions to eligible communications providers are no longer based on a benchmark established by the UTC. Instead, the UTC is directed to establish the criteria to be used to calculate distributions. Distributions must be reduced on a proportional basis if the program is unable to fully fund the distribution formula.

Expenditures from the UCS account are authorized for the UTC expenses related to implementation and administration of the UCS program.

The UTC is required, no later than 90 days following the effective date of the bill, to initiate rulemaking to reform the UCS program, including future funding and eligibility. By December 1, 2024, the UTC may report to the Legislature on the adequacy of funding levels, funding impacts, an analysis of the need for future program funding, and recommendations on potential funding mechanisms to improve availability of services, including broadband, in unserved areas.

Broadband Account.

The statewide broadband account is created in the State Treasury. The SBO must deposit in the account any federal funds, grants, or donations the SBO may receive.

Expenditures from the account may be used only:

- for grant and loan awards made by the PWB broadband program and costs incurred by the PWB in administering the grants and loans program;
- to contract for data acquisition, a statewide broadband demand assessment, or gap analysis;
- to supplement revenues raised by bonds sold by local governments for broadband structure development; or
- to provide for state match requirements under federal law.

The PWB may maintain separate accounting in the statewide broadband account as the PWB considers necessary for the purposes of its grants and loans program. The PWB must maintain separate accounting for any federal funds in the account.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 26, 2019.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 11 through 18 and 20, relating to the Universal Communications Services program, which contain an emergency clause and take effect immediately. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Innovation, Technology & Economic Development):

(In support) The lack of broadband service, particularly in rural areas, is more prevalent than what is shown on the Federal Communications Commission broadband map. The bill incorporates concepts proposed by many different stakeholders and contains a number of provisions and incentives intended to address broadband availability in the state.

Stakeholders across the state are grappling with strategy development for broadband access and competing for federal grants, and the state is not well-equipped to respond to those issues effectively. The Statewide Broadband Office will help develop policy and encourage collaborative work among stakeholders to compete for those federal grants. The establishment of the Public Works Board grants and loans program provides a good foundation for long-term and ongoing funding of high-speed broadband, and fills in the gaps in federal funding.

Public Utility Districts (PUDs) were formed to deliver essential public services throughout the state; broadband is an essential service today and PUDs are well-positioned to deliver that service to make sure all citizens have access to high-speed broadband for telemedicine, education, and other purposes. The bill authorizes PUDs to provide Internet services for up to six months. This is insufficient time to replace an Internet service provider and to provide adequate customer service; a period of 12 months would be more appropriate.

Many farmers and ranchers live in rural and unserved areas; this bill will help connect them, their businesses, and their families with the technology they need to be successful. Rural and farming areas are high cost areas and offer low return on investment, and many needy communities are unable to match even a small amount of funds. Therefore, a significant portion of broadband projects in these areas should be funded through grants to keep rates affordable. Farms should be explicitly added as a priority criteria for awarding grants and other funding.

Most people living on tribal lands are either underserved or unserved in terms of broadband access. The limited service that exists in these areas is unreliable and often interrupted. Internet access is essential for equal and consistent access to telemedicine, educational opportunities, and emergency services.

Without broadband access at home, students incur a higher cost of travel, and a loss of access to online classes and testing. Reliable broadband connection is a requirement to provide many rural students with access to education, world-class technical training, and employment opportunities. Meaningful and sustained economic development cannot proceed effectively

and efficiently without broadband access. Expanded and improved broadband access is crucial to providing remote and tribal areas with access to health care, mental health care, and counseling services. In emergencies, lack of broadband services is not only inconvenient but also dangerous; when a fast-moving wildfire destroys communication lines, lives are put in danger and emergency crews have to scramble to set up temporary communications services in the midst of a disaster.

Additional consideration should be given to technologies that offer high speeds and longevity because high costs of broadband projects in some areas could incentivize cheaper or less scalable technologies or construction in urban areas over rural areas. The new grants and loans program is important but should not be funded at the expense of other critical infrastructure investments.

(Opposed) None.

(Other) Many people in the state remain without access to reliable high-speed Internet. This lack of connectivity is a barrier to starting a business or looking for employment, and it limits access to healthcare and educational opportunities. Some stakeholders support the bill generally but have concerns regarding eligibility and the focus on underserved rather than unserved areas. The high cost of providing broadband access to unserved rural areas requires extraordinary measures. The focus should be on delivering service to unserved areas.

Staff Summary of Public Testimony (Capital Budget):

(In support) This legislation supports public-private partnerships for the purposes of developing broadband. The public utility districts (PUDs) would suggest that this policy would benefit from the addition of a panel of three experts to be consulted. The expertise could come from an agency that is knowledgeable about broadband or information technology services. There is safe harbor language that allows PUDs to provide Internet access if there is not a service provider available to provide the service. This authority is temporary and, as the bill currently exists, would only last six months. There is concern that this timeframe is too short and a 12-month timeframe should be considered. The six-month limit may not be enough time to get a successful service provider in the area and up and running. The Universal Communication Services (UCS) Account was created due to both revenue changes and federal changes. The UCS Account provides a funding source to keep the smaller communication service providers operating. These funds also provide a revenue stream that is used to pay back loans. The Public Works Board (PWB) has been tracking all things infrastructure for years and is supportive of this legislation. However, the one part of the proposal that is of a concern to the PWB relates to transferring \$7.5 million from the Public Works Assistance Account into the newly created Broadband Account for the purpose of broadband. While we support the development of broadband, there are over \$800 million dollars in traditional infrastructure needs. The PWB wants to make sure it is able to also address traditional infrastructure.

The lack of access to reliable internet is a threat to safety. It limits access to emergency services. There are regions in the state that are more sparsely populated and economically depressed, and it is in these areas that access to broadband is greatly needed. The a funding cap of \$2 million per project established in this bill should be increased to \$10 million which

would allow the build out of larger projects. For example, the Hoh Tribe project would need to cover 40 miles along Highway 101.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) The Universal Communication Services (UCS) Account was created to backfill revenues that were no longer provided by the federal government. The UCS program keeps independent telecommunications companies healthy and enables them to provide broadband Internet access to their customers. In many areas served by independent telecommunication companies, there are not broadband Internet access issues.

The Colville Tribe covers 1.4 million acres of land. A wildfire took out telecommunication lines, and the UCS program provided assistance in rebuilding necessary infrastructure. The UCS program is not sensible unless both operating and capital funding is provided. Broadband Internet is not futuristic or magical, but instead is a necessary element of modern life. A kid should not have to drive to a Starbuck's parking lot in order to obtain broadband Internet access because it is unavailable at home.

The Public Utility Districts (PUDs) would like to see two amendments added to this bill: (1) that the Public Works Board consult a panel of three experts along with the Utilities and Transportation Commission during the project selection process; and (2) that the PUDs be allowed to provide service for 12 instead of six months in the event a service provider is lost in the area.

(Opposed) None.

Persons Testifying (Innovation, Technology & Economic Development): (In support) John Flanagan, Office of the Governor; Will Saunders, Office of the Chief Information Officer; Chris Green, Department Of Commerce; Brian Thomas, Utilities and Transportation Commission; Bre Elsey, Washington Farm Bureau; Al Aldrich, Port of Skagit; George Caan, Washington Public Utility Districts Association; Cliff Sears, Grant County Public Utility District; Mike Coleman, Chelan County Public Utility District; Joel Myer, Mason County Public Utility District; Susie Allen, Colville Business Committee (Confederated Tribes of the Colville Reservation); Michael Moran, Confederated Tribes of the Colville Reservation; Terry Leas, Big Bend Community College; Claire Ward, NoaNet; JC Baldwin, Public Works Board; Paul Parker, Transportation Commission; Carolyn Logue, Washington Library Association; Jennifer Stoll, Oregon Community Health Information Network; and Candice Bock, Association of Washington Cities.

(Other) Mike Ennis, Association of Washington Business; and Ron Main, Association of Broadband Communications.

Persons Testifying (Capital Budget): Dave Arbaugh, Chelan Public Utility District and OCHIN; Peggen Frank, Hoh Tribe; Mara Machulsky, Washington Public Utility Districts Association; Betty Buckley, Washington Independent Telecommunications Association; and John Flanagan, Office of the Governor.

Persons Testifying (Appropriations): Representative Hudgins, prime sponsor; Michael Moran, Confederated Tribes of the Colville Reservation and Washington State School Retirees' Association; Dave Arbaugh, Chelan County Public Utility District and OCHIN; JC Baldwin and Mara Machulsky, Public Works Board; Betty Buckley, Washington Independent Telecommunications Association; Peggen Frank, Hoh Tribe; and Scott Richards, Washington Public Utility Districts Association.

Persons Signed In To Testify But Not Testifying (Innovation, Technology & Economic Development): None.

Persons Signed In To Testify But Not Testifying (Capital Budget): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.