

HOUSE BILL REPORT

2SSB 5511

As Reported by House Committee On:
Innovation, Technology & Economic Development
Capital Budget

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: Senate Committee on Ways & Means (originally sponsored by Senators Wellman, Sheldon, Carlyle, Short, McCoy, Nguyen, Takko, Cleveland, Darneille, Dhingra, Lias, Mullet, Saldaña and Frockt; by request of Office of the Governor).

Brief History:

Committee Activity:

Innovation, Technology & Economic Development: 3/19/19, 3/28/19 [DPA];
Capital Budget: 4/4/19, 4/5/19 [DPA(CB w/o ITED)].

**Brief Summary of Second Substitute Bill
(As Amended by Committee)**

- 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 (PUDs) 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: Do pass as amended. Signed by 9 members: Representatives Hudgins, Chair; Kloba, Vice Chair; Smith, Ranking Minority Member; Boehnke, Assistant Ranking Minority Member; Morris, Slatter, Tarleton, Van Werven and Wylie.

Staff: Yelena Baker (786-7301).

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 government 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 international and interstate 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 Amended Bill:

Broadband Goals.

"Broadband" and "broadband service" are defined to mean any service providing advanced 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 after that, 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 Program.

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 assistances, 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. Before the PWB awards funds to a proposed project, the Utilities and Transportation Commission (UTC) must provide the PWB an assessment of the economic and technical feasibility of the project. The PWB must consider the UTC assessment as part of the evaluation of the project.

The PWB may choose to fund all or part of an application that meets all the requirements and shall endeavor to award funds to qualified applicants in all regions of the state.

Funds awarded to a single project may not fund more than 50 percent of the total cost of the project or exceed \$2 million, except that the PWB may choose to fund up to 90 percent of the total cost of a project and up to \$5 million in financially "distressed areas", as that term is defined in the statutory provisions related to Rural Washington Loan Fund, or in "Indian country" as that terms in defined in the Washington Administrative Code.

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. 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.

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. The tax treatment of the temporary retail services provided by a PUD must be the same as if provided by the defunct ISP.

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.

Amended Bill Compared to Second Substitute Bill:

The amended bill:

1. requires the Public Works Board (PWB) to collaborate with the Statewide Broadband Office on establishing the grants and loans programs, prescribing funding priorities, developing additional rules for eligibility, and adopting rules for voluntary nonbinding mediation;
2. eliminates the requirement that an applicant to the PWB grants and loans program provide information about the kind and amount of broadband infrastructure to be purchased for a project;
3. removes the requirement that the PWB give top priority to tribal reservations in rural and remote regions when endeavoring to award funds to qualified applicants in all regions of the state;
4. authorizes the PWB to fund up to 90 percent of the total cost of a project and up to \$5 million in "distressed areas" and "Indian country" and defines those terms;
5. requires the PWB to consult with the Utilities and Transportation Commission, rather than an expert review panel of up to three members, on the economic and technical feasibility of a proposed project;
6. requires a public utility district (PUD) providing wholesale or retail telecommunications services to keep separate accounting for any revenues and

- expenditures for those services and to dedicate any revenues received from the provision of wholesale or retail telecommunications services to costs incurred to build and maintain telecommunications facilities;
7. modifies the maximum period of time during which a PUD is authorized to provide retail telecommunications services from 11 months to five months;
 8. specifies that the tax treatment of the temporary retail services provided by a PUD must be the same as if provided by the defunct Internet service provider; and
 9. provides that the act is null and void if specific funding for the purposes of the act is not provided by June 30, 2019 in the omnibus appropriations act.
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Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 11 through 18 and section 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:

(In support) Broadband is essential for maintaining and expanding our rural communities, health and safety, education, and economic development. Businesses do not expand into areas that lack high-speed broadband, even if other things, such as workforce or natural resources, are available. Re-establishing the Statewide Broadband Office means there will be an entity whose entire focus will be on these critical issues.

For remote tribes, lack of reliable Internet is a threat to the safety of tribal citizens and a barrier to participating in the modern world. The language that limits the amount of funding a tribe can receive is of concern and should be amended to allow more substantial investments to the tribes in rural and financially distressed areas.

Some stakeholders expressed concern at having the Utilities and Transportation Commission (UTC) assess the economic and technical feasibility of proposed projects, but the UTC will act in an advisory capacity only and cannot disqualify a project. Establishing an expert review panel would add unnecessary costs.

Tribal areas are not the only areas that desperately need the Internet. There are many unserviceable pockets minutes away from the capital, and these areas should not be forgotten when the limited broadband funds are distributed.

(Opposed) None.

(Other) The lack of protections for overbuilding is concerning; funding projects that result in overbuild would undermine the intent of the bill. There are limited funds and every dollar spent to overbuild is a dollar that is no longer available to unserved areas.

The requirement that an applicant to the grants and loans program must provide information about the kind and amount of broadband infrastructure seems to suggest that there are winning technologies and losing technologies, and that the Public Works Board (PWB) will somehow evaluate that.

The UTC should be the entity that evaluates proposed projects for economic and technical feasibility. The bill does not confer any new authority on the UTC; it simply provides that the UTC has the expertise to review and evaluate proposals.

An expert review panel to assess economic and technical feasibility of proposed projects can provide more flexibility to the PWB. Depending on a proposal, WaTech, the Department of Commerce, and other agencies may have the relevant expertise to review proposals.

When an Internet service provider fails and leaves a community without Internet service, the PUDs may step in and provide that service until another Internet service provider is found. Doing so may take a long time, so the PUDs should be allowed to provide temporary retail services for up to 12 months, instead of six months.

Persons Testifying: (In support) Senator Wellman, prime sponsor; Peggen Frank, Hoh Tribe; Michael Moran, Confederated Tribes of the Colville Reservation; John Flanagan, Governor's Office; Claire Ward, NoaNet; and Catarina Thiessen.

(Other) Michael Ennis, Association of Washington Business; Ron Main, Broadband Communications Association of Washington; and George Caan, Washington Public Utility Districts Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass as amended by Committee on Capital Budget and without amendment by Committee on Innovation, Technology & Economic Development. Signed by 20 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, Leavitt, Lekanoff, Morgan, Riccelli, Santos, Sells, Stonier and Walsh.

Staff: Melissa Palmer (786-7388).

Summary of Recommendation of Committee On Capital Budget Compared to Recommendation of Committee On Innovation, Technology & Economic Development:

The Public Works Board is required to consult with the Utilities and Transportation Commission on the technical feasibility of a proposed project, rather than the economic and technical feasibility.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 11 through 18 and section 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:

(In support) Public utility districts (PUDs) are in support of this legislation but are still looking for a 12-month extension on safe harbor provisions. It is a complicated matter to replace an Internet service provider. Public utilities districts would like to see the Utilities and Transportation Commission (UTC) focus on the technical feasibility of projects, rather than the economic feasibility. Public utility districts are not-for-profit entities that build, own, and operate broadband infrastructure for the purpose of serving the community. These decisions are made by locally elected officials. Because of this, PUDs would ask the UTC to focus on the technical feasibility, and not focus on the economic feasibility. The Senate removed all funding for the Universal Communication Services (UCS) program from the operating budget and the Washington Independent Telecommunications Association is working to get that restored. The Association of Washington Business would like to see stronger over-build protection and share concerns about the lack of funding for the UCS.

(Opposed) The Association of Washington Cities is opposed to the bill because of the funding mechanism. Cities are supportive of the creation of the Statewide Broadband Office and the Statewide Broadband Account. When we testified in favor of the companion version of this legislation, we indicated we were opposed to any diversion from the Public Works Assistance Account (PWAA) into the new Broadband Account. The Association of Washington Cities does not believe that broadband infrastructure should be funded at the expense of traditional infrastructure. It is unfortunate to take an already small resource and direct it to different infrastructure and a different applicant group. There already are significant needs for waste water and drinking water infrastructure. The PWAA is critical for cities to meet key infrastructure needs. The opposition is related to the diversion of the PWAA into the new account.

Persons Testifying: (In support) Scott Richards, Washington Public Utilities District Association; Betty Buckley, Washington Independent Telecommunications Association; and Mike Ennis, Association of Washington Business.

(Opposed) Candice Bock, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.