

HOUSE BILL REPORT

ESHB 1336

As Amended by the Senate

Title: An act relating to creating and expanding unrestricted authority for public entities to provide telecommunications services to end users.

Brief Description: Creating and expanding unrestricted authority for public entities to provide telecommunications services to end users.

Sponsors: House Committee on Community & Economic Development (originally sponsored by Representatives Hansen, Ybarra, Berry, Simmons, Ramel, Valdez, Leavitt, Morgan, Ryu, Peterson, Shewmake, Davis, Ormsby, Gilday, Stonier, Eslick, Pollet and Harris-Talley).

Brief History:

Committee Activity:

Community & Economic Development: 1/27/21, 2/3/21 [DPS].

Floor Activity:

Passed House: 2/23/21, 60-37.

Senate Amended.

Passed Senate: 4/11/21, 27-22.

Brief Summary of Engrossed Substitute Bill

- Authorizes public utility districts, port districts, second-class cities, towns, and counties to provide retail telecommunications services.

HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Ryu, Chair; Paul, Vice Chair; Boehnke, Ranking Minority Member; Chase, Assistant Ranking Minority Member; Frame, Johnson, J., Lovick, Rule and Taylor.

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

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

Minority Report: Without recommendation. Signed by 3 members: Representatives Corry, Jacobsen and Sutherland.

Staff: Cassie Jones (786-7303).

Background:

Public Utility Districts and Port Districts - Telecommunications.

"Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Telecommunications facilities" means lines; conduits; ducts; poles; wires; cables; crossarms; receivers; transmitters; instruments; machines; appliances; instrumentalities and all devices; real estate; easements; apparatus; property; and routes used, operated, owned, or controlled by any entity to facilitate the provision of telecommunications services.

A public utility district (PUD) and a port district in existence on June 8, 2000, may construct, purchase, acquire, operate, and maintain telecommunications facilities within or without the district limits for purposes of internal telecommunications needs and for the provision of wholesale telecommunications services within the district. Public utility districts have limited authority to provide retail telecommunications services. Port districts do not have that authority.

In providing telecommunications services, PUDs and port districts must:

- ensure that the rates, terms, and conditions are not unduly or unreasonably discriminatory or preferential;
- keep accounting of revenues and expenditures of the telecommunications activities separate from the internal telecommunications operations;
- dedicate the revenues from the telecommunications 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.

If a person or entity receiving wholesale telecommunications services from a PUD or a port district has a complaint regarding the reasonableness of rates, terms, and conditions, the person or entity may petition the Utilities and Transportation Commission (UTC). If a person or entity receiving retail services from a PUD has a complaint regarding the reasonableness of rates, terms, and conditions, the person or entity may file a complaint with the PUD's commission.

A port district that has not exercised its authority to provide telecommunications services before June 7, 2018, must develop a business case plan before exercising that authority. The port district must procure an independent qualified consultant to review the business case plan, including the use of public funds in the provision of wholesale telecommunications services. Any recommendations or adjustments to the business case plan made during third-party review must be received and either rejected or accepted by the port commission in an open meeting.

Public Utility Districts - Retail Telecommunications Services.

A PUD has limited authority to provide retail telecommunications services.

Temporary Authority. A PUD that provides wholesale telecommunications services but not retail telecommunications service may provide retail telecommunications to the customers of an Internet service provider (ISP) if the ISP:

- was operating on telecommunications facilities of the PUD; and
- has ceased to provide access to the Internet to its customers.

The PUD may only provide the retail telecommunications if there are no other willing retail service providers. The PUD, within 30 days of the ISP ceasing to provide service, must initiate a process to find a replacement ISP to resume providing access to the Internet using the telecommunications facilities of the PUD. The PUD may provide the service for up to five months after the PUD begins the replacement search or until a replacement ISP is in operation, whichever is earlier. For the applicable period, 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.

Authority for Certain Public Utility Districts. A PUD that as of June 7, 2018, provides only water, sewer, and wholesale telecommunications services in a county with an area less than 500 square miles and is located west of the Puget Sound may provide retail Internet service on the PUD's broadband network located within the PUDs boundaries only when all of the existing providers of end-user Internet service on the PUD's broadband network cease to provide end-user service or inadequate end-user service. This authority expires five years after June 7, 2018, for any PUD that has not entered into a partnership payment structure to finance broadband deployment or been petitioned to provide retail Internet service within that time period.

After a PUD board of commissioners receives a petition requesting provision of retail Internet services, the PUD commissioners may hold three meetings to: (1) verify property owners' signatures; (2) determine and submit findings regarding the existence or adequacy of retail Internet services on the PUD's broadband network; (3) receive a business case plan; and (4) by resolution, authorize the PUD to provide retail Internet service on its broadband network. Authorization is contingent on the development of the business case plan and a determination of no or inadequate service. A petition requesting provision of retail Internet

services may be submitted by either of the following that has developed a partnership payment structure to finance broadband deployment with the PUD: (1) a majority of a group, including homeowners associations, of a geographical area within the district; or (2) an individual.

Cities, Towns, and Counties - Telecommunications.

There are several classifications of cities and towns under Washington law: (1) first class cities; (2) second class cities; (3) code cities; (4) unclassified cities; and (5) towns. First class cities are those that have a population of 10,000 or more and have adopted a charter pursuant to a provision of the Washington Constitution (Constitution). Second-class cities and towns do not have their own charters and are governed by statute. Unclassified cities include those that were created by special charter prior to the adoption of the Constitution; statutory enactments supplement their territorial charters. Code cities are those that have incorporated under the statutory framework known as the Optional Municipal Code. Washington counties may organize under a home rule charter pursuant to the Constitution. Those counties that have not adopted a charter are governed by statute.

Generally, the powers of municipal corporations are limited to those powers that are: (1) expressly granted by statute or by the Constitution; (2) necessarily implied in or incident to powers expressly granted; and (3) essential to the declared purposes and objects of the municipal corporation. However, this general rule does not apply to cities and counties that have adopted charters pursuant to the Constitution or the Optional Municipal Code. These municipalities have "home rule powers," which do not need express or implied statutory authority to enact local legislation.

According to a 2003 Attorney General Opinion, first class cities, code cities, and charter counties may provide telecommunications services as part of their "home rule powers," except as may be limited by specific statutory language governing particular services. Second class cities and towns, however, do not have the authority to provide telecommunication services.

Summary of Engrossed Substitute Bill:

"Retail telecommunications services" means the sale, lease, license, or indivisible right of use of telecommunications services or telecommunications facilities directly to end users.

A PUD is authorized to provide retail telecommunications services and telecommunications facilities within the district and outside of the district by contract with another PUD, a political subdivision of Washington that is authorized to provide retail telecommunications services, or with any federally recognized tribe located in Washington. A PUD is also authorized to provide wholesale telecommunications outside the district by contract with any political subdivision of the state authorized to provide retail telecommunications or with any federally recognized tribe located in Washington.

The authority granted to PUDs that allowed them to temporarily provide Internet service to customers of a defunct ISP is repealed. The authority for certain PUDs, those that only provide water, sewer, and wholesale telecommunications services in a county with an area less than 500 square miles located west of the Puget Sound, to provide retail Internet service is also repealed.

Port districts are authorized to provide retail telecommunications services within and outside the district's limits. The requirement that a port district develop a business case plan if exercising its wholesale telecommunications authority for the first time after June 7, 2018, is repealed.

Before providing retail telecommunications services, PUDs and port districts are encouraged to examine and report to their governing bodies the following about the area to be served by the public entity:

- an assessment of the current availability of broadband infrastructure and its adequacy to provide high-speed Internet access and other advanced telecommunications services to end users;
- the location of where retail telecommunications services will be provided;
- evidence relating to the unserved or underserved nature of the community in which retail telecommunications services will be provided;
- expected costs of providing retail telecommunications services to customers to be served by the public entity; and
- evidence that proposed telecommunications infrastructure will be capable of scaling to greater download and upload speeds to meet state broadband goals under RCW 43.330.536.

Second-class cities, towns, and counties are authorized to provide telecommunications services.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendments make the following changes to Engrossed Substitute House Bill 1336:

- removes the provision authorizing a PUD to provide either retail or wholesale, or both telecommunications services and telecommunications facilities within the district;
- specifies when a PUD is authorized to maintain telecommunications facilities within or without the district's limits for the provision of wholesale telecommunications services;
- authorizes a PUD to provide retail telecommunications services or telecommunications facilities within the district's limits or without the district's limits by contract with another PUD, any political subdivision of the state authorized to provide retail telecommunications services in the state, or with any federally recognized tribe located in the state of Washington;
- modifies the reporting requirements in the bill as follows:

- requires, rather than encourages, a PUD and port district to make specified findings and report to its governing body before providing retail telecommunications services;
- adds a provision requiring a PUD and port district to report its findings to the Statewide Broadband Office (SBO);
- adds a requirement for a town, second-class city, and county to make the same specified findings as PUDs and port districts and report to its governing body and the SBO before providing retail telecommunications service;
- adds a provision requiring entities to make additional findings and report on sources of funding for the project that will supplement any grant or loan program, a strategic plan to maintain long-term operation of the infrastructure, and the expected installation charges and monthly costs for end users;
- requires the SBO to post a review of the proposed project on its website;
- removes the report requirement regarding evidence relating to the underserved nature of the community in which retail telecommunications services will be provided; and
- redefines "unserved" as an area of Washington in which households and businesses lack access to broadband service at a minimum 100 megabits per second download speed and at a minimum 20 megabits per second upload rather than a census block in which no provider has the capacity to deliver Internet access service at speeds of a minimum of 25 megabits download and three megabits upload;
- adds an exception for increasing access to broadband to the provision that a county, city, or town planning under the Growth Management Act may not receive financial assistance for a public works project unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by the Growth Management Act and requires the relevant sections of the Washington Administrative Code to be amended by January 1, 2022, accordingly; and
- makes technical corrections.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is a bipartisan project. The last year has demonstrated to all that high-speed broadband is essential for modern life. Washington is in a minority of states with restrictions on some local governments' ability to provide broadband services. States that allow unrestricted broadband have lower costs and faster speeds. Many in the rural areas do not have access to services that PUDs could provide. This bill is not just about the rural

areas. Plenty of people have access but it is unreliable and unaffordable. This bill is about getting broadband to the kids who need it so they can become citizens. With the pandemic, kids need broadband access even more. There are some areas in the bill that could be changed a little bit so other providers can provide the Internet as well. But this is really about getting kids access right now.

Public entities have long been excluded from federal programs that would allow for greater buildout of infrastructure. Ports have a 100-year history of working with private companies. The goal for ports is to extend the infrastructure, not to overbuild. This is a \$1 billion plus problem that public entities should be allowed to participate in solving. The need for infrastructure in rural and tribal areas is great. Public utility districts can not provide direct Internet access to the tribal members. This bill would allow both tribes and PUDs to buildout Internet access to key tribal neighborhoods very soon. Without this bill, tribes are limited to accessing old infrastructure and that limits access to telemedicine and online school. The limited retail authority that was granted in 2018 to Kitsap County has greatly improved access and services and has lowered cost. Public-private partnerships are essential. But PUDs need access to federal funding. The restrictions on providing the services directly continue to make PUDs ineligible for most federal funds. Public Utility District customers call broadband an essential utility and want this service.

This bill represents a crucial policy shift that addresses economic, education, healthcare, and equity issues. There is currently an inequitable arrangement where people in more populated areas have high speed Internet and rural areas do not. It is not profitable for private companies to provide the service in the underserved or unserved areas. But this can be done under the utility model, for example, the rural electrification model. The current electrical model will work today if citizens want it. This is another tool in the toolbox for local governments.

This is about equity for children. Many students do not have Internet in the home. Cellular hotspots have been inadequate. For kids to have an education in the twenty-first century, the kids need high speed Internet access. It is just as important as providing books. Learning is extremely difficult during the pandemic without the Internet. Students have been disenfranchised by the digital divide that existed before the pandemic. This is not a rural only issue, but 15 percent of urban households are also impacted. Students and adults need the Internet for school, training, job searching, and more. Closing the digital divide is a fundamental social justice issue.

Healthcare as an industry is highly reliant on the Internet. Four gigabyte Wi-Fi hotspots serve as a backup Internet and are painfully slow. Interruptions in Internet service can interrupt patient care. Health care clinics need more choice. This will improve reliability and service and reduce cost. Rural communities offer many tourism opportunities for visitors but there is no infrastructure to support the visitors. It is a safety issue to be able to communicate from remote areas. Rural communities are cut off; this bill will help support the economies of rural Washington. Lack of high-speed Internet limits the economic

growth of an area.

(Opposed) There is support for allowing additional entrants in the field to support people who don't have access to service. We need to focus on unserved areas due to lack of funds. The money does not spread far enough. Retail authority for public entities should be limited to areas that don't have access to broadband. The authority should not be used to overbuild broadband networks. Public entities should have to operate on a level playing field with the same taxes and regulations as private companies. Robust universal broadband is critical to all. Lack of public retail authority is not the biggest barrier to increasing broadband access. The bill could undermine existing service networks to deploy robust broadband. Existing networks should not be duplicated or undermined. The bill does not ensure that anyone new will be served. This bill does not protect existing providers from being overbuilt. There should not be unrestricted retail services provided especially where private companies already provide service. Broadband providers already invest in Washington and this bill could stifle investment.

(Other) Students are working very hard to learn during the pandemic. Students on a hybrid schedule who attend school two days per week do not have access education on the other days if they do not have access to the Internet. Cares Act funding has been used to connect students to the Internet. This is an equity issue.

Persons Testifying: (In support) Representative Hansen, prime sponsor; Representative Ybarra; Aaron Wheeler, Suquamish Tribe; Laura Bernstein, Share The Cities; Nancy Chamberlain and Tori Emerson, Washington State Parent Teacher Association; Bob Hunter; Debra Lester, Kitsap Public Utility District; Kelly Rupp, Lead To Results, LLC.; Caitlin Lake; Greg Brotherton, Jefferson County; Joe Poire, Port of Whitman County; Justin Holzgrove, Mason County Public Utility District No. 3; Kathryn Sharpe; George Caan, Washington Public Utility Districts Association; Chris Roden, Lewis County Public Utility District; Randy Mueller, Port of Chehalis; Garry Cameron, Winlock School District; Gaelon Spradley, Valley View Health Centers; Cynthia Swift, East Lewis County Chamber of Commerce; Mary Kay Nelson, White Pass Scenic Byway; Lindsey Pollock, Lewis County Board of Commissioners; James Thompson, Washington Public Ports Association; Sara Young, Port of Skagit; James Sayce, Port of Willapa; Theresa Power-Drutis, New Connections; and Janet St. Clair, Island County.

(Opposed) George Henny, Whidbey Telecom; Gail Long, TDS Telecom; Betty Buckley, Washington International Trade Association; Mike Ennis, Association of Washington Business.

(Other) Eric Sobotta, Reardan-Edwall School District.

Persons Signed In To Testify But Not Testifying:

None.