

HOUSE BILL REPORT

2SSB 5383

As Reported by House Committee On:

Community & Economic Development
Appropriations

Title: An act relating to authorizing public utility districts and port districts to provide retail telecommunications services in unserved areas under certain conditions.

Brief Description: Authorizing public utility districts and port districts to provide retail telecommunications services in unserved areas under certain conditions.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Wellman, Short, Hunt, King, Lovelett, Nguyen, Randall, Saldaña, Warnick, Wilson, C. and Wilson, L.).

Brief History:

Committee Activity:

Community & Economic Development: 3/17/21, 3/26/21 [DPA];

Appropriations: 4/1/21 [DPA(APP w/o CED)].

Brief Summary of Second Substitute Bill

(As Amended By Committee)

- Allows public utility districts and port districts to provide retail telecommunications services to end users in unserved areas under certain conditions.

HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT

Majority Report: Do pass as amended. Signed by 7 members: Representatives Ryu, Chair; Paul, Vice Chair; Frame, Johnson, J., Lovick, Rule and Taylor.

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

Minority Report: Without recommendation. Signed by 5 members: Representatives

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.

Boehnke, Ranking Minority Member; Chase, Assistant Ranking Minority Member; Corry, Jacobsen and Sutherland.

Staff: Cassie Jones (786-7303).

Background:

Public Utility Districts and Port Districts — Telecommunications.

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.

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.

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 PUD's 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.

Statewide Broadband Office.

The purpose of the Governor's Statewide Broadband Office (Office) is to encourage, foster, develop, and improve affordable, quality broadband within the state to promote innovation, serve the growing needs of Washington's education, healthcare, and public safety systems, industries and business, governmental operations, and citizens, and improve broadband

accessibility for unserved communities.

The Office's statutory speed goals are the following:

- by 2024, businesses and residences have access to minimum speeds of 25 megabits per second (Mbps) download and 3 Mbps upload;
- by 2026, communities have access to at least 1 gigabit per second symmetrical service at anchor institutions; and
- by 2028, businesses and residences have access to at least one provider with 150 Mbps symmetrical service.

The Office is required to report biennially to the Legislature on its activities. The reports must include information and analysis on the current availability of broadband in the state and average speeds, an overview of incumbent broadband infrastructure within the state, a summary of the Office's activities coordinated with the Public Works Board, and suggested policies, incentives, and legislation designed to achieve the state's broadband goals.

Summary of Amended Bill:

The authority of a public utility district (PUD) to provide wholesale telecommunications services is expanded to allow a PUD to provide those services:

- within an area in an adjoining county that is already provided with electrical services by the district; and
- within an adjoining county that does not have a PUD providing electrical or telecommunications services headquartered within the county's boundaries, but only if the district providing telecommunications services is not authorized to provide electrical services.

Public utility districts and port districts may provide retail telecommunications services in unserved areas. A PUD or port district must, within 30 days of its decision to provide such services in an unserved area, notify and consult with the Governor's Statewide Broadband Office (Office). The Office must post such notices it receives on its public website.

Any PUD or port district that intends to provide retail telecommunications services to an unserved area must also submit a telecommunications infrastructure and service plan to the Office and the Office must post the plan on its website. The plan must include, but is not limited to, the following:

- a map and description of how the deployment of proposed broadband infrastructure will achieve at a minimum 100 Mbps download speed and at a minimum of 20 Mbps upload speed and then increases to be consistent with the stated long-term state broadband speed goals for unserved areas;
- project timeline prioritization of unserved areas; and
- a description of potential state and federal funding available to provide service to the unserved area.

A retail telecommunications project developed by a PUD or port to serve unserved areas may not provide such services in an area where an existing provider meets or exceeds at a minimum 100 Mbps download speed and 20 Mbps upload speed and then increases to be consistent with the stated long-term state broadband speed goals for unserved areas.

When building in served areas to reach the unserved area, a PUD or port district may provide retail telecommunications services to residential locations. These additional locations may not include businesses and anchor institutions. A PUD or port district providing retail telecommunications services to unserved areas must operate an open access network.

"Unserved areas" means areas of Washington in which households and businesses lack access to broadband service of speeds at a minimum of 100 Mbps download and at a minimum 20 Mbps upload.

By December 31, 2022, the Office must submit a report to the Governor and the appropriate committees of the Legislature regarding the provision of retail telecommunications services to unserved areas by PUDs and port districts. The report must, at a minimum, contain:

- the number of PUDs and port districts providing retail telecommunications services in an unserved area; and
- any recommendations to improve the provision of retail telecommunications services in unserved areas.

The act expires June 30, 2023, and will take effect only if Engrossed Substitute House Bill 1336 is enacted by July 25, 2021.

Amended Bill Compared to Second Substitute Bill:

The amended bill makes the following changes to the original bill:

- adds a provision allowing a public utility district (PUD) to provide wholesale telecommunications services as follows: (1) within an adjoining county that is already provided electrical services by the district; and (2) within an adjoining county that does not have a PUD providing electrical or telecommunications services headquartered within the county's boundaries, but only if the PUD providing the telecommunications services is not authorized to provide electrical service;
- removes the ability of and process for an existing broadband service provider to object to a retail telecommunications services project of a PUD or port district for unserved areas;
- adds provisions requiring a PUD or port district to notify and consult with the Statewide Broadband Office (Office) within 30 days that it intends to provide retail telecommunications services in unserved areas and submit to the Office a telecommunications infrastructure and service plan;
- adds a provision prohibiting a PUD or a port district from providing retail

- telecommunications services in an area where an existing provider meets or exceeds at a minimum 100 Mbps download speed and 20 Mbps upload speed and then increases to be consistent with the long-term state broadband goals for unserved areas;
- adds a provision allowing a PUD or port district to provide retail telecommunications services to residential locations in a served area when building in the served area to reach the unserved project area;
 - redefines "unserved area" as areas of Washington in which households and businesses lack access to broadband service of speeds at a minimum of 100 Mbps download and at a minimum 20 Mbps upload;
 - modifies reporting requirements for the Office by removing items reflecting the stricken language relating to the underlying bill's objection process for existing providers and moving up the reporting date to December 31, 2022;
 - adds an expiration date of June 30, 2023; and
 - makes passage of Second Substitute Senate Bill 5383 contingent on passage of Engrossed Substitute House Bill 1336.

Appropriation: None.

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.

Staff Summary of Public Testimony:

(In support) The State Broadband Office (Office) was established so that there would be increased focus on getting broadband out to the state to help people get connected, especially in the rural areas. Due to COVID-19, the broadband discussion began to focus on education and how critical it was to have access to broadband for that purpose, especially in rural areas. There are still many unserved areas. This bill is a result of working with many stakeholders including the Office. The strategy is to focus initially on the unserved areas. This bill is well targeted to bring a network to the unserved and avoids the temptation of overbuilding and cherry picking. Overbuilding is redundant and a waste of resources and will impact the ability of existing providers to serve the community. Broadband providers invest billions in providing broadband infrastructure. Public providers should be restricted to unserved areas and be subject to the same requirements as private companies.

Focusing on areas without broadband access is the best approach to achieving the goal of serving the rural and unserved. Lack of access to Internet has been difficult during COVID-19 and is limiting recovery in the rural areas. Bad service is also limiting children in remote education. There is a role for public utility districts (PUDs) and ports to provide retail

service in rural Washington. Public utility districts and port districts should be limited to unserved areas and should not be allowed to overbuild existing broadband networks.

This bill is a good start because it mandates speeds and includes important guardrails such as the challenge process. The bill also requires the PUDs and port districts to work with the Office and with other broadband providers before building into an area. The challenge process is not a veto nor would that be appropriate. All telecommunications companies have competition and are not monopolies. Public projects should not stop private projects.

(Opposed) There are areas where there are no PUDs or port districts. This bill does not authorize other entities to provide retail service, so it does nothing to help those areas where there are no PUDs or port districts. Other entities should also be allowed to offer retail broadband service. The right place to address scarce resources is in grant requirements. The challenge process will be overly limiting to public entities.

(Other) There is a common understanding that PUDs should be able to apply for federal money to serve unserved communities. They must be authorized to have retail authority as a condition for federal funds. The definition of unserved should require speeds of 100 Mbps download and 20 Mbps upload with graduated increases consistent with the state's goals. Improving broadband access is a bipartisan goal.

Broadband service providers need funding from the Federal Communications Commission (FCC). Retail authority is often required for FCC funding. The more entities that can apply the more federal money the state will get. The objection process could undermine the ability to secure federal funds within the application timelines and could delay customers in getting service. The protest language is duplicative because the FCC already has a process.

Internet access is not enough if it is unreliable and unaffordable. This bill gives a veto to private companies so they can keep their monopolies. Public utility districts should be allowed to provide new service and improve existing service. The bill gives veto authority to the unelected officials in the Office on the decisions of local elected officials. The challenge process stops the will of the local citizenry seeking to build infrastructure. The Office should not be acting as a gate keeper or regulator; that is not its mission. The veto process is at cross-purposes with local partnering and places the needs of private companies over voters' needs.

It is the duty of the Office to focus on unserved areas when building out broadband. This bill promotes this purpose by focusing on areas of need first. The challenge process is not a veto. It is a checks and balance process to ensure that the spending of public money aligns with legislative mandates.

Persons Testifying: (In support) Senator Wellman, prime sponsor; Steve Appelo, Wahkiakum West; Mike Ennis, Association of Washington Business; Stephanie Swanberg, The Tri-City Regional Chamber of Commerce; Gail Long, TDS Telecom; Donna Hilty,

Whidbey Telecom; Lynn Follansbee, USTelecom; Mike Oblizalo, Hood Canal Communications; Betty Buckley, Washington Independent Telecommunications Association; and Michael Shaw, Pierce County.

(Opposed) Mitchell Harper.

(Other) Bob Hunter and Debra Lester, Kitsap Public Utility District; George Caan and James Thompson, Washington Public Utility District Association; Laura Bernstein, Share The Cities Action Fund; Russ Elliott, Washington State Broadband Office; and Joe Poire, Port of Whitman County.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Community & Economic Development. Signed by 21 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Caldier, Chandler, Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Steele, Stonier, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 3 members: Representatives Stokesbary, Ranking Minority Member; Hoff and Schmick.

Minority Report: Without recommendation. Signed by 9 members: Representatives Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Dye, Harris, Jacobsen, Rude and Springer.

Staff: Jessica Van Horne (786-7288).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Community & Economic Development:

The Appropriations Committee recommended the following changes:

- adds a provision stating that public utility districts (PUDs) and port districts providing retail telecommunications services in unserved areas may use state funds, federal funds appropriated through the state, or federal funds dedicated for unserved areas to fund the projects identified in its infrastructure and service plan;
- removes a provision that prohibited a PUD or port district from providing retail service in an area where there is an existing provider providing services with speeds of 100 Mbps download and 20 Mbps upload;
- removes a provision that allowed a PUD or port district to provide retail service to residences in a served areas when building in the served area to reach an unserved

- area;
- removes the definition of "broadband service";
- removes the expiration date; and
- removes the provision making the bill effective only if Engrossed Substitute House Bill 1336 is also enacted.

Appropriation: None.

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.

Staff Summary of Public Testimony:

(In support) Public utility districts (PUDs) support this bill and the proposed second striking amendment. The PUDs require retail authority in order to maximize opportunities to access federal funds that will support expanding broadband into underserved areas. This bill serves as a complement to other proposed legislation that would allow public utilities to provide broadband. The Legislature should reduce barriers for public entities to provide broadband so service can be expanded. The PUDs support providing affordable and reliable broadband to better connect Washington. The PUDs support working with the Statewide Broadband Office towards those goals.

(Opposed) The business community supports the underlying bill, but not the striking amendment proposed by the Community and Economic Development (CED) Committee. While the business community is open to allowing public entities to provide broadband service, especially in areas where there is little or no current broadband service, it believes that those entities should be subject to the same rules as other providers. The striking amendment proposed by the CED Committee would incentivize overbuilding and removes the ability to challenge a PUD or other entity's plan. Providing retail authority is not necessary for public entities to access federal funding.

Persons Testifying: (In support) Lisa Thatcher, Kitsap Public Utility District; and George Caan, Washington Public Utility District Association.

(Opposed) Mike Ennis, Association of Washington Business; and Betty Buckley, Washington Independent Telecommunications Association.

Persons Signed In To Testify But Not Testifying: None.