

SENATE BILL REPORT

3SHB 1498

As Reported by Senate Committee On:
Environment, Energy & Technology, March 26, 2019
Ways & Means, April 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: Passed House: 3/08/19, 95-1.

Committee Activity: Environment, Energy & Technology: 3/20/19, 3/26/19 [DPA-WM, DNP].

Ways & Means: 4/04/19, 4/08/19 [DPA].

Brief Summary of Amended Bill

- Establishes the Governor's Statewide Broadband Office.
- Requires the Public Works Board, in collaboration with the Governor's Statewide Broadband Office, to establish and administer a competitive grant and loan program to promote access to broadband service to unserved areas.
- Authorizes public utility districts to temporarily provide retail telecommunications services under certain conditions.
- Authorizes port districts to provide wholesale telecommunications services outside of their district limits.
- Modifies the state Universal Communications Services Program and extends the program by five years.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

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 and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Fortunato, Assistant Ranking Member, Environment; Billig, Brown, Das, Hobbs, Liias, McCoy, Nguyen, Rivers, Short and Wellman.

Minority Report: Do not pass.

Signed by Senator Ericksen, Ranking Member.

Staff: Angela Kleis (786-7469)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Liias, Palumbo, Pedersen, Rivers, Schoesler, Van De Wege, Wagoner and Warnick.

Staff: Sarian Scott (786-7729)

Background: Broadband Office. Until 2014, a broadband office within the Department of Commerce provided oversight and administration of a wide range of functions pertaining to high-speed Internet activities. The responsibilities of the office included coordination, programming, and outreach on broadband issues; procurement of a state broadband map; and oversight of implementation of federally funded or mandated broadband programs for the state.

Federal Communications Commission. The Federal Communications Commission (FCC) regulates interstate and international communication in promotion of several purposes, including competition, innovation, and investment in broadband services and facilities. The FCC's broadband speed benchmarks are download speeds of at least 25 megabits per second (Mbps) and upload speeds of at least three Mbps.

Broadband Grants and Loans. Federal grant and loan programs, supplemented by state programs, provide financial assistance to support expanding broadband Internet capability to underserved areas of the nation. Each program has different eligibility and funding requirements.

Utilities and Transportation Commission. The Utilities and Transportation Commission (UTC) is a three-member commission appointed by the Governor and confirmed by the Senate. The UTC regulates the rates, services, facilities, and practices of utilities and transportation services.

State Universal Service Program. In 2011, the FCC approved a process to end the complex system of fees, surcharges, and subsidies that support rural telephone companies, and transitioned federal monies toward expanding broadband services in unserved areas. To assist rural companies in this transition period, the Legislature established a temporary

Universal Communications Services Program (program) operated by the UTC. The program expires July 1, 2020.

The program is funded by legislative appropriations to the Universal Communications Services Account (account). Expenditures for the program may not exceed \$5 million. A telecommunications provider is eligible to receive distributions from the account if:

- the company has fewer than 40,000 access lines in the state;
- the company's customers are at risk of rate instability or service interruptions absent distributions to the company; and
- the company meets any other criteria established by the UTC.

Distributions from the account are made according to a formula developed by the UTC. If less than \$5 million is spent from the account in any fiscal year, the unspent portion must be carried over to subsequent fiscal years. Any money carried over is in addition to the \$5 million allotted for any subsequent year.

Public Utility Districts and Port Districts. Public utility districts (PUDs) are expressly authorized, among other things, to provide electricity, water, and sewer service. They have additional incidental and implied authorities necessary for accomplishing their primary purposes. PUDs are also allowed to provide wholesale services to other PUDs by contract.

Port districts in existence on June 8, 2000, may acquire and operate telecommunications facilities for their own internal telecommunications needs and to provide wholesale telecommunications services within their district limits.

Public Works Board. The Public Works Board (PWB), comprised of 13 members appointed by the Governor, administers the public works assistance account to provide loans and grants and to give financial guarantees to local governments for public works projects.

Summary of Amended Bill: State Broadband Speed Goals. State goals for access to broadband services that meet minimum download and upload speeds are established.

Broadband or broadband services mean any service providing advanced telecommunications capability and Internet access with transmission speeds that, at a minimum, provide 25 Mbps download and 3 Mbps upload.

Broadband Office. The Governor's Statewide Broadband Office (office) is established and has the power and duty to serve as the central broadband planning body for the state.

Beginning January 1, 2021, and every two years after that, the office shall report to the appropriate legislative committees on the office's activities during the previous two years including:

- an analysis of the current availability and use of broadband in the state;
- information gathered from anchor institutions determining the actual speed and capacity of broadband currently in use and the need for increases;
- an overview of incumbent state broadband infrastructure; and
- suggested policies and legislation to accelerate the achievement of state broadband speed goals.

Broadband Grant and Loan Program. The PWB, in collaboration with the office, must establish and administer a competitive grant and loan program to promote expanding access to broadband service in unserved areas of the state. Grants and loans may be awarded to assist funding middle mile and last mile infrastructure that supports broadband services and strategic planning for deploying broadband service to unserved areas.

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.

Grant and loan applications must include certain information such as project location; evidence regarding the unserved nature of the community; proposed actual download and upload speeds; estimated cost of retail services to end users; and demonstration of the project's sustainability. The PWB shall publish on its website proposed project locations, as well as proposed broadband speeds for each application submitted.

Existing broadband service providers near the proposed project areas may submit an objection, certified by affidavit, to the PWB demonstrating that (1) the project would result in overbuild, or (2) the objecting provider commits to providing broadband service equal to or greater than the state speed goals. If the PWB denies an application based on an objection and the objecting provider does not fulfill its commitment, then the PWB is prohibited from denying funding to an applicant on the basis of a challenge by the same provider for the following two grant and loan cycles.

When evaluating applications and awarding funds, the PWB shall give priority to applications for projects that are constructed in areas identified as unserved. The PWB may give priority to applications that meet specific criteria, such as provide assistance to public-private partnerships deploying broadband infrastructure or offers new or upgraded broadband service to important community anchor institutions. In addition, the PWB shall attempt to award funds to qualified applicants in all regions of the state and consider the affordability and quality of service to end users in making a determination on any application.

Grants and loans to a private entity must be conditioned on a guarantee the asset or infrastructure to be developed will be maintained for public use for at least 15 years.

The PWB must consult with the UTC prior to awarding funds. The UTC must provide the PWB with an assessment of the technical feasibility of a propose applications. Generally, funds awarded for a project may not fund more than 50 percent of the total cost of a project. However, the PWB may choose to fund up to 90 percent of the total cost of a project in financially distressed areas and in areas identified as Indian country. Funds awarded to a

single project must not exceed \$2 million, except the PWB may choose to fund projects in financially distressed areas and in areas identified as Indian country for up to \$5 million.

Funding. The Statewide Broadband Account is created in the State Treasury. Monies in the account may be spent only after appropriations. Funds from the account may only be used for certain expenditures including for grants and loans awarded under the program or to contract for a statewide broadband demand assessment. The PWB must maintain a separate account for any federal funds.

Public Utility Districts and Port Districts. A PUD is authorized to provide temporary retail services to customers if an Internet service provider (ISP), operating on a PUD telecommunications facility that provides wholesale services, ceases to provide Internet access to its customers and no other retail service providers are willing to provide service.

Within 30 days of the ISP ceasing to provide Internet access, the PUD must initiate a process to find a replacement ISP or provider. Until a replacement ISP or provider is in operation, the district commission may, for a maximum period of 11 months, establish a rate to provide Internet access and charge customers to cover expenses necessary.

Port districts in existence on June 8, 2000, may acquire and operate telecommunications facilities for their own internal needs and to provide wholesale telecommunications services within or outside of their district limits.

State Universal Communications Services Program. The purpose of the program is amended to include the provision, enhancement, and maintenance of broadband services.

A communications provider is eligible to receive distributions from the program if it has adopted a plan to provide, enhance, or maintain broadband services in its service area rather than if its customers are at risk of rate instability or service interruptions.

Distributions to eligible communications providers are based on criteria established by the UTC. Distributions must be proportionally reduced if the program does not have sufficient funds to fully fund the distribution formula. Expenditures from the account may be used for UTC expenses related to implementation and administration of the program.

The program is extended until 2025.

Reporting and Rule Making. By December 1, 2024, the UTC may report to the Legislature:

- on the adequacy of funding levels for each small telecommunications company to maintain reliable universal service;
- an analysis of the need for future program funding; and
- recommendations on potential funding mechanisms to improve the availability of communications services, including broadband service in unserved areas.

The UTC must initiate rule making to reform the program no later than 90 days following the effective date of this act. Rule making must address certain criteria such as adding broadband as a supported service and establishing broadband provider eligibility.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Removes the requirement for the UTC to provide the Public Works Board an assessment of the economic feasibility of a proposed application.

EFFECT OF ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE AMENDMENT(S):

- Requires the Public Works Board to collaborate with the Governor's Statewide Broadband Office when establishing and administering the competitive grant and loan program.
- Clarifies the financially distressed areas where the Public Works Board may choose to fund up to 90 percent of the total cost of a project.
- Provides a funding exemption for projects qualifying in financially distressed areas.
- Extends the time frame for which a PUD may provide retail telecommunications services from 5 to 11 months.
- Makes technical corrections.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Third Substitute House Bill (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: A lack of internet threatens safety and limits resources available to Washington residents in unserved areas. Modern communication services will help level the playing field. We need to build a program that is flexible to support various needs of areas across the state.

The amendment adopted by the committee for the Senate companion regarding tribal lands prioritization criteria and award fund expansion should be added to the bill. The state needs to recognize tribe investment in broadband infrastructure and development and they should be provided additional assistance to close the digital divide.

We have amendments regarding moving the grant and loan cap to \$5 million. Review of grant and loan applications should be conducted at the discretion of the PWB in consultation with the UTC. If the committee decides to establish an expert review, then it should include WaTech, Commerce, and the UTC. However, this will increase costs. We will provide language regarding extending the safe harbor provision to 11 months from 5 months.

OTHER: We are concerned with lack of protection for overbuild. The UTC should be involved in reviewing the grant and loan applications because they have the expertise. The UTC role in the review process is too limited.

Persons Testifying (Environment, Energy & Technology): PRO: Representative Zack Hudgins, Prime Sponsor; Al Aldrich, Grant County PUD; Michael Moran, Confederated Tribes of the Colville Reservation; Susie Allen, Councilmember, Confederated Tribes of the Colville Reservation; George Caan, Washington PUD Association; Dave Arbaugh, Chelan PUD, OCHIN; Peggen Frank, Hoh Tribe; Claire Ward, NoaNet; John Flanagan, Governor's Office.

OTHER: Ron Main, Broadband Communications Association of Washington; Mike Ennis, Association of Washington Business.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology):
No one.

Staff Summary of Public Testimony on Bill as Amended by Environment, Energy & Technology (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: A state broadband office within the Department of Commerce will allow us to help with the deployment of broadband infrastructure by connecting policymakers, providers, communities, state, and federal programs. I have circulated to staff a letter by USDA Secretary Perdue that was sent to Governor Inslee, that talks about a new federal solicitation \$600 million dollars in a reconnect program for rural broadband in unserved areas. When the USDA awards these funds, it matters if a state has a broadband plan in a broadband office. It matters if there is an office who can work to expedite administrative activities when necessary to achieve the build out timelines that are their expectation. It matters that there is an entity who can certify to where public funding has or has not been previously deployed. We encourage you to look to the House level ensuring we can deliver on the promise it makes ultimately to work towards the goal of border-to-border access to broadband in Washington by 2028.

Full funding for the broadband office is necessary. There was language in the Senate capital budget that inadvertently placed money in a different account than was originally intended. There is a broadband account created in the bill. The Senate appropriation on the capital side put that \$10 million into the Public Works Assistance Account and did not put it into the broadband account. There was some language restricting that money only to be used only to be used for grants and loans. That potentially damages the ability of the Public Works board to actually implement the program. At the same time, we had hoped to use some of the capital funding for things like data acquisition and gap analyses. The Universal Service Fund is an integral part of the state's broadband program. The House Budget had \$8 million. We are advocating for \$10 million. There are also some technical corrections that the UTC has requested around that.

We would like to request an amendment to the House bill. The amendment relates to the role of the UTC and how it reviews and consults with the Public Works Board on grant loan applications. In 1498, the UTC must provide the public works with an assessment of economic and technical feasibility of a proposed application. Originally, the association requested a three-member expert review panel take the place of the UTC, providing this assessment, this was part of the SB 5511, the companion bill as it left the Senate. Due to fiscal concerns about the impact of a panel, we would like to propose another option. The association appreciates the positive role the UTC can play in applying their expertise on the

technical feasibility of proposed projects. For example, they are bringing on an engineer to do that. However when it comes to economic feasibility of the project PUDs believe these decisions are better made through processes governed by locally elected officials commissioners who are authorized and elected to make economic decisions on behalf of the public they serve. PUDs build, operate, and replace broadband infrastructure based on the benefits to the communities they serve, and are accountable to the communities they serve.

CON: I am opposed to this bill. When I testified on its Senate companion, I was in support and cities are in support of the policy goals in this bill. There was a caveat to that support and that was if it was funded the new broadband account was funded the diversion of Public Works assistance in dollars and fortunately that is what has occurred. We are opposed to that diversion of funds out of the Public Works assistance account to this new funding program. We certainly read that broadband infrastructure is important but we do not think it should be funded at the expense of other traditional infrastructure. The Public Works Assistance Account is critical for funding basic infrastructure like wastewater treatment and drinking water. It helps us keep those costs low for ratepayers and helps us meet environmental mandates. We ask that you look for another option for funding this new broadband program and not divert money out of the Public Works Assistance Account.

Persons Testifying (Ways & Means): PRO: Scott Richards, Washington Public Utility Districts Association; John Flanagan, Governor's Office; Jasmine Vasavada, Department of Commerce.

CON: Candice Bock, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.