

FINAL BILL REPORT

2SSB 5511

C 365 L 19

Synopsis as Enacted

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, Liias, Mullet, Saldaña and Frockt; by request of Office of the Governor).

Senate Committee on Environment, Energy & Technology
Senate Committee on Ways & Means
House Committee on Innovation, Technology & Economic Development
House Committee on Capital Budget
House Committee on Appropriations

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.

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.

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 Internet capability in underserved 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 terminates on June 30, 2019.

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: 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 with the purpose to encourage, foster, develop, and improve affordable, quality broadband within the state. The office has the power and duty to:

- serve as the central broadband planning body for the state;
- coordinate with certain entities to promote the deployment of broadband infrastructure and greater broadband access;
- review existing broadband initiatives, policies, and investment;
- update the state's broadband goals and definitions as technology advances; and

- encourage public-private partnerships..

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 collected 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 Public Works Board (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 may give priority to applications that meet specific criteria, such as the project is located in an unserved area or the project 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 proposed application. 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 are made. 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. PUDs are 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 access to the Internet to its end-use 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 five months establish a rate to provide Internet access and charge customers to cover expenses necessary to provide Internet access. The tax treatment of the retail services provided by a PUD during this period must be the same as if those those retail services were provided by the defunct Internet service provider.

In addition to current law, 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 outside of their district limits. A port district may select a telecommunications company to operate all or a portion of the port district's telecommunications facilities.

State Universal Communications Services Program. The purpose of the State Universal Communications Services 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 established distribution formula. Expenditures from the account may be used for UTC expenses related to implementation and administration of the program.

The program is extended by five years.

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 including adding broadband as a supported service as well as establishing provider eligibility requirements and service performance and buildout requirements for funding recipients.

Votes on Final Passage:

Senate	47	0	
House	97	1	(House amended)
Senate	48	0	(Senate concurred)

Effective: July 28, 2019
May 13, 2019 (Sections 11 through 18, and Section 20)