

FINAL BILL REPORT

ESHB 1336

PARTIAL VETO

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Synopsis as Enacted

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).

House Committee on Community & Economic Development
Senate Committee on Environment, Energy & Technology

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.

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.

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.

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.

"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.

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, 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. The petition process and requirements are specified.

Cities, Towns, and Counties - Telecommunications.

There are several classifications of cities and towns: (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. 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.

Statewide Broadband Office.

The stated purpose of the Governor's Statewide Broadband Office (Office) is to encourage, foster, develop, and improve affordable, quality broadband to promote innovation, serve the growing needs of the state'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.

Public Works Assistance.

A county, city, or town must meet a number of requirements in order to receive financial assistance for a public works project from the Public Works Board. Except where necessary to address a public health need or substantial environmental degradation, a

county, city, or town planning under the Growth Management Act (GMA) may not receive financial assistance unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by the GMA. Under Public Works Board rules, a county, city, or town must be found by the Growth Management Hearings board to be in compliance with the GMA in order to be eligible for assistance.

Summary:

A PUD is authorized to provide wholesale telecommunications services as follows:

- within the district and by contract with another PUD;
- within an area in an adjoining county that is already provided electrical services by the district; or
- 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.

A PUD is authorized to provide retail telecommunications services or telecommunications facilities within the district's limits or without the district's limits by contract with another public utility district, 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.

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.

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

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

Before providing retail telecommunications services, PUDs, port districts, second-class cities, towns, and counties must report to their governing bodies and to the Office 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 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;
 - evidence that proposed telecommunications infrastructure will be capable of scaling to greater download and upload speeds to meet state statutory broadband goals;
 - sources of funding for the project that will supplement any grant or loan awards; and
 - a strategic plan to maintain long-term operation of the infrastructure, and the expected installation charges and monthly costs for end users.

For purposes of these reports, "unserved area" means an area of Washington in which households and businesses lack access to broadband service at a minimum 100 Mbps download speed and at a minimum 20 Mbps upload speed. The Office must post a review of the proposed projects on its website.

A county, city, or town planning under the GMA may receive financial assistance for a public works project that increases access to broadband even if it has not adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by the GMA. The relevant sections of the Washington Administrative Code must be amended by January 1, 2022, accordingly.

Votes on Final Passage:

House	60	37
Senate	27	22 (Senate amended)
House	65	32 (House concurred)

Effective: July 25, 2021

Partial Veto Summary: The Governor vetoed the provision that allowed a county, city, or town planning under the GMA that has not adopted a comprehensive plan, including a capital facilities element, and development regulations to receive financial assistance for a public works project that increases access to broadband and required relevant sections of the Washington Administrative Code to be amended by January 1, 2022.