

# SENATE BILL REPORT

## 2SSB 5511

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As Amended by House, April 16, 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:** Senate Committee on Ways & Means (originally sponsored by Senators Wellman, Sheldon, Carlyle, Short, McCoy, Nguyen, Takko, Cleveland, Darneille, Dhingra, Lias, Mullet, Saldaña and Frockt; by request of Office of the Governor).

**Brief History:**

**Committee Activity:** Environment, Energy & Technology: 2/05/19, 2/14/19 [DPS-WM].  
Ways & Means: 2/27/19, 2/28/19 [DP2S].

**Floor Activity:**

Passed Senate: 3/06/19, 47-0.

Passed House: 4/16/19, 97-1.

**Brief Summary of Second Substitute Bill**

- Establishes the Governor's Statewide Broadband Office.
- Requires the Public Works Board to establish 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 and extends the state Universal Communications Services Program.

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**SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY**

**Majority Report:** That Substitute Senate Bill No. 5511 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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*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.*

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

**Staff:** Angela Kleis (786-7469)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 5511 be substituted therefor, and the second substitute bill do pass.

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

**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 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 of Second Substitute 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; 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) 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 establish an expert review panel charged with providing the PWB with an assessment of the economic and technical feasibility of applications. Funds awarded for a project may not fund more than 50 percent of the total cost of a project and, except as provided, must not exceed \$2 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. 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 11 months establish a rate to provide Internet access and charge customers to cover expenses necessary to provide Internet access.

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 or outside of their district limits.

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 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 July 1, 2024.

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.

**Appropriation:** The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

**Fiscal Note:** Available.

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

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill (Environment, Energy & Technology):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill facilitates the coordination of reliable and affordable broadband for the people that need it the most. Broadband services support economic development in rural

communities; provide access to family members; and increase access to core services such as healthcare and education including digital learning. Reliable broadband is not a luxury. It is a need. The lack of service poses real safety concerns. There is currently no common place where people can get assistance from the state. The Broadband Office could help fill this need. We continue to see reductions in funds at the federal level. We need these grants and loans to keep projects going. We have some concerns about the funding and diversion of funds.

OTHER: We have concerns about the eligibility requirements for grant and loans. The bill seems to focus more on the underserved rather than the unserved.

**Persons Testifying (Environment, Energy & Technology):** PRO: Senator Lisa Wellman, Prime Sponsor; Candice Bock, Association of Washington Cities; George Caan, Washington Public Utility Districts Association; Dave Arbaugh, Chelan County PUD and OCHIN; Al Aldridge, Grant County PUD; Joel Myer, Mason County PUD #3; Carolyn Logue, Washington Library Association; Susie Allen, Councilmember, Colville Business Council; Tyson Johnston, Vice President, Quinault Indian Nation; John Flanagan, Governor's Office; Mark Barkley, Commerce; Claire Ward, NoaNet; Peggen Frank, Hoh Tribe; Mara Machulsky, Public Works Board; Mike Oblizalo, Hood Canal Communications; Karin Leaf, Mason County Economic Development Council; Rick Vitzthum, Tenino/Kalama Telephone Companies.

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

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

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: We support broadband all across the state. We are fully capable of integrating the additional responsibilities included in the bill as long as it is funded. The PWB is already a resource for the community. We support the five year extension of the program. The bill merely is aspirational if you do not provide funding. We are concerned that OSPI was not at the table. Our students need access to broadband to be successful in school. Please recognize that tribes have different needs and assistance requirements. The lack of strong, reliable Internet is a threat to our community. We need assistance with funding broadband infrastructure. We recommend a \$10 million instead of \$2 million limit for awards. We recommend removing amendatory language that was added in the policy committee and revised the structure and role of the advisory board. We do not support the transfer of funds from the PWB. We have concerns with the time frame of the safe harbor provision. We need more time to provide acceptable customer service. We are asking for the time frame to be extended from 6 to 12 months. There is a backlog of projects and funds have already been accounted for.

**Persons Testifying (Ways & Means):** PRO: Michael Moran, Confederated Tribes of the Colville Reservation, WSSRA; Scott Richards, Washington Public Utility Districts Association; Shaun Seaman, Chelan County Public Utility District; JC Baldwin, Public

Works Board; Betty Buckley, Washington Independent Telecommunications Association; Peggen Frank, Hoh Tribe; Candice Bock, Association of Washington Cities.

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

**EFFECT OF HOUSE AMENDMENT(S):**

- Requires the PWB to collaborate with the Office on establishing and administering the grants and loans programs.
- Eliminates the requirement that an applicant to the PWB grants and loans program provide information about the kind and amount of broadband infrastructure to be purchased for a project.
- Removes the requirement for the PWB to give top priority to tribal reservations in rural and remote regions when endeavoring to award funds to qualified applicants in all regions of the state.
- Authorizes the PWB to fund up to 90 percent of the total cost of a project, up to \$5 million, in financially distressed areas and areas identified as Indian country.
- Requires the PWB to consult with the UTC rather than an expert review panel.
- Requires the UTC to provide the PWB with an assessment of the technical feasibility of a proposed application.
- Requires a PUD providing retail telecommunications services to keep separate accounting for any revenues and expenditures for those services and to dedicate any revenues received from the provision of wholesale or retail telecommunications services to costs incurred to build and maintain telecommunications facilities.
- Modifies the maximum period of time during which a PUD is authorized to provide retail telecommunications services from eleven months to five months.
- Specifies that the tax treatment of the retail telecommunications services provided by a PUD must be the same as if those retail telecommunications services were provided by the defunct internet service provider.
- Provides that the act is null and void if specific funding for the purposes of the act is not provided by June 30, 2019, in the omnibus appropriations act.