

# HOUSE BILL REPORT

## E2SHB 1723

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**As Passed House:**

February 12, 2022

**Title:** An act relating to closing the digital equity divide by increasing the accessibility and affordability of telecommunications services, devices, and training.

**Brief Description:** Closing the digital equity divide by increasing the accessibility and affordability of telecommunications services, devices, and training.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Gregerson, Taylor, Ryu, Johnson, J., Berry, Valdez, Goodman, Macri, Peterson, Ramel, Simmons, Wylie, Slatter, Bergquist, Pollet, Ortiz-Self, Dolan, Stonier, Riccelli, Ormsby, Harris-Talley, Hackney, Kloba and Frame).

**Brief History:**

**Committee Activity:**

Community & Economic Development: 1/11/22, 1/18/22 [DPS];

Appropriations: 1/27/22, 2/1/22 [DP2S(w/o sub CED)].

**Floor Activity:**

Passed House: 2/12/22, 68-30.

**Brief Summary of Engrossed Second Substitute Bill**

- Establishes the Washington Broadband Assistance Program to assist low-income persons with the costs of eligible voice and broadband services.
- Creates the Anchor Institution Digital Equity Program for the purpose of providing discounted rates for telecommunications services and discounted telecommunications infrastructure costs to qualifying anchor institutions.
- Makes modifications to the Community Technology Opportunity Program, including renaming it the Digital Equity Opportunity Program and redefining its purpose to be the advancement of broadband adoption

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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 part of the legislation nor does it constitute a statement of legislative intent.*

and digital equity.

- Establishes the Digital Equity Planning Grant Program to provide grants to local governments, institutions of higher education, workforce development councils, or other entities to fund the development of a digital equity plan for a discrete geographic region of the state.
- Codifies the Digital Equity Forum (Forum) and adds a provision allowing funds to be used to compensate, for any work done in connection with the Forum, additional persons with lived experience navigating barriers to digital connectivity.

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## HOUSE COMMITTEE ON COMMUNITY & ECONOMIC DEVELOPMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Ryu, Chair; Paul, Vice Chair; Boehnke, Ranking Minority Member; Donaghy, Frame, Johnson, J., Rule and Taylor.

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

**Minority Report:** Without recommendation. Signed by 4 members: Representatives Chase, Assistant Ranking Minority Member; Corry, Jacobsen and Sutherland.

**Staff:** Cassie Jones (786-7303).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Community & Economic Development. Signed by 18 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Stonier, Sullivan and Tharinger.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Chandler, Dye and Jacobsen.

**Minority Report:** Without recommendation. Signed by 8 members: Representatives MacEwen, Assistant Ranking Minority Member; Boehnke, Harris, Hoff, Rude, Schmick, Springer and Steele.

**Staff:** Jessica Van Horne (786-7288).

## **Background:**

### State Broadband Office.

The statutory purpose of the Statewide Broadband Office (SBO) 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, public safety systems, industries and business, governmental operations, and citizens, and improve broadband accessibility for unserved communities.

Among other duties, the SBO has a duty to serve as the central broadband planning body for the state and to coordinate with local governments, tribes, public and private entities, nonprofit organizations, and utilities to develop strategies to promote deployment of broadband infrastructure and greater broadband access. The SBO may assist applicants for broadband grants and loans through the Public Works Board with seeking federal funding or matching grants for deploying broadband services.

The SBO's statutory speed goals for broadband 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 one 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.

### Digital Equity Forum.

The Digital Equity Forum (Forum) was established in the 2021 Operating Budget. The stated purpose of the Forum is to develop recommendations to advance digital connectivity in Washington. In developing its recommendations, the Forum must:

- develop goals that are consistent with the SBO's statutory broadband speed goals;
- strengthen public-private partnerships;
- solicit public input through public hearings or informational sessions;
- work to increase collaboration and communication between local, state, and federal governments and agencies; and
- recommend reforms to universal service mechanisms.

The directors of the SBO and the Office of Equity are responsible for appointing participating members of the Forum. In making appointments, the directors must prioritize appointees representing federally recognized tribes, state agencies involved in digital equity, and underserved and unserved communities, including historically disadvantaged communities. Four legislators may serve on the forum in an ex officio capacity. Each member of the Forum shall serve without compensation. The SBO must transmit the Forum's recommendations to the Legislature.

### Revised Code of Washington.

The Revised Code of Washington (RCW) is the compilation of all permanent laws now in force. It is a collection of Session Laws (enacted by the Legislature, and signed by the Governor, or enacted via the initiative process), arranged by topic, with amendments added and repealed laws removed. It does not include temporary laws such as appropriations acts.

Community Technology Opportunity Program.

The Community Technology Opportunity Program (CTOP) provided organizational and capacity-building support for community technology programs throughout the state and identified and facilitated the availability of other public and private sources of funds to enhance the purposes of the CTOP and the work of community technology programs. A portion of the CTOP funds were distributed through a competitive grant program. The grants were to be used by community technology programs to provide: (1) training and skill-building opportunities; (2) access to hardware and software; (3) Internet connectivity; (4) digital media literacy; (5) assistance in the adoption of information and communication technologies in low-income and underserved areas of the state; and (6) development of locally relevant content and delivery of vital services through technology. Among other grant application requirements, applicants were required to provide evidence of matching funds equivalent to at least 25 percent of the grant amount. The account used to fund the CTOP was repealed in 2019.

**Summary of Engrossed Second Substitute Bill:**

Washington Broadband Assistance Program.

The Washington Broadband Assistance Program (Broadband Assistance Program) is established within the Department of Social and Health Services (DSHS) to assist low-income persons with the costs of eligible voice and broadband services. Subject to the availability of amounts appropriated for this specific purpose, telecommunications providers providing voice and broadband services must provide those services to low-income persons in accordance with the Broadband Assistance Program. Telecommunications providers must inform new customers of the Broadband Assistance Program when enrolling them for services to the extent that the program is funded. The DSHS must notify telecommunications providers when annual appropriations made for the Broadband Assistance Program have been fully obligated.

The DSHS must determine eligibility of low-income persons and must, subject to the availability of amounts appropriated for this specific purpose, reimburse each telecommunications provider the balance of the price charged. The DSHS may adopt rules to implement the Broadband Assistance Program but may not limit low-income persons to receiving support on only one line. "Low-income" is to be defined by the DSHS, provided that the definition may not exceed the higher of 80 percent of area median income or the self-sufficiency standard as determined by the University of Washington's self-sufficiency calculator. The DSHS must consult with the Office of Equity regarding: (1) methods for administering the Broadband Assistance Program that will reduce barriers to participation;

and a plan for outreach, eligibility determination assistance, and enrollment navigation.

The Utilities and Transportation Committee (UTC) must annually establish by rule which services are eligible for inclusion in the Broadband Assistance Program.

Telecommunications providers determine the rates for eligible services. The UTC must, by rule, determine the amount of reimbursement to telecommunications providers under the Broadband Assistance Program. In determining the amount of assistance to be provided, the UTC must consider: (1) the appropriation for the Broadband Assistance Program for that fiscal period; (2) the number of low-income persons expected to participate; (3) the price of eligible services; (4) other assistance programs available to low-income persons; and (5) other reasonable facts and circumstances. The UTC must also adopt by rule guidelines to ensure reduction of barriers to enrollment.

#### Anchor Institution Digital Equity Program.

The Anchor Institution Digital Equity Program (AIDE Program) is established. The SBO must develop, implement, and administer the AIDE Program for the purpose of providing discounted rates for telecommunications services, including broadband service, and discounted telecommunications infrastructure costs, including broadband infrastructure, to qualifying anchor institutions. Anchor institution is defined as a public school, a public housing authority, a library, a medical or health care provider, a community college or other institution of higher education, a state library agency, courts, early learning centers, homelessness shelters, group homes, community centers, elder care facilities, foster care providers, community-based organizations, and other nonprofit or governmental community support organizations. The SBO must consult with the Office of the Superintendent of Public Instruction, the state library, and the DSHS in developing and implementing the AIDE Program.

Eligible applicants include, but are not limited to, customers that receive discounts under the E-Rate Program administered by Universal Services Administration. The discount under the AIDE Program must be: (1) a minimum of 50 percent for broadband service; (2) a minimum of 25 percent for basic telecommunications services; and (3) applied after applying an E-Rate discount. Anchor institutions may apply for, and the SBO may provide, partial or full discount of telecommunications infrastructure costs. The SBO must determine the infrastructure costs that are eligible for discount under the AIDE Program.

The SBO must develop a process to prioritize applications for funding among eligible applicants under the AIDE Program. The SBO must prioritize applications based on the following factors: (1) the extent to which the application meets the state policy objective of bridging the digital divide; and (2) for broadband service discounts, the extent to which the service provided to the applicant is consistent with Washington's statutory broadband speed goals. The SBO may adopt rules to implement the AIDE Program.

#### Digital Equity Opportunity Program.

The CTOP, administered by the Department of Commerce (Commerce), is renamed to

become the Digital Equity Opportunity Program (Opportunity Grant Program). The Opportunity Grant Program is created to advance broadband adoption and digital equity and inclusion through the state.

The Opportunity Grant Program must provide organizational and capacity-building support to digital equity programs throughout the state and additional support for the purpose of: (1) evaluating the impact and efficacy of activities supported by grants awarded under the covered programs; and (2) developing, cataloging, disseminating, and promoting the exchange of best practices in order to achieve digital equity.

The Opportunity Grant Program includes a competitive grant program to provide grants for community technology programs to advance digital equity and digital inclusion by providing: (1) training and skill-building opportunities; (2) access to hardware and software; (3) Internet connectivity; (4) digital media literacy; (5) assistance in the adoption of information and communication technologies in low-income and underserved areas of the state; and (6) development of locally relevant content and delivery of vital services through technology; and (7) technical support. The requirement to provide matching funds is eliminated.

The Forum must review grant applications to provide input to Commerce regarding the prioritization of applications in awarding grants. Commerce must consider the input provided by the Forum and the extent to which the mix of grants awarded would increase the number of prekindergarten through grade 12 students gaining access to greater levels of digital inclusion.

#### Digital Equity Planning Grant Program.

Commerce must establish a Digital Equity Planning Grant Program (Planning Grant Program) to provide grants to local governments, institutions of higher education, workforce development councils, or other entities to fund the development of a digital equity plan for a discrete geographic region of the state.

Commerce must evaluate and rank applications using both objective and subjective criteria. Priority must be given for applications accompanied by express support from certain nonprofit organizations, public development authorities, federally recognized Indian tribes, or other certain community partners that intend to use community-based participatory action research methods. Commerce must also consider input from the Forum in awarding grants and how the grants awarded would increase the number of prekindergarten through grade 12 students gaining greater access to digital inclusion. Commerce must develop criteria for the contents of digital equity plans and may adopt rules as necessary to implement the Planning Grant Program.

#### State Broadband Office.

The statutory purpose of the SBO is modified to include improving broadband accessibility and adoption for unserved and underserved communities and populations. Public housing

agencies are added to the statutory list of entities with which the SBO must coordinate to develop strategies to promote deployment of broadband infrastructure and greater broadband access.

In addition to applicants for Public Works Board broadband grants and loans, the SBO may assist applicants for the Opportunity Grant Program and the Planning Grant Program with seeking federal funds or matching grants for deploying or increasing adoption of broadband services.

The SBO must coordinate outreach to hard-to-reach and low-income communities across the state to provide information about broadband programs available to consumers in these communities. The outreach effort must be reviewed by the Office of Equity annually.

#### Digital Equity Forum.

The Forum is codified in the RCW. A provision is added that allows funds to be used to compensate, for any work done in connection with the Forum, additional persons with lived experience navigating barriers to digital connectivity.

#### Digital Equity Account.

The Digital Equity Account is created in the State Treasury. The Legislature may appropriate moneys in the account only for the purposes of the Broadband Assistance Program, the AIDE Program, Opportunity Grant Program, and the Planning Grant Program.

#### Miscellaneous Provisions.

The secretaries or directors of the DSHS, the UTC, Commerce, and the SBO, or their designee, may take any action necessary to ensure that the provisions of the act are implemented by the relevant effective dates.

A severability and a null and void clause are included.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 14, 2022.

**Effective Date:** The bill takes effect July 1, 2023, except for the following sections, which take effect 90 days after adjournment of the session in which the bill is passed: section 406, relating to the Digital Equity Forum; section 601, relating to authority of the Department of Social and Health Services, the Utilities and Transportation Committee, and Department of Commerce to take actions necessary to implement the act; section 602, relating to effective dates; and section 603, a severability provision. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Community & Economic Development):**

(In support) Despite investment, policy changes, and help from the federal government, there is still work to do to close the digital divide. People still struggle to access and use the internet and participate in society. New, funded programs are needed to address access and digital literacy. The programs in the bill have been discussed for two years. Each one does its part to help give Washingtonians the resources they need to get online wherever they are. The Digital Equity Forum is also codified in the bill. Lack of devices and slow Internet speeds are interfering with the ability of individuals to learn digital literacy. Many of these individuals are black, Indigenous, people of color (BIPOC), and students at Title I schools across the nation. This bill is a step in the right direction to close the digital divide, including by expanding affordability and infrastructure.

The bill should also include a focus on structural racism and people with lived experience. There is disparity regarding access to the Internet based on race between urban and rural communities. This bill will help address these issues by creating new programs. This bill should address structural racism by making it easier for black and BIPOC individuals to apply for assistance. Underserved and unserved definitions should be expanded to include additional groups. Raising minimum speeds is important to serve families of color and larger families with many devices. Support for digital navigators, including those already providing services in public libraries, is also critical.

With the pandemic putting focus on the digital divide, there is also opportunity to create new ways to support communities at the state level. The SBO could take on this work in a more coordinated way. Low-income families and refugee and immigrant families may have difficulty getting access to computers; programs that help address this can be very helpful to people seeking education and change their lives and their families' lives.

Those without access were left out during the pandemic. The digital divide for low-income families means less access to food, shelter, and personal safety. It also means limited or no access to COVID-19 resources. It has also meant getting behind in school. Continued lack of access means continued exclusion from vital services, employment, and the ability to navigate life. Prekindergarten digital equity programs should be included in the program in order to recognize the importance of access to education for early learners. This is especially important in the context of school closures due to COVID-19. Ongoing financial investment is critical. Bridging the digital divide is imperative for education equity for all students.

(Opposed) There are concerns with Part 2 of the bill because it does not recognize significant federal investments, such as the Emergency Broadband Benefit Program, which has been widely utilized. A new program would be duplicative of this and other federal programs. Part 2 of the bill is also against federal law due to a prohibition on state regulation of wireless rates.

(Other) This bill works to continue efforts to increase internet access and affordability for historically marginalized people as well as underserved and underserved people. COVID-



19 has shown huge disparities across the state and what universal broadband would mean for all. Courts could be considered an anchor institution for purposes of the legislation. Offering individuals access to the courts remotely benefits everyone. Currently, courts in rural areas are not able to offer court services remotely and this is unjust for those who do not have access to those services much more conveniently and at lower cost. This bill is an important step forward to strengthening digital literacy and equity. There are some definitions and mechanisms that may cause confusion in its implementation. The proposal is also preempted by federal law. The AIDE Program should focus on institutions that are not eligible for federal funds.

**Staff Summary of Public Testimony (Appropriations):**

(In support) Closing the digital equity divide is one of the biggest issues of our time, especially during the COVID-19 pandemic. Closing the divide will mean ensuring everyone has digital literacy, appropriate and affordable devices, and digital security. Infrastructure is not the only tool necessary to ensure broadband access. Other tools are needed to ensure rural communities, communities of color, low-income communities, and other groups hit hard by the pandemic can access affordable broadband. The programs proposed in this bill would serve as a critical companion to current investments in broadband infrastructure. The bill would help all Washingtonians access digital opportunities and will increase the effective use of government services. Individuals and businesses would benefit from closing current gaps in broadband service. Assisting businesses will also help grow local economies.

(Opposed) Wireless providers have concerns regarding the language that would compel providers to participate in the new Broadband Access Program. The Federal Communications Act preempts this section. Allowing voluntary participation would alleviate this concern around federal preemption.

(Other) None.

**Persons Testifying (Community & Economic Development):** (In support) Representative Mia Gregerson, prime sponsor; Shira Rosen and Cat Howell, Literacy Source; Albert Sardinias, Washington Build-Back Black Alliance; Shaun Glaze, Black Brilliance Research Project; Sandra Castaneda, Puget Sound Training Center; Kathleen Perez; Lili Gu; Courtenay Burns, Waterford Institute; Eileen Aparis and Huan Do, Evergreen Goodwill of Northwest Washington; Logan Endres, Washington State School Directors' Association; Gladis Clemente, Villa Comunitaria; Simone Boe, Washington Education Association; Sabrina Roach; Dorene Cornwell; and Carolyn Logue, Washington Library Association.

(Opposed) Jeff Gombosky, CTIA - The Wireless Association.

(Other) Ernie Rasmussen, Washington State Broadband Office; Molly Jones, Washington Technology Industry Association; and Judith Ramseyer, Superior Court Judges'

Association.

**Persons Testifying (Appropriations):** (In support) Representative Mia Gregerson, prime sponsor; Michael Shepard; Mario Villanueva, Washington State Catholic Conference; David Keyes, City of Seattle; and Yanira Cisneros, Yakima County Development Association.

(Opposed) Jeff Gombosky, CTIA - The Wireless Association.

**Persons Signed In To Testify But Not Testifying (Community & Economic Development):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.