

SENATE BILL REPORT

ESHB 1336

As Reported by Senate Committee On:
Environment, Energy & Technology, March 25, 2021

Title: An act relating to creating and expanding unrestricted authority for public entities to provide telecommunications services to end users.

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).

Brief History: Passed House: 2/23/21, 60-37.

Committee Activity: Environment, Energy & Technology: 3/11/21, 3/25/21 [DPA, DNP, w/oRec].

Brief Summary of Amended Bill

- Authorizes a public utility district, port district, town, second-class city, and county to provide retail telecommunications services.
- Provides an exception for increasing access to broadband to provisions regarding a county, city, or town planning under the Growth Management Act.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass as amended.

Signed by Senators Lovelett, Vice Chair; Das, Hobbs, Liias, Nguyen, Sheldon and Stanford.

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.

Minority Report: Do not pass.

Signed by Senators Ericksen, Ranking Member; Brown and Short.

Minority Report: That it be referred without recommendation.

Signed by Senators Carlyle, Chair; Wellman.

Staff: Angela Kleis (786-7469)

Background: Public Utility District. A public utility district (PUD) in existence on June 8, 2000, may construct and operate any telecommunications facilities within or without the PUD's limits for the following purposes:

- for the PUD's internal communications needs; and
- for providing wholesale telecommunications services within the district and by contract with another PUD.

PUD authority to provide retail telecommunications services to end users is limited to when:

- an Internet service provider (ISP) operating on a PUD's facility stops providing services to customers and no other retail service providers are willing to provide service—restrictions are prescribed; and
- a PUD that meets certain requirements is petitioned to provide such services—petition requirements are specified.

Port District. A port district (port) in existence on June 8, 2000, may construct and operate any telecommunications facilities within or without the district's limits for the following purposes:

- for the port's own use; and
- for the provision of wholesale telecommunications services within or without the district's limits.

A port that has not exercised its authority by June 7, 2018, must develop a business case plan before exercising this authority. The business case plan must be reviewed by an independent qualified consultant. Ports do not have the authority to provide telecommunications services to end users.

Counties, Cities, and Towns. The state Constitution requires the Legislature to provide a uniform system for county and city government; however, it allows cities that meet population specifications and counties to adopt home rule charters establishing differing governing systems as long as no provision is contrary to current federal or state laws. In addition, the Optional Municipal Code provides broad home rule powers to cities that meet certain requirements.

Cities are municipal corporations classified according to their population at the time of organization. First-class cities are those with a population of 10,000 or more that have

adopted a city charter. Second-class cities are those with a population of 1500 or more that have not adopted a city charter and do not operate under the Optional Municipal Code. Towns have a population of less than 1500 and do not operate under the Optional Municipal Code.

According to a 2003 attorney general opinion, charter counties and first-class cities and cities operating under the Optional Municipal Code have the authority to offer telecommunications services to their residents to the extent not specifically barred by statute. These municipalities with home rule powers do not need express or implied statutory authority to enact local legislation. Other cities, towns, and counties are limited to those powers granted by statute and currently do not have this authority.

Public Works Board-Financial Assistance. To qualify for certain financial assistance, the Public Works Board (PWB) must determine a local government meets specified conditions, such as the local government has developed a capital facility plan. Except where necessary to address a public health need or substantial degradation, a county, city, or town planning under the Growth Management Act (GMA) may not receive financial assistance from the PWB unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required under the GMA.

Summary of Amended Bill: Retail Authority. A PUD may construct and operate telecommunications facilities to provide either retail or wholesale, or both, telecommunications services:

- within the district; or
- outside of the district by contract with another PUD, any political subdivision of the state authorized to provide retail services in the state, or with any federally recognized tribe located in the state.

A port may construct and operate telecommunications facilities to provide retail telecommunications services within or outside of the district's limits.

A town, second-class city, and county may construct and operate telecommunication services or telecommunications facilities to provide its inhabitants with telecommunications services.

Reports. Before providing retail telecommunications services, PUDs and ports are encouraged to examine and report to its governing body the following about the area to be served:

- an assessment of current availability of broadband infrastructure and its adequacy to provide high-speed Internet access to end users;
- the location where retail services will be provided;
- evidence relating to the unserved or underserved nature of the community;
- expected costs of providing retail services to customers; and
- evidence that the proposed infrastructure will be scalable to meet statutory broadband

goals.

For the purposes of this report, unserved means a census block in which no provider has the capacity to deliver Internet access service at speeds of a minimum 25 megabits per second (Mbps) download and 3 Mbps upload.

Repeals. The following are repealed:

- authority for a PUD to provide retail services when an Internet service provider operating on a PUD facility stops providing services to customers and no other retail service providers are willing to provide service;
- authority for certain PUDs that are petitioned to provide such retail services; and
- the requirement for a port that has not exercised its wholesale authority by June 7, 2018, to develop a business case plan prior to exercising this authority.

Public Works Board-Financial Assistance. An exception for increasing access to broadband is added to the provision that a county, city, or town planning under the 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. The relevant sections of the Washington Administrative Code (WAC) must be amended by January 1, 2022, accordingly.

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

- Adds an exception for increasing access to broadband to the provision that a county, city, or town planning under the GMA may not receive financial assistance for a public works project unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by the GMA.
- Requires the relevant sections of the WAC to be amended by January 1, 2022, accordingly.

Appropriation: None.

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 Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: We should not restrict PUD, port, city, and county authority to serve their communities. Certain cities have unrestricted retail services. The bill does not mandate broadband. It removes restrictions that prohibit municipalities from serving the public and provides flexibility and

opportunity to collaborate in order to provide people with more solutions and options.

Without retail authority, we cannot access federal funds. It will take too long to build out to all areas. Federal funds are needed for costly Internet highway builds.

The current structure is not meeting the needs of our communities. This is an equity issue in rural and urban areas. It is critical to make broadband available to everyone. We need reliable, affordable Internet service to educate our children, provide access to telehealth, and recruit businesses to our areas.

CON: Private companies have invested billions in broadband infrastructure. Retail authority alone will not ensure access to federal funds. The bill does not prevent overbuild, provide guardrails, or ensure the unserved will get served first. Public entities would be able to selectively pick where they want to provide service. This bill would have a significant negative impact on my lively hood.

OTHER: This is a step in the right direction but recommend continuing to focus on unserved areas. Municipal service could be helpful to unserved areas. Washington is one of the most connected states. This bill risks disrupting this success.

Persons Testifying: PRO: Representative Drew Hansen, Prime Sponsor; Mitchell Harper; Nancy Chamberlain, Washington State PTA; Phoebe Walker, ASUW Seattle; Derek Young, Pierce County Council; Janet St Clair, Island County Board of Commissioners; Tori Emerson, Washington State PTA; George Caan, WPUDA; Len McComb, Two Medicine Communications; Greg Brotherton, Jefferson County Commissioner; Sharon Trask, Mason County Board of Commissioners; Laura Bernstein, Share The Cities Action Fund; Joe Poire, Port of Whitman County; Thomas Spencer, Associated Students of WSU-Vancouver; Bob Hunter, Kitsap PUD; Debra Lester, Kitsap PUD; Christine Grant, Whatcom County Public Utility District; Sara Young, Port of Skagit; Anne Johannsen, Teacher, North Mason; Lorrell Noahr, Washington Education Association; Justin Holzgrove, Mason County PUD No. 3; Chris Roden, Lewis County Public Utility District; Lisa Grant, Centralia School District; Gaelon Spradley, Valley View Health Center; Megan Evander, Winlock School District; Cynthia Swift, East Lewis County Chamber of Commerce; Angie Brown, Lewis County Title; Frank Corbin; Rob Kopp, Northwest Open Access Network.

CON: Gail Long, TDS Telecom; Mark Martell, RTI-Pend Oreille Telecom; Mike Ennis, Association of Washington Business; Mike Oblizalo, Hood Canal Communications; Steve Appelo, Wahkiakum West; Michor Hodgen, Kalama Telephone Company; David Ducharme, Broadband Communications Association of Washington; Forbes Mercy, Washington Broadband, Inc; Rick Vitzthum, Scatter Creek Ltd; Betty Buckley, Washington Independent Telecommunications Association; Donna Hilty, Whidbey Telecom; Dale Merten, ToledoTel.

OTHER: Stephanie Swanberg, Tri-City Regional Chamber of Commerce; Doug Brake, Information Technology and Innovation Foundation; Rick Cimerman, The Internet and

Television Association; Russ Elliott, Washington State Broadband Office.

Persons Signed In To Testify But Not Testifying: No one.