

SENATE BILL REPORT

2SSB 5383

As Amended by House, April 11, 2021

Title: An act relating to authorizing public utility districts and port districts to provide retail telecommunications services in unserved areas under certain conditions.

Brief Description: Authorizing public utility districts and port districts to provide retail telecommunications services in unserved areas under certain conditions.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Wellman, Short, Hunt, King, Lovelett, Nguyen, Randall, Saldaña, Warnick, Wilson, C. and Wilson, L.).

Brief History:

Committee Activity: Environment, Energy & Technology: 2/03/21, 2/11/21 [DPS-WM].
Ways & Means: 2/18/21, 2/22/21 [DP2S, DNP].

Floor Activity: Passed Senate: 2/26/21, 43-3.
Passed House: 4/11/21, 62-36.

Brief Summary of Second Substitute Bill

- Authorizes a public utility district or port district to provide retail telecommunication services in an unserved area.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: That Substitute Senate Bill No. 5383 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Ericksen, Ranking Member; Das, Fortunato, Hobbs, Lias, Nguyen, Sheldon, Short, Stanford and Wellman.

Staff: Angela Kleis (786-7469)

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.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5383 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Braun, Carlyle, Conway, Darneille, Dhingra, Gildon, Hasegawa, Hunt, Keiser, Lias, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Minority Report: Do not pass.

Signed by Senators Honeyford, Assistant Ranking Member, Capital; Schoesler, Assistant Ranking Member, Capital.

Staff: Richard Ramsey (786-7412)

Background: State Broadband Office. The purpose of the Governor's Statewide Broadband Office (office) is to encourage and develop affordable, quality broadband within the state to promote innovation, serve the growing needs of Washington's systems, and improve broadband accessibility for unserved communities.

The office's statutory 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.

Retail Telecommunications Services-Public Utility District. Under current law, unless specified, a public utility district (PUD) is not authorized to provide retail telecommunication services to customers.

Temporary Authority. A PUD may provide retail telecommunication services to customers if an Internet service provider (ISP) operating on a PUD telecommunications facility ceases to provide Internet services to customers and no other retail service providers are willing to provide service. The PUD must find a replacement provider and may only provide retail services to customers for a maximum of five months. The tax treatment of retail services provided by a PUD must be the same as if those retail services were provided by the defunct ISP.

Authority for Certain PUDs. A PUD that 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 services only when all of the existing providers cease to provide retail services or provide inadequate end-user service.

The authority to provide retail services 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 Internet service. Petition requirements are specified.

Summary of Second Substitute Bill: A PUD or a port district may provide retail telecommunications services to an end-user in an unserved area if it is notified by the office that an existing service provider has not filed an objection and a broadband service plan (plan). PUDs are authorized to provide wholesale telecommunications services to an area currently served with electrical service in an adjoining county.

Prior to beginning a project, a PUD or a port district must notify the office of its intent to provide service to an unserved area. The office must post this intent on its public website.

An existing service provider has 30 days within the posting of this intent to submit to the office an objection to the project demonstrating that it would result in overbuild. If the provider intends to prevent overbuild, it must also submit a plan to the office. A service provider objecting to a PUD or a port district providing retail services must demonstrate that it will provide end users with speeds of at least 100 Mbps download and 20 Mbps upload. The service provider plans are not subject to public inspection.

The office may request additional information to authenticate an objection and must communicate with the PUD or port district whether it received an objection to a proposed project. PUDs and port districts may enter into mediation with service providers if an objection is submitted.

The office is required to notify an affected PUD or port district if a service provider does not fulfill its commitment to provide services within six months and authorize the PUD or port district to commence work. If a service provider did not fulfill its commitment is prohibited from objecting to projects for the next 18 months.

A PUD or port district providing retail telecommunications services to unserved areas is required to operate an open access network.

By December 31, 2023, the office must submit a report to the Legislature evaluating the effectiveness of authorizing a PUD to provide retail telecommunication services to unserved areas as provided in this act.

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 First Substitute (Environment, Energy & Technology): PRO: We have long supported the idea that PUDs and ports should be able to provide retail services to unserved areas. We propose changing the target from 150 Mbps to 100/20 Mbps. This bill takes the right approach to bring service to those still unserved and prevent overbuild with the inclusion of the challenge process. The bill would allow PUDs to seek federal funds for unserved areas.

CON: We do not like the idea a private company can veto PUD service through the challenge process. It might allow one large for-profit to limit the expansion of broadband. In order to access federal funds, we need full retail authority. As drafted, the bill is limited to only the unserved. The challenge process undermines communities that petition a PUD to provide retail services.

OTHER: We support the general direction of the bill because it gets service out to the unserved while recognizing private sector investment. We suggest changing requirements to provide for gradual, scalable growth. The ports should also have retail authority. This is an important tool for equity and inclusion of rural areas. We would prefer universal access for all households because this issue affects more than only those in unserved areas.

Persons Testifying (Environment, Energy & Technology): PRO: Senator Lisa Wellman, Prime Sponsor; Betty Buckley, Washington Independent Telecommunications Association; David Ducharme, Broadband Communications Assn. of WA; Mike Ennis, AWB.

CON: Laura Bernstein, Share The Cities; Bob Hunter, Kitsap PUD; Debra Lester, Kitsap PUD; John Andrist, NCI Datacom, Inc.

OTHER: James Thompson, Washington Public Ports Association; George Caan, Washington PUD Association; William Painter, Lewis County Public Utility District; Russ Elliott, Washington State Broadband Office; Nancy Chamberlain, Washington State PTA.

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: Rural broadband is expensive, \$5 billion to build out in rural areas. Having PUDs and ports as active participants would be great. We have a shared goal of closing the digital divide. We are open to the concept of expanding the public provision of broadband in unserved areas.

CON: In its current form, the bill does not go far enough to enable public entities to expand broadband. The bill creates a protective process. The goal is to use federal funds to expand into unserved rural areas.

OTHER: We are looking to support this bill. The bill enhances the spirit of the current law that created the Statewide Broadband Office. We have made suggestions to the sponsor,

including moves to change the speed metric. The focus of the bill is segregation of public and private providers; we want to change the focus to be integration of the two. Imagine e-commerce if broadband was available in Lewis County; 20,000 households would be served. The past year has demonstrated the need for broadband. We agree with the expanded role of public entities and are encouraged with the constructive conversation.

Persons Testifying (Ways & Means): PRO: Senator Lisa Wellman, Prime Sponsor; Betty Buckley, WA Independant Telecommunications Association; Mike Ennis, AWB.

CON: Bob Hunter, Kitsap PUD; Lisa Thatcher, Kitsap PUD.

OTHER: Russ Elliott, Washington State Broadband Office; James Thompson, Washington Public Ports Association; William Painter, Lewis County Public Utility District; Dave Arbaugh, Mason 3 PUD.

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

EFFECT OF HOUSE AMENDMENT(S):

- Revises PUD authority to maintain telecommunications facilities for the provision of wholesale telecommunications services within or without the district's limits by adding that such services may be provided: (1) within an adjoining county that is already provided electrical services by the PUD; and (2) 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 PUD providing the telecommunications services is not authorized to provide electrical service.
- Removes the ability of and process for an existing broadband service provider to object to a retail telecommunications services project of a PUD or port district for unserved areas.
- Adds provisions requiring a PUD or port district to notify and consult with the office within 30 days of its decision to provide retail telecommunications services in unserved areas and submit to the office a telecommunications infrastructure and service plan.
- Adds a provision allowing a PUD or port district that provides retail telecommunications services in unserved areas to use state funds, federal funds appropriated through the state, or federal funds dedicated for projects in unserved areas to fund projects identified in its telecommunications infrastructure and service plan.
- Removes the definition for "broadband service."
- Redefines "unserved area" as areas of Washington in which households and businesses lack access to broadband service of speeds at a minimum of 100 megabits per second download and at a minimum 20 megabits per second upload.
- Modifies reporting requirements for the office by removing items reflecting the stricken language relating to the underlying bill's objection process for existing providers and changing the reporting date to December 31, 2022, rather than December 31, 2023.
- Removes language that specifies that PUDs and port districts may not provide telecommunications services to end users with certain exceptions and instead allows PUDs and port districts to provide retail telecommunications services as authorized in statute.