
Innovation, Technology & Economic Development Committee

2SSB 5511

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 Summary of Second Substitute Bill

- Creates the Governor's Statewide Broadband Office.
- Requires the Public Works Board to establish a competitive grants and loans program for broadband.
- Authorizes public utility districts (PUDs) to temporarily provide retail Internet services.
- Authorizes port districts to provide wholesale Internet services outside of the district.
- Modifies and extends the Universal Communications Services program.

Hearing Date: 3/19/19

Staff: Yelena Baker (786-7301).

Background:

Broadband Office.

Until 2014, a Broadband Office within the Department of Commerce provided oversight and administration of a wide range of programs pertaining to high-speed Internet access, including mapping functions, coordination, and oversight of federally funded broadband programs for the state.

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.

Public Works Board.

The Public Works Board (PWB) within the Department of Commerce administers the Public Works Assistance Account and provides financial and technical assistance to local governments in addressing local infrastructure and public works projects by making loans, grants, financing guarantees, and technical assistance available to local government for these projects.

Broadband Grants and Loans Programs.

A number of federal and state programs provide financial support to providers and end users of communications and broadband services.

At the federal level, the Federal Communications Commission regulates international and interstate advanced telecommunications, and has set broadband benchmarks at 25 megabits per second download and three megabits per second upload speeds. Wireline and wireless-based providers receive funding from a number of federal government programs intended to spur broadband investment in unserved and underserved areas of the nation.

The federal programs are supplemented by two state-level programs in Washington: the Universal Communications Services (UCS) program and the Rural Broadband Infrastructure Program operated by the Community Economic Revitalization Board (CERB), which provides low-interest loans and grants to local governments and federally recognized Indian tribes in rural and underserved communities to finance infrastructure for high-speed, open-access broadband service. Each program differs with respect to eligibility, manners of support, definition of supported service, designation of supported areas, service characteristics, and funding requirements.

Port Districts and Public Utility Districts.

Port districts and Public Utility Districts (PUDs) in existence on June 8, 2000, may acquire and operate telecommunication facilities within and outside of the district for their own internal telecommunications needs, and to provide wholesale telecommunications services within the district.

In providing wholesale services, port districts and PUDs must:

- ensure that the rates, terms, and conditions are not unduly or unreasonably discriminatory or preferential;
- keep accounting of revenues and expenditures of the wholesale telecommunications activities separate from the internal telecommunications operations;
- dedicate the revenues from the wholesale 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.

Port districts and PUDs may not charge preferential or discriminatory rates for their nontelecommunications operations, or exercise powers of eminent domain to acquire telecommunications facilities or contractual rights to such facilities.

A port district exercising telecommunications authority for the first time must first develop a business case plan.

Universal Communications Services Program.

The UCS program was established in 2014 to provide temporary direct support to Washington's smaller incumbent communications service providers during certain changes in federal funding.

The UCS program is funded by a General Fund state appropriation to the UCS account. Expenditures from the account may be used only for the purposes of the UCS program. A maximum of \$5 million is appropriated each year, for a total of \$25 million over five years. Any unspent funds in a particular year may be carried over to subsequent years.

A communications provider is eligible to receive distributions under the UCS program if:

- the provider is an incumbent local exchange carrier and has fewer than 40,000 lines in the state;
- the customers of the provider are at risk of rate instability or service interruptions absent distributions to the provider; and
- the provider meets any other criteria established by the Utilities and Transportation Commission (UTC).

Distributions under the UCS program are based on a benchmark that the UTC determines is a reasonable amount customers should pay for basic service provided over the incumbent public network.

The UCS program expires in 2019 and the statutory sections establishing the program expire in 2020.

Summary of Bill:

Broadband Goals.

"Broadband" and "broadband service" are defined to mean any service providing advanced telecommunications capability and Internet access with a minimum of 25 megabits per second download speed and three megabits per second upload speed.

Statewide goals for access to broadband service and minimum download and upload speeds are established.

Broadband Office.

The Governor's Statewide Broadband Office (SBO) is established to serve as the central broadband planning body for the state. The SBO director must be appointed by the Governor, and the SBO may employ necessary staff to carry out the SBO duties.

The SBO powers and duties include: coordinating with relevant parties to develop strategies and plans for deployment of broadband infrastructure; reviewing existing broadband initiatives;

developing and implementing a statewide plan to encourage cost-effective broadband access and increased usage; and encouraging public-private partnerships to increase deployment and adoption of broadband services and applications.

When developing plans for broadband deployment, the SBO must consider a number of elements, including the coordination of public, private, state, and federal funding. The SBO may apply for federal funds and other grants, accept donations, collaborate with all relevant state agencies, and assist applicants to the grants and loans program within the Public Works Board with seeking federal funding and other grant opportunities.

Beginning January 1, 2021, and every two years after that, the SBO must report to the Legislature and include an analysis of the current availability and use of broadband, an overview of incumbent broadband infrastructure within the state, a summary of the SBO activities in coordinating broadband infrastructure development, and suggested policies and legislation to accelerate the achievement of statewide broadband goals.

Broadband Grants and Loans Program.

The Community Economic Revitalization Board (CERB) must facilitate the timely transfer of information and documents from its broadband program to the Public Works Board (PWB), which must establish a competitive grants and loans program to assist eligible applicants in funding acquisition, installation, and construction of middle mile and last mile broadband infrastructure in unserved areas of the state.

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.

The application process is established. The PWB must develop administrative procedures governing the application and award process, and provide a method for the allocation of loans, grants, provisions of technical assistances, and interest rates. The PWB is responsible for reviewing applications and awarding funds.

Applicants for a grant or a loan must provide specific information relating to the project, including:

- location of the project;
- the kind and amount of broadband infrastructure to be purchased for the project;
- whether the proposed infrastructure will be capable of scaling to greater speeds;
- anticipated economic, educational, health care, or public safety benefits;
- estimated total costs and other available funding sources, if any; and
- evidence that the applicant contacted all broadband providers in the proposed project area to ask each for a plan to upgrade broadband speeds.

Any existing broadband service provider near the proposed project area may submit a certified affidavit objecting to an application on the grounds that the proposed project would result in overbuild or that the objecting provider commits to provide broadband services to end users in the project area at speeds greater or equal to the state speed goals. If the objecting provider fails

to fulfill its commitment, the PWB is prohibited from denying funding to an applicant on the basis of a challenge from the same broadband service provider for two grant and loan cycles.

Specific criteria for evaluating applications and awarding funds are established. The PWB must give priority to applications for projects to be constructed in unserved areas. Funding priority may be given to applications that demonstrate project readiness to proceed, construct open-access infrastructure, offer new or substantially upgraded broadband service, utilize equipment and technology that demonstrate longer longevity of service, and seek the lowest amount of state investment.

The PWB must act as fiscal agent for the program. Prior to awarding funds, the PWB must establish an expert review panel charged with assessing the economic and technical feasibility of applications. The expert review panel must be composed of no more than three individuals from state agencies with demonstrated proficiency in broadband or telecommunications. The PWB must consider the expert review panel's assessment as part of the evaluation of a proposed application.

The PWB may choose to fund all or part of an application that meets all the requirements and shall endeavor to award funds to qualified applicants in all regions of the state, giving top priority to tribal reservations in rural and remote regions of the state.

Funds awarded to a single project may not fund more than 50 percent of the total cost of the project, except that the PWB may choose to fund up to 90 percent of the total cost of a project in financially "distressed areas", as that term is defined in the statutory provisions related to Rural Washington Loan Fund.

Funds awarded to a single project may not exceed \$2 million, unless awarded to a rural and remotely located tribal applicant that provides evidence of prior broadband investment of at least \$2 million in tribal funds. The PWB may award up to \$5 million per project if a rural and remotely located tribal applicant provides evidence of prior broadband investment of approximately \$5 in tribal funds. No matching cash funds are required of a rural and remotely located tribal applicant awarded funds. Loans awarded to rural and remotely located tribal applicants must be no-interest or very low-interest loans.

Any fund awards must be conditioned on a guarantee that the infrastructure to be developed will be maintained for public use for a period of at least 15 years. As provided for in a financing agreement or by law, the PWB has the right of recovery in the event of default in payment or other breach of the financing agreement.

Port Districts and Public Utility Districts.

Port districts may acquire and operate telecommunication facilities to provide wholesale telecommunications service outside of the district's limits. Port districts may select a telecommunications company to operate all or a portion of the port district's telecommunications facilities.

Public utility districts (PUDs) are authorized to provide temporary retail services if an Internet service provider (ISP) operating on PUD telecommunications facilities ceases to provide Internet

access to end-use customers and no other retail service providers are willing to provide the service. Within 30 days of an ISP ceasing to provide services, the PUD must begin a process to find a replacement ISP. Until a replacement ISP is in operation and up to the maximum of 11 months from when the PUD begins the replacement search, whichever is earlier, the PUD may charge its retail customers to cover expenses for providing Internet access.

Existing requirements with regard to rates, terms, and conditions on wholesale services, as well as accounting and revenue commitments, are extended to temporary retail services. A recipient of temporary retail telecommunications services from a PUD may file a complaint with the district commission regarding the district's rates, terms, conditions, or services provided.

Universal Communications Services Program.

The expiration dates of the Universal Communications Services (UCS) program and the statutory sections establishing the program are extended to July 1, 2025.

The purpose of the UCS program is expanded to include the provision, enhancement, and maintenance of broadband services, and is no longer limited to the time period in which incumbent communications providers would be adapting to changes in federal funding. The requirement that customers must be at risk of rate instability or service interruptions is removed. Instead, a communications provider has to adopt a plan to provide, enhance, or maintain broadband services in its service area.

A provider who is not an incumbent local exchange company is eligible to receive distributions from the UCS account if the provider:

- demonstrates to the Utilities and Transportation Commission (UTC) the ability to provide the same or comparable services at the same or similar quality standards at a lower rate; and
- submits to UTC regulation of its services as if the provider was an incumbent local exchange company servicing the exchange for which the provider seeks distribution.

Distributions to eligible communications providers are no longer based on a benchmark established by the UTC. Instead, the UTC is directed to establish the criteria to be used to calculate distributions. Distributions must be reduced on a proportional basis if the program is unable to fully fund the distribution formula.

Expenditures from the UCS account are authorized for the UTC expenses related to implementation and administration of the UCS program.

The UTC is required, no later than 90 days following the effective date of the bill, to initiate rulemaking to reform the UCS program, including future funding and eligibility. By December 1, 2024, the UTC may report to the Legislature on the adequacy of funding levels, funding impacts, an analysis of the need for future program funding, and recommendations on potential funding mechanisms to improve availability of services, including broadband, in unserved areas.

Broadband Account.

The statewide broadband account is created in the State Treasury. The SBO must deposit in the account any federal funds, grants, or donations the SBO may receive.

Expenditures from the account may be used only:

- for grant and loan awards made by the PWB broadband program and costs incurred by the PWB in administering the grants and loans program;
- to contract for data acquisition, a statewide broadband demand assessment, or gap analysis;
- to supplement revenues raised by bonds sold by local governments for broadband structure development; or
- to provide for state match requirements under federal law.

The PWB may maintain separate accounting in the statewide broadband account as the PWB considers necessary for the purposes of its grants and loans program. The PWB must maintain separate accounting for any federal funds in the account.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 11 through 18 and section 20, relating to the Universal Communications Services program, which contain an emergency clause and take effect immediately.