

SHB 1336 - H AMD 59

By Representative Corry

WITHDRAWN 02/23/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the COVID-19
4 pandemic has made it clear that equitable access to education can
5 only happen with equitable access to reliable broadband. Under
6 Article IX, section 1 of the state Constitution, it is the paramount
7 duty of the state to make ample provision for the education of all
8 children residing within the state of Washington. Increasing
9 broadband access to unserved areas of the state is of vital
10 importance to increasing educational opportunities in the parts of
11 our state that without broadband access cannot safely participate in
12 our educational system.

13 The legislature further finds that in order to achieve our
14 constitutional duty to provide equitable access to education, we must
15 allow our public utility districts to provide retail
16 telecommunications services to people in an area where no broadband
17 provider is serving or has plans to serve in the near future.

18 **Sec. 2.** RCW 54.16.330 and 2019 c 365 s 9 are each amended to
19 read as follows:

20 (1)(a) A public utility district in existence on June 8, 2000,
21 may construct, purchase, acquire, develop, finance, lease, license,
22 handle, provide, add to, contract for, interconnect, alter, improve,
23 repair, operate, and maintain any telecommunications facilities
24 within or without the district's limits for the following purposes:

25 (i) For the district's internal telecommunications needs;

26 (ii) For the provision of wholesale telecommunications services
27 within the district and by contract with another public utility
28 district.

29 (b) Except as provided in subsections (8) and (10) of this
30 section, nothing in this section shall be construed to authorize

1 public utility districts to provide telecommunications services to
2 end users.

3 (2) A public utility district providing wholesale or retail
4 telecommunications services shall ensure that rates, terms, and
5 conditions for such services are not unduly or unreasonably
6 discriminatory or preferential. Rates, terms, and conditions are
7 discriminatory or preferential when a public utility district
8 offering rates, terms, and conditions to an entity for wholesale or
9 retail telecommunications services does not offer substantially
10 similar rates, terms, and conditions to all other entities seeking
11 substantially similar services.

12 (3) A public utility district providing wholesale or retail
13 telecommunications services shall not be required to, but may,
14 establish a separate utility system or function for such purpose. In
15 either case, a public utility district providing wholesale or retail
16 telecommunications services shall separately account for any revenues
17 and expenditures for those services according to standards
18 established by the state auditor pursuant to its authority in chapter
19 43.09 RCW and consistent with the provisions of this title. Any
20 revenues received from the provision of wholesale or retail
21 telecommunications services must be dedicated to costs incurred to
22 build and maintain any telecommunications facilities constructed,
23 installed, or acquired to provide such services, including payments
24 on debt issued to finance such services, until such time as any bonds
25 or other financing instruments executed after June 8, 2000, and used
26 to finance such telecommunications facilities are discharged or
27 retired.

28 (4) When a public utility district provides wholesale or retail
29 telecommunications services, all telecommunications services rendered
30 to the district for the district's internal telecommunications needs
31 shall be allocated or charged at its true and full value. A public
32 utility district may not charge its nontelecommunications operations
33 rates that are preferential or discriminatory compared to those it
34 charges entities purchasing wholesale or retail telecommunications
35 services.

36 (5) If a person or entity receiving retail telecommunications
37 services from a public utility district under this section has a
38 complaint regarding the reasonableness of the rates, terms,
39 conditions, or services provided, the person or entity may file a
40 complaint with the district commission.

1 (6) A public utility district shall not exercise powers of
2 eminent domain to acquire telecommunications facilities or
3 contractual rights held by any other person or entity to
4 telecommunications facilities.

5 (7) Except as otherwise specifically provided, a public utility
6 district may exercise any of the powers granted to it under this
7 title and other applicable laws in carrying out the powers authorized
8 under this section. Nothing in chapter 81, Laws of 2000 limits any
9 existing authority of a public utility district under this title.

10 (8) (a) If an internet service provider operating on
11 telecommunications facilities of a public utility district that
12 provides wholesale telecommunications services but does not provide
13 retail telecommunications services, ceases to provide access to the
14 internet to its end-use customers, and no other retail service
15 providers are willing to provide service, the public utility district
16 may provide retail telecommunications services to the end-use
17 customers of the defunct internet service provider in order for end-
18 use customers to maintain access to the internet until a replacement
19 internet service provider is, or providers are, in operation.

20 (b) Within thirty days of an internet service provider ceasing to
21 provide access to the internet, the public utility district must
22 initiate a process to find a replacement internet service provider or
23 providers to resume providing access to the internet using
24 telecommunications facilities of a public utility district.

25 (c) For a maximum period of five months, following initiation of
26 the process begun in (b) of this section, or, if earlier than five
27 months, until a replacement internet service provider is, or
28 providers are, in operation, the district commission may establish a
29 rate for providing access to the internet and charge customers to
30 cover expenses necessary to provide access to the internet.

31 (9) The tax treatment of the retail telecommunications services
32 provided by a public utility district to the end-use customers during
33 the period specified in subsection (8) of this section must be the
34 same as if those retail telecommunications services were provided by
35 the defunct internet service provider.

36 (10) (a) A public utility district may provide retail
37 telecommunications services to an end user in an unserved area if the
38 public utility district receives notice from the governor's statewide
39 broadband office, established in RCW 43.330.532, that an existing
40 broadband service provider has not submitted an objection and a

1 broadband service plan required in this subsection for the same
2 project area. Prior to beginning a project to provide retail
3 telecommunications services in this subsection, a public utility
4 district must notify the governor's statewide broadband office of its
5 intent to provide such services and post a notice of intent on its
6 public website. The governor's statewide broadband office must post
7 notices received from a public utility district pursuant to this
8 subsection on its public website.

9 (b) Any existing broadband service provider providing broadband
10 services near the proposed project area may, within 30 days of the
11 posting of the notice of intent under (a) of this subsection, submit
12 the following in writing to the office:

13 (i) An objection demonstrating that the project would result in
14 overbuild, meaning that the objecting broadband service provider
15 currently provides, or has begun construction to provide, broadband
16 service to end users in the proposed project area at speeds equal to
17 or greater than 150 megabits per second; and

18 (ii) If an existing broadband service provider intends to prevent
19 overbuild as provided in (b)(i) of this subsection, then the existing
20 service provider must submit a broadband service plan to the
21 governor's statewide broadband office. The broadband service plan
22 must, at a minimum, demonstrate that the existing service provider
23 currently provides broadband service to end users near the unserved
24 area at speeds equal to or greater than the speed goals contained in
25 RCW 43.330.536 and outline how the existing broadband service
26 provider intends to provide broadband service with speeds of at least
27 150 megabits per second to the unserved area. A broadband service
28 plan is confidential and exempt from public inspection and copying
29 under chapter 42.56 RCW.

30 (c) For the purposes of this subsection:

31 (i) "Broadband service" has the same meaning as defined in RCW
32 43.330.530.

33 (ii) "Unserved areas" has the same meaning as defined in RCW
34 43.330.530.

35 **Sec. 3.** RCW 43.330.538 and 2019 c 365 s 6 are each amended to
36 read as follows:

37 (1)(a) Beginning January 1, 2021, and biennially thereafter, the
38 office shall report to the legislative committees with jurisdiction

1 over broadband policy and finance on the office's activities during
2 the previous two years.

3 ~~((2))~~ (b) The report must, at a minimum, contain:

4 ~~((a))~~ (i) An analysis of the current availability and use of
5 broadband, including average broadband speeds, within the state;

6 ~~((b))~~ (ii) Information gathered from schools, libraries,
7 hospitals, and public safety facilities across the state, determining
8 the actual speed and capacity of broadband currently in use and the
9 need, if any, for increases in speed and capacity to meet current or
10 anticipated needs;

11 ~~((c))~~ (iii) An overview of incumbent broadband infrastructure
12 within the state;

13 ~~((d))~~ (iv) A summary of the office's activities in coordinating
14 broadband infrastructure development with the public works board,
15 including a summary of funds awarded under RCW 43.155.160;

16 ~~((e))~~ (v) Suggested policies, incentives, and legislation
17 designed to accelerate the achievement of the goals under RCW
18 43.330.536; and

19 ~~((f))~~ (vi) Any proposed legislative and policy initiatives.

20 (2)(a) By December 31, 2023, the office must submit a report to
21 the governor and the appropriate committees of the legislature
22 evaluating the effectiveness of authorizing a public utility district
23 to provide retail telecommunications services to unserved areas as
24 provided in RCW 54.16.330(10).

25 (b) The report must, at a minimum, contain:

26 (i) The number of public utility districts providing retail
27 telecommunications services in an unserved area authorized in RCW
28 54.16.330(10);

29 (ii) An analysis on the effectiveness of the broadband service
30 plans required in RCW 54.16.330(10); and

31 (iii) Any recommendations to improve the provision of retail
32 telecommunications services in unserved areas.

33 NEW SECTION. Sec. 4. A new section is added to chapter 42.56
34 RCW to read as follows:

35 A broadband service plan submitted by a broadband service
36 provider to the governor's statewide broadband office established in
37 RCW 43.330.532 in accordance with the requirements under RCW
38 54.16.330(10) are exempt from disclosure under this chapter."

1 Correct the title.

EFFECT: Strikes all provisions of the substitute bill and inserts the following provisions:

(1) Allows a public utility district (PUD) to provide retail telecommunications services to an end user in an unserved area if the PUD receives notice from the Statewide Broadband Office (Office) that an existing broadband service provider has not submitted an objection and a broadband service plan.

(2) Requires a PUD to notify the Office of its intent to provide retail telecommunications services in an unserved area and post notice of its intent on its public website and requires the Office to post such notices on its public website.

(3) Allows any existing broadband service provider providing broadband services near the proposed PUD project to, within 30 days of the PUD posting its notice of intent, submit in writing to the Office:

(a) An objection demonstrating that the objecting service provider currently provides, or has begun construction to provide, broadband service to end users in the proposed project area at speeds equal to or greater than 150 megabits per second; and

(b) A broadband service plan that must:

(i) Demonstrate that the existing service provider currently provides broadband service to end users near the unserved area at speeds equal to or greater than the state's speed goals; and

(ii) Outline how the existing broadband provider intends to provide broadband service with speeds of at least 150 megabits per second to the unserved area.

(4) Exempts broadband service plans from public inspection and copying under the Public Records Act.

(5) Requires the Office, by December 31, 2023, to submit a report to the Governor and appropriate legislative committees evaluating the effectiveness of authorizing a PUD to provide retail telecommunications services to unserved areas.

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