

ESSB 6034 - H COMM AMD

By Committee on Technology & Economic Development

ADOPTED AND ENGROSSED 3/2/18

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 54.16  
4 RCW to read as follows:

5 (1) The definitions in this subsection apply throughout this  
6 section unless the context clearly requires otherwise.

7 (a) "Broadband" means high-speed internet access and other  
8 advanced telecommunications services.

9 (b) "Broadband network" means networks of deployed  
10 telecommunications equipment and technologies necessary to provide  
11 broadband.

12 (c) "Inadequate" means internet retail service that does not meet  
13 one hundred percent of the standards detailed in the service level  
14 agreement.

15 (d) "Partnership payment structure" means a group of or  
16 individual property owners who agree to pay a term payment structure  
17 for infrastructure improvements to their property.

18 (e) "Petition" means a formal written request for retail internet  
19 service by property owners on the public utility district broadband  
20 network.

21 (f) "Retail internet service" means the provision of broadband to  
22 end users.

23 (g) "Service level agreement" means a standard agreement, adopted  
24 during an open public meeting, between the retail internet service  
25 provider and the public utility that describes the required  
26 percentage of broadband download and upload speed and system  
27 availability, customer service, and transmission time.

28 (2) Any public utility district that, as of the effective date of  
29 this section, provides only water, sewer, and wholesale  
30 telecommunications services in a county with an area less than five  
31 hundred square miles and is located west of the Puget Sound may  
32 provide retail internet service on the public utility district's

1 broadband network located within the public utility district  
2 boundaries only when all of the existing providers of end-user  
3 internet service on the public utility district's broadband network  
4 cease to provide end-user service or provide inadequate end-user  
5 service as determined in the manner prescribed by this section. The  
6 authority provided in this subsection expires five years after the  
7 effective date of this act for any public utility district that has  
8 not begun providing retail internet service within that time period.

9 (3) Upon receiving a petition meeting the requirements of  
10 subsection (4) of this section, a public utility district board of  
11 commissioners may hold up to three meetings to:

12 (a) Verify the signature or signatures of the property owners on  
13 the petition and certify the petition;

14 (b) Determine and submit findings that the retail internet  
15 service available to the petitioners served by the public utility  
16 district's broadband network is either nonexistent or inadequate as  
17 defined in the service level agreement adopted by the commissioners  
18 for all existing internet service providers on the public utility  
19 district's broadband network;

20 (c) Receive, and either reject or accept any recommendations or  
21 adjustments to, a business case plan developed in accordance with  
22 subsection (7) of this section; and

23 (d) By resolution, authorize the public utility district to  
24 provide retail internet service on the public utility district's  
25 broadband network.

26 (4) A petition meets the requirements of subsection (3) of this  
27 section if it is delivered to a public utility district board of  
28 commissioners, declares that the signatories on the public utility  
29 district's broadband network have no or inadequate retail internet  
30 service providers, requests the public utility district to provide  
31 the retail internet service, and is signed by one of the following:

32 (a) A majority of a group, including homeowners' associations, of  
33 any geographical area within the public utility district, who have  
34 developed a partnership payment structure to finance broadband  
35 deployment with the public utility district; or

36 (b) Any individual who has developed a partnership payment  
37 structure to finance broadband deployment with the public utility  
38 district.

39 (5) For the purposes of this section, the adequacy of retail  
40 internet service is determined by measuring retail internet service

1 to end users on the public utility district's broadband network and  
2 comparing it with service standards in the public utility district  
3 service level agreement used for all public utility district network  
4 providers. Measurement of the existing retail internet service  
5 provider's service must be quantified by measuring the service with  
6 speed and capacity devices and software. Additionally, a retail  
7 internet service provider may submit its own assessment of its  
8 service level for consideration by the commission within thirty days  
9 of the first meeting conducted under subsection (3) of this section.

10 (6) The commissioners of a public utility district may by  
11 resolution authorize the public utility district to provide or  
12 contract for provision of retail internet services on the public  
13 utility district's broadband network:

14 (a) After development of a business case plan in accordance with  
15 subsection (7) of this section; and

16 (b) When it is determined that no service or inadequate service  
17 exists for the individual or petitioners identified in subsection (4)  
18 of this section.

19 (7) The business case plan under subsection (6) of this section  
20 must be reviewed by an independent qualified consultant. The review  
21 must include the use of public funds in the provision of retail  
22 internet service. Any recommendations or adjustments to the business  
23 case plan made during third-party review must be received and either  
24 rejected or accepted by the district board of commissioners in an  
25 open meeting.

26 (8)(a) Except as provided in subsection (9) of this section, in  
27 case of failure to reach an agreement on the adequacy of retail  
28 internet service, the commissioners must request an appointment of an  
29 administrative law judge under Title 34 RCW to hear the dispute.

30 (b) The commissioners must provide a written notice, together  
31 with a copy of the dispute, and may require the disputing parties to  
32 attend a hearing before the administrative law judge, at a time and  
33 place to be specified in the written notice.

34 (c) The place of any such hearing may be the office of the  
35 commissioners or another place designated by the commissioners. The  
36 disputed information must be presented at the hearing.

37 (d) Upon review and consideration of all of the evidence, the  
38 administrative law judge must determine if the retail internet  
39 service is inadequate or nonexistent as defined in this section. Upon  
40 making a determination, the administrative law judge must state

1 findings of fact and must issue and file a determination with the  
2 commissioners.

3 (9) If a provider of end-user service is a company regulated by  
4 the utilities and transportation commission, the company may choose  
5 to have the commission resolve disputes concerning the service level  
6 agreement under the process established in RCW 54.16.340. For the  
7 purposes of this subsection, "company" includes subsidiaries or  
8 affiliates.

9 (10) Any public utility district providing cable television  
10 service under this section must secure a cable television franchise,  
11 pay franchise fees, and any applicable taxes to the local cable  
12 franchise authority as required by federal law.

13 (11) Except as provided in subsection (9) of this section,  
14 nothing in this section may be construed or is intended to confer  
15 upon the utilities and transportation commission any authority to  
16 exercise jurisdiction over locally regulated utilities.

17 (12) All rates for retail internet services offered by a public  
18 utility district under this section must be just, fair, and  
19 reasonable, except the public utility district may set tiers of  
20 service charges based on service demands of the end user, including  
21 commercial and residential rates.

22 (13) A public utility district must not condition the  
23 availability or cost of other services upon the purchase or use of  
24 retail internet service.

25 (14) A public utility district authorized to provide retail  
26 internet service within a specific geographical area must, upon  
27 reasonable notice, furnish to all persons and entities within that  
28 geographical area meeting the provisions of subsections (2) and (4)  
29 of this section proper facilities and connections for retail internet  
30 service as requested.

31 (15) A public utility district providing retail internet service  
32 must separately account for any revenues and expenditures for those  
33 services according to standards established by the state auditor  
34 pursuant to its authority in chapter 43.09 RCW and consistent with  
35 the provisions of this title.

36 NEW SECTION. **Sec. 2.** A new section is added to chapter 34.12  
37 RCW to read as follows:

1           When requested by the public utility district commissioners, the  
2 chief administrative law judge shall assign an administrative law  
3 judge to conduct proceedings under section 1 of this act.

4           NEW SECTION.   **Sec. 3.**   A new section is added to chapter 54.16  
5 RCW to read as follows:

6           (1) Property owned by a public utility district that is exempt  
7 from property tax under RCW 84.36.010 is subject to an annual payment  
8 in lieu of property taxes if the property consists of a broadband  
9 network used in providing retail internet service.

10          (2)(a) The amount of the payment must be determined jointly and  
11 in good faith negotiation between the public utility district that  
12 owns the property and the county or counties in which the property is  
13 located.

14          (b) The amount agreed upon may not exceed the property tax amount  
15 that would be owed on the property comprising the broadband network  
16 used in providing retail internet service as calculated by the  
17 department of revenue. The public utility district must provide  
18 information necessary for the department of revenue to make the  
19 required valuation under this subsection. The department of revenue  
20 must provide the amount of property tax that would be owed on the  
21 property to the county or counties in which the broadband network is  
22 located on an annual basis.

23          (c) If the public utility district and a county cannot agree on  
24 the amount of the payment in lieu of taxes, either party may invoke  
25 binding arbitration by providing written notice to the other party.  
26 In the event that the amount of payment in lieu of taxes is submitted  
27 to binding arbitration, the arbitrators must consider the government  
28 services available to the public utility district's broadband network  
29 used in providing retail internet service. The public utility  
30 district and county must each select one arbitrator, the two of whom  
31 must pick a third arbitrator. Costs of the arbitration, including  
32 compensation for the arbitrators' services, must be borne equally by  
33 the parties participating in the arbitration.

34          (3) By April 30th of each year, a public utility district must  
35 remit the annual payment to the county treasurer of each county in  
36 which the public utility district's broadband network used in  
37 providing retail internet service is located in a form and manner  
38 required by the county treasurer.

1           (4) The county must distribute the amounts received under this  
2 section to all property taxing districts, including the state, in  
3 appropriate tax code areas in the same proportion as it would  
4 distribute property taxes from taxable property.

5           (5) By December 1, 2019, and annually thereafter, the department  
6 of revenue must submit a report to the appropriate legislative  
7 committees detailing the amount of payments made under this section  
8 and the amount of property tax that would be owed on the property  
9 comprising the broadband network used in providing retail internet  
10 service.

11           (6) The definitions in section 1 of this act apply to this  
12 section."

13           Correct the title.

--- END ---