
SENATE BILL 5511

State of Washington

66th Legislature

2019 Regular Session

By Senators Wellman, Sheldon, Carlyle, Short, McCoy, Nguyen, Takko, Cleveland, Darneille, Dhingra, Lias, Mullet, Saldaña, and Frockt; by request of Office of the Governor

Read first time 01/23/19. Referred to Committee on Environment, Energy & Technology.

1 AN ACT Relating to expanding affordable, resilient broadband
2 service to enable economic development, public safety, health care,
3 and education in Washington's communities; amending RCW 54.16.330,
4 53.08.370, 80.36.630, 80.36.650, 80.36.660, 80.36.670, 80.36.680,
5 80.36.690, and 80.36.700; amending 2013 2nd sp.s. c 8 ss 212 and 303
6 (uncodified); reenacting and amending RCW 43.84.092; adding new
7 sections to chapter 43.330 RCW; adding new sections to chapter 43.155
8 RCW; creating a new section; repealing RCW 43.330.415, 43.330.418,
9 and 80.36.620; and providing expiration dates.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11 NEW SECTION. **Sec. 1.** The legislature finds that:

12 (1) Access to broadband is critical to full participation in
13 society and the modern economy;

14 (2) Increasing broadband access to unserved and underserved areas
15 of the state serves a fundamental governmental purpose and function
16 and provides a public benefit to the citizens of Washington by
17 enabling access to health care, education, and essential services,
18 providing economic opportunities, and enhancing public health and
19 safety;

20 (3) Achieving affordable and quality broadband access for all
21 Washingtonians will require additional and sustained investment,

1 research, local and community participation, and partnerships between
2 private, public, and nonprofit entities;

3 (4) The federal communications commission has adopted a national
4 broadband plan that includes recommendations directed to federal,
5 state, and local governments, including recommendations to:

6 (a) Design policies to ensure robust competition and maximize
7 consumer welfare, innovation, and investment;

8 (b) Ensure efficient allocation and management of assets that the
9 government controls or influences to encourage network upgrades and
10 competitive entry;

11 (c) Reform current universal service mechanisms to support
12 deployment in high-cost areas, ensuring that low-income Americans can
13 afford broadband, and supporting efforts to boost adoption and
14 utilization; and

15 (d) Reform laws, policies, standards, and incentives to maximize
16 the benefits of broadband in sectors that government influences
17 significantly, such as public education, health care, and government
18 operations;

19 (5) Extensive investments have been made by the
20 telecommunications industry and the public sector, as well as
21 policies and programs adopted to provide affordable broadband
22 services throughout the state, that will provide a foundation to
23 build a comprehensive statewide framework for additional actions
24 needed to advance the state's broadband goals; and

25 (6) Providing additional funding mechanisms to increase broadband
26 access in unserved and underserved areas is in the best interest of
27 the state. To that end, this act establishes a grant and loan program
28 that will support the extension of broadband infrastructure to
29 unserved and underserved areas. To ensure this program primarily
30 serves the public interest, the legislature intends that any grant or
31 loan provided to a private entity under this program must be
32 conditioned on a guarantee that the asset or infrastructure to be
33 developed will be maintained for public use for a period of at least
34 fifteen years.

35 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.330
36 RCW to read as follows:

37 The definitions in this section apply throughout this section and
38 sections 3 through 6 of this act unless the context clearly requires
39 otherwise.

1 (1) "Board" means the public works board established in RCW
2 43.155.030.

3 (2) "Broadband" or "broadband service" means any service
4 providing advanced telecommunications capability and internet access
5 with transmission speeds that, at a minimum, provide twenty-five
6 megabits per second download and three megabits per second upload.

7 (3) "Broadband infrastructure" means networks of deployed
8 telecommunications equipment and technologies necessary to provide
9 high-speed internet access and other advanced telecommunications
10 services to end users.

11 (4) "Department" means the department of commerce.

12 (5) "Last mile infrastructure" means broadband infrastructure
13 that serves as the final connection from a broadband service
14 provider's network to the end-use customer's on-premises
15 telecommunications equipment.

16 (6) "Local government" includes cities, towns, counties,
17 municipal corporations, public port districts, quasi-municipal
18 corporations, special purpose districts, and multiparty entities
19 comprised of public entity members.

20 (7) "Middle mile infrastructure" means broadband infrastructure
21 that links a broadband service provider's core network infrastructure
22 to last mile infrastructure.

23 (8) "Office" means the governor's statewide broadband office
24 established in section 3 of this act.

25 (9) "Tribe" means any federally recognized Indian tribe whose
26 traditional lands and territories included parts of Washington.

27 (10) "Underserved areas" means areas of Washington in which
28 households or businesses lack adequate access to broadband service,
29 as defined by the office.

30 (11) "Unserved areas" means areas of Washington in which
31 households and businesses lack access to broadband service, as
32 defined by the office.

33 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.330
34 RCW to read as follows:

35 (1) The governor's statewide broadband office is established. The
36 director of the office must be appointed by the governor. The office
37 may employ staff necessary to carry out the office's duties as
38 prescribed by this act, subject to the availability of amounts
39 appropriated for this specific purpose.

1 (2) The purpose of the office is to encourage, foster, develop,
2 and improve affordable, quality broadband within the state in order
3 to:

4 (a) Drive job creation, promote innovation, improve economic
5 vitality, and expand markets for Washington businesses;

6 (b) Serve the ongoing and growing needs of Washington's education
7 systems, health care systems, public safety systems, industries and
8 business, governmental operations, and citizens; and

9 (c) Improve broadband accessibility for unserved and underserved
10 communities and populations.

11 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.330
12 RCW to read as follows:

13 (1) The office has the power and duty to:

14 (a) Serve as the central broadband planning body for the state of
15 Washington;

16 (b) Coordinate with local governments, tribes, public and private
17 entities, nonprofit organizations, and consumer-owned and investor-
18 owned utilities to develop strategies and plans for deployment of
19 broadband infrastructure and greater broadband access;

20 (c) Review existing broadband initiatives, policies, and public
21 and private investments;

22 (d) Develop, recommend, and implement a statewide plan to
23 encourage cost-effective broadband access and to make recommendations
24 for increased usage, particularly in rural and other unserved and
25 underserved areas;

26 (e) Update the state's broadband goals and definitions for
27 broadband service in unserved and underserved areas as technology
28 advances, except that the state's definition for broadband service
29 may not be actual speeds less than twenty-five megabits per second
30 download and three megabits per second upload; and

31 (f) Encourage public-private partnerships to increase deployment
32 and adoption of broadband services and applications.

33 (2) When developing plans or strategies for broadband deployment,
34 the office must consider:

35 (a) Partnerships between communities, tribes, nonprofit
36 organizations, consumer-owned and investor-owned utilities, and
37 public and private entities;

38 (b) Funding opportunities that provide for the coordination of
39 public, private, state, and federal funds for the purposes of making

1 broadband infrastructure or broadband services available to rural,
2 unserved, and underserved areas of the state;

3 (c) Barriers to the adoption and utilization of broadband
4 service, including affordability of service; and

5 (d) Requiring minimum broadband service of twenty-five megabits
6 per second download and three megabits per second upload speed, that
7 is scalable to faster service.

8 (3) The office may take all appropriate steps to seek federal
9 funding in order to maximize investment in broadband deployment and
10 adoption in the state.

11 (4) The office may assist applicants to the grant and loan
12 program created in section 7 of this act with seeking federal funding
13 or matching grants and other grant opportunities for deploying
14 broadband services.

15 (5) The office may apply for federal funds and other grants or
16 accept donations and must deposit the funds in the statewide
17 broadband account created in section 8 of this act.

18 (6) In carrying out its purpose, the office may collaborate with
19 the utilities and transportation commission, the office of the chief
20 information officer, the department of commerce, the community
21 economic revitalization board, the public works board, the state
22 librarian, and all other relevant state agencies.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.330
24 RCW to read as follows:

25 It is a goal of the state of Washington that:

26 (1) By 2024, all Washington businesses and residences have access
27 to high-speed broadband that provides minimum download speeds of at
28 least twenty-five megabits per second and minimum upload speeds of at
29 least three megabits per second;

30 (2) By 2026, all Washington communities have access to at least
31 one gigabit per second symmetrical broadband service via anchor
32 institutions like schools, hospitals, libraries, and government
33 buildings; and

34 (3) By 2028, all Washington businesses and residences have access
35 to at least one provider of broadband with download speeds of at
36 least one hundred fifty megabits per second and upload speeds of at
37 least one hundred fifty megabits per second.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.330
2 RCW to read as follows:

3 (1) Beginning January 1, 2021, and biennially thereafter, the
4 office shall report to the legislative committees with jurisdiction
5 over broadband policy and finance on the office's activities during
6 the previous two years.

7 (2) The report must, at a minimum, contain:

8 (a) An analysis of the current availability and use of broadband,
9 including average broadband speeds, within the state;

10 (b) Information gathered from schools, libraries, hospitals, and
11 public safety facilities across the state, determining the actual
12 speed and capacity of broadband currently in use and the need, if
13 any, for increases in speed and capacity to meet current or
14 anticipated needs;

15 (c) An overview of incumbent broadband infrastructure within the
16 state;

17 (d) A summary of the office's activities in coordinating
18 broadband infrastructure development with the public works board,
19 including a summary of funds awarded under section 7 of this act;

20 (e) Suggested policies, incentives, and legislation designed to
21 accelerate the achievement of the goals under section 5 of this act;
22 and

23 (f) Any proposed legislative and policy initiatives.

24 NEW SECTION. **Sec. 7.** A new section is added to chapter 43.155
25 RCW to read as follows:

26 (1) The board shall establish a competitive grant and loan
27 program to award funding to eligible applicants in order to promote
28 the expansion of access to broadband service in unserved and
29 underserved areas of the state.

30 (2)(a) Grants and loans may be awarded under this section to
31 assist in funding acquisition, installation, and construction of
32 middle mile and last mile infrastructure that supports broadband
33 services and to assist in funding strategic planning for deploying
34 broadband service in unserved and underserved areas.

35 (b) The board may choose to fund all or part of an application
36 for funding, provided that the application meets the requirements of
37 subsection (9) of this section.

38 (3) Eligible applicants for grants and loans awarded under this
39 section include:

- 1 (a) Local governments;
 - 2 (b) Tribes;
 - 3 (c) Nonprofit organizations;
 - 4 (d) Cooperative associations;
 - 5 (e) Multiparty entities comprised of public entity members;
 - 6 (f) Limited liability corporations organized for the purpose of
 - 7 expanding broadband access; and
 - 8 (g) Incorporated businesses or partnerships.
- 9 (4) (a) The board shall develop administrative procedures
- 10 governing the application and award process. The board shall act as
- 11 fiscal agent for the program and is responsible for receiving and
- 12 reviewing applications and awarding funds under this section.
- 13 (b) At least thirty days prior to the first day applications may
- 14 be submitted each fiscal year, the office and the board must publish
- 15 on their web sites the specific criteria and any quantitative
- 16 weighting scheme or scoring system that the board will use to
- 17 evaluate or rank applications and award funding.
- 18 (5) An applicant for a grant or loan under this section must
- 19 provide the following information on the application:
- 20 (a) The location of the project;
 - 21 (b) The kind and amount of broadband infrastructure to be
 - 22 purchased for the project;
 - 23 (c) Evidence regarding the unserved or underserved nature of the
 - 24 community in which the project is to be located;
 - 25 (d) Evidence that proposed infrastructure will be capable of
 - 26 scaling to greater download and upload speeds;
 - 27 (e) The number of households passed that will gain access to
 - 28 broadband service as a result of the project or whose broadband
 - 29 service will be upgraded as a result of the project;
 - 30 (f) The estimated cost of retail services to end users
 - 31 facilitated by a project;
 - 32 (g) The proposed actual download and upload speeds experienced by
 - 33 end users;
 - 34 (h) Evidence of significant community institutions that will
 - 35 benefit from the proposed project;
 - 36 (i) Anticipated economic, educational, health care, or public
 - 37 safety benefits created by the project;
 - 38 (j) Evidence of community support for the project;

1 (k) If available, a description of the applicant's user adoption
2 assistance program and efforts to promote the use of newly available
3 broadband services created by the project;

4 (l) The estimated total cost of the project;

5 (m) Other sources of funding for the project that will supplement
6 any grant or loan award;

7 (n) A demonstration of the project's long-term sustainability,
8 including the applicant's financial soundness, organizational
9 capacity, and technical expertise;

10 (o) A strategic plan to maintain long-term operation of the
11 infrastructure;

12 (p) Evidence that no later than six weeks before submission of
13 the application, the applicant contacted, in writing, all entities
14 providing broadband service near the proposed project area to ask
15 each broadband service provider's plan to upgrade broadband service
16 in the project area to speeds that meet or exceed the state's
17 definition for broadband service as defined in section 2 of this act,
18 within the time frame specified in the proposed grant or loan
19 activities;

20 (q) If applicable, the broadband service providers' written
21 responses to the inquiry made under (p) of this subsection; and

22 (r) Any additional information requested by the board.

23 (6)(a) Within thirty days of the close of the grant and loan
24 application process, the board shall publish on its web site the
25 proposed geographic broadband service area and the proposed broadband
26 speeds for each application submitted.

27 (b) Any existing broadband service provider near the proposed
28 project area may, within thirty days of publication of the
29 information under (a) of this subsection, submit in writing to the
30 board an objection to an application. An objection must contain
31 information demonstrating that:

32 (i) The project would result in overbuild, meaning that the
33 objecting provider currently provides, or has begun construction to
34 provide, broadband service to end users in the proposed project area
35 at speeds equal to or greater than the state speed goals contained in
36 section 5 of this act; or

37 (ii) The objecting provider commits to complete construction of
38 broadband infrastructure and provide broadband service to end users
39 in the proposed project area at speeds equal to or greater than the
40 state speed goals contained in section 5 of this act, no later than

1 twenty-four months after the date awards are made under this section
2 for the grant and loan cycle under which the application was
3 submitted.

4 (c) Objections submitted to the board under this subsection must
5 be certified by affidavit.

6 (d) The board may evaluate the information submitted under this
7 section by the objecting provider and must consider it in making a
8 determination on the application objected to. The board may request
9 clarification or additional information. The board may choose to not
10 fund a project if the board determines that the objecting provider's
11 commitment to provide broadband service that meets the requirements
12 of (b) of this subsection in the proposed project area is credible.
13 In assessing the commitment, the board may consider whether the
14 objecting provider has or will provide a bond, letter of credit, or
15 other indicia of financial commitment guaranteeing the project's
16 completion.

17 (e) If the board denies funding to an applicant as a result of a
18 broadband service provider's objection made under this section, and
19 the broadband service provider does not fulfill its commitment to
20 provide broadband service in the project area, then for the following
21 two grant and loan cycles, the board is prohibited from denying
22 funding to an applicant on the basis of a challenge by the same
23 broadband service provider, unless the board determines that the
24 broadband service provider's failure to fulfill the provider's
25 commitment was the result of factors beyond the broadband service
26 provider's control. The board is not prohibited from denying funding
27 to an applicant for reasons other than an objection by the same
28 broadband service provider.

29 (f) An applicant or broadband service provider that objected to
30 the application may request a debriefing conference regarding the
31 board's decision on the application. Requests for debriefing must be
32 coordinated by the office and must be submitted in writing in
33 accordance with procedure specified by the office.

34 (g) Confidential business and financial information submitted by
35 an objecting provider under this subsection is exempt from disclosure
36 under chapter 42.56 RCW.

37 (7) (a) In evaluating applications and awarding funds, the board
38 shall give priority to applications that are constructed in areas
39 identified as unserved.

1 (b) In evaluating applications and awarding funds, the board may
2 give priority to applications that:

3 (i) Are constructed in areas identified as underserved;

4 (ii) Provide assistance to public-private partnerships deploying
5 broadband infrastructure from areas currently served with broadband
6 service to areas currently lacking access to broadband services;

7 (iii) Construct infrastructure that is open-access, meaning that
8 service providers may use network services at rates, terms, and
9 conditions that are not discriminatory or preferential between
10 providers;

11 (iv) Bring broadband service to tribal lands or areas servicing
12 tribal entities;

13 (v) Serve economically distressed areas of the state as the term
14 "distressed area" is defined in RCW 43.168.020;

15 (vi) Offer new or substantially upgraded broadband service to
16 important community anchor institutions including, but not limited
17 to, libraries, educational institutions, public safety facilities,
18 and health care facilities;

19 (vii) Facilitate the use of telemedicine and electronic health
20 records, especially in deliverance of behavioral health services and
21 services to veterans;

22 (viii) Provide technical support and train residents, businesses,
23 and institutions in the community served by the project to utilize
24 broadband service;

25 (ix) Include a component to actively promote the adoption of
26 newly available broadband services in the community;

27 (x) Provide evidence of strong support for the project from
28 citizens, government, businesses, and community institutions;

29 (xi) Provide access to broadband service to a greater number of
30 unserved or underserved households and businesses;

31 (xii) Seek the lowest amount of state investment per new location
32 served and leverage greater amounts of funding for the project from
33 other private and public sources;

34 (xiii) Include evidence of a customer service plan; or

35 (xiv) Consider leveraging existing broadband infrastructure and
36 other unique solutions.

37 (c) The board shall endeavor to award funds under this section to
38 qualified applicants in all regions of the state.

39 (d) The board shall consider affordability and quality of service
40 to end users in making a determination on any application.

1 (e) The board may, in collaboration with the office, develop
2 additional rules for eligibility, project applications, the
3 associated objection process, and funding priority, as provided under
4 this subsection and subsections (3), (5), and (6) of this section.

5 (f) The board may adopt rules for a voluntary nonbinding
6 mediation between incumbent providers and applicants to the grant and
7 loan program created in this section.

8 (8) To ensure a grant or loan to a private entity under this
9 section primarily serves the public interest and benefits the public,
10 any such grant or loan must be conditioned on a guarantee that the
11 asset or infrastructure to be developed will be maintained for public
12 use for a period of at least fifteen years.

13 (9)(a) No funds awarded under this section may fund more than
14 fifty percent of the total cost of the project.

15 (b) Funds awarded to a single project under this section must not
16 exceed two million dollars.

17 (10) Prior to awarding funds under this section, the board must
18 consult with the Washington utilities and transportation commission.
19 The commission must provide to the board an assessment of the
20 economic and technical feasibility of a proposed application. The
21 board must consider the commission's assessment as part of its
22 evaluation of a proposed application.

23 (11) The definitions in section 2 of this act apply throughout
24 this section unless the context clearly requires otherwise.

25 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.155
26 RCW to read as follows:

27 (1) The statewide broadband account is created in the state
28 treasury. Moneys received from appropriations by the legislature, the
29 proceeds of bond sales when authorized by the legislature, repayment
30 of loans, or any other lawful source must be deposited into the
31 account. Moneys in the account may be spent only after appropriation.

32 (2) Expenditures from the account may be used only:

33 (a) For grant and loan awards made under section 7 of this act,
34 including costs incurred by the board to administer section 7 of this
35 act;

36 (b) To contract for data acquisition, a statewide broadband
37 demand assessment, or gap analysis;

38 (c) To supplement revenues raised by bonds sold by local
39 governments for broadband structure development; or

1 (d) To provide for state match requirements under federal law.

2 (3) The board must maintain separate accounting for any federal
3 funds in the account.

4 (4) The definitions in section 2 of this act apply throughout
5 this section unless the context clearly requires otherwise.

6 **Sec. 9.** RCW 54.16.330 and 2004 c 158 s 1 are each amended to
7 read as follows:

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

13 ~~((a))~~ (i) For the district's internal telecommunications needs;
14 ~~((and~~

15 ~~(b))~~ (ii) For the provision of wholesale telecommunications
16 services within the district and by contract with another public
17 utility district.

18 (b) Except as provided in subsection (8) of this section, nothing
19 in this ~~(subsection)~~ section shall be construed to authorize public
20 utility districts to provide telecommunications services to end
21 users.

22 (2) A public utility district providing wholesale or retail
23 telecommunications services shall ensure that rates, terms, and
24 conditions for such services are not unduly or unreasonably
25 discriminatory or preferential. Rates, terms, and conditions are
26 discriminatory or preferential when a public utility district
27 offering rates, terms, and conditions to an entity for wholesale or
28 retail telecommunications services does not offer substantially
29 similar rates, terms, and conditions to all other entities seeking
30 substantially similar services.

31 (3) A public utility district providing wholesale or retail
32 telecommunications services shall not be required to, but may,
33 establish a separate utility system or function for such purpose. In
34 either case, a public utility district providing wholesale or retail
35 telecommunications services shall separately account for any revenues
36 and expenditures for those services according to standards
37 established by the state auditor pursuant to its authority in chapter
38 43.09 RCW and consistent with the provisions of this title. Any
39 revenues received from the provision of wholesale or retail

1 telecommunications services must be dedicated to costs incurred to
2 build and maintain any telecommunications facilities constructed,
3 installed, or acquired to provide such services, including payments
4 on debt issued to finance such services, until such time as any bonds
5 or other financing instruments executed after June 8, 2000, and used
6 to finance such telecommunications facilities are discharged or
7 retired.

8 (4) When a public utility district provides wholesale or retail
9 telecommunications services, all telecommunications services rendered
10 to the district for the district's internal telecommunications needs
11 shall be allocated or charged at its true and full value. A public
12 utility district may not charge its nontelecommunications operations
13 rates that are preferential or discriminatory compared to those it
14 charges entities purchasing wholesale or retail telecommunications
15 services.

16 (5) If a person or entity receiving retail telecommunications
17 services from a public utility district under this chapter has a
18 complaint regarding the reasonableness of the rates, terms,
19 conditions, or services provided, the person or entity may file a
20 complaint with the district commission.

21 (6) A public utility district shall not exercise powers of
22 eminent domain to acquire telecommunications facilities or
23 contractual rights held by any other person or entity to
24 telecommunications facilities.

25 ((+6)) (7) Except as otherwise specifically provided, a public
26 utility district may exercise any of the powers granted to it under
27 this title and other applicable laws in carrying out the powers
28 authorized under this section. Nothing in chapter 81, Laws of 2000
29 limits any existing authority of a public utility district under this
30 title.

31 (8) (a) If an internet service provider operating on
32 telecommunications facilities of a public utility district that
33 provides wholesale telecommunications services but does not provide
34 retail telecommunications services, ceases to provide access to the
35 internet to its end-use customers, and no other retail service
36 providers are willing to provide service, the public utility district
37 may provide retail telecommunications services to the end-use
38 customers of the defunct internet service provider in order for end-
39 use customers to maintain access to the internet until a replacement
40 internet service provider is, or providers are, in operation.

1 (b) Within thirty days of an internet service provider ceasing to
2 provide access to the internet, the public utility district must
3 initiate a process to find a replacement internet service provider or
4 providers to resume providing access to the internet using
5 telecommunications facilities of a public utility district.

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

12 **Sec. 10.** RCW 53.08.370 and 2018 c 169 s 2 are each amended to
13 read as follows:

14 (1) A port district in existence on June 8, 2000, may construct,
15 purchase, acquire, develop, finance, lease, license, handle, provide,
16 add to, contract for, interconnect, alter, improve, repair, operate,
17 and maintain any telecommunications facilities within or without the
18 district's limits for the following purposes:

19 (a) For the district's own use; and

20 (b) For the provision of wholesale telecommunications services
21 within or without the district's limits. Nothing in this subsection
22 shall be construed to authorize port districts to provide
23 telecommunications services to end users.

24 (2) Except as provided in subsection (9) of this section, a port
25 district providing wholesale telecommunications services under this
26 section shall ensure that rates, terms, and conditions for such
27 services are not unduly or unreasonably discriminatory or
28 preferential. Rates, terms, and conditions are discriminatory or
29 preferential when a port district offering such rates, terms, and
30 conditions to an entity for wholesale telecommunications services
31 does not offer substantially similar rates, terms, and conditions to
32 all other entities seeking substantially similar services.

33 (3) When a port district establishes a separate utility function
34 for the provision of wholesale telecommunications services, it shall
35 account for any and all revenues and expenditures related to its
36 wholesale telecommunications facilities and services separately from
37 revenues and expenditures related to its internal telecommunications
38 operations. Any revenues received from the provision of wholesale
39 telecommunications services must be dedicated to the utility function

1 that includes the provision of wholesale telecommunications services
2 for costs incurred to build and maintain the telecommunications
3 facilities until such time as any bonds or other financing
4 instruments executed after June 8, 2000, and used to finance the
5 telecommunications facilities are discharged or retired.

6 (4) When a port district establishes a separate utility function
7 for the provision of wholesale telecommunications services, all
8 telecommunications services rendered by the separate function to the
9 district for the district's internal telecommunications needs shall
10 be charged at its true and full value. A port district may not charge
11 its nontelecommunications operations rates that are preferential or
12 discriminatory compared to those it charges entities purchasing
13 wholesale telecommunications services.

14 (5) A port district shall not exercise powers of eminent domain
15 to acquire telecommunications facilities or contractual rights held
16 by any other person or entity to telecommunications facilities.

17 (6) Except as otherwise specifically provided, a port district
18 may exercise any of the powers granted to it under this title and
19 other applicable laws in carrying out the powers authorized under
20 this section. Nothing in chapter 81, Laws of 2000 limits any existing
21 authority of a port district under this title.

22 (7) A port district that has not exercised the authorities
23 provided in this section prior to June 7, 2018, must develop a
24 business case plan before exercising the authorities provided in this
25 section. The port district must procure an independent qualified
26 consultant to review the business case plan, including the use of
27 public funds in the provision of wholesale telecommunications
28 services. Any recommendations or adjustments to the business case
29 plan made during third-party review must be received and either
30 rejected or accepted by the port commission in an open meeting.

31 (8) A port district with telecommunications facilities for use in
32 the provision of wholesale telecommunications in accordance with
33 subsection (1)(b) of this section may be subject to local leasehold
34 excise taxes under RCW 82.29A.040.

35 (9)(a) A port district under this section may select a
36 telecommunications company to operate all or a portion of the port
37 district's telecommunications facilities.

38 (b) For the purposes of this section "telecommunications company"
39 means any for-profit entity owned by investors that sells
40 telecommunications services to end users.

1 (c) Nothing in this subsection (9) is intended to limit or
2 otherwise restrict any other authority provided by law.

3 **Sec. 11.** RCW 80.36.630 and 2013 2nd sp.s. c 8 s 202 are each
4 amended to read as follows:

5 (1) The definitions in this section apply throughout this section
6 and RCW 80.36.650 through 80.36.690 and 80.36.610 unless the context
7 clearly requires otherwise.

8 (a) "Basic residential service" means those services set out in
9 47 C.F.R. Sec. 54.101(a) (2011), as it existed on the effective date
10 of this section, and mandatory extended area service approved by the
11 commission.

12 (b) "Basic telecommunications services" means the following
13 services:

14 (i) Single-party service;

15 (ii) Voice grade access to the public switched network;

16 (iii) Support for local usage;

17 (iv) Dual tone multifrequency signaling (touch-tone);

18 (v) Access to emergency services (911);

19 (vi) Access to operator services;

20 (vii) Access to interexchange services;

21 (viii) Access to directory assistance; and

22 (ix) Toll limitation services.

23 (c) "Broadband service" means any service providing advanced
24 telecommunications capability, including internet access and access
25 to high quality voice, data, graphics, or video.

26 (d) "Communications provider" means a provider of communications
27 services that assigns a working telephone number to a final consumer
28 for intrastate wireline or wireless communications services or
29 interconnected voice over internet protocol service, and includes
30 local exchange carriers.

31 ~~((d))~~ (e) "Communications services" includes telecommunications
32 services and information services and any combination thereof.

33 ~~((e))~~ (f) "Incumbent local exchange carrier" has the same
34 meaning as set forth in 47 U.S.C. Sec. 251(h).

35 ~~((f))~~ (g) "Incumbent public network" means the network
36 established by incumbent local exchange carriers for the delivery of
37 communications services to customers that is used by communications
38 providers for origination or termination of communications services
39 by or to customers.

1 ~~((g))~~ (h) "Interconnected voice over internet protocol service"
2 means an interconnected voice over internet protocol service that:
3 ~~((a)–[(i)])~~ (i) Enables real-time, two-way voice communications;
4 ~~((b)–[(ii)])~~ (ii) requires a broadband connection from the user's
5 location; ~~((c)–[(iii)])~~ (iii) requires internet protocol-compatible
6 customer premises equipment; and ~~((d)–[(iv)])~~ (iv) permits users
7 generally to receive calls that originate on the public network and
8 to terminate calls to the public network.

9 ~~((h))~~ (i) "Program" means the state universal communications
10 services program created in RCW 80.36.650.

11 ~~((i))~~ (j) "Telecommunications" has the same meaning as defined
12 in 47 U.S.C. Sec. 153(43).

13 ~~((j))~~ (k) "Telecommunications act of 1996" means the
14 telecommunications act of 1996 (P.L. 104-104, 110 Stat. 56).

15 ~~((k) "Working telephone number" means a north American numbering
16 plan telephone number, or successor dialing protocol, that is
17 developed for use in placing calls to or from the public network,
18 that enables a consumer to make or receive calls.)~~

19 (2) This section expires July 1, ~~((2020))~~ 2025.

20 **Sec. 12.** RCW 80.36.650 and 2016 c 145 s 1 are each amended to
21 read as follows:

22 (1) A state universal communications services program is
23 established. The program is established to protect public safety and
24 welfare under the authority of the state to regulate
25 telecommunications under Article XII, section 19 of the state
26 Constitution. The purpose of the program is to support continued
27 provision of basic telecommunications services under rates, terms,
28 and conditions established by the commission ~~((during the time over
29 which incumbent communications providers in the state are adapting to
30 changes in federal universal service fund and intercarrier
31 compensation support))~~ and the provision, enhancement, and
32 maintenance of broadband services, recognizing that, historically,
33 the incumbent public network functions to provide all communications
34 services including, but not limited to, voice and broadband services.

35 (2) Under the program, eligible communications providers may
36 receive distributions from the universal communications services
37 account created in RCW 80.36.690 in exchange for the affirmative
38 agreement to provide continued telecommunications services under the
39 rates, terms, and conditions established by the commission under this

1 chapter, and broadband services, for the period covered by the
2 distribution. The commission must implement and administer the
3 program under terms and conditions established in RCW 80.36.630
4 through 80.36.690. Expenditures for the program may not exceed five
5 million dollars per fiscal year; provided, however, that if less than
6 five million dollars is expended in any fiscal year, the unexpended
7 portion must be carried over to subsequent fiscal years and, unless
8 fully expended, must be available for program expenditures in such
9 subsequent fiscal years in addition to the five million dollars
10 allotted for each of those subsequent fiscal years.

11 (3) A communications provider is eligible to receive
12 distributions from the account if:

13 (a) (i) The communications provider is: ~~((+i))~~ (A) An incumbent
14 local exchange carrier serving fewer than forty thousand access lines
15 in the state; or ~~((+ii))~~ (B) a radio communications service company
16 providing wireless two-way voice communications service and broadband
17 services to less than the equivalent of forty thousand access lines
18 in the state. For purposes of determining the access line threshold
19 in this subsection, the access lines or equivalents of all wireline
20 affiliates must be counted as a single threshold, if the lines or
21 equivalents are located in Washington;

22 ~~((+b))~~ (ii) ~~The ((customers of the communications provider are~~
23 ~~at risk of rate instability or service interruptions or cessations~~
24 ~~absent a distribution to the provider that will allow the provider to~~
25 ~~maintain rates reasonably close to the benchmark))~~ communications
26 provider has adopted a plan to provide, enhance, or maintain
27 broadband services in its service area; and

28 ~~((+e))~~ (iii) The communications provider meets any other
29 requirements established by the commission pertaining to the
30 provision of communications services, including basic
31 telecommunications services; or

32 (b) The communications provider demonstrates to the commission
33 that the communications provider is able to provide the same or
34 comparable services at the same or similar service quality standards
35 at a lower price; and: (i) Will provide communications services to
36 all customers in the exchange or exchanges in which it will provide
37 service; and (ii) submits to the commission's regulation of its
38 service as if it were the incumbent local exchange company serving
39 the exchange or exchanges for which it seeks distribution from the
40 account.

1 (4) (a) Distributions to eligible communications providers are
2 based on ((a benchmark)) criteria established by the commission.
3 ((The benchmark is the rate the commission determines to be a
4 reasonable amount customers should pay for basic residential service
5 provided over the incumbent public network. However, if an incumbent
6 local exchange carrier is charging rates above the benchmark for the
7 basic residential service, that provider may not seek distributions
8 from the fund for the purpose of reducing those rates to the
9 benchmark.))

10 (b) If the program does not have sufficient funds to fully fund
11 the distribution formula set out in (a) of this subsection,
12 distributions must be reduced on a pro rata basis using the amounts
13 calculated for that year's program support as the basis of the pro
14 rata calculations.

15 (c) To receive a distribution under the program, an eligible
16 communications provider must affirmatively consent to continue
17 providing communications services to its customers under rates,
18 terms, and conditions established by the commission pursuant to this
19 chapter for the period covered by the distribution.

20 (5) The program is funded from amounts deposited by the
21 legislature in the universal communications services account
22 established in RCW 80.36.690. The commission must operate the program
23 within amounts appropriated for this purpose and deposited in the
24 account.

25 (6) The commission must periodically review the accounts and
26 records of any communications provider that receives distributions
27 under the program to ensure compliance with the program and monitor
28 the providers' use of the funds.

29 (7) The commission must establish an advisory board, consisting
30 of a reasonable balance of representatives from different types of
31 stakeholders, including but not limited to communications providers
32 and consumers, to advise the commission on any rules and policies
33 governing the operation of the program.

34 (8) The program terminates on June 30, ((2019)) 2024, and no
35 distributions may be made after that date.

36 (9) This section expires July 1, ((2020)) 2025.

37 **Sec. 13.** RCW 80.36.660 and 2013 2nd sp.s. c 8 s 204 are each
38 amended to read as follows:

1 (1) To implement the program, the commission must adopt rules for
2 the following purposes:

3 (a) Operation of the program, including criteria for: Eligibility
4 for distributions; use of the funds; identification of any reports or
5 data that must be filed with the commission, including, but not
6 limited to, how a communication provider used the distributed funds;
7 and the communications provider's infrastructure;

8 (b) Operation of the universal communications services account
9 established in RCW 80.36.690;

10 (c) Establishment of the (~~benchmark~~) criteria used to calculate
11 distributions; and

12 (d) Readoption, amendment, or repeal of any existing rules
13 adopted pursuant to RCW 80.36.610 (~~and 80.36.620~~) as necessary to
14 be consistent with RCW 80.36.630 through 80.36.690 and 80.36.610.

15 (2) This section expires July 1, (~~2020~~) 2025.

16 **Sec. 14.** RCW 80.36.670 and 2013 2nd sp.s. c 8 s 205 are each
17 amended to read as follows:

18 (1) In addition to any other penalties prescribed by law, the
19 commission may impose penalties for failure to make or delays in
20 making or filing any reports required by the commission for
21 administration of the program. In addition, the commission may
22 recover amounts determined to have been improperly distributed under
23 RCW 80.36.650. For the purposes of this section, the provisions of
24 RCW 80.04.380 through 80.04.405, inclusive, apply to all companies
25 that receive support from the universal communications services
26 account created in RCW 80.36.690.

27 (2) Any action taken under this section must be taken only after
28 providing the affected communications provider with notice and an
29 opportunity for a hearing, unless otherwise provided by law.

30 (3) Any amounts recovered under this section must be deposited in
31 the universal communications services account created in RCW
32 80.36.690.

33 (4) This section expires July 1, (~~2020~~) 2025.

34 **Sec. 15.** RCW 80.36.680 and 2013 2nd sp.s. c 8 s 206 are each
35 amended to read as follows:

36 (1) The commission may delegate to the commission secretary or
37 other staff the authority to resolve disputes and make other
38 administrative decisions necessary to the administration and

1 supervision of the program consistent with the relevant statutes and
2 commission rules.

3 (2) This section expires July 1, (~~(2020)~~) 2025.

4 **Sec. 16.** RCW 80.36.690 and 2013 2nd sp.s. c 8 s 208 are each
5 amended to read as follows:

6 (1) The universal communications services account is created in
7 the custody of the state treasurer. Revenues to the account consist
8 of moneys deposited in the account by the legislature and any
9 penalties or other recoveries received pursuant to RCW 80.36.670.
10 Expenditures from the account may be used only for the purposes of
11 the universal communications services program established in RCW
12 80.36.650 and commission expenses related to implementation and
13 administration of the provisions of RCW 80.36.630 through 80.36.690
14 and section 212, chapter 8, Laws of 2013 2nd sp. sess. Only the
15 secretary of the commission or the secretary's designee may authorize
16 expenditures from the account. The account is subject to allotment
17 procedures under chapter 43.88 RCW, but an appropriation is not
18 required for expenditures.

19 (2) This section expires July 1, (~~(2020)~~) 2025.

20 **Sec. 17.** RCW 80.36.700 and 2013 2nd sp.s. c 8 s 211 are each
21 amended to read as follows:

22 (1) The universal communications services program established in
23 RCW 80.36.630 through 80.36.690 terminates on June 30, (~~(2019)~~) 2024.

24 (2) This section expires July 1, (~~(2020)~~) 2025.

25 **Sec. 18.** 2013 2nd sp.s. c 8 s 212 (uncodified) is amended to
26 read as follows:

27 (1) By December 1, (~~(2017)~~) 2024, and in compliance with RCW
28 43.01.036, the Washington utilities and transportation commission
29 (~~(must)~~) may report to the appropriate committees of the legislature,
30 on the following: (~~(+1)~~) (a) Whether funding levels for each small
31 telecommunications company have been adequate to maintain reliable
32 universal service; (~~(+2)~~) (b) the future impacts on small
33 telecommunications companies from the elimination of funding under
34 this act; (~~(+3)~~) (c) the impacts on customer rates from the current
35 level of funding and the future impacts when the funding terminates
36 under this act; and (~~(+4)~~) (d) the impacts on line and service
37 delivery investments when the funding is terminated under this act.

1 The report may also include an analysis of the need for future
2 program funding and recommendations on potential funding mechanisms
3 to improve the availability of communications services, including
4 broadband service, in unserved and underserved areas. Commission
5 expenses related to conducting all analysis in preparation of this
6 report must be expended from the universal communications services
7 account.

8 (2) The Washington utilities and transportation commission must
9 initiate a rule making to reform the state universal communications
10 services program no later than ninety days following the effective
11 date of this section. The rule making must address adding broadband
12 as a supported service and, consistent with the size of the fund,
13 establishing:

14 (a) Broadband provider eligibility;

15 (b) Service performance and buildout requirements for funding
16 recipients;

17 (c) Support amounts for maintaining systems that meet federal or
18 state broadband speed guidelines; and

19 (d) Methods to effectively and efficiently distribute program
20 support to eligible providers.

21 **Sec. 19.** RCW 43.84.092 and 2018 c 287 s 7, 2018 c 275 s 10, and
22 2018 c 203 s 14 are each reenacted and amended to read as follows:

23 (1) All earnings of investments of surplus balances in the state
24 treasury shall be deposited to the treasury income account, which
25 account is hereby established in the state treasury.

26 (2) The treasury income account shall be utilized to pay or
27 receive funds associated with federal programs as required by the
28 federal cash management improvement act of 1990. The treasury income
29 account is subject in all respects to chapter 43.88 RCW, but no
30 appropriation is required for refunds or allocations of interest
31 earnings required by the cash management improvement act. Refunds of
32 interest to the federal treasury required under the cash management
33 improvement act fall under RCW 43.88.180 and shall not require
34 appropriation. The office of financial management shall determine the
35 amounts due to or from the federal government pursuant to the cash
36 management improvement act. The office of financial management may
37 direct transfers of funds between accounts as deemed necessary to
38 implement the provisions of the cash management improvement act, and
39 this subsection. Refunds or allocations shall occur prior to the

1 distributions of earnings set forth in subsection (4) of this
2 section.

3 (3) Except for the provisions of RCW 43.84.160, the treasury
4 income account may be utilized for the payment of purchased banking
5 services on behalf of treasury funds including, but not limited to,
6 depository, safekeeping, and disbursement functions for the state
7 treasury and affected state agencies. The treasury income account is
8 subject in all respects to chapter 43.88 RCW, but no appropriation is
9 required for payments to financial institutions. Payments shall occur
10 prior to distribution of earnings set forth in subsection (4) of this
11 section.

12 (4) Monthly, the state treasurer shall distribute the earnings
13 credited to the treasury income account. The state treasurer shall
14 credit the general fund with all the earnings credited to the
15 treasury income account except:

16 (a) The following accounts and funds shall receive their
17 proportionate share of earnings based upon each account's and fund's
18 average daily balance for the period: The abandoned recreational
19 vehicle disposal account, the aeronautics account, the aircraft
20 search and rescue account, the Alaskan Way viaduct replacement
21 project account, the brownfield redevelopment trust fund account, the
22 budget stabilization account, the capital vessel replacement account,
23 the capitol building construction account, the Cedar River channel
24 construction and operation account, the Central Washington University
25 capital projects account, the charitable, educational, penal and
26 reformatory institutions account, the Chehalis basin account, the
27 cleanup settlement account, the Columbia river basin water supply
28 development account, the Columbia river basin taxable bond water
29 supply development account, the Columbia river basin water supply
30 revenue recovery account, the common school construction fund, the
31 community forest trust account, the connecting Washington account,
32 the county arterial preservation account, the county criminal justice
33 assistance account, the deferred compensation administrative account,
34 the deferred compensation principal account, the department of
35 licensing services account, the department of licensing tuition
36 recovery trust fund, the department of retirement systems expense
37 account, the developmental disabilities community trust account, the
38 diesel idle reduction account, the drinking water assistance account,
39 the drinking water assistance administrative account, the early
40 learning facilities development account, the early learning

1 facilities revolving account, the Eastern Washington University
2 capital projects account, the Interstate 405 express toll lanes
3 operations account, the education construction fund, the education
4 legacy trust account, the election account, the electric vehicle
5 charging infrastructure account, the energy freedom account, the
6 energy recovery act account, the essential rail assistance account,
7 The Evergreen State College capital projects account, the federal
8 forest revolving account, the ferry bond retirement fund, the freight
9 mobility investment account, the freight mobility multimodal account,
10 the grade crossing protective fund, the public health services
11 account, (~~the high capacity transportation account,~~) the state
12 higher education construction account, the higher education
13 construction account, the highway bond retirement fund, the highway
14 infrastructure account, the highway safety fund, the high occupancy
15 toll lanes operations account, the hospital safety net assessment
16 fund, the industrial insurance premium refund account, the judges'
17 retirement account, the judicial retirement administrative account,
18 the judicial retirement principal account, the local leasehold excise
19 tax account, the local real estate excise tax account, the local
20 sales and use tax account, the marine resources stewardship trust
21 account, the medical aid account, the mobile home park relocation
22 fund, the money-purchase retirement savings administrative account,
23 the money-purchase retirement savings principal account, the motor
24 vehicle fund, the motorcycle safety education account, the multimodal
25 transportation account, the multiuse roadway safety account, the
26 municipal criminal justice assistance account, the natural resources
27 deposit account, the oyster reserve land account, the pension funding
28 stabilization account, the perpetual surveillance and maintenance
29 account, the pollution liability insurance agency underground storage
30 tank revolving account, the public employees' retirement system plan
31 1 account, the public employees' retirement system combined plan 2
32 and plan 3 account, the public facilities construction loan revolving
33 account beginning July 1, 2004, the public health supplemental
34 account, the public works assistance account, the Puget Sound capital
35 construction account, the Puget Sound ferry operations account, the
36 Puget Sound taxpayer accountability account, the real estate
37 appraiser commission account, the recreational vehicle account, the
38 regional mobility grant program account, the resource management cost
39 account, the rural arterial trust account, the rural mobility grant
40 program account, the rural Washington loan fund, the sexual assault

1 prevention and response account, the site closure account, the
2 skilled nursing facility safety net trust fund, the small city
3 pavement and sidewalk account, the special category C account, the
4 special wildlife account, the state employees' insurance account, the
5 state employees' insurance reserve account, the state investment
6 board expense account, the state investment board commingled trust
7 fund accounts, the state patrol highway account, the state route
8 number 520 civil penalties account, the state route number 520
9 corridor account, the state wildlife account, the statewide broadband
10 account, the statewide tourism marketing account, the student
11 achievement council tuition recovery trust fund, the supplemental
12 pension account, the Tacoma Narrows toll bridge account, the
13 teachers' retirement system plan 1 account, the teachers' retirement
14 system combined plan 2 and plan 3 account, the tobacco prevention and
15 control account, the tobacco settlement account, the toll facility
16 bond retirement account, the transportation 2003 account (nickel
17 account), the transportation equipment fund, the transportation
18 future funding program account, the transportation improvement
19 account, the transportation improvement board bond retirement
20 account, the transportation infrastructure account, the
21 transportation partnership account, the traumatic brain injury
22 account, the tuition recovery trust fund, the University of
23 Washington bond retirement fund, the University of Washington
24 building account, the volunteer firefighters' and reserve officers'
25 relief and pension principal fund, the volunteer firefighters' and
26 reserve officers' administrative fund, the Washington judicial
27 retirement system account, the Washington law enforcement officers'
28 and firefighters' system plan 1 retirement account, the Washington
29 law enforcement officers' and firefighters' system plan 2 retirement
30 account, the Washington public safety employees' plan 2 retirement
31 account, the Washington school employees' retirement system combined
32 plan 2 and 3 account, the Washington state health insurance pool
33 account, the Washington state patrol retirement account, the
34 Washington State University building account, the Washington State
35 University bond retirement fund, the water pollution control
36 revolving administration account, the water pollution control
37 revolving fund, the Western Washington University capital projects
38 account, the Yakima integrated plan implementation account, the
39 Yakima integrated plan implementation revenue recovery account, and
40 the Yakima integrated plan implementation taxable bond account.

1 Earnings derived from investing balances of the agricultural
2 permanent fund, the normal school permanent fund, the permanent
3 common school fund, the scientific permanent fund, the state
4 university permanent fund, and the state reclamation revolving
5 account shall be allocated to their respective beneficiary accounts.

6 (b) Any state agency that has independent authority over accounts
7 or funds not statutorily required to be held in the state treasury
8 that deposits funds into a fund or account in the state treasury
9 pursuant to an agreement with the office of the state treasurer shall
10 receive its proportionate share of earnings based upon each account's
11 or fund's average daily balance for the period.

12 (5) In conformance with Article II, section 37 of the state
13 Constitution, no treasury accounts or funds shall be allocated
14 earnings without the specific affirmative directive of this section.

15 **Sec. 20.** 2013 2nd sp.s. c 8 s 303 (uncodified) is amended to
16 read as follows:

17 Section 209 of this act expires July 1, (~~2020~~) 2025.

18 NEW SECTION. **Sec. 21.** The following acts or parts of acts are
19 each repealed:

20 (1) RCW 43.330.415 (Washington community technology opportunity
21 account) and 2011 1st sp.s. c 43 s 608, 2009 c 509 s 8, & 2008 c 262
22 s 8;

23 (2) RCW 43.330.418 (Broadband deployment and adoption—Governor's
24 actions—Oversight and implementation by the department) and 2011 1st
25 sp.s. c 43 s 609 & 2009 c 509 s 9; and

26 (3) RCW 80.36.620 (Universal service program—Rules) and 1998 c
27 337 s 3.

28 NEW SECTION. **Sec. 22.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

--- END ---