
SUBSTITUTE SENATE BILL 5383

State of Washington

67th Legislature

2021 Regular Session

By Senate Environment, Energy & Technology (originally sponsored by Senators Wellman, Short, Hunt, King, Lovelett, Nguyen, Randall, Saldaña, Warnick, Wilson, C., and Wilson, L.)

READ FIRST TIME 02/12/21.

1 AN ACT Relating to authorizing a public utility district to
2 provide retail telecommunications services in unserved areas under
3 certain conditions; amending RCW 54.16.330 and 43.330.538; adding a
4 new section to chapter 42.56 RCW; and creating a new section.

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

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

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

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

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

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

9 (ii) For the provision of wholesale telecommunications services
10 within the district and by contract with another public utility
11 district.

12 (b) Except as provided in subsections (8) and (10) of this
13 section, nothing in this section shall be construed to authorize
14 public utility districts to provide telecommunications services to
15 end users.

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

25 (3) A public utility district providing wholesale or retail
26 telecommunications services shall not be required to, but may,
27 establish a separate utility system or function for such purpose. In
28 either case, a public utility district providing wholesale or retail
29 telecommunications services shall separately account for any revenues
30 and expenditures for those services according to standards
31 established by the state auditor pursuant to its authority in chapter
32 43.09 RCW and consistent with the provisions of this title. Any
33 revenues received from the provision of wholesale or retail
34 telecommunications services must be dedicated to costs incurred to
35 build and maintain any telecommunications facilities constructed,
36 installed, or acquired to provide such services, including payments
37 on debt issued to finance such services, until such time as any bonds
38 or other financing instruments executed after June 8, 2000, and used
39 to finance such telecommunications facilities are discharged or
40 retired.

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

9 (5) If a person or entity receiving retail telecommunications
10 services from a public utility district under this section has a
11 complaint regarding the reasonableness of the rates, terms,
12 conditions, or services provided, the person or entity may file a
13 complaint with the district commission.

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

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

23 (8)(a) If an internet service provider operating on
24 telecommunications facilities of a public utility district that
25 provides wholesale telecommunications services but does not provide
26 retail telecommunications services, ceases to provide access to the
27 internet to its end-use customers, and no other retail service
28 providers are willing to provide service, the public utility district
29 may provide retail telecommunications services to the end-use
30 customers of the defunct internet service provider in order for end-
31 use customers to maintain access to the internet until a replacement
32 internet service provider is, or providers are, in operation.

33 (b) Within thirty days of an internet service provider ceasing to
34 provide access to the internet, the public utility district must
35 initiate a process to find a replacement internet service provider or
36 providers to resume providing access to the internet using
37 telecommunications facilities of a public utility district.

38 (c) For a maximum period of five months, following initiation of
39 the process begun in (b) of this section, or, if earlier than five
40 months, until a replacement internet service provider is, or

1 providers are, in operation, the district commission may establish a
2 rate for providing access to the internet and charge customers to
3 cover expenses necessary to provide access to the internet.

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

9 (10)(a) A public utility district may provide retail
10 telecommunications services to an end user in an unserved area if the
11 public utility district receives notice from the governor's statewide
12 broadband office, established in RCW 43.330.532, that an existing
13 broadband service provider has not submitted an objection and a
14 broadband service plan required in this subsection for the same
15 project area. Prior to beginning a project to provide retail
16 telecommunications services in this subsection, a public utility
17 district must notify the governor's statewide broadband office of its
18 intent to provide such services and post a notice of intent on its
19 public website. The governor's statewide broadband office must post
20 notices received from a public utility district pursuant to this
21 subsection on its public website.

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

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

31 (ii) If an existing broadband service provider intends to prevent
32 overbuild as provided in (b)(i) of this subsection, then the existing
33 service provider must submit a broadband service plan to the
34 governor's statewide broadband office. The broadband service plan
35 must, at a minimum, demonstrate that the existing service provider
36 currently provides broadband service to end users near the unserved
37 area at speeds equal to or greater than the speed goals contained in
38 RCW 43.330.536 and outline how the existing broadband service
39 provider intends to provide broadband service with speeds of at least
40 150 megabits per second to the unserved area. A broadband service

1 plan is confidential and exempt from public inspection and copying
2 under chapter 42.56 RCW.

3 (c) For the purposes of this subsection:

4 (i) "Broadband service" has the same meaning as defined in RCW
5 43.330.530.

6 (ii) "Unserved areas" has the same meaning as defined in RCW
7 43.330.530.

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

10 (1) (a) Beginning January 1, 2021, and biennially thereafter, the
11 office shall report to the legislative committees with jurisdiction
12 over broadband policy and finance on the office's activities during
13 the previous two years.

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

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

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

22 ~~((c))~~ (iii) An overview of incumbent broadband infrastructure
23 within the state;

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

27 ~~((e))~~ (v) Suggested policies, incentives, and legislation
28 designed to accelerate the achievement of the goals under RCW
29 43.330.536; and

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

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

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

37 (i) The number of public utility districts providing retail
38 telecommunications services in an unserved area authorized in RCW
39 54.16.330(10);

- 1 (ii) An analysis on the effectiveness of the broadband service
2 plans required in RCW 54.16.330(10); and
3 (iii) Any recommendations to improve the provision of retail
4 telecommunications services in unserved areas.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 42.56
6 RCW to read as follows:

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

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