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**SECOND SUBSTITUTE SENATE BILL 5383**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

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

READ FIRST TIME 02/22/21.

1 AN ACT Relating to authorizing public utility districts and port  
2 districts to provide retail telecommunications services in unserved  
3 areas under certain conditions; amending RCW 54.16.330, 53.08.370,  
4 and 43.330.538; adding a new section to chapter 42.56 RCW; and  
5 creating a new section.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the COVID-19  
8 pandemic has made it clear that equitable access to education can  
9 only happen with equitable access to reliable broadband. Increasing  
10 broadband access to unserved areas of the state is of vital  
11 importance to increasing quality of life, broadening educational  
12 opportunities, and promoting economic inclusion in the parts of our  
13 state that, without broadband access, cannot fully participate in  
14 modern society. The legislature further finds that one of the most  
15 effective tools to ensure all Washingtonians have an opportunity to  
16 equitably access education, the job market, and health care resources  
17 is to allow our public utility districts and port districts to  
18 provide retail telecommunications services.

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

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

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

7 (ii) For the provision of wholesale telecommunications services  
8 within the district and by contract with another public utility  
9 district, or to an area currently served with electrical service in  
10 an adjoining county.

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

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

24 (3) A public utility district providing wholesale or retail  
25 telecommunications services shall not be required to, but may,  
26 establish a separate utility system or function for such purpose. In  
27 either case, a public utility district providing wholesale or retail  
28 telecommunications services shall separately account for any revenues  
29 and expenditures for those services according to standards  
30 established by the state auditor pursuant to its authority in chapter  
31 43.09 RCW and consistent with the provisions of this title. Any  
32 revenues received from the provision of wholesale or retail  
33 telecommunications services must be dedicated to costs incurred to  
34 build and maintain any telecommunications facilities constructed,  
35 installed, or acquired to provide such services, including payments  
36 on debt issued to finance such services, until such time as any bonds  
37 or other financing instruments executed after June 8, 2000, and used  
38 to finance such telecommunications facilities are discharged or  
39 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 service provider has not submitted an objection and a broadband  
14 service plan required in this subsection for the same project area.  
15 Prior to beginning a project to provide retail telecommunications  
16 services in this subsection, a public utility district must notify  
17 the governor's statewide broadband office of its intent to provide  
18 such services and post a notice of intent on its public website. The  
19 governor's statewide broadband office must post notices received from  
20 a public utility district pursuant to this subsection on its public  
21 website.

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

26 (A) A letter certifying by affidavit that the project would  
27 result in overbuild, meaning that the objecting service provider  
28 currently provides, has begun construction to provide, or can  
29 demonstrate that it obligated resources towards the completion of a  
30 feasibility study before the public utility district provided notice  
31 of intent under (a) of this subsection to begin construction within  
32 six months for broadband service to end users in the proposed project  
33 area with speeds of at least 100 megabits per second download and 20  
34 megabits per second upload; and

35 (B) If an existing service provider intends to prevent overbuild  
36 as provided in (b)(i)(A) of this subsection, then the existing  
37 service provider must submit a broadband service plan to the  
38 governor's statewide broadband office. The broadband service plan  
39 must, at a minimum, demonstrate that the existing service provider  
40 currently provides broadband service to end users within the unserved

1 area at speeds equal to or greater than the speed goals contained in  
2 RCW 43.330.536(1) and outline how the existing service provider  
3 intends to provide and sustain broadband service to end users with  
4 speeds of at least 100 megabits per second download and 20 megabits  
5 per second upload within six months.

6 (ii) The governor's statewide broadband office may require an  
7 existing service provider to disclose additional information pursuant  
8 to (b)(i)(B) of this subsection to validate the authenticity of  
9 claims issued by an objecting provider. A broadband service plan is  
10 confidential and exempt from public inspection and copying under  
11 chapter 42.56 RCW.

12 (c) No later than 30 days after submitting information to the  
13 governor's statewide broadband office under (b) of this subsection,  
14 the governor's statewide broadband office must notify the public  
15 utility district of one of the following:

16 (i) An existing service provider did not submit the letter and  
17 broadband service plan under (b) of this subsection and the public  
18 utility district may pursue the proposed project in the unserved  
19 area; or

20 (ii) An existing service provider did submit the letter and  
21 broadband service plan under (b) of this subsection. The parties may  
22 elect to enter into mediation to explore options for providing  
23 broadband services in the unserved area. Mediation must be completed  
24 within 30 days or a date agreed to by all parties.

25 (d) If an existing service provider that raised an objection does  
26 not fulfill its commitment within six months for reasons deemed by  
27 the governor's statewide broadband office as not outside the existing  
28 service provider's control, the governor's statewide broadband office  
29 must notify the affected public utility district that the existing  
30 service provider has not fulfilled its commitment and grant  
31 permission to the public utility district to commence work on the  
32 project. The service provider that did not fulfill its commitment is  
33 prohibited from objecting to proposed projects posted on the  
34 governor's statewide broadband office under (a) of this subsection  
35 for the next 18 months.

36 (e) A public utility district providing retail telecommunications  
37 services under this subsection must operate an open access network.

38 (f) This section does not apply to retail internet services  
39 provided by a public utility district under RCW 54.16.420.

40 (g) For the purposes of this subsection:

1 (i) "Broadband service" has the same meaning as defined in RCW  
2 43.330.530.

3 (ii) "Open access network" means a network that, during the  
4 useful life of the infrastructure, ensures service providers may use  
5 network services and facilities at rates, terms, and conditions that  
6 are not discriminatory or preferential between providers, and employs  
7 accountable interconnection arrangements published and available  
8 publicly.

9 (iii) "Unserved areas" has the same meaning as defined in RCW  
10 43.330.530.

11 **Sec. 3.** RCW 53.08.370 and 2019 c 365 s 10 are each amended to  
12 read as follows:

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

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

19 (b) For the provision of wholesale telecommunications services  
20 within or without the district's limits. ~~((Nothing))~~ Except as  
21 provided in subsection (10) of this section, nothing in this  
22 subsection 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 (10)(a) A port district may provide retail telecommunications  
4 services to an end user in an unserved area if the port district  
5 receives notice from the governor's statewide broadband office,  
6 established in RCW 43.330.532, that an existing service provider has  
7 not submitted an objection and a broadband service plan required in  
8 this subsection for the same project area. Prior to beginning a  
9 project to provide retail telecommunications services in this  
10 subsection, a port district must notify the governor's statewide  
11 broadband office of its intent to provide such services and post a  
12 notice of intent on its public website. The governor's statewide  
13 broadband office must post notices received from a port district  
14 pursuant to this subsection on its public website.

15 (b)(i) Any existing service provider providing broadband services  
16 within the proposed project area may, within 30 days of the posting  
17 of the notice of intent under (a) of this subsection, submit the  
18 following in writing to the governor's statewide broadband office:

19 (A) A letter certifying by affidavit that the project would  
20 result in overbuild, meaning that the objecting service provider  
21 currently provides, has begun construction to provide, or can  
22 demonstrate that it obligated resources towards the completion of a  
23 feasibility study before the port district provided notice of intent  
24 under (a) of this subsection to begin construction within six months  
25 for broadband service to end users in the proposed project area with  
26 speeds of at least 100 megabits per second download and 20 megabits  
27 per second upload; and

28 (B) If an existing service provider intends to prevent overbuild  
29 as provided in (b)(i)(A) of this subsection, then the existing  
30 service provider must submit a broadband service plan to the  
31 governor's statewide broadband office. The broadband service plan  
32 must, at a minimum, demonstrate that the existing service provider  
33 currently provides broadband service to end users within the unserved  
34 area at speeds equal to or greater than the speed goals contained in  
35 RCW 43.330.536(1) and outline how the existing service provider  
36 intends to provide and sustain broadband service to end users with  
37 speeds of at least 100 megabits per second download and 20 megabits  
38 per second upload within six months.

39 (ii) The governor's statewide broadband office may require an  
40 existing service provider to disclose additional information pursuant



1 to (b) (i) (B) of this subsection to validate the authenticity of  
2 claims issued by an objecting provider. A broadband service plan is  
3 confidential and exempt from public inspection and copying under  
4 chapter 42.56 RCW.

5 (c) No later than 30 days after submitting information to the  
6 governor's statewide broadband office under (b) of this subsection,  
7 the governor's statewide broadband office must notify the port  
8 district of one of the following:

9 (i) An existing service provider did not submit the letter and  
10 broadband service plan under (b) of this subsection, and the port  
11 district may pursue the proposed project in the unserved area; or

12 (ii) An existing service provider did submit the letter and  
13 broadband service plan under (b) of this subsection. The parties may  
14 elect to enter into mediation to explore options for providing  
15 broadband services in the unserved area. Mediation must be completed  
16 within 30 days or a date agreed to by all parties.

17 (d) If an existing service provider who raised an objection does  
18 not fulfill its commitment within six months for reasons deemed by  
19 the governor's statewide broadband office as not outside the existing  
20 service provider's control, the governor's statewide broadband office  
21 must notify the affected port district that the existing service  
22 provider has not fulfilled its commitment and grant permission to the  
23 port district to commence work on the project. The service provider  
24 that did not fulfill its commitment is prohibited from objecting to  
25 proposed projects posted on the governor's statewide broadband office  
26 under (a) of this subsection for the next 18 months.

27 (e) A port district providing retail telecommunications services  
28 under this subsection must operate an open access network.

29 (f) For the purposes of this subsection:

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

32 (ii) "Open access network" means a network that, during the  
33 useful life of the infrastructure, ensures service providers may use  
34 network services and facilities at rates, terms, and conditions that  
35 are not discriminatory or preferential between providers, and employs  
36 accountable interconnection arrangements published and available  
37 publicly.

38 (iii) "Unserved areas" has the same meaning as defined in RCW  
39 43.330.530.

1       **Sec. 4.** RCW 43.330.538 and 2019 c 365 s 6 are each amended to  
2 read as follows:

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

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

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

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

17       ~~((d))~~ (iv) 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 RCW 43.155.160;

20       ~~((e))~~ (v) Suggested policies, incentives, and legislation  
21 designed to accelerate the achievement of the goals under RCW  
22 43.330.536; and

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

24       (2) (a) By December 31, 2023, the office must submit a report to  
25 the governor and the appropriate committees of the legislature  
26 regarding the provision of retail telecommunications services to  
27 unserved areas by public utility districts and port districts as  
28 provided in RCW 54.16.330(10) and 53.08.370(10).

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

30       (i) The number of public utility districts and port districts  
31 providing retail telecommunications services in an unserved area  
32 authorized in RCW 54.16.330(10) and 53.08.370(10);

33       (ii) The number of and which existing service providers submitted  
34 plans and objected to a public utility district or port district from  
35 providing retail telecommunications services pursuant to RCW  
36 54.16.330(10) (a) and 53.08.370(10) (a);

37       (iii) The number of and which existing service providers filed a  
38 certified affidavit claiming overbuild by a public utility district  
39 or port district pursuant to RCW 54.16.330(10) (b) (i) and  
40 53.08.370(10) (b) (i);

1        (iv) The number of and which existing service providers failed to  
2 fulfill their commitment to provide retail telecommunications  
3 services pursuant to RCW 54.16.330(10)(d) and 53.08.370(10)(d); and  
4        (v) Any recommendations to improve the provision of retail  
5 telecommunications services in unserved areas.

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

8        A broadband service plan submitted by a broadband service  
9 provider to the governor's statewide broadband office established in  
10 RCW 43.330.532 in accordance with the requirements under RCW  
11 54.16.330(10) and 53.08.370(10) are exempt from disclosure under this  
12 chapter.

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