6034-S.E AMH DEBO SMIL 132

**ESSB 6034** - H AMD **1385**

By Representative DeBolt

**ADOPTED 03/06/2018**

Strike everything after the enacting clause and insert the following:

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

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

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

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

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

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

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

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

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

(2) Any public utility district that, as of the effective date of this section, provides only water, sewer, and wholesale telecommunications services in a county with an area less than five hundred square miles and is located west of the Puget Sound may provide retail internet service on the public utility district's broadband network located within the public utility district boundaries only when all of the existing providers of end-user internet service on the public utility district's broadband network cease to provide end-user service or provide inadequate end-user service as determined in the manner prescribed by this section. The authority provided in this subsection expires five years after the effective date of this act for any public utility district that has not either entered into a partnership payment structure to finance broadband deployment or been petitioned to provide retail internet service within that time period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Upon review and consideration of all of the evidence, the administrative law judge must determine if the retail internet service is inadequate or nonexistent as defined in this section. Upon making a determination, the administrative law judge must state findings of fact and must issue and file a determination with the commissioners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Correct the title.

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|  | EFFECT:   Expires the authority provided for any public utility district that has not either entered into a partnership payment structure to finance broadband deployment or been petitioned to provide retail internet service within 5 years of the effective date of the act. Requires development of a business case plan prior to authorization to provide retail internet service. Modifies the rates standard from "fair and nondiscriminatory" to "just, fair, and reasonable." Prohibits PUDs from conditioning the cost or availability of other services on purchase or use of retail internet services. Requires provision of retail internet service to all entities within the geographical area meeting certain conditions. Requires separate accounting for retail internet service revenues and expenditures. Subjects PUD broadband network property used for retail internet service to annual payments in lieu of property taxes. Requires the Department of Revenue to submit annual reports to the Legislature on payments made under the provisions and the amount of property tax that would be owed on the broadband network used in providing retail internet service. |

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