**1336-S AMH CORR H0976.1 - NOT FOR FLOOR USE**

**SHB 1336** - H AMD **54**

By Representative Corry

**WITHDRAWN 02/23/2021**

Strike everything after the enacting clause and insert the following:

"**Sec.**  RCW 54.04.045 and 2008 c 197 s 2 are each amended to read as follows:

(1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable, or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, which is authorized to construct attachments upon, along, under, or across public ways.

(c) "Locally regulated utility" means a public utility district not subject to rate or service regulation by the utilities and transportation commission.

(d) "Nondiscriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of licensees approved for attachments.

(2) All rates, terms, and conditions made, demanded, or received by a locally regulated utility for attachments to its poles must be just, reasonable, nondiscriminatory, and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) ((~~A just and reasonable rate must be calculated as follows:~~

~~(a) One component of the rate shall consist of the additional costs of procuring and maintaining pole attachments, but may not exceed the actual capital and operating expenses of the locally regulated utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities and uses that remain available to the owner or owners of the subject facilities;~~

~~(b) The other component of the rate shall consist of the additional costs of procuring and maintaining pole attachments, but may not exceed the actual capital and operating expenses of the locally regulated utility attributable to the share, expressed in feet, of the required support and clearance space, divided equally among the locally regulated utility and all attaching licensees, in addition to the space used for the pole attachment, which sum is divided by the height of the pole; and~~

~~(c) The just and reasonable rate shall be computed by adding one~~‑~~half of the rate component resulting from (a) of this subsection to one~~‑~~half of the rate component resulting from (b) of this subsection.~~

~~(4) For the purpose of establishing a rate under subsection (3)(a) of this section, the~~)) The locally regulated utility ((~~may establish a rate according to the calculation set forth in subsection (3)(a) of this section or it may~~)) shall establish a rate according to the cable formula set forth by the federal communications commission by rule as it existed on June 12, 2008, or such subsequent date as may be provided by the federal communications commission by rule, ((~~consistent with the purposes of this section~~)) provided that the rate may not exceed the average rate charged for attachments by investor-owned public utilities regulated by the utilities and transportation commission.

((~~(5)~~)) (4) Except in extraordinary circumstances, a locally regulated utility must respond to a licensee's application to enter into a new pole attachment contract or renew an existing pole attachment contract within forty-five days of receipt, stating either:

(a) The application is complete; or

(b) The application is incomplete, including a statement of what information is needed to make the application complete.

((~~(6)~~)) (5) Within sixty days of an application being deemed complete, the locally regulated utility shall notify the applicant as to whether the application has been accepted for licensing or rejected. In extraordinary circumstances, and with the approval of the applicant, the locally regulated utility may extend the sixty‑day timeline under this subsection. If the application is rejected, the locally regulated utility must provide reasons for the rejection. A request to attach may only be denied on a nondiscriminatory basis (a) where there is insufficient capacity; or (b) for reasons of safety, reliability, or the inability to meet generally applicable engineering standards and practices.

((~~(7)~~)) (6) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities.

(7) A locally regulated utility shall not require more space for a safety barrier than that required by the national electric code.

(8) A locally regulated utility shall not deny an application in favor of reserving space for its own use, other than for the transmission of electric power.

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

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

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

(ii) For the provision of ((~~wholesale~~)) telecommunications services within the district and by contract with another public utility district;

(iii) To provide broadband internet access.

(b) ((~~Except as provided in subsection (8) of this section, nothing in this section shall be construed to authorize public utility districts to provide telecommunications services to end users~~)) In order to provide retail telecommunications or broadband internet access services, or both, a public utility must:

(i) Submit a budget and plan for broadband deployment for a vote of their current rate payers, which includes full disclosure of the cost of building and providing the services;

(ii) Construct facilities for broadband internet access service to unserved areas as a first priority;

(iii) Pay all telecommunications related taxes, applicable franchise fees, and contribute to the federal universal service fund;

(iv) Allow access to fiber on a dark fiber basis at wholesale rates to any competitor that requests such access; and

(v) Be subject to an annual audit by an independent outside auditor for compliance with all conditions set out in this act.

(c) As used in this section, an "unserved area" is a census block in which no provider has the capacity to deliver internet access service at speeds of a minimum of 25 megabits download and three megabits upload.

(2) A public utility district providing ((~~wholesale or retail~~)) telecommunications or broadband internet access services, or both, shall ensure that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a public utility district offering rates, terms, and conditions to an entity for wholesale or retail telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) A public utility district providing ((~~wholesale or retail~~)) telecommunications or broadband internet access services, or both, shall ((~~not~~)) be required to((~~, but may,~~)) establish a separate utility system or function for such purpose. ((~~In either case, a~~)) A public utility district providing ((~~wholesale or retail~~)) telecommunications or broadband internet access services shall 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. Further, all equipment and infrastructure not related to the transmission of electricity, as indicated by common industry practice, must be attributed to the cost of providing telecommunications or broadband internet access services, or both, including but not limited to the cost of fiber-to-the-home, and all common facilities must be allocated based on the number of locations served with no less than 50 percent of such common facilities allocated to telecommunications or broadband internet access, or both. Any revenues received from the provision of ((~~wholesale or retail~~)) telecommunications or broadband internet access services must be dedicated to costs incurred to build and maintain any ((~~telecommunications~~)) facilities constructed, installed, or acquired to provide such services, including payments on debt issued to finance such services, until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance such ((~~telecommunications~~)) facilities are discharged or retired.

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

(5) If a person or entity receiving retail telecommunications or broadband internet access services, or both, from a public utility district under this section has a complaint regarding the reasonableness of the rates, terms, conditions, or services provided, the person or entity may file a complaint with the ((~~district commission~~)) utilities and transportation commission.

(6) A public utility district shall not exercise powers of eminent domain to acquire ((~~telecommunications~~)) facilities or contractual rights held by any other person or entity to telecommunications or broadband internet access facilities.

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

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

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

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

~~(9) The tax treatment of the retail telecommunications services provided by a public utility district to the end-use customers during the period specified in subsection (8) of this section must be the same as if those retail telecommunications services were provided by the defunct internet service provider~~)) Notwithstanding anything to the contrary, a public utility district may not offer telecommunications or broadband internet access services, or both, in an area served by a provider receiving state or federal support or that has built or is building facilities under a loan or grant from the rural utility service, or equivalent agency, or when a provider is offering broadband internet access service that meets the standards established by the federal communications commission.

(9) Any complaint concerning public utility district pole attachment rates for a public utility district offering telecommunications or broadband internet access services, or both, is subject to the jurisdiction of the utilities and transportation commission.

(10) As a condition to offering such services, a public utility district that offers wholesale or retail telecommunications or broadband internet access services, or both, shall obtain a franchise from the local governmental agency or agencies where the district has installed facilities and, if wholesale, require an entity offering retail services on the district's facilities to obtain such franchise or franchises."

Correct the title.

EFFECT: Strikes all provisions of the substitute bill and inserts the following provisions:

(1) Modifies provisions related to public utility districts (PUDs) authority to set rates, terms, and conditions regarding attachments to its poles as follows:

(a) Eliminates the statutorily prescribed method for calculating just and reasonable rates;

(b) Provides the rate may not exceed the average rate charged for attachments by investor-owned public utilities regulated by the Utilities and Transportation Commission (UTC);

(c) Prohibits a PUD from requiring more space for a safety barrier than that required by the National Electric Safety Code;

(d) Prohibits a PUD from denying an application in favor of reserve space for its own use, except for the transmission of electric power.

(2) Modifies the authority of a PUD to provide telecommunications services as follows:

(a) Allows a PUD to provide broadband internet access;

(b) Places the following conditions on PUDs' authority to provide retail telecommunications or broadband internet access:

(i) Submit a budget and plan for broadband deployment for a vote of their current rate payers, which plan includes full disclosure of the cost of building and providing the services;

(ii) Construct facilities for broadband internet access service to unserved areas as a first priority;

(iii) Pay all telecommunications related taxes, applicable franchise fees and contribute to the federal universal service fund;

(iv) Allow access to fiber on a dark fiber basis at wholesale rates to any competitor that requests such access; and

(v) Be subject to an annual audit by an independent outside auditor for compliance with all conditions set out in the bill;

(c) Requires a PUD to establish a separate utility system or function for the purpose of providing telecommunications or broadband.

(d) Requires that all equipment and infrastructure not related to the transmission of electricity, as indicated by common industry practice, must be attributed to the cost of providing telecommunications or broadband internet access services, or both, including but not limited to the cost of fiber-to-the-home, and all common facilities must be allocated based on the number of locations served with no less than 50 percent of such common facilities allocated to telecommunications or broadband internet access, or both.

(e) Provides that persons or entities receiving retail or broadband services may file a complaint with the UTC rather than the district commission.

(f) Eliminates PUD's temporary authority to provide retail internet service to customers of a defunct internet service provider (ISP).

(g) Prohibits a PUD from offering telecommunications or broadband internet access services, or both, in an area served by a provider receiving state or federal support or has built or is building facilities under a loan or grant from the Rural Utility Service, or equivalent agency, or when a provider is offering broadband internet access service that meets the standards established by the federal communications commission.

(h) Provides that any complaint concerning public utility district pole attachment rates for a public utility district offering telecommunications or broadband internet access services, or both, is subject to the jurisdiction of the utilities and transportation commission.

(i) Requires PUDs that offer telecommunications or broadband to obtain a franchise from the local governmental agency or agencies where the district has installed facilities and, if wholesale, require an entity offering retail services on the district's facilities to obtain such franchise or franchises.