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**ENGROSSED SUBSTITUTE HOUSE BILL 1336**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** House Community & Economic Development (originally sponsored by Representatives Hansen, Ybarra, Berry, Simmons, Ramel, Valdez, Leavitt, Morgan, Ryu, Peterson, Shewmake, Davis, Ormsby, Gilday, Stonier, Eslick, Pollet, and Harris-Talley)

AN ACT Relating to creating and expanding unrestricted authority for public entities to provide telecommunications services to end users; amending RCW 54.16.005, 54.16.330, 54.16.425, 53.08.005, and 53.08.370; adding a new section to chapter 54.16 RCW; adding a new section to chapter 35.27 RCW; adding a new section to chapter 35.23 RCW; adding a new section to chapter 36.01 RCW; adding a new section to chapter 53.08 RCW; creating a new section; and repealing RCW 54.16.420.

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

**Sec.**  RCW 54.16.005 and 2000 c 81 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Broadband infrastructure" means networks of deployed telecommunications equipment and technologies necessary to provide high-speed internet access and other advanced telecommunications services.

(2) "Commission" means the Washington utilities and transportation commission.

((~~(2)~~)) (3) "District commission" means the governing board of a public utility district.

(4) "Retail telecommunications services" means the sale, lease, license, or indivisible right of use of telecommunications services or telecommunications facilities directly to end users.

(5) "Telecommunications" has the same meaning as ((~~that contained~~)) defined in RCW 80.04.010.

((~~(3)~~)) (6) "Telecommunications facilities" means lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property, and routes used, operated, owned, or controlled by any entity to facilitate the provision of telecommunications services.

((~~(4)~~)) (7) "Wholesale telecommunications services" means the provision of telecommunications services or telecommunications facilities for resale ((~~by~~)) to an entity ((~~authorized to provide~~)) that provides retail telecommunications services ((~~to the general public and internet service providers~~)).

**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~~)) outside of the district's limits for any or all of the following purposes:

((~~(i)~~)) (a) 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.~~

~~(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~~)) (b) For the provision of either retail or wholesale, or both, telecommunications services and telecommunications facilities within the district; or

(c) For the provision of either retail or wholesale, or both, telecommunications services or telecommunications facilities outside of the district by contract with another public utility district, any political subdivision of the state authorized to provide retail telecommunications services in the state, or with any federally recognized tribe located in the state of Washington.

(2) A public utility district providing wholesale or retail telecommunications services 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 services shall not be required to, but may, establish a separate utility system or function for such purpose. In either case, a public utility district providing wholesale or retail telecommunications 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. Any revenues received from the provision of wholesale or retail telecommunications 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 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 operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale or retail telecommunications services.

(5) If a person or entity receiving retail telecommunications services 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.

(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 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.~~))

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

(1) Before providing
retail telecommunications services, a public utility district is encouraged to examine and report to its governing body the following about the area to be served by the public utility district:

(a) An assessment of the current availability of broadband infrastructure and its adequacy to provide high-speed internet access and other advanced telecommunications services to end users;

(b) The location of where retail telecommunications services will be provided;

(c) Evidence relating to the unserved or underserved nature of the community in which retail telecommunications services will be provided;

(d) Expected costs of providing retail telecommunications services to customers to be served by the public utility district; and

(e) Evidence that proposed telecommunications infrastructure will be capable of scaling to greater download and upload speeds to meet state broadband goals under RCW 43.330.536.

(2) For purposes of this section, "unserved" means a census block in which no provider has the capacity to deliver internet access service at speeds of a minimum of twenty-five megabits download and three megabits upload.

**Sec.**  RCW 54.16.425 and 2018 c 186 s 3 are each amended 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~~)) infrastructure used in providing retail ((~~internet service~~)) telecommunications services.

(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~~)) infrastructure used in providing retail ((~~internet service~~)) telecommunications services 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~~)) infrastructure 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~~)) infrastructure used in providing retail ((~~internet service~~)) telecommunications services. 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~~)) infrastructure used in providing retail ((~~internet service~~)) telecommunications services 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~~)) infrastructure used in providing retail ((~~internet service~~)) telecommunications services.

((~~(6) The definitions in RCW 54.16.420 apply to this section.~~))

NEW SECTION. **Sec.**  A new section is added to chapter 35.27 RCW to read as follows:

(1) A town may construct, purchase, acquire, develop, finance, lease, license, provide, contract for, interconnect, alter, improve, repair, operate, and maintain telecommunications services or telecommunications facilities for the purpose of furnishing the town and its inhabitants with telecommunications services. The town has full authority to regulate and control the use, distribution, and price of the services.

(2) For purposes of this section, "telecommunications" has the same meaning as defined in RCW 80.04.010.

NEW SECTION. **Sec.**  A new section is added to chapter 35.23 RCW to read as follows:

(1) A second-class city may construct, purchase, acquire, develop, finance, lease, license, provide, contract for, interconnect, alter, improve, repair, operate, and maintain telecommunications services or telecommunications facilities for the purpose of furnishing the second-class city and its inhabitants with telecommunications services. The second-class city has full authority to regulate and control the use, distribution, and price of the services.

(2) For purposes of this section, "telecommunications" has the same meaning as defined in RCW 80.04.010.

NEW SECTION. **Sec.**  A new section is added to chapter 36.01 RCW to read as follows:

(1) A county may construct, purchase, acquire, develop, finance, lease, license, provide, contract for, interconnect, alter, improve, repair, operate, and maintain telecommunications services or telecommunications facilities for the purpose of furnishing the county and its inhabitants with telecommunications services. The county has full authority to regulate and control the use, distribution, and price of the services.

(2) For purposes of this section, "telecommunications" has the same meaning as defined in RCW 80.04.010.

**Sec.**  RCW 53.08.005 and 2018 c 169 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the Washington utilities and transportation commission.

(2) "Retail telecommunications services" means the sale, lease, license, or indivisible right of use of telecommunications services or telecommunications facilities directly to end users.

(3) "Telecommunications" has the same meaning as contained in RCW 80.04.010.

((~~(3)~~)) (4) "Telecommunications facilities" means lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property, and routes used, operated, owned, or controlled by any entity to facilitate the provision of telecommunications services.

((~~(4)~~)) (5) "Wholesale telecommunications services" means the provision of telecommunications services or telecommunications facilities for resale ((~~by~~)) to an entity authorized to provide telecommunications services ((~~to the general public and internet service providers~~)). Wholesale telecommunications services includes the provision of unlit or dark optical fiber for resale, but not the provision of lit optical fiber.

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

(1) A port 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~~)) outside the district's limits for any or all of the following purposes:

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

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

(c) For the provision of retail telecommunications services within or outside the district's limits.

(2) Except as provided in subsection ((~~(9)~~)) (8) of this section, a port district providing wholesale or retail telecommunications services under this section 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 port district offering such 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) When a port district establishes a separate utility function for the provision of wholesale or retail telecommunications services, it shall account for any and all revenues and expenditures related to its wholesale or retail telecommunications facilities and services separately from revenues and expenditures related to its internal telecommunications operations. Any revenues received from the provision of wholesale or retail telecommunications services must be dedicated to the utility function that includes the provision of wholesale or retail telecommunications services for costs incurred to build and maintain the telecommunications facilities until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance the telecommunications facilities are discharged or retired.

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

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

(6) Except as otherwise specifically provided, a port 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 port district under this title.

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

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

((~~(9)~~)) (8)(a) A port district under this section may select a telecommunications company to operate all or a portion of the port district's telecommunications facilities.

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

(c) Nothing in this subsection ((~~(9)~~)) (8) is intended to limit or otherwise restrict any other authority provided by law.

NEW SECTION. **Sec.**  A new section is added to chapter 53.08 RCW to read as follows:

(1) Before providing retail telecommunications services, a port district is encouraged to examine and report to its governing body the following about the area to be served by the port district:

(a) An assessment of the current availability of broadband infrastructure and its adequacy to provide high-speed internet access and other advanced telecommunications services to end users;

(b) The location of where retail telecommunications services will be provided;

(c) Evidence relating to the unserved or underserved nature of the community in which retail telecommunications services will be provided;

(d) Expected costs of providing retail telecommunications services to customers to be served by the port district; and

(e) Evidence that proposed telecommunications infrastructure will be capable of scaling to greater download and upload speeds to meet state broadband goals under RCW 43.330.536.

(2) For purposes of this section, "unserved" means a census block in which no provider has the capacity to deliver internet access service at speeds of a minimum of twenty-five megabits download and three megabits upload.

NEW SECTION. **Sec.**  This act may be known and cited as the public broadband act.

NEW SECTION. **Sec.**  RCW 54.16.420 (Retail internet service—Definitions—Authority—Requirements) and 2018 c 186 s 1 are each repealed.

**--- END ---**