**6034-S.E AMH TED H4883.1 - NOT FOR FLOOR USE**

**ESSB 6034** - H COMM AMD

By Committee on Technology & Economic Development

**ADOPTED AS AMENDED 03/02/2018**

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.

(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 (8) 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 (8) 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 who may apply therefor and be reasonably entitled thereto proper facilities and connections for retail internet service as demanded.

(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.

**Sec.**  RCW 54.28.010 and 1977 ex.s. c 366 s 1 are each amended to read as follows:

((~~As used in this chapter:~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Operating property" means all of the property utilized by a public utility district in the operation of a plant or system for the generation, transmission, or distribution of electric energy for sale((~~;~~)).

(2) "Taxing districts" means counties, cities, towns, school districts, and road districts((~~;~~)).

(3) "Distributes to consumers" means the sale of electric energy to ultimate consumers thereof, and does not include sales of electric energy for resale by the purchaser((~~;~~)).

(4) "Wholesale value" means all costs of a public utility district associated with the generation and transmission of energy from its own generation and transmission system to the point or points of inter-connection with a distribution system owned and used by a district to distribute such energy to consumers, or in the event a distribution system owned by a district is not used to distribute such energy, then the term means the gross revenues derived by a district from the sale of such energy to consumers((~~;~~)).

(5) "Thermal electric generating facility" means a steam-powered electrical energy producing facility utilizing nuclear or fossil fuels((~~;~~)).

(6) "Placed in operation" means delivery of energy into a transmission or distribution system for use or sale in such a manner as to establish a value accruing to the power plant operator, except operation incidental to testing or start-up adjustments((~~;~~)).

(7) "Impacted area" for a thermal electric generating facility on a federal reservation means that area in the state lying within thirty-five statute miles of the most commonly used entrance of the federal reservation and which is south of the southern boundary of township fifteen north.

(8) "Retail internet service" has the same meaning as defined in section 1 of this act.

(9) "Broadband network" has the same meaning as defined in section 1 of this act.

**Sec.**  RCW 54.28.011 and 2010 1st sp.s. c 23 s 1001 are each amended to read as follows:

"Gross revenue" means the amount received from the sale of electric energy or retail internet service, which also includes any regularly recurring charge billed to consumers as a condition of receiving electric energy or retail internet service, and excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070.

NEW SECTION. **Sec.**  A new section is added to chapter 54.28 RCW to read as follows:

(1) There is levied and collected from every district a tax for the act or privilege of engaging within this state in the business of operating a broadband network for the purpose of selling retail internet service. With respect to each such district, such tax must be two percent of the gross revenues derived from the sale of retail internet services.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section.

**Sec.**  RCW 54.28.040 and 2017 c 323 s 103 are each amended to read as follows:

(1) Before May 1st of each calendar year through calendar year 2018, the department of revenue must compute the tax imposed by this chapter for the last preceding calendar year and notify the district of the amount thereof, which shall be payable on or before the following June 1st.

(2) For tax reporting periods beginning on or after January 1, 2018, taxpayers must report the taxes due under RCW 54.28.020 ((~~and~~)), 54.28.025, and section 5(1) of this act on returns as prescribed by the department of revenue. Except as otherwise provided in this subsection (2), taxes imposed in RCW 54.28.020 ((~~and~~)), 54.28.025, and section 5(1) of this act are due for a taxpayer at the same time as the taxpayer's payment of taxes imposed under chapters 82.04 and 82.16 RCW. The department of revenue may allow taxpayers to report and pay the taxes due under RCW 54.28.020 ((~~and~~)), 54.28.025, and section 5(1) of this act on an annual basis, even if they report taxes imposed under chapters 82.04 and 82.16 RCW more frequently than annually. In such cases, the taxes imposed in RCW 54.28.020 ((~~and~~)), 54.28.025, and section 5(1) of this act are due at the same time as the taxes under chapters 82.04 and 82.16 RCW for the taxpayer's final reporting period for the calendar year.

(3) The department of revenue may require persons to report such information as needed by the department to administer this chapter.

(4) Upon receipt of the amount of each tax imposed the department of revenue shall deposit the same with the state treasurer, who must deposit four percent of the revenues received under RCW 54.28.020(1) ((~~and~~)), 54.28.025(1), and section 5(1) of this act and all revenues received under RCW 54.28.020(2) ((~~and~~)), 54.28.025(2), and section 5(2) of this act in the general fund of the state and must distribute the remainder in the manner hereinafter set forth. The state treasurer must send a duplicate copy of each transmittal to the department of revenue.

**Sec.**  RCW 54.28.050 and 2017 c 323 s 104 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the department of revenue must instruct the state treasurer, after placing thirty-seven and six-tenths percent of the taxes collected under RCW 54.28.020(1) in the state general fund to be dedicated for the benefit of the public schools, to distribute the balance as follows:

(a) For amounts collected under RCW 54.28.020(1)(a), the balance must be distributed to each county in proportion to the gross revenue from sales made within each county; ((~~and to distribute the balance~~))

(b) For amounts collected under section 5(1) of this act, if the broadband network is located in only one county, the balance must be distributed to the county in which the broadband network is located. If the broadband network is located in more than one county, the balance must be distributed on a pro rata manner to each applicable county based on the cost of the broadband network; and

(c) For amounts collected under RCW 54.28.020(1) (b) and (c) the balance must be distributed as follows:

((~~(a)~~)) (i) If the entire generating facility, including reservoir, if any, is in a single county then all of the balance to the county where such generating facility is located;

((~~(b)~~)) (ii) If any reservoir is in more than one county, then to each county in which the reservoir or any portion thereof is located a percentage equal to the percentage determined by dividing the total cost of the generating facilities, including adjacent switching facilities, into twice the cost of land and land rights acquired for any reservoir within each county, land and land rights to be defined the same as used by the federal energy regulatory commission;

((~~(c)~~)) (iii) If the powerhouse and dam, if any, in connection with such reservoir are in more than one county, the balance must be divided sixty percent to the county in which the owning district is located and forty percent to the other county or counties or if the powerhouse and dam, if any, are owned by a joint operating agency organized under chapter 43.52 RCW, or by more than one district or are outside the county of the owning district, then to be divided equally between the counties in which such facilities are located. If all of the powerhouse and dam, if any, are in one county, then the balance must be distributed to the county in which the facilities are located.

(2) The department of revenue must instruct the state treasurer to adjust distributions under this section, in whole or in part, to account for each county's proportionate share of amounts previously distributed under this section and subsequently refunded to a public utility district under RCW 82.32.060.

(3) The provisions of this section do not apply to the distribution of taxes collected under RCW 54.28.025.

**Sec.**  RCW 54.28.070 and 1941 c 245 s 3 are each amended to read as follows:

Any city or town in which a public utility district operates works, plants, or facilities for the distribution and sale of electricity, or a broadband network for the sale of retail internet service, shall have the power to levy and collect from such district a tax under this section. With respect to the distribution and sale of electricity, a tax may be imposed on the gross revenues derived by such district from the sale of electricity within the city or town, exclusive of the revenues derived from the sale of electricity for purposes of resale. ((~~Such~~)) With respect to the sale of retail internet service, a tax may be imposed under the applicable authority in chapter 35.21 RCW. The tax when levied shall be a debt of the district, and may be collected as such. Any such district shall have the power to add the amount of such tax to the rates or charges it makes for electricity ((~~so~~)) or retail internet service sold within the limits of such city or town.

**Sec.**  RCW 54.28.120 and 1957 c 278 s 14 are each amended to read as follows:

In the event any district hereafter purchases or otherwise acquires electric utility properties comprising all or a portion of an electric generation and/or distribution system, or a broadband network for the purpose of providing retail internet service, from a public service company, as defined in RCW 80.04.010, the total amount of privilege taxes imposed under ((~~chapter 278, Laws of 1957~~)) this chapter to be paid by the district annually on the combined operating property within each county where such utility property is located, irrespective of any other basis of levy contained in this chapter, will be not less than the combined total of the ad valorem taxes, based on regular levies, last levied against the electric utility property constituting the system so purchased or acquired, or the broadband network purchased or acquired, plus the taxes paid by the district for the same year on the revenues of other operating property in the same county under terms of this chapter. If all or any portion of the property so acquired is subsequently sold, or if rates charged to purchasers of electric energy, or retail internet service are reduced, the amount of privilege tax required under this section shall be proportionately reduced.

**Sec.**  RCW 82.02.030 and 1993 sp.s. c 25 s 107 are each amended to read as follows:

The rate of the additional taxes under RCW 54.28.020(2), 54.28.025(2), section 5(2) of this act, 66.24.210(2), 82.16.020(2), 82.27.020(5), and 82.29A.030(2) shall be seven percent."

Correct the title.

EFFECT: 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 reasonably entitled to service within the authorized geographical area. Requires separate accounting for retail internet service revenues and expenditures. Applies a tax on PUDs for the privilege of operating a broadband network for the purpose of selling retail internet service at a rate of 2 percent of gross revenue of sales, with an additional surtax applied equal to 7 percent multiplied by the rate. Applies the following provisions currently applicable to the PUD privilege tax on electricity to the new PUD privilege tax on retail internet service:

Annual reporting requirements;

Distribution of revenues;

Municipal authorization to impose business taxes; and

Accounting for acquisitions of property from a public service company.