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**SENATE BILL 5139**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Rolfes, Sheldon, McCoy, Takko, Chase, Cleveland, Hasegawa, Van De Wege, and Wellman

AN ACT Relating to ensuring economic development by authorizing public utility districts to provide retail telecommunications services; amending RCW 54.16.005 and 54.16.330; adding a new section to chapter 54.16 RCW; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that public utility districts provide reliable, affordable electric, water, sewer, and wholesale telecommunications services, depending on the needs of the community. The legislature further finds that many public utility districts in the state maintain telecommunications facilities but are prohibited by statute from providing telecommunications services directly to retail, end-use customers.

The legislature finds that the lack of access to broadband services in some areas of Washington is comparable to the availability of electricity in the 1920s and 1930s. The legislature further finds that public utility districts were established by initiative in 1930 to give all people of the state the same rights to develop and distribute electricity. Additionally, the legislature finds that since enactment of the initiative, public utility districts have contributed to the economic development of the counties they serve by ensuring customer access to power.

The legislature finds that public utility districts are uniquely positioned to offer broadband services in part because locally elected public utility district boards ensure utility resources are managed in a manner that supports their local communities and economies.

The legislature intends for this act to authorize public utility districts to provide retail telecommunications services. The legislature further intends to provide a structured manner for which public utility districts may provide retail broadband services to end-use customers.

**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) "Commission" means the Washington utilities and transportation commission.

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

(3) "Dominant internet service provider" means an internet service provider that provides retail internet access to at least fifty-one percent of the total end-use customers connected to telecommunications facilities owned or leased by a public utility district.

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

(5) "Telecommunications" has the same meaning as that contained 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 or telecommunications facilities for resale by an entity authorized to provide telecommunications services to the general public and internet service providers.

**Sec.**  RCW 54.16.330 and 2004 c 158 s 1 are each amended to read as follows:

(1) 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:

(a) For the district's internal telecommunications needs; ((~~and~~))

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

~~Nothing in this subsection shall be construed to authorize public utility districts to provide telecommunications services to end users~~));

(c) For the provision of retail telecommunications services and telecommunications facilities within the district; or

(d) For the provision of retail telecommunications services or telecommunications facilities outside of the district by contract with another public utility district or any other political subdivision of the state authorized to provide retail telecommunications services in the state.

(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 chapter has a complaint regarding the reasonableness of the rates, terms, conditions, or service 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.

((~~(6)~~)) (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) If a dominant internet service provider, using 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, the public utility district may provide access to the internet to the end-use customers of the dominant 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. Within thirty days of a dominant 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 telecommunication facilities of a public utility district. 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.

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

(1) A public utility district may provide any retail telecommunications service or services in either of the following ways:

(a) By a majority vote of the district commission on a resolution; or

(b) On petition to the district commission signed by registered voters equal to no less than ten percent of the qualified electors of the county based on the total vote cast in the last general county election held in an even-numbered year, the district commission must conduct a hearing to consider whether the district must undertake the provision of broadband services to end users and customers. If the district commission determines that the district will undertake the provision of broadband services to end users and customers, then the provision of broadband services must be approved by a majority vote of the district commission on a resolution.

(2) Prior to constructing, purchasing, acquiring, developing, financing, leasing, licensing, handling, providing, adding to, contracting for, interconnecting, altering, improving, repairing, operating, or maintaining telecommunications facilities for the provision of retail telecommunications services, a public utility district must develop a written implementation plan describing how the district intends to provide retail telecommunications services under RCW 54.16.330.

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