

ESSB 6034 - H AMD 1385

By Representative DeBolt

ADOPTED 03/06/2018

1 Strike everything after the enacting clause and insert the
2 following:

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4 "NEW SECTION. **Sec. 1.** A new section is added to chapter 54.16
5 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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25 NEW SECTION. **Sec. 2.** A new section is added to chapter 34.12
26 RCW to read as follows:

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

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

33 (1) Property owned by a public utility district that is exempt
34 from property tax under RCW 84.36.010 is subject to an annual payment

1 in lieu of property taxes if the property consists of a broadband
2 network used in providing retail internet service.

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

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

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

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

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

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

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

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12 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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