

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6034

Chapter 186, Laws of 2018

65th Legislature
2018 Regular Session

PUBLIC UTILITY DISTRICTS--RETAIL TELECOMMUNICATIONS SERVICES

EFFECTIVE DATE: June 7, 2018

Passed by the Senate March 7, 2018
Yeas 46 Nays 2

CYRUS HABIB

President of the Senate

Passed by the House March 6, 2018
Yeas 93 Nays 5

FRANK CHOPP

Speaker of the House of Representatives

Approved March 22, 2018 11:32 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6034** as passed by Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

March 26, 2018

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6034

AS AMENDED BY THE HOUSE

Passed Legislature - 2018 Regular Session

State of Washington **65th Legislature** **2018 Regular Session**

By Senate Energy, Environment & Technology (originally sponsored by Senators Rolfes, Sheldon, Angel, Hunt, Chase, Kuderer, and Hasegawa)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to authorizing limited retail telecommunications
2 services for public utility districts that provide only sewer, water,
3 and telecommunications on the effective date of this act; adding new
4 sections to chapter 54.16 RCW; and adding a new section to chapter
5 34.12 RCW.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 54.16
8 RCW to read as follows:

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

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

13 (b) "Broadband network" means networks of deployed
14 telecommunications equipment and technologies necessary to provide
15 broadband.

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

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

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

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

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

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

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

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

31 (b) Determine and submit findings that the retail internet
32 service available to the petitioners served by the public utility
33 district's broadband network is either nonexistent or inadequate as
34 defined in the service level agreement adopted by the commissioners
35 for all existing internet service providers on the public utility
36 district's broadband network;

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

1 (d) By resolution, authorize the public utility district to
2 provide retail internet service on the public utility district's
3 broadband network.

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

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

14 (b) Any individual who has developed a partnership payment
15 structure to finance broadband deployment with the public utility
16 district.

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

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

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

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

37 (7) The business case plan under subsection (6) of this section
38 must be reviewed by an independent qualified consultant. The review
39 must include the use of public funds in the provision of retail
40 internet service. Any recommendations or adjustments to the business

1 case plan made during third-party review must be received and either
2 rejected or accepted by the district board of commissioners in an
3 open meeting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) Property owned by a public utility district that is exempt
23 from property tax under RCW 84.36.010 is subject to an annual payment
24 in lieu of property taxes if the property consists of a broadband
25 network used in providing retail internet service.

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

30 (b) The amount agreed upon may not exceed the property tax amount
31 that would be owed on the property comprising the broadband network
32 used in providing retail internet service as calculated by the
33 department of revenue. The public utility district must provide
34 information necessary for the department of revenue to make the
35 required valuation under this subsection. The department of revenue
36 must provide the amount of property tax that would be owed on the
37 property to the county or counties in which the broadband network is
38 located on an annual basis.

1 (c) If the public utility district and a county cannot agree on
2 the amount of the payment in lieu of taxes, either party may invoke
3 binding arbitration by providing written notice to the other party.
4 In the event that the amount of payment in lieu of taxes is submitted
5 to binding arbitration, the arbitrators must consider the government
6 services available to the public utility district's broadband network
7 used in providing retail internet service. The public utility
8 district and county must each select one arbitrator, the two of whom
9 must pick a third arbitrator. Costs of the arbitration, including
10 compensation for the arbitrators' services, must be borne equally by
11 the parties participating in the arbitration.

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

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

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

27 (6) The definitions in section 1 of this act apply to this
28 section.

Passed by the Senate March 7, 2018.

Passed by the House March 6, 2018.

Approved by the Governor March 22, 2018.

Filed in Office of Secretary of State March 26, 2018.

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