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**SUBSTITUTE SENATE BILL 5511**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Wellman, Sheldon, Carlyle, Short, McCoy, Nguyen, Takko, Cleveland, Darneille, Dhingra, Liias, Mullet, Saldaña, and Frockt; by request of Office of the Governor)

AN ACT Relating to expanding affordable, resilient broadband service to enable economic development, public safety, health care, and education in Washington's communities; amending RCW 54.16.300, 54.16.330, 54.16.420, 53.08.370, 80.36.630, 80.36.650, 80.36.660, 80.36.670, 80.36.680, 80.36.690, and 80.36.700; amending 2013 2nd sp.s. c 8 ss 212 and 303 (uncodified); reenacting and amending RCW 43.84.092; adding new sections to chapter 43.330 RCW; adding new sections to chapter 43.155 RCW; creating a new section; repealing RCW 43.330.415, 43.330.418, and 80.36.620; and providing expiration dates.

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

NEW SECTION. **Sec.**  The legislature finds that:

(1) Access to broadband is critical to full participation in society and the modern economy;

(2) Increasing broadband access to unserved and underserved areas of the state serves a fundamental governmental purpose and function and provides a public benefit to the citizens of Washington by enabling access to health care, education, and essential services, providing economic opportunities, and enhancing public health and safety;

(3) Achieving affordable and quality broadband access for all Washingtonians will require additional and sustained investment, research, local and community participation, and partnerships between private, public, and nonprofit entities;

(4) The federal communications commission has adopted a national broadband plan that includes recommendations directed to federal, state, and local governments, including recommendations to:

(a) Design policies to ensure robust competition and maximize consumer welfare, innovation, and investment;

(b) Ensure efficient allocation and management of assets that the government controls or influences to encourage network upgrades and competitive entry;

(c) Reform current universal service mechanisms to support deployment in high-cost areas, ensuring that low-income Americans can afford broadband, and supporting efforts to boost adoption and utilization; and

(d) Reform laws, policies, standards, and incentives to maximize the benefits of broadband in sectors that government influences significantly, such as public education, health care, and government operations;

(5) Extensive investments have been made by the telecommunications industry and the public sector, as well as policies and programs adopted to provide affordable broadband services throughout the state, that will provide a foundation to build a comprehensive statewide framework for additional actions needed to advance the state's broadband goals; and

(6) Providing additional funding mechanisms to increase broadband access in unserved and underserved areas is in the best interest of the state. To that end, this act establishes a grant and loan program that will support the extension of broadband infrastructure to unserved and underserved areas. To ensure this program primarily serves the public interest, the legislature intends that any grant or loan provided to a private entity under this program must be conditioned on a guarantee that the asset or infrastructure to be developed will be maintained for public use for a period of at least fifteen years.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

The definitions in this section apply throughout this section and sections 3 through 6 of this act unless the context clearly requires otherwise.

(1) "Board" means the public works board established in RCW 43.155.030.

(2) "Broadband" or "broadband service" means any service providing advanced telecommunications capability and internet access with transmission speeds that, at a minimum, provide twenty-five megabits per second download and three megabits per second upload.

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

(4) "Department" means the department of commerce.

(5) "Last mile infrastructure" means broadband infrastructure that serves as the final connection from a broadband service provider's network to the end-use customer's on-premises telecommunications equipment.

(6) "Local government" includes cities, towns, counties, municipal corporations, public port districts, quasi-municipal corporations, special purpose districts, and multiparty entities comprised of public entity members.

(7) "Middle mile infrastructure" means broadband infrastructure that links a broadband service provider's core network infrastructure to last mile infrastructure.

(8) "Office" means the governor's statewide broadband office established in section 3 of this act.

(9) "Tribe" means any federally recognized Indian tribe whose traditional lands and territories included parts of Washington.

(10) "Underserved areas" means areas of Washington in which households or businesses lack adequate access to broadband service, as defined by the office.

(11) "Unserved areas" means areas of Washington in which households and businesses lack access to broadband service, as defined by the office.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1) The governor's statewide broadband office is established. The director of the office must be appointed by the governor. The office may employ staff necessary to carry out the office's duties as prescribed by this act, subject to the availability of amounts appropriated for this specific purpose.

(2) The purpose of the office is to encourage, foster, develop, and improve affordable, quality broadband within the state in order to:

(a) Drive job creation, promote innovation, improve economic vitality, and expand markets for Washington businesses;

(b) Serve the ongoing and growing needs of Washington's education systems, health care systems, public safety systems, industries and business, governmental operations, and citizens; and

(c) Improve broadband accessibility for unserved and underserved communities and populations.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1) The office has the power and duty to:

(a) Serve as the central broadband planning body for the state of Washington;

(b) Coordinate with local governments, tribes, public and private entities, nonprofit organizations, and consumer-owned and investor-owned utilities to develop strategies and plans for deployment of broadband infrastructure and greater broadband access;

(c) Review existing broadband initiatives, policies, and public and private investments;

(d) Develop, recommend, and implement a statewide plan to encourage cost-effective broadband access and to make recommendations for increased usage, particularly in rural and other unserved and underserved areas;

(e) Update the state's broadband goals and definitions for broadband service in unserved and underserved areas as technology advances, except that the state's definition for broadband service may not be actual speeds less than twenty-five megabits per second download and three megabits per second upload; and

(f) Encourage public-private partnerships to increase deployment and adoption of broadband services and applications.

(2) When developing plans or strategies for broadband deployment, the office must consider:

(a) Partnerships between communities, tribes, nonprofit organizations, consumer-owned and investor-owned utilities, and public and private entities;

(b) Funding opportunities that provide for the coordination of public, private, state, and federal funds for the purposes of making broadband infrastructure or broadband services available to rural, unserved, and underserved areas of the state;

(c) Barriers to the adoption and utilization of broadband service, including affordability of service; and

(d) Requiring minimum broadband service of twenty-five megabits per second download and three megabits per second upload speed, that is scalable to faster service.

(3) The office may take all appropriate steps to seek federal funding in order to maximize investment in broadband deployment and adoption in the state.

(4) The office may assist applicants to the grant and loan program created in section 7 of this act with seeking federal funding or matching grants and other grant opportunities for deploying broadband services.

(5) The office may apply for federal funds and other grants or accept donations and must deposit the funds in the statewide broadband account created in section 8 of this act.

(6) In carrying out its purpose, the office may collaborate with the utilities and transportation commission, the office of the chief information officer, the department of commerce, the community economic revitalization board, the public works board, the state librarian, and all other relevant state agencies.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

It is a goal of the state of Washington that:

(1) By 2024, all Washington businesses and residences have access to high-speed broadband that provides minimum download speeds of at least twenty-five megabits per second and minimum upload speeds of at least three megabits per second;

(2) By 2026, all Washington communities have access to at least one gigabit per second symmetrical broadband service via anchor institutions like schools, hospitals, libraries, and government buildings; and

(3) By 2028, all Washington businesses and residences have access to at least one provider of broadband with download speeds of at least one hundred fifty megabits per second and upload speeds of at least one hundred fifty megabits per second.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1) Beginning January 1, 2021, and biennially thereafter, the office shall report to the legislative committees with jurisdiction over broadband policy and finance on the office's activities during the previous two years.

(2) The report must, at a minimum, contain:

(a) An analysis of the current availability and use of broadband, including average broadband speeds, within the state;

(b) Information gathered from schools, libraries, hospitals, and public safety facilities across the state, determining the actual speed and capacity of broadband currently in use and the need, if any, for increases in speed and capacity to meet current or anticipated needs;

(c) An overview of incumbent broadband infrastructure within the state;

(d) A summary of the office's activities in coordinating broadband infrastructure development with the public works board, including a summary of funds awarded under section 7 of this act;

(e) Suggested policies, incentives, and legislation designed to accelerate the achievement of the goals under section 5 of this act; and

(f) Any proposed legislative and policy initiatives.

NEW SECTION. **Sec.**  A new section is added to chapter 43.155 RCW to read as follows:

(1) The board shall establish a competitive grant and loan program to award funding to eligible applicants in order to promote the expansion of access to broadband service in unserved and underserved areas of the state.

(2)(a) Grants and loans may be awarded under this section to assist in funding acquisition, installation, and construction of middle mile and last mile infrastructure that supports broadband services and to assist in funding strategic planning for deploying broadband service in unserved and underserved areas.

(b) The board may choose to fund all or part of an application for funding, provided that the application meets the requirements of subsection (9) of this section.

(3) Eligible applicants for grants and loans awarded under this section include:

(a) Local governments;

(b) Tribes;

(c) Nonprofit organizations;

(d) Cooperative associations;

(e) Multiparty entities comprised of public entity members;

(f) Limited liability corporations organized for the purpose of expanding broadband access; and

(g) Incorporated businesses or partnerships.

(4)(a) The board shall develop administrative procedures governing the application and award process. The board shall act as fiscal agent for the program and is responsible for receiving and reviewing applications and awarding funds under this section.

(b) At least thirty days prior to the first day applications may be submitted each fiscal year, the office and the board must publish on their web sites the specific criteria and any quantitative weighting scheme or scoring system that the board will use to evaluate or rank applications and award funding.

(5) An applicant for a grant or loan under this section must provide the following information on the application:

(a) The location of the project;

(b) The kind and amount of broadband infrastructure to be purchased for the project;

(c) Evidence regarding the unserved or underserved nature of the community in which the project is to be located;

(d) Evidence that proposed infrastructure will be capable of scaling to greater download and upload speeds;

(e) The number of households passed that will gain access to broadband service as a result of the project or whose broadband service will be upgraded as a result of the project;

(f) The estimated cost of retail services to end users facilitated by a project;

(g) The proposed actual download and upload speeds experienced by end users;

(h) Evidence of significant community institutions that will benefit from the proposed project;

(i) Anticipated economic, educational, health care, or public safety benefits created by the project;

(j) Evidence of community support for the project;

(k) If available, a description of the applicant's user adoption assistance program and efforts to promote the use of newly available broadband services created by the project;

(l) The estimated total cost of the project;

(m) Other sources of funding for the project that will supplement any grant or loan award;

(n) A demonstration of the project's long-term sustainability, including the applicant's financial soundness, organizational capacity, and technical expertise;

(o) A strategic plan to maintain long-term operation of the infrastructure;

(p) Evidence that no later than six weeks before submission of the application, the applicant contacted, in writing, all entities providing broadband service near the proposed project area to ask each broadband service provider's plan to upgrade broadband service in the project area to speeds that meet or exceed the state's definition for broadband service as defined in section 2 of this act, within the time frame specified in the proposed grant or loan activities;

(q) If applicable, the broadband service providers' written responses to the inquiry made under (p) of this subsection; and

(r) Any additional information requested by the board.

(6)(a) Within thirty days of the close of the grant and loan application process, the board shall publish on its web site the proposed geographic broadband service area and the proposed broadband speeds for each application submitted.

(b) Any existing broadband service provider near the proposed project area may, within thirty days of publication of the information under (a) of this subsection, submit in writing to the board an objection to an application. An objection must contain information demonstrating that:

(i) The project would result in overbuild, meaning that the objecting provider currently provides, or has begun construction to provide, broadband service to end users in the proposed project area at speeds equal to or greater than the state speed goals contained in section 5 of this act; or

(ii) The objecting provider commits to complete construction of broadband infrastructure and provide broadband service to end users in the proposed project area at speeds equal to or greater than the state speed goals contained in section 5 of this act, no later than twenty-four months after the date awards are made under this section for the grant and loan cycle under which the application was submitted.

(c) Objections submitted to the board under this subsection must be certified by affidavit.

(d) The board may evaluate the information submitted under this section by the objecting provider and must consider it in making a determination on the application objected to. The board may request clarification or additional information. The board may choose to not fund a project if the board determines that the objecting provider's commitment to provide broadband service that meets the requirements of (b) of this subsection in the proposed project area is credible. In assessing the commitment, the board may consider whether the objecting provider has or will provide a bond, letter of credit, or other indicia of financial commitment guaranteeing the project's completion.

(e) If the board denies funding to an applicant as a result of a broadband service provider's objection made under this section, and the broadband service provider does not fulfill its commitment to provide broadband service in the project area, then for the following two grant and loan cycles, the board is prohibited from denying funding to an applicant on the basis of a challenge by the same broadband service provider, unless the board determines that the broadband service provider's failure to fulfill the provider's commitment was the result of factors beyond the broadband service provider's control. The board is not prohibited from denying funding to an applicant for reasons other than an objection by the same broadband service provider.

(f) An applicant or broadband service provider that objected to the application may request a debriefing conference regarding the board's decision on the application. Requests for debriefing must be coordinated by the office and must be submitted in writing in accordance with procedure specified by the office.

(g) Confidential business and financial information submitted by an objecting provider under this subsection is exempt from disclosure under chapter 42.56 RCW.

(7)(a) In evaluating applications and awarding funds, the board shall give priority to applications that are constructed in areas identified as unserved.

(b) In evaluating applications and awarding funds, the board may give priority to applications that:

(i) Are constructed in areas identified as underserved;

(ii) Provide assistance to public-private partnerships deploying broadband infrastructure from areas currently served with broadband service to areas currently lacking access to broadband services;

(iii) Construct infrastructure that is open-access, meaning that service providers may use network services at rates, terms, and conditions that are not discriminatory or preferential between providers;

(iv) Are submitted by tribal governments whose reservations are in rural and remote areas where reliable and efficient broadband services are unavailable to many or most residents;

(v) Bring broadband service to tribal lands, particularly to rural and remote tribal lands or areas servicing rural and remote tribal entities;

(vi) Are submitted by tribal governments in rural and remote areas that have spent significant amounts of tribal funds to address the problem but cannot provide necessary broadband services without either additional state or federal, or both, support;

(vii) Serve economically distressed areas of the state as the term "distressed area" is defined in RCW 43.168.020;

(viii) Offer new or substantially upgraded broadband service to important community anchor institutions including, but not limited to, libraries, educational institutions, public safety facilities, and health care facilities;

(ix) Facilitate the use of telemedicine and electronic health records, especially in deliverance of behavioral health services and services to veterans;

(x) Provide technical support and train residents, businesses, and institutions in the community served by the project to utilize broadband service;

(xi) Include a component to actively promote the adoption of newly available broadband services in the community;

(xii) Provide evidence of strong support for the project from citizens, government, businesses, and community institutions;

(xiii) Provide access to broadband service to a greater number of unserved or underserved households and businesses;

(xiv) Seek the lowest amount of state investment per new location served and leverage greater amounts of funding for the project from other private and public sources;

(xv) Include evidence of a customer service plan; or

(xvi) Consider leveraging existing broadband infrastructure and other unique solutions.

(c) The board shall endeavor to award funds under this section to qualified applicants in all regions of the state, giving top priority to tribal reservations in rural and remote regions of Washington.

(d) The board shall consider affordability and quality of service to end users in making a determination on any application.

(e) The board may, in collaboration with the office, develop additional rules for eligibility, project applications, the associated objection process, and funding priority, as provided under this subsection and subsections (3), (5), and (6) of this section.

(f) The board may adopt rules for a voluntary nonbinding mediation between incumbent providers and applicants to the grant and loan program created in this section.

(8) To ensure a grant or loan to a private entity under this section primarily serves the public interest and benefits the public, any such grant or loan must be conditioned on a guarantee that the asset or infrastructure to be developed will be maintained for public use for a period of at least fifteen years.

(9)(a) No funds awarded under this section may fund more than fifty percent of the total cost of the project.

(b) Funds awarded to a single project under this section must not exceed two million dollars unless awarded pursuant to a proposal from a tribal government in a rural and remote area if the tribe provides evidence of prior investments of at least two million dollars in tribal funds for expanding broadband services on the reservation. Awards may then be up to five million dollars per project if the rural and remotely located tribal applicant provides evidence of prior investments by the tribe of approximately five million dollars to expand broadband services on the reservation and can show that this has not adequately addressed the needs of populations unserved and underserved by broadband on the reservation. No matching cash funds are required of the rural and remotely located tribal applicant awarded these funds. If a rural and remotely located tribal government is offered loan funds for expansion of broadband services, these must be no-interest or very low-interest loans.

(10) Prior to awarding funds under this section, the board must consult with the Washington utilities and transportation commission. The commission must provide to the board an assessment of the economic and technical feasibility of a proposed application. The board must consider the commission's assessment as part of its evaluation of a proposed application.

(11) The definitions in section 2 of this act apply throughout this section unless the context clearly requires otherwise.

NEW SECTION. **Sec.**  A new section is added to chapter 43.155 RCW to read as follows:

(1) The statewide broadband account is created in the state treasury. Moneys received from appropriations by the legislature, the proceeds of bond sales when authorized by the legislature, repayment of loans, or any other lawful source must be deposited into the account. Moneys in the account may be spent only after appropriation.

(2) Expenditures from the account may be used only:

(a) For grant and loan awards made under section 7 of this act, including costs incurred by the board to administer section 7 of this act;

(b) To contract for data acquisition, a statewide broadband demand assessment, or gap analysis;

(c) To supplement revenues raised by bonds sold by local governments for broadband structure development; or

(d) To provide for state match requirements under federal law.

(3) The board must maintain separate accounting for any federal funds in the account.

(4) The definitions in section 2 of this act apply throughout this section unless the context clearly requires otherwise.

**Sec.**  RCW 54.16.300 and 1987 c 18 s 1 are each amended to read as follows:

A public utility district by resolution may combine two or more of its separate utility functions into a single utility and combine its related funds or accounts into a single fund or account. The separate utility functions include electrical energy systems, domestic water systems, irrigation systems, sanitary sewer systems, ((~~and~~)) storm sewer systems, and broadband systems. All powers granted to public utility districts to acquire, construct, maintain, and operate such systems may be exercised in the joint acquisition, construction, maintenance, and operation of such combined systems. The establishment, maintenance, and operation of the combined system shall be governed by the public utility district statutes relating to one of the utility systems that is being combined, as specified in the resolution combining the utility systems.

**Sec.**  RCW 54.16.330 and 2004 c 158 s 1 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 the district's limits for the following purposes:

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

~~(b)~~)) (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 ((~~subsection~~)) section shall be construed to authorize public utility districts to provide telecommunications services to end users.

(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 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 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 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.

((~~(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)(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.

**Sec.**  RCW 54.16.420 and 2018 c 186 s 1 are each amended 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 June 7, 2018, 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. The authority provided in this subsection expires five years after June 7, 2018, 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 that time period.

(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 (9) 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 (9) 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 meeting the provisions of subsections (2) and (4) of this section proper facilities and connections for retail internet service as requested.

((~~(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.~~))

**Sec.**  RCW 53.08.370 and 2018 c 169 s 2 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 the district's limits for the following purposes:

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

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

(2) Except as provided in subsection (9) of this section, a port district providing wholesale 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 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 telecommunications services, it shall account for any and all revenues and expenditures related to its wholesale telecommunications facilities and services separately from revenues and expenditures related to its internal telecommunications operations. Any revenues received from the provision of wholesale telecommunications services must be dedicated to the utility function that includes the provision of wholesale 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 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 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 telecommunications in accordance with subsection (1)(b) of this section may be subject to local leasehold excise taxes under RCW 82.29A.040.

(9)(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) is intended to limit or otherwise restrict any other authority provided by law.

**Sec.**  RCW 80.36.630 and 2013 2nd sp.s. c 8 s 202 are each amended to read as follows:

(1) The definitions in this section apply throughout this section and RCW 80.36.650 through 80.36.690 and 80.36.610 unless the context clearly requires otherwise.

(a) "Basic residential service" means those services set out in 47 C.F.R. Sec. 54.101(a) (2011), as it existed on the effective date of this section, and mandatory extended area service approved by the commission.

(b) "Basic telecommunications services" means the following services:

(i) Single-party service;

(ii) Voice grade access to the public switched network;

(iii) Support for local usage;

(iv) Dual tone multifrequency signaling (touch-tone);

(v) Access to emergency services (911);

(vi) Access to operator services;

(vii) Access to interexchange services;

(viii) Access to directory assistance; and

(ix) Toll limitation services.

(c) "Broadband service" means any service providing advanced telecommunications capability, including internet access and access to high quality voice, data, graphics, or video.

(d) "Communications provider" means a provider of communications services that assigns a working telephone number to a final consumer for intrastate wireline or wireless communications services or interconnected voice over internet protocol service, and includes local exchange carriers.

((~~(d)~~)) (e) "Communications services" includes telecommunications services and information services and any combination thereof.

((~~(e)~~)) (f) "Incumbent local exchange carrier" has the same meaning as set forth in 47 U.S.C. Sec. 251(h).

((~~(f)~~)) (g) "Incumbent public network" means the network established by incumbent local exchange carriers for the delivery of communications services to customers that is used by communications providers for origination or termination of communications services by or to customers.

((~~(g)~~)) (h) "Interconnected voice over internet protocol service" means an interconnected voice over internet protocol service that: ((~~(a) [(i)]~~)) (i) Enables real-time, two-way voice communications; ((~~(b) [(ii)]~~)) (ii) requires a broadband connection from the user's location; ((~~(c) [(iii)]~~)) (iii) requires internet protocol-compatible customer premises equipment; and ((~~(d) [(iv)]~~)) (iv) permits users generally to receive calls that originate on the public network and to terminate calls to the public network.

((~~(h)~~)) (i) "Program" means the state universal communications services program created in RCW 80.36.650.

((~~(i)~~)) (j) "Telecommunications" has the same meaning as defined in 47 U.S.C. Sec. 153(43).

((~~(j)~~)) (k) "Telecommunications act of 1996" means the telecommunications act of 1996 (P.L. 104-104, 110 Stat. 56).

((~~(k) "Working telephone number" means a north American numbering plan telephone number, or successor dialing protocol, that is developed for use in placing calls to or from the public network, that enables a consumer to make or receive calls.~~))

(2) This section expires July 1, ((~~2020~~)) 2025.

**Sec.**  RCW 80.36.650 and 2016 c 145 s 1 are each amended to read as follows:

(1) A state universal communications services program is established. The program is established to protect public safety and welfare under the authority of the state to regulate telecommunications under Article XII, section 19 of the state Constitution. The purpose of the program is to support continued provision of basic telecommunications services under rates, terms, and conditions established by the commission ((~~during the time over which incumbent communications providers in the state are adapting to changes in federal universal service fund and intercarrier compensation support~~)) and the provision, enhancement, and maintenance of broadband services, recognizing that, historically, the incumbent public network functions to provide all communications services including, but not limited to, voice and broadband services.

(2) Under the program, eligible communications providers may receive distributions from the universal communications services account created in RCW 80.36.690 in exchange for the affirmative agreement to provide continued telecommunications services under the rates, terms, and conditions established by the commission under this chapter, and broadband services, for the period covered by the distribution. The commission must implement and administer the program under terms and conditions established in RCW 80.36.630 through 80.36.690. Expenditures for the program may not exceed five million dollars per fiscal year; provided, however, that if less than five million dollars is expended in any fiscal year, the unexpended portion must be carried over to subsequent fiscal years and, unless fully expended, must be available for program expenditures in such subsequent fiscal years in addition to the five million dollars allotted for each of those subsequent fiscal years.

(3) A communications provider is eligible to receive distributions from the account if:

(a)(i) The communications provider is: ((~~(i)~~)) (A) An incumbent local exchange carrier serving fewer than forty thousand access lines in the state; or ((~~(ii)~~)) (B) a radio communications service company providing wireless two-way voice communications service and broadband services to less than the equivalent of forty thousand access lines in the state. For purposes of determining the access line threshold in this subsection, the access lines or equivalents of all wireline affiliates must be counted as a single threshold, if the lines or equivalents are located in Washington;

((~~(b)~~)) (ii) The ((~~customers of the communications provider are at risk of rate instability or service interruptions or cessations absent a distribution to the provider that will allow the provider to maintain rates reasonably close to the benchmark~~)) communications provider has adopted a plan to provide, enhance, or maintain broadband services in its service area; and

((~~(c)~~)) (iii) The communications provider meets any other requirements established by the commission pertaining to the provision of communications services, including basic telecommunications services; or

(b) The communications provider demonstrates to the commission that the communications provider is able to provide the same or comparable services at the same or similar service quality standards at a lower price; and: (i) Will provide communications services to all customers in the exchange or exchanges in which it will provide service; and (ii) submits to the commission's regulation of its service as if it were the incumbent local exchange company serving the exchange or exchanges for which it seeks distribution from the account.

(4)(a) Distributions to eligible communications providers are based on ((~~a benchmark~~)) criteria established by the commission. ((~~The benchmark is the rate the commission determines to be a reasonable amount customers should pay for basic residential service provided over the incumbent public network. However, if an incumbent local exchange carrier is charging rates above the benchmark for the basic residential service, that provider may not seek distributions from the fund for the purpose of reducing those rates to the benchmark.~~))

(b) If the program does not have sufficient funds to fully fund the distribution formula set out in (a) of this subsection, distributions must be reduced on a pro rata basis using the amounts calculated for that year's program support as the basis of the pro rata calculations.

(c) To receive a distribution under the program, an eligible communications provider must affirmatively consent to continue providing communications services to its customers under rates, terms, and conditions established by the commission pursuant to this chapter for the period covered by the distribution.

(5) The program is funded from amounts deposited by the legislature in the universal communications services account established in RCW 80.36.690. The commission must operate the program within amounts appropriated for this purpose and deposited in the account.

(6) The commission must periodically review the accounts and records of any communications provider that receives distributions under the program to ensure compliance with the program and monitor the providers' use of the funds.

(7) The commission must establish an advisory board, consisting of a reasonable balance of representatives from different types of stakeholders, including but not limited to communications providers and consumers, to advise the commission on any rules and policies governing the operation of the program.

(8) The program terminates on June 30, ((~~2019~~)) 2024, and no distributions may be made after that date.

(9) This section expires July 1, ((~~2020~~)) 2025.

**Sec.**  RCW 80.36.660 and 2013 2nd sp.s. c 8 s 204 are each amended to read as follows:

(1) To implement the program, the commission must adopt rules for the following purposes:

(a) Operation of the program, including criteria for: Eligibility for distributions; use of the funds; identification of any reports or data that must be filed with the commission, including, but not limited to, how a communication provider used the distributed funds; and the communications provider's infrastructure;

(b) Operation of the universal communications services account established in RCW 80.36.690;

(c) Establishment of the ((~~benchmark~~)) criteria used to calculate distributions; and

(d) Readoption, amendment, or repeal of any existing rules adopted pursuant to RCW 80.36.610 ((~~and 80.36.620~~)) as necessary to be consistent with RCW 80.36.630 through 80.36.690 and 80.36.610.

(2) This section expires July 1, ((~~2020~~)) 2025.

**Sec.**  RCW 80.36.670 and 2013 2nd sp.s. c 8 s 205 are each amended to read as follows:

(1) In addition to any other penalties prescribed by law, the commission may impose penalties for failure to make or delays in making or filing any reports required by the commission for administration of the program. In addition, the commission may recover amounts determined to have been improperly distributed under RCW 80.36.650. For the purposes of this section, the provisions of RCW 80.04.380 through 80.04.405, inclusive, apply to all companies that receive support from the universal communications services account created in RCW 80.36.690.

(2) Any action taken under this section must be taken only after providing the affected communications provider with notice and an opportunity for a hearing, unless otherwise provided by law.

(3) Any amounts recovered under this section must be deposited in the universal communications services account created in RCW 80.36.690.

(4) This section expires July 1, ((~~2020~~)) 2025.

**Sec.**  RCW 80.36.680 and 2013 2nd sp.s. c 8 s 206 are each amended to read as follows:

(1) The commission may delegate to the commission secretary or other staff the authority to resolve disputes and make other administrative decisions necessary to the administration and supervision of the program consistent with the relevant statutes and commission rules.

(2) This section expires July 1, ((~~2020~~)) 2025.

**Sec.**  RCW 80.36.690 and 2013 2nd sp.s. c 8 s 208 are each amended to read as follows:

(1) The universal communications services account is created in the custody of the state treasurer. Revenues to the account consist of moneys deposited in the account by the legislature and any penalties or other recoveries received pursuant to RCW 80.36.670. Expenditures from the account may be used only for the purposes of the universal communications services program established in RCW 80.36.650 and commission expenses related to implementation and administration of the provisions of RCW 80.36.630 through 80.36.690 and section 212, chapter 8, Laws of 2013 2nd sp. sess. Only the secretary of the commission or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) This section expires July 1, ((~~2020~~)) 2025.

**Sec.**  RCW 80.36.700 and 2013 2nd sp.s. c 8 s 211 are each amended to read as follows:

(1) The universal communications services program established in RCW 80.36.630 through 80.36.690 terminates on June 30, ((~~2019~~)) 2024.

(2) This section expires July 1, ((~~2020~~)) 2025.

**Sec.**  2013 2nd sp.s. c 8 s 212 (uncodified) is amended to read as follows:

(1) By December 1, ((~~2017~~)) 2024, and in compliance with RCW 43.01.036, the Washington utilities and transportation commission ((~~must~~)) may report to the appropriate committees of the legislature, on the following: ((~~(1)~~)) (a) Whether funding levels for each small telecommunications company have been adequate to maintain reliable universal service; ((~~(2)~~)) (b) the future impacts on small telecommunications companies from the elimination of funding under this act; ((~~(3)~~)) (c) the impacts on customer rates from the current level of funding and the future impacts when the funding terminates under this act; and ((~~(4)~~)) (d) the impacts on line and service delivery investments when the funding is terminated under this act. The report may also include an analysis of the need for future program funding and recommendations on potential funding mechanisms to improve the availability of communications services, including broadband service, in unserved and underserved areas. Commission expenses related to conducting all analysis in preparation of this report must be expended from the universal communications services account.

(2) The Washington utilities and transportation commission must initiate a rule making to reform the state universal communications services program no later than ninety days following the effective date of this section. The rule making must address adding broadband as a supported service and, consistent with the size of the fund, establishing:

(a) Broadband provider eligibility;

(b) Service performance and buildout requirements for funding recipients;

(c) Support amounts for maintaining systems that meet federal or state broadband speed guidelines; and

(d) Methods to effectively and efficiently distribute program support to eligible providers.

**Sec.**  RCW 43.84.092 and 2018 c 287 s 7, 2018 c 275 s 10, and 2018 c 203 s 14 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The abandoned recreational vehicle disposal account, the aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of licensing tuition recovery trust fund, the department of retirement systems expense account, the developmental disabilities community trust account, the diesel idle reduction account, the drinking water assistance account, the drinking water assistance administrative account, the early learning facilities development account, the early learning facilities revolving account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the electric vehicle charging infrastructure account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, ((~~the high capacity transportation account,~~)) the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the money-purchase retirement savings administrative account, the money-purchase retirement savings principal account, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the pollution liability insurance agency underground storage tank revolving account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the sexual assault prevention and response account, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the statewide broadband account, the statewide tourism marketing account, the student achievement council tuition recovery trust fund, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**Sec.**  2013 2nd sp.s. c 8 s 303 (uncodified) is amended to read as follows:

Section 209 of this act expires July 1, ((~~2020~~)) 2025.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 43.330.415 (Washington community technology opportunity account) and 2011 1st sp.s. c 43 s 608, 2009 c 509 s 8, & 2008 c 262 s 8;

(2)RCW 43.330.418 (Broadband deployment and adoption—Governor's actions—Oversight and implementation by the department) and 2011 1st sp.s. c 43 s 609 & 2009 c 509 s 9; and

(3)RCW 80.36.620 (Universal service program—Rules) and 1998 c 337 s 3.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**--- END ---**