CERTIFICATION OF ENROLLMENT

**SECOND SUBSTITUTE SENATE BILL 5383**

67th Legislature

2021 Regular Session

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| Passed by the Senate April 23, 2021  Yeas 40 Nays 9  **President of the Senate**  Passed by the House April 11, 2021  Yeas 62 Nays 36  **Speaker of the House of Representatives** | CERTIFICATE  I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 5383** as passed by the Senate and the House of Representatives on the dates hereon set forth.  Secretary |
| Approved |  |
| **Governor of the State of Washington** | **Secretary of State**  **State of Washington** |

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**SECOND SUBSTITUTE SENATE BILL 5383**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

**State of Washington 67th Legislature 2021 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Wellman, Short, Hunt, King, Lovelett, Nguyen, Randall, Saldaña, Warnick, Wilson, C., and Wilson, L.)

AN ACT Relating to authorizing public utility districts and port districts to provide retail telecommunications services in unserved areas under certain conditions; amending RCW 54.16.330, 53.08.370, and 43.330.538; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that the COVID-19 pandemic has made it clear that equitable access to education can only happen with equitable access to reliable broadband. Increasing broadband access to unserved areas of the state is of vital importance to increasing quality of life, broadening educational opportunities, and promoting economic inclusion in the parts of our state that, without broadband access, cannot fully participate in modern society. The legislature further finds that one of the most effective tools to ensure all Washingtonians have an opportunity to equitably access education, the job market, and health care resources is to allow our public utility districts and port districts to provide retail telecommunications services.

**Sec.**  RCW 54.16.330 and 2019 c 365 s 9 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:

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

(ii) For the provision of wholesale telecommunications services ((~~within~~)) as follows:

(A) Within the district and by contract with another public utility district;

(B) Within an area in an adjoining county that is already provided electrical services by the district; or

(C) Within an adjoining county that does not have a public utility district providing electrical or telecommunications services headquartered within the county's boundaries, but only if the district providing telecommunications services is not authorized to provide electrical services((~~.~~

~~(b) Except as provided in subsection (8) of this section, nothing in this section shall be construed to authorize public utility districts to provide telecommunications services to end users~~)); or

(iii) For the provision of retail telecommunications services as authorized in this section.

(2) A public utility district providing wholesale or retail telecommunications services shall ensure that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a public utility district offering rates, terms, and conditions to an entity for wholesale or retail telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) A public utility district providing wholesale or retail telecommunications services shall not be required to, but may, establish a separate utility system or function for such purpose. In either case, a public utility district providing wholesale or retail telecommunications services shall separately account for any revenues and expenditures for those services according to standards established by the state auditor pursuant to its authority in chapter 43.09 RCW and consistent with the provisions of this title. Any revenues received from the provision of wholesale or retail telecommunications services must be dedicated to costs incurred to build and maintain any telecommunications facilities constructed, installed, or acquired to provide such services, including payments on debt issued to finance such services, until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance such telecommunications facilities are discharged or retired.

(4) When a public utility district provides wholesale or retail telecommunications services, all telecommunications services rendered to the district for the district's internal telecommunications needs shall be allocated or charged at its true and full value. A public utility district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale or retail telecommunications services.

(5) If a person or entity receiving retail telecommunications services from a public utility district under this section 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.

(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.

(9) The tax treatment of the retail telecommunications services provided by a public utility district to the end-use customers during the period specified in subsection (8) of this section must be the same as if those retail telecommunications services were provided by the defunct internet service provider.

(10)(a) A public utility district may provide retail telecommunications services to end users in unserved areas.

(b) A public utility district must notify and consult with the governor's statewide broadband office within 30 days of its decision to provide retail telecommunications services to unserved areas. The governor's statewide broadband office must post notices received from a public utility district pursuant to this subsection on its public website.

(c) Any public utility district that intends to provide retail telecommunications services to unserved areas must submit a telecommunications infrastructure and service plan to the governor's statewide broadband office that will be published on the office's website. Submission of plans will enable the governor's statewide broadband office: (i) To better understand infrastructure deployment; (ii) to potentially allocate funding for unserved areas; (iii) to advance the state policy objectives; (iv) to determine whether the plan aligns with state policy objectives and broadband priorities; (v) to measure progress toward serving those in unserved areas; (vi) to report on the feasibility and sustainability of the project; and (vii) to confirm that the project is within an unserved area. The telecommunications infrastructure and service plans shall include, but not be limited to, the following:

(A) Map and description of how the deployment of proposed broadband infrastructure will achieve at a minimum 100 megabits per second download speed and at a minimum 20 megabits per second upload speed and then increases to be consistent with the stated long-term state broadband speed goals for unserved areas;

(B) Project timeline prioritization of unserved areas; and

(C) Description of potential state and federal funding available to provide service to the unserved area.

(d) A public utility district that exercises its authority under (a) of this subsection to provide retail telecommunications services may use state funds, federal funds appropriated through the state, or federal funds dedicated for projects in unserved areas to fund projects identified in the submitted telecommunications infrastructure and service plan required in (c) of this subsection.

(e) A public utility district providing retail telecommunications services under this subsection must operate an open access network.

(f) This section does not apply to retail internet services provided by a public utility district under RCW 54.16.420.

(g) Provisions in this subsection do not apply to the provision of wholesale telecommunications services authorized in this section.

(h) For the purposes of this subsection:

(i) "Open access network" means a network that, during the useful life of the infrastructure, ensures service providers may use network services and facilities at rates, terms, and conditions that are not discriminatory or preferential between providers, and employs accountable interconnection arrangements published and available publicly.

(ii) "Unserved areas" means areas of Washington in which households and businesses lack access to broadband service of speeds at a minimum of 100 megabits per second download and at a minimum 20 megabits per second upload.

**Sec.**  RCW 53.08.370 and 2019 c 365 s 10 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~~)); or

(c) For the provision of retail telecommunications services as authorized in this section.

(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.

(10)(a) A port district may provide retail telecommunications services to end users in unserved areas.

(b) A port district must notify and consult with the governor's statewide broadband office within 30 days of its decision to provide retail telecommunications services to unserved areas. The governor's statewide broadband office must post notices received from a port district pursuant to this subsection on its public website.

(c) Any port district that intends to provide retail telecommunications services to unserved areas must submit a telecommunications infrastructure and service plan to the governor's statewide broadband office that will be published on the office's website. Submission of plans will enable the governor's statewide broadband office: (i) To better understand infrastructure deployment; (ii) to potentially allocate funding for unserved areas; (iii) to advance the state policy objectives; (iv) to determine whether the plan aligns with state policy objectives and broadband priorities; (v) to measure progress toward serving those in unserved areas; (vi) to report on the feasibility and sustainability of the project; and (vii) to confirm that the project is within an unserved area. The telecommunications infrastructure and service plans shall include, but not be limited to, the following:

(A) Map and description of how the deployment of proposed broadband infrastructure will achieve at a minimum 100 megabits per second download speed and at a minimum 20 megabits per second upload speed and then increases to be consistent with the stated long-term state broadband speed goals for unserved areas;

(B) Project timeline prioritization of unserved areas; and

(C) Description of potential state and federal funding available to provide service to the unserved area.

(d) A port district that exercises its authority under (a) of this subsection to provide retail telecommunications services may use state funds, federal funds appropriated through the state, or federal funds dedicated for projects in unserved areas to fund projects identified in the submitted telecommunications infrastructure and service plan required in (c) of this subsection.

(e) A port district providing retail telecommunications services under this subsection must operate an open access network.

(f) Provisions in this subsection do not apply to the provision of wholesale telecommunications services authorized in this section.

(g) For the purposes of this subsection:

(i) "Open access network" means a network that, during the useful life of the infrastructure, ensures service providers may use network services and facilities at rates, terms, and conditions that are not discriminatory or preferential between providers, and employs accountable interconnection arrangements published and available publicly.

(ii) "Unserved areas" means areas of Washington in which households and businesses lack access to broadband service of speeds at a minimum of 100 megabits per second download and at a minimum 20 megabits per second upload.

**Sec.**  RCW 43.330.538 and 2019 c 365 s 6 are each amended to read as follows:

(1)(a) 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)~~)) (b) The report must, at a minimum, contain:

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

((~~(b)~~)) (ii) 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)~~)) (iii) An overview of incumbent broadband infrastructure within the state;

((~~(d)~~)) (iv) A summary of the office's activities in coordinating broadband infrastructure development with the public works board, including a summary of funds awarded under RCW 43.155.160;

((~~(e)~~)) (v) Suggested policies, incentives, and legislation designed to accelerate the achievement of the goals under RCW 43.330.536; and

((~~(f)~~)) (vi) Any proposed legislative and policy initiatives.

(2)(a) By December 31, 2022, the office must submit a report to the governor and the appropriate committees of the legislature regarding the provision of retail telecommunications services to unserved areas by public utility districts and port districts as provided in RCW 54.16.330(10) and 53.08.370(10).

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

(i) The number of public utility districts and port districts providing retail telecommunications services in an unserved area authorized in RCW 54.16.330(10) and 53.08.370(10); and

(ii) Any recommendations to improve the provision of retail telecommunications services in unserved areas.

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