

2SSB 5383 - H COMM AMD
By Committee on Appropriations

ADOPTED AS AMENDED 04/11/2021

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that the COVID-19
4 pandemic has made it clear that equitable access to education can
5 only happen with equitable access to reliable broadband. Increasing
6 broadband access to unserved areas of the state is of vital
7 importance to increasing quality of life, broadening educational
8 opportunities, and promoting economic inclusion in the parts of our
9 state that, without broadband access, cannot fully participate in
10 modern society. The legislature further finds that one of the most
11 effective tools to ensure all Washingtonians have an opportunity to
12 equitably access education, the job market, and health care resources
13 is to allow our public utility districts and port districts to
14 provide retail telecommunications services.

15 **Sec. 2.** RCW 54.16.330 and 2019 c 365 s 9 are each amended to
16 read as follows:

17 (1)(a) A public utility district in existence on June 8, 2000,
18 may construct, purchase, acquire, develop, finance, lease, license,
19 handle, provide, add to, contract for, interconnect, alter, improve,
20 repair, operate, and maintain any telecommunications facilities
21 within or without the district's limits for the following purposes:

22 (i) For the district's internal telecommunications needs; and
23 (ii) For the provision of wholesale telecommunications services
24 (~~within~~) as follows:

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

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

29 (C) Within an adjoining county that does not have a public
30 utility district providing electrical or telecommunications services
31 headquartered within the county's boundaries, but only if the

1 district providing telecommunications services is not authorized to
2 provide electrical services.

3 (b) Except as provided in subsections (8) and (10) of this
4 section, nothing in this section shall be construed to authorize
5 public utility districts to provide telecommunications services to
6 end users.

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

16 (3) A public utility district providing wholesale or retail
17 telecommunications services shall not be required to, but may,
18 establish a separate utility system or function for such purpose. In
19 either case, a public utility district providing wholesale or retail
20 telecommunications services shall separately account for any revenues
21 and expenditures for those services according to standards
22 established by the state auditor pursuant to its authority in chapter
23 43.09 RCW and consistent with the provisions of this title. Any
24 revenues received from the provision of wholesale or retail
25 telecommunications services must be dedicated to costs incurred to
26 build and maintain any telecommunications facilities constructed,
27 installed, or acquired to provide such services, including payments
28 on debt issued to finance such services, until such time as any bonds
29 or other financing instruments executed after June 8, 2000, and used
30 to finance such telecommunications facilities are discharged or
31 retired.

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

1 (5) If a person or entity receiving retail telecommunications
2 services from a public utility district under this section has a
3 complaint regarding the reasonableness of the rates, terms,
4 conditions, or services provided, the person or entity may file a
5 complaint with the district commission.

6 (6) A public utility district shall not exercise powers of
7 eminent domain to acquire telecommunications facilities or
8 contractual rights held by any other person or entity to
9 telecommunications facilities.

10 (7) Except as otherwise specifically provided, a public utility
11 district may exercise any of the powers granted to it under this
12 title and other applicable laws in carrying out the powers authorized
13 under this section. Nothing in chapter 81, Laws of 2000 limits any
14 existing authority of a public utility district under this title.

15 (8) (a) If an internet service provider operating on
16 telecommunications facilities of a public utility district that
17 provides wholesale telecommunications services but does not provide
18 retail telecommunications services, ceases to provide access to the
19 internet to its end-use customers, and no other retail service
20 providers are willing to provide service, the public utility district
21 may provide retail telecommunications services to the end-use
22 customers of the defunct internet service provider in order for end-
23 use customers to maintain access to the internet until a replacement
24 internet service provider is, or providers are, in operation.

25 (b) Within thirty days of an internet service provider ceasing to
26 provide access to the internet, the public utility district must
27 initiate a process to find a replacement internet service provider or
28 providers to resume providing access to the internet using
29 telecommunications facilities of a public utility district.

30 (c) For a maximum period of five months, following initiation of
31 the process begun in (b) of this section, or, if earlier than five
32 months, until a replacement internet service provider is, or
33 providers are, in operation, the district commission may establish a
34 rate for providing access to the internet and charge customers to
35 cover expenses necessary to provide access to the internet.

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

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

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

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

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

28 (B) Project timeline prioritization of unserved areas; and

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

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

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

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

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

3 (h) For the purposes of this subsection:

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

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

14 **Sec. 3.** RCW 53.08.370 and 2019 c 365 s 10 are each amended to
15 read as follows:

16 (1) A port district in existence on June 8, 2000, may construct,
17 purchase, acquire, develop, finance, lease, license, handle, provide,
18 add to, contract for, interconnect, alter, improve, repair, operate,
19 and maintain any telecommunications facilities within or without the
20 district's limits for the following purposes:

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

22 (b) For the provision of wholesale telecommunications services
23 within or without the district's limits. ~~((Nothing))~~ Except as
24 provided in subsection (10) of this section, nothing in this
25 subsection shall be construed to authorize port districts to provide
26 telecommunications services to end users.

27 (2) Except as provided in subsection (9) of this section, a port
28 district providing wholesale telecommunications services under this
29 section shall ensure that rates, terms, and conditions for such
30 services are not unduly or unreasonably discriminatory or
31 preferential. Rates, terms, and conditions are discriminatory or
32 preferential when a port district offering such rates, terms, and
33 conditions to an entity for wholesale telecommunications services
34 does not offer substantially similar rates, terms, and conditions to
35 all other entities seeking substantially similar services.

36 (3) When a port district establishes a separate utility function
37 for the provision of wholesale telecommunications services, it shall
38 account for any and all revenues and expenditures related to its
39 wholesale telecommunications facilities and services separately from

1 revenues and expenditures related to its internal telecommunications
2 operations. Any revenues received from the provision of wholesale
3 telecommunications services must be dedicated to the utility function
4 that includes the provision of wholesale telecommunications services
5 for costs incurred to build and maintain the telecommunications
6 facilities until such time as any bonds or other financing
7 instruments executed after June 8, 2000, and used to finance the
8 telecommunications facilities are discharged or retired.

9 (4) When a port district establishes a separate utility function
10 for the provision of wholesale telecommunications services, all
11 telecommunications services rendered by the separate function to the
12 district for the district's internal telecommunications needs shall
13 be charged at its true and full value. A port district may not charge
14 its nontelecommunications operations rates that are preferential or
15 discriminatory compared to those it charges entities purchasing
16 wholesale telecommunications services.

17 (5) A port district shall not exercise powers of eminent domain
18 to acquire telecommunications facilities or contractual rights held
19 by any other person or entity to telecommunications facilities.

20 (6) Except as otherwise specifically provided, a port district
21 may exercise any of the powers granted to it under this title and
22 other applicable laws in carrying out the powers authorized under
23 this section. Nothing in chapter 81, Laws of 2000 limits any existing
24 authority of a port district under this title.

25 (7) A port district that has not exercised the authorities
26 provided in this section prior to June 7, 2018, must develop a
27 business case plan before exercising the authorities provided in this
28 section. The port district must procure an independent qualified
29 consultant to review the business case plan, including the use of
30 public funds in the provision of wholesale telecommunications
31 services. Any recommendations or adjustments to the business case
32 plan made during third-party review must be received and either
33 rejected or accepted by the port commission in an open meeting.

34 (8) A port district with telecommunications facilities for use in
35 the provision of wholesale telecommunications in accordance with
36 subsection (1)(b) of this section may be subject to local leasehold
37 excise taxes under RCW 82.29A.040.

38 (9)(a) A port district under this section may select a
39 telecommunications company to operate all or a portion of the port
40 district's telecommunications facilities.

1 (b) For the purposes of this section "telecommunications company"
2 means any for-profit entity owned by investors that sells
3 telecommunications services to end users.

4 (c) Nothing in this subsection (9) is intended to limit or
5 otherwise restrict any other authority provided by law.

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

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

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

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

32 (B) Project timeline prioritization of unserved areas; and

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

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

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

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

5 (g) For the purposes of this subsection:

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

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

16 **Sec. 4.** RCW 43.330.538 and 2019 c 365 s 6 are each amended to
17 read as follows:

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

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

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

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

30 ~~((c))~~ (iii) An overview of incumbent broadband infrastructure
31 within the state;

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

35 ~~((e))~~ (v) Suggested policies, incentives, and legislation
36 designed to accelerate the achievement of the goals under RCW
37 43.330.536; and

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

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

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

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

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

12 Correct the title.

EFFECT: Strikes and restores the provisions of the original bill with the following modifications:

(1) Adds a provision allowing a public utility district (PUD) to provide wholesale telecommunications services as follows:

(a) Within an adjoining county that is already provided electrical services by the district; and (b) within an adjoining county that does not have a PUD providing electrical or telecommunications services headquartered within the county's boundaries, but only if the PUD providing the telecommunications services is not authorized to provide electrical service.

(2) Removes the ability of and process for an existing broadband service provider to object to a retail telecommunications services project of a PUD or port district for unserved areas.

(3) Adds provisions requiring a PUD or port district to notify and consult with the Statewide Broadband Office (Office) within 30 days that it intends to provide retail telecommunications services in unserved areas and submit to the Office a telecommunications infrastructure and service plan.

(4) Adds a provision allowing a PUD or port district that provides retail telecommunications services in unserved areas to use state funds, federal funds appropriated through the state, or federal funds dedicated for projects in unserved areas to fund projects identified in its telecommunications infrastructure and service plan.

(5) Eliminates the definition of "broadband service."

(6) Redefines "unserved area" as 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.

(7) Modifies reporting requirements for the Office by removing items reflecting the stricken language relating to the underlying bill's objection process for existing providers and moving up the reporting date to December 31, 2022.

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