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ENGROSSED SUBSTITUTE HOUSE BILL 1336

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State of Washington

67th Legislature

2021 Regular Session

**By** House Community & Economic Development (originally sponsored by Representatives Hansen, Ybarra, Berry, Simmons, Ramel, Valdez, Leavitt, Morgan, Ryu, Peterson, Shewmake, Davis, Ormsby, Gilday, Stonier, Eslick, Pollet, and Harris-Talley)

READ FIRST TIME 02/08/21.

1 AN ACT Relating to creating and expanding unrestricted authority  
2 for public entities to provide telecommunications services to end  
3 users; amending RCW 54.16.005, 54.16.330, 54.16.425, 53.08.005, and  
4 53.08.370; adding a new section to chapter 54.16 RCW; adding a new  
5 section to chapter 35.27 RCW; adding a new section to chapter 35.23  
6 RCW; adding a new section to chapter 36.01 RCW; adding a new section  
7 to chapter 53.08 RCW; creating a new section; and repealing RCW  
8 54.16.420.

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

10 **Sec. 1.** RCW 54.16.005 and 2000 c 81 s 2 are each amended to read  
11 as follows:

12 The definitions in this section apply throughout this chapter  
13 unless the context clearly requires otherwise.

14 (1) "Broadband infrastructure" means networks of deployed  
15 telecommunications equipment and technologies necessary to provide  
16 high-speed internet access and other advanced telecommunications  
17 services.

18 (2) "Commission" means the Washington utilities and  
19 transportation commission.

20 ((+2)) (3) "District commission" means the governing board of a  
21 public utility district.

1       (4) "Retail telecommunications services" means the sale, lease,  
2 license, or indivisible right of use of telecommunications services  
3 or telecommunications facilities directly to end users.

4       (5) "Telecommunications" has the same meaning as ~~((that~~  
5 ~~contained))~~ defined in RCW 80.04.010.

6       ~~((3))~~ (6) "Telecommunications facilities" means lines,  
7 conduits, ducts, poles, wires, cables, crossarms, receivers,  
8 transmitters, instruments, machines, appliances, instrumentalities  
9 and all devices, real estate, easements, apparatus, property, and  
10 routes used, operated, owned, or controlled by any entity to  
11 facilitate the provision of telecommunications services.

12       ~~((4))~~ (7) "Wholesale telecommunications services" means the  
13 provision of telecommunications services or telecommunications  
14 facilities for resale ~~((by))~~ to an entity ~~((authorized to provide))~~  
15 that provides retail telecommunications services ~~((to the general~~  
16 ~~public and internet service providers))~~.

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

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

25       ~~((i))~~ (a) For the district's internal telecommunications needs;  
26       ~~((ii) For the provision of wholesale telecommunications services~~  
27 ~~within the district and by contract with another public utility~~  
28 ~~district.~~

29       ~~(b) Except as provided in subsection (8) of this section, nothing~~  
30 ~~in this section shall be construed to authorize public utility~~  
31 ~~districts to provide telecommunications services to end users))~~ (b)  
32 For the provision of either retail or wholesale, or both,  
33 telecommunications services and telecommunications facilities within  
34 the district; or

35       (c) For the provision of either retail or wholesale, or both,  
36 telecommunications services or telecommunications facilities outside  
37 of the district by contract with another public utility district, any  
38 political subdivision of the state authorized to provide retail

1 telecommunications services in the state, or with any federally  
2 recognized tribe located in the state of Washington.

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

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

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

36 (5) If a person or entity receiving retail telecommunications  
37 services from a public utility district under this section has a  
38 complaint regarding the reasonableness of the rates, terms,  
39 conditions, or services provided, the person or entity may file a  
40 complaint with the district commission.

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

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

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

20 ~~(b) Within thirty days of an internet service provider ceasing to  
21 provide access to the internet, the public utility district must  
22 initiate a process to find a replacement internet service provider or  
23 providers to resume providing access to the internet using  
24 telecommunications facilities of a public utility district.~~

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

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

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

38 (1) Before providing retail telecommunications services, a public  
39 utility district is encouraged to examine and report to its governing

1 body the following about the area to be served by the public utility  
2 district:

3 (a) An assessment of the current availability of broadband  
4 infrastructure and its adequacy to provide high-speed internet access  
5 and other advanced telecommunications services to end users;

6 (b) The location of where retail telecommunications services will  
7 be provided;

8 (c) Evidence relating to the unserved or underserved nature of  
9 the community in which retail telecommunications services will be  
10 provided;

11 (d) Expected costs of providing retail telecommunications  
12 services to customers to be served by the public utility district;  
13 and

14 (e) Evidence that proposed telecommunications infrastructure will  
15 be capable of scaling to greater download and upload speeds to meet  
16 state broadband goals under RCW 43.330.536.

17 (2) For purposes of this section, "unserved" means a census block  
18 in which no provider has the capacity to deliver internet access  
19 service at speeds of a minimum of twenty-five megabits download and  
20 three megabits upload.

21 **Sec. 4.** RCW 54.16.425 and 2018 c 186 s 3 are each amended to  
22 read as follows:

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

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

32 (b) The amount agreed upon may not exceed the property tax amount  
33 that would be owed on the property comprising the broadband  
34 (~~(network)~~) infrastructure used in providing retail (~~(internet~~  
35 ~~service)) telecommunications services as calculated by the department  
36 of revenue. The public utility district must provide information  
37 necessary for the department of revenue to make the required  
38 valuation under this subsection. The department of revenue must  
39 provide the amount of property tax that would be owed on the property~~

1 to the county or counties in which the broadband ((network))  
2 infrastructure is located on an annual basis.

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

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

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

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

31 ((~~(6) The definitions in RCW 54.16.420 apply to this section.~~))

32 NEW SECTION. **Sec. 5.** A new section is added to chapter 35.27  
33 RCW to read as follows:

34 (1) A town may construct, purchase, acquire, develop, finance,  
35 lease, license, provide, contract for, interconnect, alter, improve,  
36 repair, operate, and maintain telecommunications services or  
37 telecommunications facilities for the purpose of furnishing the town  
38 and its inhabitants with telecommunications services. The town has

1 full authority to regulate and control the use, distribution, and  
2 price of the services.

3 (2) For purposes of this section, "telecommunications" has the  
4 same meaning as defined in RCW 80.04.010.

5 NEW SECTION. **Sec. 6.** A new section is added to chapter 35.23  
6 RCW to read as follows:

7 (1) A second-class city may construct, purchase, acquire,  
8 develop, finance, lease, license, provide, contract for,  
9 interconnect, alter, improve, repair, operate, and maintain  
10 telecommunications services or telecommunications facilities for the  
11 purpose of furnishing the second-class city and its inhabitants with  
12 telecommunications services. The second-class city has full authority  
13 to regulate and control the use, distribution, and price of the  
14 services.

15 (2) For purposes of this section, "telecommunications" has the  
16 same meaning as defined in RCW 80.04.010.

17 NEW SECTION. **Sec. 7.** A new section is added to chapter 36.01  
18 RCW to read as follows:

19 (1) A county may construct, purchase, acquire, develop, finance,  
20 lease, license, provide, contract for, interconnect, alter, improve,  
21 repair, operate, and maintain telecommunications services or  
22 telecommunications facilities for the purpose of furnishing the  
23 county and its inhabitants with telecommunications services. The  
24 county has full authority to regulate and control the use,  
25 distribution, and price of the services.

26 (2) For purposes of this section, "telecommunications" has the  
27 same meaning as defined in RCW 80.04.010.

28 **Sec. 8.** RCW 53.08.005 and 2018 c 169 s 1 are each amended to  
29 read as follows:

30 The definitions in this section apply throughout this chapter  
31 unless the context clearly requires otherwise.

32 (1) "Commission" means the Washington utilities and  
33 transportation commission.

34 (2) "Retail telecommunications services" means the sale, lease,  
35 license, or indivisible right of use of telecommunications services  
36 or telecommunications facilities directly to end users.

1       (3) "Telecommunications" has the same meaning as contained in RCW  
2 80.04.010.

3       ~~((3))~~ (4) "Telecommunications facilities" means lines,  
4 conduits, ducts, poles, wires, cables, crossarms, receivers,  
5 transmitters, instruments, machines, appliances, instrumentalities  
6 and all devices, real estate, easements, apparatus, property, and  
7 routes used, operated, owned, or controlled by any entity to  
8 facilitate the provision of telecommunications services.

9       ~~((4))~~ (5) "Wholesale telecommunications services" means the  
10 provision of telecommunications services or telecommunications  
11 facilities for resale ~~((by))~~ to an entity authorized to provide  
12 telecommunications services ~~((to the general public and internet~~  
13 ~~service providers))~~. Wholesale telecommunications services includes  
14 the provision of unlit or dark optical fiber for resale, but not the  
15 provision of lit optical fiber.

16       **Sec. 9.** RCW 53.08.370 and 2019 c 365 s 10 are each amended to  
17 read as follows:

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

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

25       (b) For the provision of wholesale telecommunications services  
26 within or ~~((without))~~ outside the district's limits ~~((Nothing in~~  
27 ~~this subsection shall be construed to authorize port districts to~~  
28 ~~provide telecommunications services to end users)); or~~

29       (c) For the provision of retail telecommunications services  
30 within or outside the district's limits.

31       (2) Except as provided in subsection ~~((9))~~ (8) of this section,  
32 a port district providing wholesale or retail telecommunications  
33 services under this section shall ensure that rates, terms, and  
34 conditions for such services are not unduly or unreasonably  
35 discriminatory or preferential. Rates, terms, and conditions are  
36 discriminatory or preferential when a port district offering such  
37 rates, terms, and conditions to an entity for wholesale or retail  
38 telecommunications services does not offer substantially similar



1 rates, terms, and conditions to all other entities seeking  
2 substantially similar services.

3 (3) When a port district establishes a separate utility function  
4 for the provision of wholesale or retail telecommunications services,  
5 it shall account for any and all revenues and expenditures related to  
6 its wholesale or retail telecommunications facilities and services  
7 separately from revenues and expenditures related to its internal  
8 telecommunications operations. Any revenues received from the  
9 provision of wholesale or retail telecommunications services must be  
10 dedicated to the utility function that includes the provision of  
11 wholesale or retail telecommunications services for costs incurred to  
12 build and maintain the telecommunications facilities until such time  
13 as any bonds or other financing instruments executed after June 8,  
14 2000, and used to finance the telecommunications facilities are  
15 discharged or retired.

16 (4) When a port district establishes a separate utility function  
17 for the provision of wholesale or retail telecommunications services,  
18 all telecommunications services rendered by the separate function to  
19 the district for the district's internal telecommunications needs  
20 shall be charged at its true and full value. A port district may not  
21 charge its nontelecommunications operations rates that are  
22 preferential or discriminatory compared to those it charges entities  
23 purchasing wholesale or retail telecommunications services.

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

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

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

1       ~~(8)~~) A port district with telecommunications facilities for use  
2 in the provision of wholesale or retail telecommunications in  
3 accordance with subsection (1) (~~(b)~~) of this section may be subject  
4 to local leasehold excise taxes under RCW 82.29A.040.

5       ~~((9))~~ (8)(a) A port district under this section may select a  
6 telecommunications company to operate all or a portion of the port  
7 district's telecommunications facilities.

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

11       (c) Nothing in this subsection (~~((9))~~) (8) is intended to limit  
12 or otherwise restrict any other authority provided by law.

13       NEW SECTION.   **Sec. 10.** A new section is added to chapter 53.08  
14 RCW to read as follows:

15       (1) Before providing retail telecommunications services, a port  
16 district is encouraged to examine and report to its governing body  
17 the following about the area to be served by the port district:

18       (a) An assessment of the current availability of broadband  
19 infrastructure and its adequacy to provide high-speed internet access  
20 and other advanced telecommunications services to end users;

21       (b) The location of where retail telecommunications services will  
22 be provided;

23       (c) Evidence relating to the unserved or underserved nature of  
24 the community in which retail telecommunications services will be  
25 provided;

26       (d) Expected costs of providing retail telecommunications  
27 services to customers to be served by the port district; and

28       (e) Evidence that proposed telecommunications infrastructure will  
29 be capable of scaling to greater download and upload speeds to meet  
30 state broadband goals under RCW 43.330.536.

31       (2) For purposes of this section, "unserved" means a census block  
32 in which no provider has the capacity to deliver internet access  
33 service at speeds of a minimum of twenty-five megabits download and  
34 three megabits upload.

35       NEW SECTION.   **Sec. 11.** This act may be known and cited as the  
36 public broadband act.

1        NEW SECTION.    **Sec. 12.**    RCW 54.16.420 (Retail internet service—  
2    Definitions—Authority—Requirements) and 2018 c 186 s 1 are each  
3    repealed.

--- **END** ---