

ESSB 6034 - H COMM AMD

By Committee on Technology & Economic Development

ADOPTED AS AMENDED 03/02/2018

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 54.16
4 RCW to read as follows:

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

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

9 (b) "Broadband network" means networks of deployed
10 telecommunications equipment and technologies necessary to provide
11 broadband.

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

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

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

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

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

28 (2) Any public utility district that, as of the effective date of
29 this section, provides only water, sewer, and wholesale
30 telecommunications services in a county with an area less than five
31 hundred square miles and is located west of the Puget Sound may

1 provide retail internet service on the public utility district's
2 broadband network located within the public utility district
3 boundaries only when all of the existing providers of end-user
4 internet service on the public utility district's broadband network
5 cease to provide end-user service or provide inadequate end-user
6 service as determined in the manner prescribed by this section.

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

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

12 (b) Determine and submit findings that the retail internet
13 service available to the petitioners served by the public utility
14 district's broadband network is either nonexistent or inadequate as
15 defined in the service level agreement adopted by the commissioners
16 for all existing internet service providers on the public utility
17 district's broadband network;

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

21 (d) By resolution, authorize the public utility district to
22 provide retail internet service on the public utility district's
23 broadband network.

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

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

34 (b) Any individual who has developed a partnership payment
35 structure to finance broadband deployment with the public utility
36 district.

37 (5) For the purposes of this section, the adequacy of retail
38 internet service is determined by measuring retail internet service
39 to end users on the public utility district's broadband network and
40 comparing it with service standards in the public utility district

1 service level agreement used for all public utility district network
2 providers. Measurement of the existing retail internet service
3 provider's service must be quantified by measuring the service with
4 speed and capacity devices and software. Additionally, a retail
5 internet service provider may submit its own assessment of its
6 service level for consideration by the commission within thirty days
7 of the first meeting conducted under subsection (3) of this section.

8 (6) The commissioners of a public utility district may by
9 resolution authorize the public utility district to provide or
10 contract for provision of retail internet services on the public
11 utility district's broadband network:

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

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

17 (7) The business case plan under subsection (6) of this section
18 must be reviewed by an independent qualified consultant. The review
19 must include the use of public funds in the provision of retail
20 internet service. Any recommendations or adjustments to the business
21 case plan made during third-party review must be received and either
22 rejected or accepted by the district board of commissioners in an
23 open meeting.

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

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

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

35 (d) Upon review and consideration of all of the evidence, the
36 administrative law judge must determine if the retail internet
37 service is inadequate or nonexistent as defined in this section. Upon
38 making a determination, the administrative law judge must state
39 findings of fact and must issue and file a determination with the
40 commissioners.

1 (9) If a provider of end-user service is a company regulated by
2 the utilities and transportation commission, the company may choose
3 to have the commission resolve disputes concerning the service level
4 agreement under the process established in RCW 54.16.340. For the
5 purposes of this subsection, "company" includes subsidiaries or
6 affiliates.

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

11 (11) Except as provided in subsection (8) of this section,
12 nothing in this section may be construed or is intended to confer
13 upon the utilities and transportation commission any authority to
14 exercise jurisdiction over locally regulated utilities.

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

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

23 (14) A public utility district authorized to provide retail
24 internet service within a specific geographical area must, upon
25 reasonable notice, furnish to all persons and entities within that
26 geographical area who may apply therefor and be reasonably entitled
27 thereto proper facilities and connections for retail internet service
28 as demanded.

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

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

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

1 **Sec. 3.** RCW 54.28.010 and 1977 ex.s. c 366 s 1 are each amended
2 to read as follows:

3 ~~((As used in this chapter:))~~ The definitions in this section
4 apply throughout this chapter unless the context clearly requires
5 otherwise.

6 (1) "Operating property" means all of the property utilized by a
7 public utility district in the operation of a plant or system for the
8 generation, transmission, or distribution of electric energy for
9 sale((+)).

10 (2) "Taxing districts" means counties, cities, towns, school
11 districts, and road districts((+)).

12 (3) "Distributes to consumers" means the sale of electric energy
13 to ultimate consumers thereof, and does not include sales of electric
14 energy for resale by the purchaser((+)).

15 (4) "Wholesale value" means all costs of a public utility
16 district associated with the generation and transmission of energy
17 from its own generation and transmission system to the point or
18 points of inter-connection with a distribution system owned and used
19 by a district to distribute such energy to consumers, or in the event
20 a distribution system owned by a district is not used to distribute
21 such energy, then the term means the gross revenues derived by a
22 district from the sale of such energy to consumers((+)).

23 (5) "Thermal electric generating facility" means a steam-powered
24 electrical energy producing facility utilizing nuclear or fossil
25 fuels((+)).

26 (6) "Placed in operation" means delivery of energy into a
27 transmission or distribution system for use or sale in such a manner
28 as to establish a value accruing to the power plant operator, except
29 operation incidental to testing or start-up adjustments((+)).

30 (7) "Impacted area" for a thermal electric generating facility on
31 a federal reservation means that area in the state lying within
32 thirty-five statute miles of the most commonly used entrance of the
33 federal reservation and which is south of the southern boundary of
34 township fifteen north.

35 (8) "Retail internet service" has the same meaning as defined in
36 section 1 of this act.

37 (9) "Broadband network" has the same meaning as defined in
38 section 1 of this act.

1 **Sec. 4.** RCW 54.28.011 and 2010 1st sp.s. c 23 s 1001 are each
2 amended to read as follows:

3 "Gross revenue" means the amount received from the sale of
4 electric energy or retail internet service, which also includes any
5 regularly recurring charge billed to consumers as a condition of
6 receiving electric energy or retail internet service, and excluding
7 any tax levied by a municipal corporation upon the district pursuant
8 to RCW 54.28.070.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 54.28
10 RCW to read as follows:

11 (1) There is levied and collected from every district a tax for
12 the act or privilege of engaging within this state in the business of
13 operating a broadband network for the purpose of selling retail
14 internet service. With respect to each such district, such tax must
15 be two percent of the gross revenues derived from the sale of retail
16 internet services.

17 (2) An additional tax is imposed equal to the rate specified in
18 RCW 82.02.030 multiplied by the tax payable under subsection (1) of
19 this section.

20 **Sec. 6.** RCW 54.28.040 and 2017 c 323 s 103 are each amended to
21 read as follows:

22 (1) Before May 1st of each calendar year through calendar year
23 2018, the department of revenue must compute the tax imposed by this
24 chapter for the last preceding calendar year and notify the district
25 of the amount thereof, which shall be payable on or before the
26 following June 1st.

27 (2) For tax reporting periods beginning on or after January 1,
28 2018, taxpayers must report the taxes due under RCW 54.28.020
29 ~~((and))~~, 54.28.025, and section 5(1) of this act on returns as
30 prescribed by the department of revenue. Except as otherwise provided
31 in this subsection (2), taxes imposed in RCW 54.28.020 ~~((and))~~,
32 54.28.025, and section 5(1) of this act are due for a taxpayer at the
33 same time as the taxpayer's payment of taxes imposed under chapters
34 82.04 and 82.16 RCW. The department of revenue may allow taxpayers to
35 report and pay the taxes due under RCW 54.28.020 ~~((and))~~, 54.28.025,
36 and section 5(1) of this act on an annual basis, even if they report
37 taxes imposed under chapters 82.04 and 82.16 RCW more frequently than
38 annually. In such cases, the taxes imposed in RCW 54.28.020 ~~((and))~~,

1 54.28.025, and section 5(1) of this act are due at the same time as
2 the taxes under chapters 82.04 and 82.16 RCW for the taxpayer's final
3 reporting period for the calendar year.

4 (3) The department of revenue may require persons to report such
5 information as needed by the department to administer this chapter.

6 (4) Upon receipt of the amount of each tax imposed the department
7 of revenue shall deposit the same with the state treasurer, who must
8 deposit four percent of the revenues received under RCW 54.28.020(1)
9 (~~and~~), 54.28.025(1), and section 5(1) of this act and all revenues
10 received under RCW 54.28.020(2) (~~and~~), 54.28.025(2), and section
11 5(2) of this act in the general fund of the state and must distribute
12 the remainder in the manner hereinafter set forth. The state
13 treasurer must send a duplicate copy of each transmittal to the
14 department of revenue.

15 **Sec. 7.** RCW 54.28.050 and 2017 c 323 s 104 are each amended to
16 read as follows:

17 (1) Except as provided in subsection (2) of this section, the
18 department of revenue must instruct the state treasurer, after
19 placing thirty-seven and six-tenths percent of the taxes collected
20 under RCW 54.28.020(1) in the state general fund to be dedicated for
21 the benefit of the public schools, to distribute the balance as
22 follows:

23 (a) For amounts collected under RCW 54.28.020(1)(a), the balance
24 must be distributed to each county in proportion to the gross revenue
25 from sales made within each county; (~~and to distribute the balance~~)

26 (b) For amounts collected under section 5(1) of this act, if the
27 broadband network is located in only one county, the balance must be
28 distributed to the county in which the broadband network is located.
29 If the broadband network is located in more than one county, the
30 balance must be distributed on a pro rata manner to each applicable
31 county based on the cost of the broadband network; and

32 (c) For amounts collected under RCW 54.28.020(1) (b) and (c) the
33 balance must be distributed as follows:

34 (~~(a)~~) (i) If the entire generating facility, including
35 reservoir, if any, is in a single county then all of the balance to
36 the county where such generating facility is located;

37 (~~(b)~~) (ii) If any reservoir is in more than one county, then to
38 each county in which the reservoir or any portion thereof is located
39 a percentage equal to the percentage determined by dividing the total

1 cost of the generating facilities, including adjacent switching
2 facilities, into twice the cost of land and land rights acquired for
3 any reservoir within each county, land and land rights to be defined
4 the same as used by the federal energy regulatory commission;

5 ~~((e))~~ (iii) If the powerhouse and dam, if any, in connection
6 with such reservoir are in more than one county, the balance must be
7 divided sixty percent to the county in which the owning district is
8 located and forty percent to the other county or counties or if the
9 powerhouse and dam, if any, are owned by a joint operating agency
10 organized under chapter 43.52 RCW, or by more than one district or
11 are outside the county of the owning district, then to be divided
12 equally between the counties in which such facilities are located. If
13 all of the powerhouse and dam, if any, are in one county, then the
14 balance must be distributed to the county in which the facilities are
15 located.

16 (2) The department of revenue must instruct the state treasurer
17 to adjust distributions under this section, in whole or in part, to
18 account for each county's proportionate share of amounts previously
19 distributed under this section and subsequently refunded to a public
20 utility district under RCW 82.32.060.

21 (3) The provisions of this section do not apply to the
22 distribution of taxes collected under RCW 54.28.025.

23 **Sec. 8.** RCW 54.28.070 and 1941 c 245 s 3 are each amended to
24 read as follows:

25 Any city or town in which a public utility district operates
26 works, plants, or facilities for the distribution and sale of
27 electricity, or a broadband network for the sale of retail internet
28 service, shall have the power to levy and collect from such district
29 a tax under this section. With respect to the distribution and sale
30 of electricity, a tax may be imposed on the gross revenues derived by
31 such district from the sale of electricity within the city or town,
32 exclusive of the revenues derived from the sale of electricity for
33 purposes of resale. ~~((Such))~~ With respect to the sale of retail
34 internet service, a tax may be imposed under the applicable authority
35 in chapter 35.21 RCW. The tax when levied shall be a debt of the
36 district, and may be collected as such. Any such district shall have
37 the power to add the amount of such tax to the rates or charges it
38 makes for electricity ~~((so))~~ or retail internet service sold within
39 the limits of such city or town.

1 **Sec. 9.** RCW 54.28.120 and 1957 c 278 s 14 are each amended to
2 read as follows:

3 In the event any district hereafter purchases or otherwise
4 acquires electric utility properties comprising all or a portion of
5 an electric generation and/or distribution system, or a broadband
6 network for the purpose of providing retail internet service, from a
7 public service company, as defined in RCW 80.04.010, the total amount
8 of privilege taxes imposed under (~~chapter 278, Laws of 1957~~) this
9 chapter to be paid by the district annually on the combined operating
10 property within each county where such utility property is located,
11 irrespective of any other basis of levy contained in this chapter,
12 will be not less than the combined total of the ad valorem taxes,
13 based on regular levies, last levied against the electric utility
14 property constituting the system so purchased or acquired, or the
15 broadband network purchased or acquired, plus the taxes paid by the
16 district for the same year on the revenues of other operating
17 property in the same county under terms of this chapter. If all or
18 any portion of the property so acquired is subsequently sold, or if
19 rates charged to purchasers of electric energy, or retail internet
20 service are reduced, the amount of privilege tax required under this
21 section shall be proportionately reduced.

22 **Sec. 10.** RCW 82.02.030 and 1993 sp.s. c 25 s 107 are each
23 amended to read as follows:

24 The rate of the additional taxes under RCW 54.28.020(2),
25 54.28.025(2), section 5(2) of this act, 66.24.210(2), 82.16.020(2),
26 82.27.020(5), and 82.29A.030(2) shall be seven percent."

27 Correct the title.

EFFECT: Requires development of a business case plan prior to authorization to provide retail internet service. Modifies the rates standard from "fair and nondiscriminatory" to "just, fair, and reasonable." Prohibits PUDs from conditioning the cost or availability of other services on purchase or use of retail internet services. Requires provision of retail internet service to all entities reasonably entitled to service within the authorized geographical area. Requires separate accounting for retail internet service revenues and expenditures. Applies a tax on PUDs for the privilege of operating a broadband network for the purpose of selling retail internet service at a rate of 2 percent of gross revenue of sales, with an additional surtax applied equal to 7 percent multiplied by the rate. Applies the following provisions currently applicable to the PUD privilege tax on electricity to the new PUD privilege tax on retail internet service:

Annual reporting requirements;
Distribution of revenues;
Municipal authorization to impose business taxes; and
Accounting for acquisitions of property from a public service
company.

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