

**SHB 1336 - H AMD 54**

By Representative Corry

WITHDRAWN 02/23/2021

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

3 **"Sec. 1.** RCW 54.04.045 and 2008 c 197 s 2 are each amended to  
4 read as follows:

5 (1) As used in this section:

6 (a) "Attachment" means the affixation or installation of any  
7 wire, cable, or other physical material capable of carrying  
8 electronic impulses or light waves for the carrying of intelligence  
9 for telecommunications or television, including, but not limited to  
10 cable, and any related device, apparatus, or auxiliary equipment upon  
11 any pole owned or controlled in whole or in part by one or more  
12 locally regulated utilities where the installation has been made with  
13 the necessary consent.

14 (b) "Licensee" means any person, firm, corporation, partnership,  
15 company, association, joint stock association, or cooperatively  
16 organized association, which is authorized to construct attachments  
17 upon, along, under, or across public ways.

18 (c) "Locally regulated utility" means a public utility district  
19 not subject to rate or service regulation by the utilities and  
20 transportation commission.

21 (d) "Nondiscriminatory" means that pole owners may not  
22 arbitrarily differentiate among or between similar classes of  
23 licensees approved for attachments.

24 (2) All rates, terms, and conditions made, demanded, or received  
25 by a locally regulated utility for attachments to its poles must be  
26 just, reasonable, nondiscriminatory, and sufficient. A locally  
27 regulated utility shall levy attachment space rental rates that are  
28 uniform for the same class of service within the locally regulated  
29 utility service area.

30 (3) ~~((A just and reasonable rate must be calculated as follows:~~

31 ~~(a) One component of the rate shall consist of the additional~~  
32 ~~costs of procuring and maintaining pole attachments, but may not~~

1 ~~exceed the actual capital and operating expenses of the locally~~  
2 ~~regulated utility attributable to that portion of the pole, duct, or~~  
3 ~~conduit used for the pole attachment, including a share of the~~  
4 ~~required support and clearance space, in proportion to the space used~~  
5 ~~for the pole attachment, as compared to all other uses made of the~~  
6 ~~subject facilities and uses that remain available to the owner or~~  
7 ~~owners of the subject facilities;~~

8 ~~(b) The other component of the rate shall consist of the~~  
9 ~~additional costs of procuring and maintaining pole attachments, but~~  
10 ~~may not exceed the actual capital and operating expenses of the~~  
11 ~~locally regulated utility attributable to the share, expressed in~~  
12 ~~feet, of the required support and clearance space, divided equally~~  
13 ~~among the locally regulated utility and all attaching licensees, in~~  
14 ~~addition to the space used for the pole attachment, which sum is~~  
15 ~~divided by the height of the pole; and~~

16 ~~(c) The just and reasonable rate shall be computed by adding~~  
17 ~~one-half of the rate component resulting from (a) of this subsection~~  
18 ~~to one-half of the rate component resulting from (b) of this~~  
19 ~~subsection.~~

20 ~~(4) For the purpose of establishing a rate under subsection~~  
21 ~~(3)(a) of this section, the)) The locally regulated utility ((may~~  
22 ~~establish a rate according to the calculation set forth in subsection~~  
23 ~~(3)(a) of this section or it may)) shall establish a rate according~~  
24 ~~to the cable formula set forth by the federal communications~~  
25 ~~commission by rule as it existed on June 12, 2008, or such subsequent~~  
26 ~~date as may be provided by the federal communications commission by~~  
27 ~~rule, ((consistent with the purposes of this section)) provided that~~  
28 ~~the rate may not exceed the average rate charged for attachments by~~  
29 ~~investor-owned public utilities regulated by the utilities and~~  
30 ~~transportation commission.~~

31 ~~((5))~~ (4) Except in extraordinary circumstances, a locally  
32 regulated utility must respond to a licensee's application to enter  
33 into a new pole attachment contract or renew an existing pole  
34 attachment contract within forty-five days of receipt, stating  
35 either:

36 (a) The application is complete; or

37 (b) The application is incomplete, including a statement of what  
38 information is needed to make the application complete.

39 ~~((6))~~ (5) Within sixty days of an application being deemed  
40 complete, the locally regulated utility shall notify the applicant as

1 to whether the application has been accepted for licensing or  
2 rejected. In extraordinary circumstances, and with the approval of  
3 the applicant, the locally regulated utility may extend the sixty-day  
4 timeline under this subsection. If the application is rejected, the  
5 locally regulated utility must provide reasons for the rejection. A  
6 request to attach may only be denied on a nondiscriminatory basis (a)  
7 where there is insufficient capacity; or (b) for reasons of safety,  
8 reliability, or the inability to meet generally applicable  
9 engineering standards and practices.

10 ~~((7))~~ (6) Nothing in this section shall be construed or is  
11 intended to confer upon the utilities and transportation commission  
12 any authority to exercise jurisdiction over locally regulated  
13 utilities.

14 (7) A locally regulated utility shall not require more space for  
15 a safety barrier than that required by the national electric code.

16 (8) A locally regulated utility shall not deny an application in  
17 favor of reserving space for its own use, other than for the  
18 transmission of electric power.

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

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

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

27 (ii) For the provision of ~~((wholesale))~~ telecommunications  
28 services within the district and by contract with another public  
29 utility district;

30 (iii) To provide broadband internet access.

31 ~~((Except as provided in subsection (8) of this section,~~  
32 ~~nothing in this section shall be construed to authorize public~~  
33 ~~utility districts to provide telecommunications services to end~~  
34 ~~users)) In order to provide retail telecommunications or broadband  
35 internet access services, or both, a public utility must:~~

36 (i) Submit a budget and plan for broadband deployment for a vote  
37 of their current rate payers, which includes full disclosure of the  
38 cost of building and providing the services;

1 (ii) Construct facilities for broadband internet access service  
2 to unserved areas as a first priority;

3 (iii) Pay all telecommunications related taxes, applicable  
4 franchise fees, and contribute to the federal universal service fund;

5 (iv) Allow access to fiber on a dark fiber basis at wholesale  
6 rates to any competitor that requests such access; and

7 (v) Be subject to an annual audit by an independent outside  
8 auditor for compliance with all conditions set out in this act.

9 (c) As used in this section, an "unserved area" is a census block  
10 in which no provider has the capacity to deliver internet access  
11 service at speeds of a minimum of 25 megabits download and three  
12 megabits upload.

13 (2) A public utility district providing (~~wholesale or retail~~)  
14 telecommunications or broadband internet access services, or both,  
15 shall ensure that rates, terms, and conditions for such services are  
16 not unduly or unreasonably discriminatory or preferential. Rates,  
17 terms, and conditions are discriminatory or preferential when a  
18 public utility district offering rates, terms, and conditions to an  
19 entity for wholesale or retail telecommunications services does not  
20 offer substantially similar rates, terms, and conditions to all other  
21 entities seeking substantially similar services.

22 (3) A public utility district providing (~~wholesale or retail~~)  
23 telecommunications or broadband internet access services, or both,  
24 shall (~~not~~) be required to (~~but may~~) establish a separate  
25 utility system or function for such purpose. (~~In either case, a~~) A  
26 public utility district providing (~~wholesale or retail~~)  
27 telecommunications or broadband internet access services shall  
28 separately account for any revenues and expenditures for those  
29 services (~~according to standards established by the state auditor~~  
30 pursuant to its authority in chapter 43.09 RCW and)) consistent with  
31 the provisions of this title. Further, all equipment and  
32 infrastructure not related to the transmission of electricity, as  
33 indicated by common industry practice, must be attributed to the cost  
34 of providing telecommunications or broadband internet access  
35 services, or both, including but not limited to the cost of fiber-to-  
36 the-home, and all common facilities must be allocated based on the  
37 number of locations served with no less than 50 percent of such  
38 common facilities allocated to telecommunications or broadband  
39 internet access, or both. Any revenues received from the provision of  
40 (~~wholesale or retail~~) telecommunications or broadband internet

1 access services must be dedicated to costs incurred to build and  
2 maintain any ~~((telecommunications))~~ facilities constructed,  
3 installed, or acquired to provide such services, including payments  
4 on debt issued to finance such services, until such time as any bonds  
5 or other financing instruments executed after June 8, 2000, and used  
6 to finance such ~~((telecommunications))~~ facilities are discharged or  
7 retired.

8 (4) When a public utility district provides ~~((wholesale or~~  
9 ~~retail))~~ telecommunications services, all ~~((telecommunications))~~ such  
10 services rendered to the district for the district's internal  
11 ~~((telecommunications))~~ needs shall be allocated or charged at its  
12 true and full value. A public utility district may not charge its  
13 ~~((nontelecommunications))~~ other operations rates that are  
14 preferential or discriminatory compared to those it charges entities  
15 purchasing ~~((wholesale or retail))~~ telecommunications or broadband  
16 internet access services.

17 (5) If a person or entity receiving retail telecommunications or  
18 broadband internet access services, or both, from a public utility  
19 district under this section has a complaint regarding the  
20 reasonableness of the rates, terms, conditions, or services provided,  
21 the person or entity may file a complaint with the ~~((district~~  
22 ~~commission))~~ utilities and transportation commission.

23 (6) A public utility district shall not exercise powers of  
24 eminent domain to acquire ~~((telecommunications))~~ facilities or  
25 contractual rights held by any other person or entity to  
26 telecommunications or broadband internet access facilities.

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

32 (8) ~~((a) If an internet service provider operating on~~  
33 ~~telecommunications facilities of a public utility district that~~  
34 ~~provides wholesale telecommunications services but does not provide~~  
35 ~~retail telecommunications services, ceases to provide access to the~~  
36 ~~internet to its end-use customers, and no other retail service~~  
37 ~~providers are willing to provide service, the public utility district~~  
38 ~~may provide retail telecommunications services to the end-use~~  
39 ~~customers of the defunct internet service provider in order for end-~~

1 use customers to maintain access to the internet until a replacement  
2 internet service provider is, or providers are, in operation.

3 (b) ~~Within thirty days of an internet service provider ceasing to~~  
4 ~~provide access to the internet, the public utility district must~~  
5 ~~initiate a process to find a replacement internet service provider or~~  
6 ~~providers to resume providing access to the internet using~~  
7 ~~telecommunications facilities of a public utility district.~~

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

14 (9) ~~The tax treatment of the retail telecommunications services~~  
15 ~~provided by a public utility district to the end-use customers during~~  
16 ~~the period specified in subsection (8) of this section must be the~~  
17 ~~same as if those retail telecommunications services were provided by~~  
18 ~~the defunct internet service provider)) Notwithstanding anything to  
19 the contrary, a public utility district may not offer  
20 telecommunications or broadband internet access services, or both, in  
21 an area served by a provider receiving state or federal support or  
22 that has built or is building facilities under a loan or grant from  
23 the rural utility service, or equivalent agency, or when a provider  
24 is offering broadband internet access service that meets the  
25 standards established by the federal communications commission.~~

26 (9) Any complaint concerning public utility district pole  
27 attachment rates for a public utility district offering  
28 telecommunications or broadband internet access services, or both, is  
29 subject to the jurisdiction of the utilities and transportation  
30 commission.

31 (10) As a condition to offering such services, a public utility  
32 district that offers wholesale or retail telecommunications or  
33 broadband internet access services, or both, shall obtain a franchise  
34 from the local governmental agency or agencies where the district has  
35 installed facilities and, if wholesale, require an entity offering  
36 retail services on the district's facilities to obtain such franchise  
37 or franchises."

38 Correct the title.

EFFECT: Strikes all provisions of the substitute bill and inserts the following provisions:

(1) Modifies provisions related to public utility districts (PUDs) authority to set rates, terms, and conditions regarding attachments to its poles as follows:

(a) Eliminates the statutorily prescribed method for calculating just and reasonable rates;

(b) Provides the rate may not exceed the average rate charged for attachments by investor-owned public utilities regulated by the Utilities and Transportation Commission (UTC);

(c) Prohibits a PUD from requiring more space for a safety barrier than that required by the National Electric Safety Code;

(d) Prohibits a PUD from denying an application in favor of reserve space for its own use, except for the transmission of electric power.

(2) Modifies the authority of a PUD to provide telecommunications services as follows:

(a) Allows a PUD to provide broadband internet access;

(b) Places the following conditions on PUDs' authority to provide retail telecommunications or broadband internet access:

(i) Submit a budget and plan for broadband deployment for a vote of their current rate payers, which plan includes full disclosure of the cost of building and providing the services;

(ii) Construct facilities for broadband internet access service to unserved areas as a first priority;

(iii) Pay all telecommunications related taxes, applicable franchise fees and contribute to the federal universal service fund;

(iv) Allow access to fiber on a dark fiber basis at wholesale rates to any competitor that requests such access; and

(v) Be subject to an annual audit by an independent outside auditor for compliance with all conditions set out in the bill;

(c) Requires a PUD to establish a separate utility system or function for the purpose of providing telecommunications or broadband.

(d) Requires that all equipment and infrastructure not related to the transmission of electricity, as indicated by common industry practice, must be attributed to the cost of providing telecommunications or broadband internet access services, or both, including but not limited to the cost of fiber-to-the-home, and all common facilities must be allocated based on the number of locations served with no less than 50 percent of such common facilities allocated to telecommunications or broadband internet access, or both.

(e) Provides that persons or entities receiving retail or broadband services may file a complaint with the UTC rather than the district commission.

(f) Eliminates PUD's temporary authority to provide retail internet service to customers of a defunct internet service provider (ISP).

(g) Prohibits a PUD from offering telecommunications or broadband internet access services, or both, in an area served by a provider receiving state or federal support or has built or is building facilities under a loan or grant from the Rural Utility Service, or equivalent agency, or when a provider is offering broadband internet access service that meets the standards established by the federal communications commission.

(h) Provides that any complaint concerning public utility district pole attachment rates for a public utility district offering

telecommunications or broadband internet access services, or both, is subject to the jurisdiction of the utilities and transportation commission.

(i) Requires PUDs that offer telecommunications or broadband to obtain a franchise from the local governmental agency or agencies where the district has installed facilities and, if wholesale, require an entity offering retail services on the district's facilities to obtain such franchise or franchises.

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