

2SSB 5383 - H COMM AMD

By Committee on Community & Economic Development

NOT ADOPTED 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 and (v) to measure progress toward serving those in unserved areas.
19 The telecommunications infrastructure and service plans shall
20 include, but not be limited to, the following:

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

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

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

29 (d)(i) Except as provided in (d)(ii) of this subsection (10), a
30 retail telecommunications project developed by a district to serve
31 unserved areas may not provide retail telecommunications services in
32 an area where an existing provider meets or exceeds at a minimum 100
33 megabits per second download speed and 20 megabits per second upload
34 speed and then increases to be consistent with the stated long-term
35 state broadband speed goals for unserved areas.

36 (ii) When building in served areas to reach the unserved area,
37 the district may provide retail telecommunications services to
38 residential locations. These additional locations may not include
39 businesses and anchor institutions which include, but are not limited

1 to, libraries, educational institutions, public safety facilities,
2 and health care facilities.

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

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

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

9 (h) For the purposes of this subsection:

10 (i) "Broadband service" has the same meaning as defined in RCW
11 43.330.530.

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

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

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

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

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

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

35 (2) Except as provided in subsection (9) of this section, a port
36 district providing wholesale telecommunications services under this
37 section shall ensure that rates, terms, and conditions for such
38 services are not unduly or unreasonably discriminatory or
39 preferential. Rates, terms, and conditions are discriminatory or

1 preferential when a port district offering such rates, terms, and
2 conditions to an entity for wholesale telecommunications services
3 does not offer substantially similar rates, terms, and conditions to
4 all other entities seeking substantially similar services.

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

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

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

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

33 (7) A port district that has not exercised the authorities
34 provided in this section prior to June 7, 2018, must develop a
35 business case plan before exercising the authorities provided in this
36 section. The port district must procure an independent qualified
37 consultant to review the business case plan, including the use of
38 public funds in the provision of wholesale telecommunications
39 services. Any recommendations or adjustments to the business case

1 plan made during third-party review must be received and either
2 rejected or accepted by the port commission in an open meeting.

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

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

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

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

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

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

22 (c) Any port district that intends to provide retail
23 telecommunications services to unserved areas must submit a
24 telecommunications infrastructure and service plan to the governor's
25 statewide broadband office that will be published on the office's
26 website. Submission of plans will enable the governor's statewide
27 broadband office: (i) To better understand infrastructure deployment;
28 (ii) to potentially allocate funding for unserved areas; (iii) to
29 advance the state policy objectives; (iv) to determine whether the
30 plan aligns with state policy objectives and broadband priorities;
31 and (v) to measure progress toward serving those in unserved areas.
32 The telecommunications infrastructure and service plans shall
33 include, but not be limited to, the following:

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

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

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

3 (d) (i) Except as provided in (d) (ii) of this subsection (10), a
4 retail telecommunications project developed by a port district to
5 serve unserved areas may not provide retail telecommunications
6 services in an area where an existing provider meets or exceeds at a
7 minimum 100 megabits per second download speed and 20 megabits per
8 second upload speed and then increases to be consistent with the
9 stated long-term state broadband speed goals for unserved areas.

10 (ii) When building in served areas to reach the unserved area,
11 the district may provide retail telecommunications services to
12 residential locations. These additional locations may not include
13 businesses and anchor institutions which include, but are not limited
14 to, libraries, educational institutions, public safety facilities,
15 and health care facilities.

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

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

20 (g) For the purposes of this subsection:

21 (i) "Broadband service" has the same meaning as defined in RCW
22 43.330.530.

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

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

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

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

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

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

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

8 ~~((c))~~ (iii) An overview of incumbent broadband infrastructure
9 within the state;

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

13 ~~((e))~~ (v) Suggested policies, incentives, and legislation
14 designed to accelerate the achievement of the goals under RCW
15 43.330.536; and

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

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

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

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

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

28 NEW SECTION. Sec. 5. This act expires June 30, 2023.

29 NEW SECTION. Sec. 6. This act takes effect only if Engrossed
30 Substitute House Bill No. 1336 is enacted by July 25, 2021."

31 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 prohibiting a PUD or a port district from providing retail telecommunications services in an area where an existing provider meets or exceeds at a minimum 100 megabits per second download speed and 20 megabits per second upload speed and then increases to be consistent with the long-term state broadband goals for unserved areas.

(5) Adds a provision allowing a PUD or port district to provide retail telecommunications services to residential locations in a served area when building in the served area to reach the unserved project area.

(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.

(8) Adds an expiration date of June 30, 2023.

(9) Makes passage of 2SSB 5383 contingent on passage of ESHB 1336.

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