

2SSB 5383 - H COMM AMD

By Committee on Appropriations

ADOPTED AND ENGROSSED 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;

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 subsection (8) of this section, nothing~~
4 ~~in this section shall be construed to authorize public utility~~
5 ~~districts to provide telecommunications services to end users)); or~~

6 (iii) For the provision of retail telecommunications services as
7 authorized in this section.

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

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

33 (4) When a public utility district provides wholesale or retail
34 telecommunications services, all telecommunications services rendered
35 to the district for the district's internal telecommunications needs
36 shall be allocated or charged at its true and full value. A public
37 utility district may not charge its nontelecommunications operations
38 rates that are preferential or discriminatory compared to those it
39 charges entities purchasing wholesale or retail telecommunications
40 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 in this subsection~~
24 ~~shall be construed to authorize port districts to provide~~
25 ~~telecommunications services to end users)); or~~

26 (c) For the provision of retail telecommunications services as
27 authorized in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (d) A port district that exercises its authority under (a) of
39 this subsection to provide retail telecommunications services may use
40 state funds, federal funds appropriated through the state, or federal

1 funds dedicated for projects in unserved areas to fund projects
2 identified in the submitted telecommunications infrastructure and
3 service plan required in (c) of this subsection.

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

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

8 (g) For the purposes of this subsection:

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

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

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

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

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

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

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

33 ~~((c))~~ (iii) An overview of incumbent broadband infrastructure
34 within the state;

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

1 ~~((e))~~ (v) Suggested policies, incentives, and legislation
2 designed to accelerate the achievement of the goals under RCW
3 43.330.536; and

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

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

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

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

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

16 Correct the title.

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