
HOUSE BILL 1336

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By Representatives Hansen, Ybarra, Berry, Simmons, Ramel, Valdez, Leavitt, Morgan, Ryu, Peterson, Shewmake, Davis, Ormsby, Gilday, Stonier, Eslick, Pollet, and Harris-Talley

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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, 35A.80.010,
4 53.08.005, and 53.08.370; adding a new section to chapter 35.92 RCW;
5 adding a new section to chapter 36.01 RCW; creating a new section;
6 and repealing RCW 54.16.420.

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

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

10 The definitions in this section apply throughout this chapter
11 unless the context clearly requires otherwise.

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

16 (2) "Commission" means the Washington utilities and
17 transportation commission.

18 ((+2)) (3) "District commission" means the governing board of a
19 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~~) 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 an entity (~~authorized to provide~~) that
15 provides retail telecommunications services (~~to the general public~~
16 ~~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 (1) (~~(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)~~) (b) For the provision of wholesale telecommunications
27 services within the district and by contract with another public
28 utility district or with any federally recognized tribe located in
29 the state of Washington;

30 (c) For the provision of retail telecommunications services and
31 telecommunications facilities within the district; or

32 (d) For the provision of retail telecommunications services or
33 telecommunications facilities outside of the district by contract
34 with another public utility district, any political subdivision of
35 the state authorized to provide retail telecommunications services in
36 the state, or with any federally recognized tribe located in the
37 state of Washington.

38 (~~(b) Except as provided in subsection (8) of this section,~~
39 ~~nothing in this section shall be construed to authorize public~~

1 ~~utility districts to provide telecommunications services to end~~
2 ~~users.))~~

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

38 (1) Property owned by a public utility district that is exempt
39 from property tax under RCW 84.36.010 is subject to an annual payment

1 in lieu of property taxes if the property consists of a broadband
2 ((~~network~~)) infrastructure used in providing retail ((~~internet~~
3 ~~service~~)) telecommunications services.

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

8 (b) The amount agreed upon may not exceed the property tax amount
9 that would be owed on the property comprising the broadband
10 ((~~network~~)) infrastructure used in providing retail ((~~internet~~
11 ~~service~~)) telecommunications services as calculated by the department
12 of revenue. The public utility district must provide information
13 necessary for the department of revenue to make the required
14 valuation under this subsection. The department of revenue must
15 provide the amount of property tax that would be owed on the property
16 to the county or counties in which the broadband ((~~network~~))
17 infrastructure is located on an annual basis.

18 (c) If the public utility district and a county cannot agree on
19 the amount of the payment in lieu of taxes, either party may invoke
20 binding arbitration by providing written notice to the other party.
21 In the event that the amount of payment in lieu of taxes is submitted
22 to binding arbitration, the arbitrators must consider the government
23 services available to the public utility district's broadband
24 ((~~network~~)) infrastructure used in providing retail ((~~internet~~
25 ~~service~~)) telecommunications services. The public utility district
26 and county must each select one arbitrator, the two of whom must pick
27 a third arbitrator. Costs of the arbitration, including compensation
28 for the arbitrators' services, must be borne equally by the parties
29 participating in the arbitration.

30 (3) By April 30th of each year, a public utility district must
31 remit the annual payment to the county treasurer of each county in
32 which the public utility district's broadband ((~~network~~))
33 infrastructure used in providing retail ((~~internet—service~~))
34 telecommunications services is located in a form and manner required
35 by the county treasurer.

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

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

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

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 35.92
9 RCW to read as follows:

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

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

19 **Sec. 5.** RCW 35A.80.010 and 1988 c 127 s 2 are each amended to
20 read as follows:

21 (1) A code city may provide utility service within and
22 (~~(without)~~) outside of its limits and exercise all powers to the
23 extent authorized by general law for any class of city or town. The
24 cost of such improvements may be financed by procedures provided for
25 financing local improvement districts in chapters 35.43 through 35.54
26 RCW and by revenue and refunding bonds as authorized by chapters
27 35.41, 35.67 and 35.89 RCW and Title 85 RCW. A code city may protect
28 and operate utility services as authorized by chapters 35.88, 35.91,
29 35.92, and 35.94 RCW and may acquire and damage property in
30 connection therewith as provided by chapter 8.12 RCW and shall be
31 governed by the regulations of the department of ecology as provided
32 in RCW 90.48.110.

33 (2) For the purposes of this section:

34 (a) "Telecommunications" has the same meaning as in RCW
35 80.04.010; and

36 (b) "Utility services" may include water, sewer, solid waste,
37 electricity, or telecommunications services.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 36.01
2 RCW to read as follows:

3 (1) A county may construct, purchase, acquire, develop, finance,
4 lease, license, provide, contract for, interconnect, alter, improve,
5 repair, operate, and maintain telecommunications services or
6 telecommunications facilities for the purpose of furnishing the
7 county and its inhabitants with telecommunications services. The
8 county has full authority to regulate and control the use,
9 distribution, and price of the services.

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

12 **Sec. 7.** RCW 53.08.005 and 2018 c 169 s 1 are each amended to
13 read as follows:

14 The definitions in this section apply throughout this chapter
15 unless the context clearly requires otherwise.

16 (1) "Commission" means the Washington utilities and
17 transportation commission.

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

21 (3) "Telecommunications" has the same meaning as contained in RCW
22 80.04.010.

23 ((+3)) (4) "Telecommunications facilities" means lines,
24 conduits, ducts, poles, wires, cables, crossarms, receivers,
25 transmitters, instruments, machines, appliances, instrumentalities
26 and all devices, real estate, easements, apparatus, property, and
27 routes used, operated, owned, or controlled by any entity to
28 facilitate the provision of telecommunications services.

29 ((+4)) (5) "Wholesale telecommunications services" means the
30 provision of telecommunications services or telecommunications
31 facilities for resale by an entity authorized to provide
32 telecommunications services (~~to the general public and internet~~
33 ~~service providers~~). Wholesale telecommunications services includes
34 the provision of unlit or dark optical fiber for resale, but not the
35 provision of lit optical fiber.

36 **Sec. 8.** RCW 53.08.370 and 2019 c 365 s 10 are each amended to
37 read as follows:

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

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

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

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

14 (2) ~~((Except as provided in subsection (9) of this section, a))~~ A
15 port district providing wholesale or retail telecommunications
16 services under this section shall ensure that rates, terms, and
17 conditions for such services are not unduly or unreasonably
18 discriminatory or preferential. Rates, terms, and conditions are
19 discriminatory or preferential when a port district offering such
20 rates, terms, and conditions to an entity for wholesale or retail
21 telecommunications services does not offer substantially similar
22 rates, terms, and conditions to all other entities seeking
23 substantially similar services.

24 (3) When a port district establishes a separate utility function
25 for the provision of wholesale or retail telecommunications services,
26 it shall account for any and all revenues and expenditures related to
27 its wholesale or retail telecommunications facilities and services
28 separately from revenues and expenditures related to its internal
29 telecommunications operations. Any revenues received from the
30 provision of wholesale or retail telecommunications services must be
31 dedicated to the utility function that includes the provision of
32 wholesale or retail telecommunications services for costs incurred to
33 build and maintain the telecommunications facilities until such time
34 as any bonds or other financing instruments executed after June 8,
35 2000, and used to finance the telecommunications facilities are
36 discharged or retired.

37 (4) When a port district establishes a separate utility function
38 for the provision of wholesale or retail telecommunications services,
39 all telecommunications services rendered by the separate function to
40 the district for the district's internal telecommunications needs

1 shall be charged at its true and full value. A port district may not
2 charge its nontelecommunications operations rates that are
3 preferential or discriminatory compared to those it charges entities
4 purchasing wholesale or retail telecommunications services.

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

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

13 ~~(7) ((A port district that has not exercised the authorities
14 provided in this section prior to June 7, 2018, must develop a
15 business case plan before exercising the authorities provided in this
16 section. The port district must procure an independent qualified
17 consultant to review the business case plan, including the use of
18 public funds in the provision of wholesale telecommunications
19 services. Any recommendations or adjustments to the business case
20 plan made during third-party review must be received and either
21 rejected or accepted by the port commission in an open meeting.~~

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

26 ~~((9))~~ (8)(a) A port district under this section may select a
27 telecommunications company to operate all or a portion of the port
28 district's telecommunications facilities.

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

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

34 NEW SECTION. **Sec. 9.** This act may be known and cited as the
35 public broadband act.

1 NEW SECTION. **Sec. 10.** RCW 54.16.420 (Retail internet service—
2 Definitions—Authority—Requirements) and 2018 c 186 s 1 are each
3 repealed.

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