

By Representative Ryu

**2SSB 5383** - H COMM AMD

By Committee on Community & Economic Development

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; or

27 (B) Within an area in an adjoining county that is already  
28 provided electrical services by the district.

29 (b) Except as provided in subsections (8) and (10) of this  
30 section, nothing in this section shall be construed to authorize

1 public utility districts to provide telecommunications services to  
2 end 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 (10) (a) A public utility district may provide retail  
37 telecommunications services to end users when using:

38 (i) State funding for telecommunications infrastructure that will  
39 be distributed by the state for unserved areas; or

1 (ii) Federal funding for telecommunications infrastructure  
2 distributed by the state for 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 seek, secure, or authorize the use of state funds or federal funds  
6 distributed by the state for retail telecommunications services to  
7 unserved areas. The governor's statewide broadband office must post  
8 notices received from a public utility district pursuant to this  
9 subsection on its public website.

10 (c) Any public utility district that intends to provide retail  
11 telecommunications services to unserved areas using state funding or  
12 federal funding being distributed by the state must submit a  
13 telecommunications infrastructure and service plan to the governor's  
14 statewide broadband office that will be published on the office's  
15 website. Submission of plans will enable the governor's statewide  
16 broadband office: (i) To better understand infrastructure deployment;  
17 (ii) to potentially allocate funding for unserved areas; (iii) to  
18 advance the state policy objectives; (iv) to determine whether the  
19 plan aligns with state policy objectives and broadband priorities;  
20 and (v) to measure progress toward serving those in unserved areas.  
21 The telecommunications infrastructure and service plans shall  
22 include, 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) (i) Except as provided in (d) (ii) of this subsection (10), a  
32 retail telecommunications project developed by a district to serve  
33 unserved areas when using state funding or federal funding that will  
34 be distributed by the state may not provide retail telecommunications  
35 services in an area where an existing provider meets or exceeds at a  
36 minimum 100 megabits per second download speed and 20 megabits per  
37 second upload speed and then increases to be consistent with the  
38 stated long-term state broadband speed goals for unserved areas.

39 (ii) When building in served areas to reach the unserved area,  
40 the district may provide retail telecommunications services to

1 residential locations in an amount not to exceed 20 percent of the  
2 locations in the unserved area. These additional locations may not  
3 include businesses and anchor institutions which include, but are not  
4 limited to, libraries, educational institutions, public safety  
5 facilities, and health care facilities.

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

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

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

12 (h) For the purposes of this subsection:

13 (i) "Broadband service" has the same meaning as defined in RCW  
14 43.330.530.

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

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

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

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

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

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

38 (2) Except as provided in subsection (9) of this section, a port  
39 district providing wholesale telecommunications services under this

1 section shall ensure that rates, terms, and conditions for such  
2 services are not unduly or unreasonably discriminatory or  
3 preferential. Rates, terms, and conditions are discriminatory or  
4 preferential when a port district offering such rates, terms, and  
5 conditions to an entity for wholesale telecommunications services  
6 does not offer substantially similar rates, terms, and conditions to  
7 all other entities seeking substantially similar services.

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

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

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

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

36 (7) A port district that has not exercised the authorities  
37 provided in this section prior to June 7, 2018, must develop a  
38 business case plan before exercising the authorities provided in this  
39 section. The port district must procure an independent qualified  
40 consultant to review the business case plan, including the use of

1 public funds in the provision of wholesale telecommunications  
2 services. Any recommendations or adjustments to the business case  
3 plan made during third-party review must be received and either  
4 rejected or accepted by the port commission in an open meeting.

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

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

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

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

17 (10)(a) A port district may provide retail telecommunications  
18 services to end users when using:

19 (i) State funding for telecommunications infrastructure that will  
20 be distributed by the state for unserved areas; or

21 (ii) Federal funding for telecommunications infrastructure  
22 distributed by the state for unserved areas.

23 (b) A port district must notify and consult with the governor's  
24 statewide broadband office within 30 days of its decision to seek,  
25 secure, or authorize the use of state funds or federal funds  
26 distributed by the state for retail telecommunications services to  
27 unserved areas. The governor's statewide broadband office must post  
28 notices received from a port district pursuant to this subsection on  
29 its public website.

30 (c) Any port district that intends to provide retail  
31 telecommunications services to unserved areas using state funding or  
32 federal funding being distributed by the state must submit a  
33 telecommunications infrastructure and service plan to the governor's  
34 statewide broadband office that will be published on the office's  
35 website. Submission of plans will enable the governor's statewide  
36 broadband office: (i) To better understand infrastructure deployment;  
37 (ii) to potentially allocate funding for unserved areas; (iii) to  
38 advance the state policy objectives; (iv) to determine whether the  
39 plan aligns with state policy objectives and broadband priorities;  
40 and (v) to measure progress toward serving those in unserved areas.

1 The telecommunications infrastructure and service plans shall  
2 include, but not be limited to, the following:

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

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

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

11 (d) (i) Except as provided in (d) (ii) of this subsection (10), a  
12 retail telecommunications project developed by a port district to  
13 serve unserved areas when using state funding or federal funding that  
14 will be distributed by the state may not provide retail  
15 telecommunications services in an area where an existing provider  
16 meets or exceeds at a minimum 100 megabits per second download speed  
17 and 20 megabits per second upload speed and then increases to be  
18 consistent with the stated long-term state broadband speed goals for  
19 unserved areas.

20 (ii) When building in served areas to reach the unserved area,  
21 the district may provide retail telecommunications services to  
22 residential locations in an amount not to exceed 20 percent of the  
23 locations in the unserved area. These additional locations may not  
24 include businesses and anchor institutions which include, but are not  
25 limited to, libraries, educational institutions, public safety  
26 facilities, and health care facilities.

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

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

31 (g) For the purposes of this subsection:

32 (i) "Broadband service" has the same meaning as defined in RCW  
33 43.330.530.

34 (ii) "Open access network" means a network that, during the  
35 useful life of the infrastructure, ensures service providers may use  
36 network services and facilities at rates, terms, and conditions that  
37 are not discriminatory or preferential between providers, and employs  
38 accountable interconnection arrangements published and available  
39 publicly.



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

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

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

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

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

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

19 ~~((c))~~ (iii) An overview of incumbent broadband infrastructure  
20 within the state;

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

24 ~~((e))~~ (v) Suggested policies, incentives, and legislation  
25 designed to accelerate the achievement of the goals under RCW  
26 43.330.536; and

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

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

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

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

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

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

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

4        Correct the title.

EFFECT: (1) Adds a provision allowing a public utility district (PUD) to provide wholesale telecommunications services within an adjoining county that is already provided electrical services by the district.

(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) Modifies the authority of a PUD or port district to provide retail telecommunications services by allowing them to provide those services when using: (a) State funding for telecommunications infrastructure that will be distributed by the state for unserved areas; or (b) federal funding for telecommunications infrastructure distributed by the state for unserved areas.

(4) 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 use state or federal funding for retail telecommunications services in unserved areas and submit to the Office a telecommunications infrastructure and service plan.

(5) Adds a provision prohibiting a PUD or a port district that intends to provide retail telecommunications services to unserved areas using state funding or federal funding distributed by the state 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 state long-term state broadband goals for unserved areas.

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

(7) Redefines "unserved" 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.

(8) 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.

(9) Adds an expiration date of June 30, 2023, for the bill.

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

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