

PROPOSED SUBSTITUTE BILL MEMORANDUM

To: Members of the Community and Economic Development Committee

From: Cassie Jones, Counsel, Community and Economic Development Committee

Re: **Proposed Substitute HB 1336 (H-0740.1/21)** - Creating and expanding unrestricted authority for public entities to provide telecommunications services to end users

Sponsored by Representative Boehnke

Date: February 3, 2021

A brief summary of HB 1336:

- Authorizes public utility districts, ports districts, cities and towns, and counties to provide retail telecommunications services.

The proposed substitute (H-0704.1/21) makes the following changes to HB 1336:

- Removes the express grant of authority for first-class cities and code cities to provide telecommunications services, but maintains the authority to provide telecommunications services for second-class cities and towns.
- Allows a PUD to provide wholesale telecommunications outside the district to the same extent as retail telecommunications.
- Expresses legislative intent that a public entity or federally recognized tribe with authority to provide retail telecommunications be considered an eligible telecommunications carrier for the Universal Services Program.
- Encourage PUDs and port districts to report certain information to their governing bodies related to provision of retail telecommunications services.

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-0740.1/21

ATTY/TYPIST: RB:roy

BRIEF DESCRIPTION: Creating and expanding unrestricted authority for public entities to provide telecommunications services to end users.

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, 53.08.005, and
4 53.08.370; adding a new section to chapter 54.16 RCW; adding a new
5 section to chapter 35.27 RCW; adding a new section to chapter 35.23
6 RCW; adding a new section to chapter 36.01 RCW; adding a new section
7 to chapter 53.08 RCW; creating new sections; and repealing RCW
8 54.16.420.

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

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

12 The definitions in this section apply throughout this chapter
13 unless the context clearly requires otherwise.

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

18 (2) "Commission" means the Washington utilities and
19 transportation commission.

20 ((+2)) (3) "District commission" means the governing board of a
21 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))~~ defined 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))~~ to an entity ~~((authorized to provide))~~
15 that provides retail telecommunications services ~~((to the general~~
16 ~~public 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) For the provision of wholesale telecommunications services~~
27 ~~within the district and by contract with another public utility~~
28 ~~district.~~

29 ~~(b) Except as provided in subsection (8) of this section, nothing~~
30 ~~in this section shall be construed to authorize public utility~~
31 ~~districts to provide telecommunications services to end users))~~ (b)
32 For the provision of either retail or wholesale, or both,
33 telecommunications services and telecommunications facilities within
34 the district; or

35 (c) For the provision of either retail or wholesale, or both,
36 telecommunications services or telecommunications facilities outside
37 of the district by contract with another public utility district, any
38 political subdivision of the state authorized to provide retail

1 telecommunications services in the state, or with any federally
2 recognized tribe located in the state of Washington.

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 NEW SECTION. **Sec. 3.** A new section is added to chapter 54.16
37 RCW to read as follows:

1 Before providing retail telecommunications services, a public
2 utility district is encouraged to examine and report to its governing
3 body the following about the area to be served by the public entity:

4 (1) An assessment of the current availability of broadband
5 infrastructure and its adequacy to provide high-speed internet access
6 and other advanced telecommunications services to end users;

7 (2) The location of where retail telecommunications services will
8 be provided;

9 (3) Evidence relating to the unserved or underserved nature of
10 the community in which retail telecommunications services will be
11 provided;

12 (4) Expected costs of providing retail telecommunications
13 services to customers to be served by the public entity; and

14 (5) Evidence that proposed telecommunications infrastructure will
15 be capable of scaling to greater download and upload speeds to meet
16 state broadband goals under RCW 43.330.536.

17 **Sec. 4.** RCW 54.16.425 and 2018 c 186 s 3 are each amended to
18 read as follows:

19 (1) Property owned by a public utility district that is exempt
20 from property tax under RCW 84.36.010 is subject to an annual payment
21 in lieu of property taxes if the property consists of a broadband
22 (~~network~~) infrastructure used in providing retail (~~internet~~
23 ~~service~~) telecommunications services.

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

28 (b) The amount agreed upon may not exceed the property tax amount
29 that would be owed on the property comprising the broadband
30 (~~network~~) infrastructure used in providing retail (~~internet~~
31 ~~service~~) telecommunications services as calculated by the department
32 of revenue. The public utility district must provide information
33 necessary for the department of revenue to make the required
34 valuation under this subsection. The department of revenue must
35 provide the amount of property tax that would be owed on the property
36 to the county or counties in which the broadband (~~network~~)
37 infrastructure is located on an annual basis.

38 (c) If the public utility district and a county cannot agree on
39 the amount of the payment in lieu of taxes, either party may invoke

1 binding arbitration by providing written notice to the other party.
2 In the event that the amount of payment in lieu of taxes is submitted
3 to binding arbitration, the arbitrators must consider the government
4 services available to the public utility district's broadband
5 (~~network~~) infrastructure used in providing retail (~~internet~~
6 ~~service~~) telecommunications services. The public utility district
7 and county must each select one arbitrator, the two of whom must pick
8 a third arbitrator. Costs of the arbitration, including compensation
9 for the arbitrators' services, must be borne equally by the parties
10 participating in the arbitration.

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

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

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

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

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 35.27
29 RCW to read as follows:

30 (1) A town may construct, purchase, acquire, develop, finance,
31 lease, license, provide, contract for, interconnect, alter, improve,
32 repair, operate, and maintain telecommunications services or
33 telecommunications facilities for the purpose of furnishing the town
34 and its inhabitants with telecommunications services. The town has
35 full authority to regulate and control the use, distribution, and
36 price of the services.

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

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 35.23
2 RCW to read as follows:

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

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

13 NEW SECTION. **Sec. 7.** A new section is added to chapter 36.01
14 RCW to read as follows:

15 (1) A county may construct, purchase, acquire, develop, finance,
16 lease, license, provide, contract for, interconnect, alter, improve,
17 repair, operate, and maintain telecommunications services or
18 telecommunications facilities for the purpose of furnishing the
19 county and its inhabitants with telecommunications services. The
20 county has full authority to regulate and control the use,
21 distribution, and price of the services.

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

24 **Sec. 8.** RCW 53.08.005 and 2018 c 169 s 1 are each amended to
25 read as follows:

26 The definitions in this section apply throughout this chapter
27 unless the context clearly requires otherwise.

28 (1) "Commission" means the Washington utilities and
29 transportation commission.

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

33 (3) "Telecommunications" has the same meaning as contained in RCW
34 80.04.010.

35 (~~(3)~~) (4) "Telecommunications facilities" means lines,
36 conduits, ducts, poles, wires, cables, crossarms, receivers,
37 transmitters, instruments, machines, appliances, instrumentalities
38 and all devices, real estate, easements, apparatus, property, and

1 routes used, operated, owned, or controlled by any entity to
2 facilitate the provision of telecommunications services.

3 ~~((4))~~ (5) "Wholesale telecommunications services" means the
4 provision of telecommunications services or telecommunications
5 facilities for resale ~~((by))~~ to an entity authorized to provide
6 telecommunications services ~~((to the general public and internet~~
7 ~~service providers))~~. Wholesale telecommunications services includes
8 the provision of unlit or dark optical fiber for resale, but not the
9 provision of lit optical fiber.

10 **Sec. 9.** RCW 53.08.370 and 2019 c 365 s 10 are each amended to
11 read as follows:

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

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

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

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

25 (2) Except as provided in subsection ~~((9))~~ (8) of this section,
26 a port district providing wholesale or retail telecommunications
27 services under this section shall ensure that rates, terms, and
28 conditions for such services are not unduly or unreasonably
29 discriminatory or preferential. Rates, terms, and conditions are
30 discriminatory or preferential when a port district offering such
31 rates, terms, and conditions to an entity for wholesale or retail
32 telecommunications services does not offer substantially similar
33 rates, terms, and conditions to all other entities seeking
34 substantially similar services.

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

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

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

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

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

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

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

38 ~~((9))~~ (8)(a) A port district under this section may select a
39 telecommunications company to operate all or a portion of the port
40 district's telecommunications facilities.

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

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

6 NEW SECTION. **Sec. 10.** A new section is added to chapter 53.08
7 RCW to read as follows:

8 Before providing retail telecommunications services, a port
9 district is encouraged to examine and report to its governing body
10 the following about the area to be served by the public entity:

11 (1) An assessment of the current availability of broadband
12 infrastructure and its adequacy to provide high-speed internet access
13 and other advanced telecommunications services to end users;

14 (2) The location of where retail telecommunications services will
15 be provided;

16 (3) Evidence relating to the unserved or underserved nature of
17 the community in which retail telecommunications services will be
18 provided;

19 (4) Expected costs of providing retail telecommunications
20 services to customers to be served by the public entity; and

21 (5) Evidence that proposed telecommunications infrastructure will
22 be capable of scaling to greater download and upload speeds to meet
23 state broadband goals under RCW 43.330.536.

24 NEW SECTION. **Sec. 11.** The legislature intends that any public
25 entity or federally recognized tribe with authority to provide retail
26 telecommunications services under this act that provides retail
27 telecommunications services be considered an eligible
28 telecommunications carrier for purposes of chapter 80.36 RCW and WAC
29 480-123-020 as now existing or hereafter amended.

30 NEW SECTION. **Sec. 12.** This act may be known and cited as the
31 public broadband act.

32 NEW SECTION. **Sec. 13.** RCW 54.16.420 (Retail internet service—
33 Definitions—Authority—Requirements) and 2018 c 186 s 1 are each
34 repealed.

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