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**SENATE BILL 5383**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senators Wellman, Short, Hunt, King, Lovelett, Nguyen, Randall, Saldaña, Warnick, Wilson, C., and Wilson, L.

Read first time 01/29/21. Referred to Committee on Environment, Energy & Technology.

1 AN ACT Relating to authorizing a public utility district to  
2 provide retail telecommunications services in unserved areas under  
3 certain conditions; amending RCW 54.16.330 and 43.330.538; adding a  
4 new section to chapter 42.56 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the COVID-19  
7 pandemic has made it clear that equitable access to education can  
8 only happen with equitable access to reliable broadband. Under  
9 Article IX, section 1 of the state Constitution, it is the paramount  
10 duty of the state to make ample provision for the education of all  
11 children residing within the state of Washington. Increasing  
12 broadband access to unserved areas of the state is of vital  
13 importance to increasing educational opportunities in the parts of  
14 our state that without broadband access cannot safely participate in  
15 our educational system.

16 The legislature further finds that in order to achieve our  
17 constitutional duty to provide equitable access to education, we must  
18 allow our public utility districts to provide retail  
19 telecommunications services to people in an area where no broadband  
20 provider is serving or has plans to serve in the near future.

1       **Sec. 2.** RCW 54.16.330 and 2019 c 365 s 9 are each amended to  
2 read as follows:

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

8       (i) For the district's internal telecommunications needs;

9       (ii) For the provision of wholesale telecommunications services  
10 within the district and by contract with another public utility  
11 district.

12       (b) Except as provided in subsections (8) and (10) of this  
13 section, nothing in this section shall be construed to authorize  
14 public utility districts to provide telecommunications services to  
15 end users.

16       (2) A public utility district providing wholesale or retail  
17 telecommunications services shall ensure that rates, terms, and  
18 conditions for such services are not unduly or unreasonably  
19 discriminatory or preferential. Rates, terms, and conditions are  
20 discriminatory or preferential when a public utility district  
21 offering rates, terms, and conditions to an entity for wholesale or  
22 retail telecommunications services does not offer substantially  
23 similar rates, terms, and conditions to all other entities seeking  
24 substantially similar services.

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

1 (4) When a public utility district provides wholesale or retail  
2 telecommunications services, all telecommunications services rendered  
3 to the district for the district's internal telecommunications needs  
4 shall be allocated or charged at its true and full value. A public  
5 utility district may not charge its nontelecommunications operations  
6 rates that are preferential or discriminatory compared to those it  
7 charges entities purchasing wholesale or retail telecommunications  
8 services.

9 (5) If a person or entity receiving retail telecommunications  
10 services from a public utility district under this section has a  
11 complaint regarding the reasonableness of the rates, terms,  
12 conditions, or services provided, the person or entity may file a  
13 complaint with the district commission.

14 (6) A public utility district shall not exercise powers of  
15 eminent domain to acquire telecommunications facilities or  
16 contractual rights held by any other person or entity to  
17 telecommunications facilities.

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

23 (8)(a) If an internet service provider operating on  
24 telecommunications facilities of a public utility district that  
25 provides wholesale telecommunications services but does not provide  
26 retail telecommunications services, ceases to provide access to the  
27 internet to its end-use customers, and no other retail service  
28 providers are willing to provide service, the public utility district  
29 may provide retail telecommunications services to the end-use  
30 customers of the defunct internet service provider in order for end-  
31 use customers to maintain access to the internet until a replacement  
32 internet service provider is, or providers are, in operation.

33 (b) Within thirty days of an internet service provider ceasing to  
34 provide access to the internet, the public utility district must  
35 initiate a process to find a replacement internet service provider or  
36 providers to resume providing access to the internet using  
37 telecommunications facilities of a public utility district.

38 (c) For a maximum period of five months, following initiation of  
39 the process begun in (b) of this section, or, if earlier than five  
40 months, until a replacement internet service provider is, or

1 providers are, in operation, the district commission may establish a  
2 rate for providing access to the internet and charge customers to  
3 cover expenses necessary to provide access to the internet.

4 (9) The tax treatment of the retail telecommunications services  
5 provided by a public utility district to the end-use customers during  
6 the period specified in subsection (8) of this section must be the  
7 same as if those retail telecommunications services were provided by  
8 the defunct internet service provider.

9 (10)(a) A public utility district may provide retail  
10 telecommunications services to an end user in an unserved area if the  
11 public utility district does not receive notice from the governor's  
12 statewide broadband office, established in RCW 43.330.532, that an  
13 existing broadband service provider has not submitted an objection  
14 and a broadband service plan required in this subsection for the same  
15 project area. Prior to beginning a project to provide retail  
16 telecommunications services in this subsection, a public utility  
17 district must notify the governor's statewide broadband office of its  
18 intent to provide such services and post a notice of intent on its  
19 public website. The governor's statewide broadband office must post  
20 notices received from a public utility district pursuant to this  
21 subsection on its public website.

22 (b) Any existing broadband service provider providing broadband  
23 services near the proposed project area may, within 30 days of the  
24 posting of the notice of intent under (a) of this subsection, submit  
25 the following in writing to the office:

26 (i) An objection demonstrating that the project would result in  
27 overbuild, meaning that the objecting broadband service provider  
28 currently provides, or has begun construction to provide, broadband  
29 service to end users in the proposed project area at speeds equal to  
30 or greater than 150 megabits per second; and

31 (ii) If an existing broadband service provider intends to prevent  
32 overbuild as provided in (b)(i) of this subsection, then the existing  
33 service provider must submit a broadband service plan to the  
34 governor's statewide broadband office. The broadband service plan  
35 must, at a minimum, demonstrate that the existing service provider  
36 currently provides broadband service to end users near the unserved  
37 area at speeds equal to or greater than the speed goals contained in  
38 RCW 43.330.536 and outline how the existing broadband service  
39 provider intends to provide broadband service with speeds of at least  
40 150 megabits per second to the unserved area. A broadband service

1 plan is confidential and exempt from public inspection and copying  
2 under chapter 42.56 RCW.

3 (c) For the purposes of this subsection:

4 (i) "Broadband service" has the same meaning as defined in RCW  
5 43.330.530.

6 (ii) "Unserved areas" has the same meaning as defined in RCW  
7 43.330.530.

8 **Sec. 3.** RCW 43.330.538 and 2019 c 365 s 6 are each amended to  
9 read as follows:

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

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

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

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

22 ~~((c))~~ (iii) An overview of incumbent broadband infrastructure  
23 within the state;

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

27 ~~((e))~~ (v) Suggested policies, incentives, and legislation  
28 designed to accelerate the achievement of the goals under RCW  
29 43.330.536; and

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

31 (2) (a) By December 31, 2023, the office must submit a report to  
32 the governor and the appropriate committees of the legislature  
33 evaluating the effectiveness of authorizing a public utility district  
34 to provide retail telecommunications services to unserved areas as  
35 provided in RCW 54.16.330(10).

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

37 (i) The number of public utility districts providing retail  
38 telecommunications services in an unserved area authorized in RCW  
39 54.16.330(10);

1        (ii) An analysis on the effectiveness of the broadband service  
2 plans required in RCW 54.16.330(10); and  
3        (iii) Any recommendations to improve the provision of retail  
4 telecommunications services in unserved areas.

5        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 42.56  
6 RCW to read as follows:

7        A broadband service plan submitted by a broadband service  
8 provider to the governor's statewide broadband office established in  
9 RCW 43.330.532 in accordance with the requirements under RCW  
10 54.16.330(10) are exempt from disclosure under this chapter.

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