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**SECOND SUBSTITUTE SENATE BILL 5383**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Wellman, Short, Hunt, King, Lovelett, Nguyen, Randall, Saldaña, Warnick, Wilson, C., and Wilson, L.)

READ FIRST TIME 02/22/21.

1 AN ACT Relating to authorizing public utility districts and port  
2 districts to provide retail telecommunications services in unserved  
3 areas under certain conditions; amending RCW 54.16.330, 53.08.370,  
4 and 43.330.538; 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. Increasing  
9 broadband access to unserved areas of the state is of vital  
10 importance to increasing quality of life, broadening educational  
11 opportunities, and promoting economic inclusion in the parts of our  
12 state that, without broadband access, cannot fully participate in  
13 modern society. The legislature further finds that one of the most  
14 effective tools to ensure all Washingtonians have an opportunity to  
15 equitably access education, the job market, and health care resources  
16 is to allow our public utility districts and port districts to  
17 provide retail telecommunications services.

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

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

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

7 (ii) For the provision of wholesale telecommunications services  
8 (~~within~~) as follows:

9 (A) Within the district and by contract with another public  
10 utility district;

11 (B) Within an area in an adjoining county that is already  
12 provided electrical services by the district; or

13 (C) Within an adjoining county that does not have a public  
14 utility district providing electrical or telecommunications services  
15 headquartered within the county's boundaries, but only if the  
16 district providing telecommunications services is not authorized to  
17 provide electrical services (~~(-~~

18 ~~(b) Except as provided in subsection (8) of this section, nothing~~  
19 ~~in this section shall be construed to authorize public utility~~  
20 ~~districts to provide telecommunications services to end users)); or~~

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

23 (2) A public utility district providing wholesale or retail  
24 telecommunications services shall ensure that rates, terms, and  
25 conditions for such services are not unduly or unreasonably  
26 discriminatory or preferential. Rates, terms, and conditions are  
27 discriminatory or preferential when a public utility district  
28 offering rates, terms, and conditions to an entity for wholesale or  
29 retail telecommunications services does not offer substantially  
30 similar rates, terms, and conditions to all other entities seeking  
31 substantially similar services.

32 (3) A public utility district providing wholesale or retail  
33 telecommunications services shall not be required to, but may,  
34 establish a separate utility system or function for such purpose. In  
35 either case, a public utility district providing wholesale or retail  
36 telecommunications services shall separately account for any revenues  
37 and expenditures for those services according to standards  
38 established by the state auditor pursuant to its authority in chapter  
39 43.09 RCW and consistent with the provisions of this title. Any  
40 revenues received from the provision of wholesale or retail

1 telecommunications services must be dedicated to costs incurred to  
2 build and maintain any telecommunications facilities constructed,  
3 installed, or acquired to provide such services, including payments  
4 on debt issued to finance such services, until such time as any bonds  
5 or other financing instruments executed after June 8, 2000, and used  
6 to finance such telecommunications facilities are discharged or  
7 retired.

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

16 (5) If a person or entity receiving retail telecommunications  
17 services from a public utility district under this section has a  
18 complaint regarding the reasonableness of the rates, terms,  
19 conditions, or services provided, the person or entity may file a  
20 complaint with the district commission.

21 (6) A public utility district shall not exercise powers of  
22 eminent domain to acquire telecommunications facilities or  
23 contractual rights held by any other person or entity to  
24 telecommunications facilities.

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

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

1 (b) Within thirty days of an internet service provider ceasing to  
2 provide access to the internet, the public utility district must  
3 initiate a process to find a replacement internet service provider or  
4 providers to resume providing access to the internet using  
5 telecommunications facilities of a public utility district.

6 (c) For a maximum period of five months, following initiation of  
7 the process begun in (b) of this section, or, if earlier than five  
8 months, until a replacement internet service provider is, or  
9 providers are, in operation, the district commission may establish a  
10 rate for providing access to the internet and charge customers to  
11 cover expenses necessary to provide access to the internet.

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

17 (10)(a) A public utility district may provide retail  
18 telecommunications services to end users in unserved areas.

19 (b) A public utility district must notify and consult with the  
20 governor's statewide broadband office within 30 days of its decision  
21 to provide retail telecommunications services to unserved areas. The  
22 governor's statewide broadband office must post notices received from  
23 a public utility district pursuant to this subsection on its public  
24 website.

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

39 (A) Map and description of how the deployment of proposed  
40 broadband infrastructure will achieve at a minimum 100 megabits per

1 second download speed and at a minimum 20 megabits per second upload  
2 speed and then increases to be consistent with the stated long-term  
3 state broadband speed goals for unserved areas;

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

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

7 (d) A public utility district that exercises its authority under  
8 (a) of this subsection to provide retail telecommunications services  
9 may use state funds, federal funds appropriated through the state, or  
10 federal funds dedicated for projects in unserved areas to fund  
11 projects identified in the submitted telecommunications  
12 infrastructure and service plan required in (c) of this subsection.

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

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

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

19 (h) For the purposes of this subsection:

20 (i) "Open access network" means a network that, during the useful  
21 life of the infrastructure, ensures service providers may use network  
22 services and facilities at rates, terms, and conditions that are not  
23 discriminatory or preferential between providers, and employs  
24 accountable interconnection arrangements published and available  
25 publicly.

26 (ii) "Unserved areas" means areas of Washington in which  
27 households and businesses lack access to broadband service of speeds  
28 at a minimum of 100 megabits per second download and at a minimum 20  
29 megabits per second upload.

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

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

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

38 (b) For the provision of wholesale telecommunications services  
39 within or without the district's limits (~~(. Nothing in this subsection~~

1 ~~shall be construed to authorize port districts to provide~~  
2 ~~telecommunications services to end users)~~; or

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

5 (2) Except as provided in subsection (9) of this section, a port  
6 district providing wholesale telecommunications services under this  
7 section shall ensure that rates, terms, and conditions for such  
8 services are not unduly or unreasonably discriminatory or  
9 preferential. Rates, terms, and conditions are discriminatory or  
10 preferential when a port district offering such rates, terms, and  
11 conditions to an entity for wholesale telecommunications services  
12 does not offer substantially similar rates, terms, and conditions to  
13 all other entities seeking substantially similar services.

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

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

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

37 (6) Except as otherwise specifically provided, a port district  
38 may exercise any of the powers granted to it under this title and  
39 other applicable laws in carrying out the powers authorized under

1 this section. Nothing in chapter 81, Laws of 2000 limits any existing  
2 authority of a port district under this title.

3 (7) A port district that has not exercised the authorities  
4 provided in this section prior to June 7, 2018, must develop a  
5 business case plan before exercising the authorities provided in this  
6 section. The port district must procure an independent qualified  
7 consultant to review the business case plan, including the use of  
8 public funds in the provision of wholesale telecommunications  
9 services. Any recommendations or adjustments to the business case  
10 plan made during third-party review must be received and either  
11 rejected or accepted by the port commission in an open meeting.

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

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

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

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

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

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

31 (c) Any port district that intends to provide retail  
32 telecommunications services to unserved areas 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 (v) to measure progress toward serving those in unserved areas; (vi)

1 to report on the feasibility and sustainability of the project; and  
2 (vii) to confirm that the project is within an unserved area. The  
3 telecommunications infrastructure and service plans shall include,  
4 but not be limited to, the following:

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

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

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

13 (d) A port district that exercises its authority under (a) of  
14 this subsection to provide retail telecommunications services may use  
15 state funds, federal funds appropriated through the state, or federal  
16 funds dedicated for projects in unserved areas to fund projects  
17 identified in the submitted telecommunications infrastructure and  
18 service plan required in (c) of this subsection.

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

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

23 (g) For the purposes of this subsection:

24 (i) "Open access network" means a network that, during the useful  
25 life of the infrastructure, ensures service providers may use network  
26 services and facilities at rates, terms, and conditions that are not  
27 discriminatory or preferential between providers, and employs  
28 accountable interconnection arrangements published and available  
29 publicly.

30 (ii) "Unserved areas" means areas of Washington in which  
31 households and businesses lack access to broadband service of speeds  
32 at a minimum of 100 megabits per second download and at a minimum 20  
33 megabits per second upload.

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

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



1       ~~((2))~~ (b) The report must, at a minimum, contain:  
2       ~~((a))~~ (i) An analysis of the current availability and use of  
3 broadband, including average broadband speeds, within the state;  
4       ~~((b))~~ (ii) Information gathered from schools, libraries,  
5 hospitals, and public safety facilities across the state, determining  
6 the actual speed and capacity of broadband currently in use and the  
7 need, if any, for increases in speed and capacity to meet current or  
8 anticipated needs;  
9       ~~((c))~~ (iii) An overview of incumbent broadband infrastructure  
10 within the state;  
11       ~~((d))~~ (iv) A summary of the office's activities in coordinating  
12 broadband infrastructure development with the public works board,  
13 including a summary of funds awarded under RCW 43.155.160;  
14       ~~((e))~~ (v) Suggested policies, incentives, and legislation  
15 designed to accelerate the achievement of the goals under RCW  
16 43.330.536; and  
17       ~~((f))~~ (vi) Any proposed legislative and policy initiatives.  
18       (2) (a) By December 31, 2022, the office must submit a report to  
19 the governor and the appropriate committees of the legislature  
20 regarding the provision of retail telecommunications services to  
21 unserved areas by public utility districts and port districts as  
22 provided in RCW 54.16.330(10) and 53.08.370(10).  
23       (b) The report must, at a minimum, contain:  
24       (i) The number of public utility districts and port districts  
25 providing retail telecommunications services in an unserved area  
26 authorized in RCW 54.16.330(10) and 53.08.370(10); and  
27       (ii) Any recommendations to improve the provision of retail  
28 telecommunications services in unserved areas.

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