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**SUBSTITUTE SENATE BILL 6102**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Water, Energy & Telecommunications (originally sponsored by Senators Poulsen, Morton, Rockefeller and Pridemore)

READ FIRST TIME 02/28/07.

1           AN ACT Relating to authorizing locally regulated telecommunications  
2 services to the general public and public agencies by public utility  
3 districts; amending RCW 54.16.330; adding a new chapter to Title 54  
4 RCW; and creating a new section.

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

6           NEW SECTION.   **Sec. 1.** In 2000, the legislature intended to improve  
7 access to broadband services in rural areas by granting wholesale  
8 telecommunications authority to public utility districts. The  
9 legislature found that access to telecommunications facilities and  
10 services was essential to the economic well-being of both urban and  
11 rural areas, and that many persons and entities, particularly in rural  
12 areas, did not have access to telecommunications facilities and  
13 services. The legislature now finds that many areas of the state  
14 continue to lag in the availability of affordable and reliable  
15 broadband telecommunications services. To address this problem, the  
16 legislature intends to create a pilot project in which public utility  
17 districts in geographically remote areas of the state, with significant  
18 geographic impediments to broadband deployment, with very low  
19 population densities, with low median household income levels, with

1 national security installations located within, with underserved tribal  
2 areas within, and which are successfully operating fiber optic  
3 backbones, are authorized to offer retail telecommunications services  
4 on a pilot basis. The pilot project will be used to determine if  
5 granting retail telecommunications authority to public utility  
6 districts can improve access to telecommunications facilities and  
7 services and enhance the economic well-being and public health and  
8 safety of unserved and underserved areas of the state.

9 **Sec. 2.** RCW 54.16.330 and 2004 c 158 s 1 are each amended to read  
10 as follows:

11 (1) Except as provided in chapter 54.-- RCW (sections 3 through 5  
12 of this act), a public utility district in existence on June 8, 2000,  
13 may construct, purchase, acquire, develop, finance, lease, license,  
14 handle, provide, add to, contract for, interconnect, alter, improve,  
15 repair, operate, and maintain any telecommunications facilities within  
16 or without the district's limits for the following purposes:

- 17 (a) For the district's internal telecommunications needs; and  
18 (b) For the provision of wholesale telecommunications services  
19 within the district and by contract with another public utility  
20 district.

21 Nothing in this subsection shall be construed to authorize public  
22 utility districts to provide telecommunications services to end users.

23 (2) A public utility district providing wholesale  
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 offering  
28 rates, terms, and conditions to an entity for wholesale  
29 telecommunications services does not offer substantially similar rates,  
30 terms, and conditions to all other entities seeking substantially  
31 similar services.

32 (3) A public utility district providing wholesale  
33 telecommunications services shall not be required to but may establish  
34 a separate utility system or function for such purpose. In either  
35 case, a public utility district providing wholesale telecommunications  
36 services shall separately account for any revenues and expenditures for  
37 those services according to standards established by the state auditor

1 pursuant to its authority in chapter 43.09 RCW and consistent with the  
2 provisions of this title. Any revenues received from the provision of  
3 wholesale telecommunications services must be dedicated to costs  
4 incurred to build and maintain any telecommunications facilities  
5 constructed, installed, or acquired to provide such services, including  
6 payments on debt issued to finance such services, until such time as  
7 any bonds or other financing instruments executed after June 8, 2000,  
8 and used to finance such telecommunications facilities are discharged  
9 or retired.

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

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

20 (6) Except as otherwise specifically provided, a public utility  
21 district may exercise any of the powers granted to it under this title  
22 and 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 public utility district under this title.

25 NEW SECTION. **Sec. 3.** The definitions in this section apply  
26 throughout this chapter unless the context clearly requires otherwise.

27 (1) "Commission" means the commission of a public utility district  
28 established under this title.

29 (2) "Locally regulated utility" means a public utility district  
30 formed under this title.

31 (3) "Retail telecommunications services" means the provision of  
32 telecommunications services or facilities directly to the general  
33 public, including consumers, end users, nonprofit corporations, and  
34 public agencies as defined in RCW 39.34.020.

35 (4) "Telecommunications" has the same meaning as defined in RCW  
36 80.04.010.

1 (5) "Telecommunications facilities" includes lines, conduits,  
2 ducts, poles, wires, cables, crossarms, receivers, transmitters,  
3 instruments, machines, appliances, instrumentalities, and all devices,  
4 real estate, easements, apparatus, property, and routes used, operated,  
5 owned, or controlled by any entity to facilitate the provision of  
6 telecommunications services.

7 (6) "Telecommunications services" means the provision of  
8 telecommunications, telecommunications facilities, internet services,  
9 and information transmitted utilizing telecommunications facilities.  
10 As used in this subsection "information" means knowledge or  
11 intelligence represented by any form of writing, signs, signals,  
12 pictures, sounds, or any other symbols.

13 (7) "Wholesale telecommunications services" means the provision of  
14 telecommunications services or facilities for resale by an entity  
15 authorized to provide telecommunications services to the general public  
16 and internet service providers.

17 NEW SECTION. **Sec. 4.** (1) In addition to the authority provided in  
18 RCW 54.16.330, a locally regulated utility that meets the following  
19 criteria is authorized to provide retail telecommunications services:

20 (a) The locally regulated utility is in a geographically remote  
21 county with significant geographic impediments to broadband  
22 telecommunications deployment;

23 (b) The locally regulated utility is located in a county with a  
24 population density of nine persons per square mile or less according to  
25 April 1, 2006, population estimates made by the office of financial  
26 management;

27 (c) The locally regulated utility is located in a county with a  
28 median household income of thirty-four thousand dollars or less in  
29 2004, according to estimates made by the office of financial management  
30 in October 2006;

31 (d) The locally regulated utility is located in a county with  
32 national security installations, such as border stations and nuclear  
33 explosion listening arrays;

34 (e) The locally regulated utility is located in a county with  
35 tribal areas that are not served or are underserved by broadband  
36 telecommunications; and

1 (f) The locally regulated utility is located in a county where the  
2 utility district is successfully operating a fiber optic backbone.

3 (2) In order for the legislature to monitor the progress of the  
4 pilot project, a public utility district operating under this chapter  
5 shall submit a report to the legislature detailing any progress on the  
6 establishment and maintenance of a retail telecommunications network.  
7 The report must include the following metrics: The number, type, and  
8 location of unserved and underserved consumers that were provided  
9 service and the type of service provided; the number and location of  
10 unserved and underserved tribal areas that were provided service and  
11 the type of service provided; the comparative cost of, or public agency  
12 access or budgetary savings from, any telecommunications service  
13 provided, if available; and new or expanded services made available for  
14 public health and safety or national security. The report shall be  
15 submitted to the appropriate telecommunications committees of the  
16 legislature every November 1st until the expiration of the project.  
17 The report may be submitted in electronic form.

18 (3) The retail authority granted in this chapter expires at the end  
19 of seven years from the effective date of this section. Upon  
20 expiration of this authority, a public utility district may no longer  
21 expand its retail telecommunications network or acquire new retail  
22 telecommunications customers. However, in order to satisfy any legal  
23 or financial obligations incurred in establishing the services under  
24 the pilot project, a district may continue such service to those  
25 properties, and the occupants who use them, that are using the  
26 district's retail telecommunications services. The expiration of this  
27 pilot project shall have no effect on a district's continuing authority  
28 to offer services under RCW 54.16.330.

29 NEW SECTION. **Sec. 5.** (1) A person or entity that has requested  
30 retail telecommunications services from the public utility district  
31 providing retail telecommunications services under this chapter may  
32 petition the commission of the locally regulated utility providing the  
33 services if it believes the district's rates, terms, and conditions are  
34 unduly or unreasonably discriminatory or preferential and the  
35 commission has not issued a retail telecommunications services rate  
36 determination within the last year. In determining whether the  
37 district is providing discriminatory or preferential rates, terms, and

1 conditions, the commission may consider such matters as service  
2 quality, cost of service, technical feasibility of connection points on  
3 the district's facilities, time of response to service requests, system  
4 capacity, and other matters reasonably related to the provision of  
5 retail telecommunications services. If the commission, after notice  
6 and hearing, determines that the public utility district's rates,  
7 terms, and conditions are unduly or unreasonably discriminatory or  
8 preferential, it shall amend the rates, terms, and conditions  
9 accordingly and implement the same within thirty days.

10 (2) Nothing in this chapter may be construed or is intended to  
11 confer upon the Washington utilities and transportation commission any  
12 authority to exercise jurisdiction over retail telecommunications  
13 services offered by a public utility district under this chapter,  
14 except as required by federal law.

15 NEW SECTION. **Sec. 6.** Sections 3 through 5 of this act constitute  
16 a new chapter in Title 54 RCW.

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