S-1592.2

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**SUBSTITUTE SENATE BILL 5679**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senate Energy, Environment & Telecommunications (originally sponsored by Senators Warnick, Wellman, Sheldon, Rivers, Wilson, Cleveland, Walsh, Takko, and Rolfes)

AN ACT Relating to the authority of port districts to provide telecommunications services; amending RCW 53.08.370 and 53.08.380; and creating a new section.

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

NEW SECTION. **Sec.**  The legislature finds that:

(1) Adequate access to telecommunications facilities and services is essential to the economic well-being of communities in Washington state.

(2) Many communities, particularly in remote areas, do not have adequate access to telecommunications facilities and services.

(3) Some communities along the outer borders of the state may be served by a port district that does not fall within the definition of a rural port district, but due to their location, face similar telecommunications service issues.

(4) Specifying that port districts in these areas have authority to enter into contracts to attract private telecommunications companies may help to create a sufficient market for the provision of adequate retail telecommunications services.

**Sec.**  RCW 53.08.370 and 2000 c 81 s 7 are each amended to read as follows:

(1) Both rural port districts in existence on June 8, 2000, and port districts within a county that has at least one border along the southern, eastern, or northern border of the state may construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits for the following purposes:

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

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

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

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

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

(5) A ((~~rural~~)) port district under this section shall not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights held by any other person or entity to telecommunications facilities.

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

(7) A port district under this section may select a telecommunications company to operate the port district's telecommunications facilities. The company may be the exclusive provider of telecommunications services to end users under terms specified in the contract with the port district. For purposes of this section, "telecommunications company" means any for-profit entity owned by investors that sells telecommunications services to end users. Nothing in this subsection (7) is intended to limit or otherwise restrict any other authority provided by law.

(8) A port district constructing or operating telecommunications facilities under this section may not construct or operate telecommunications facilities for the provision of telecommunications service in areas already served by a telecommunications provider that is offering broadband service as defined by the federal communications commission, unless the port district has constructed telecommunications facilities capable of providing broadband service to at least fifty percent of the total unserved or underserved end users located within the port district's limits.

**Sec.**  RCW 53.08.380 and 2000 c 81 s 9 are each amended to read as follows:

(1) A person or entity that has requested wholesale telecommunications services from a rural port district or port district as identified in RCW 53.08.370(1) may petition the commission under the procedures set forth in RCW 80.04.110 (1) through (3) if it believes the district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential, except as provided in RCW 53.08.370. The person or entity shall provide the district notice of its intent to petition the commission and an opportunity to review within thirty days the rates, terms, and conditions as applied to it prior to submitting its petition. In determining whether a district is providing discriminatory or preferential rates, terms, and conditions, the commission may consider such matters as service quality, technical feasibility of connection points on the district's telecommunications facilities, time of response to service requests, system capacity, and other matters reasonably related to the provision of wholesale telecommunications services. If the commission, after notice and hearing, determines that a rural port district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential, it shall issue a final order finding noncompliance with this section and setting forth the specific areas of apparent noncompliance. An order imposed under this section shall be enforceable in any court of competent jurisdiction.

(2) The commission may order a rural port district or port district as identified in RCW 53.08.370(1) to pay a share of the costs incurred by the commission in adjudicating or enforcing this section.

(3) Without limiting other remedies at law or equity, the commission and prevailing party may also seek injunctive relief to compel compliance with an order.

(4) Nothing in this section shall be construed to affect the commission's authority and jurisdiction with respect to actions, proceedings, or orders permitted or contemplated for a state commission under the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56).

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