

SHB 2664 - S COMM AMD

By Committee on Energy, Environment & Technology

ADOPTED AND ENGROSSED 2/27/18

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 53.08.005 and 2000 c 81 s 6 are each amended to  
4 read as follows:

5 The definitions in this section apply throughout this chapter  
6 unless the context clearly requires otherwise.

7 (1) "Commission" means the Washington utilities and  
8 transportation commission.

9 (~~(2) ("Rural port district" means a port district formed under  
10 chapter 53.04 RCW and located in a county with an average population  
11 density of fewer than one hundred persons per square mile.~~

12 ~~(3))~~ "Telecommunications" has the same meaning as contained in  
13 RCW 80.04.010.

14 ~~((4))~~ (3) "Telecommunications facilities" means lines,  
15 conduits, ducts, poles, wires, cables, crossarms, receivers,  
16 transmitters, instruments, machines, appliances, instrumentalities  
17 and all devices, real estate, easements, apparatus, property, and  
18 routes used, operated, owned, or controlled by any entity to  
19 facilitate the provision of telecommunications services.

20 ~~((5))~~ (4) "Wholesale telecommunications services" means the  
21 provision of telecommunications services or facilities for resale by  
22 an entity authorized to provide telecommunications services to the  
23 general public and internet service providers. Wholesale  
24 telecommunications services includes the provision of unlit or dark  
25 optical fiber for resale, but not the provision of lit optical fiber.

26 Sec. 2. RCW 53.08.370 and 2000 c 81 s 7 are each amended to read  
27 as follows:

28 (1) A (~~rural~~) port district in existence on June 8, 2000, may  
29 construct, purchase, acquire, develop, finance, lease, license,  
30 handle, provide, add to, contract for, interconnect, alter, improve,

1 repair, operate, and maintain any telecommunications facilities  
2 within or without the district's limits for the following purposes:

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

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

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

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

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

38 (5) A ((~~rural~~)) port district shall not exercise powers of  
39 eminent domain to acquire telecommunications facilities or

1 contractual rights held by any other person or entity to  
2 telecommunications facilities.

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

8 (7) A port district under this section may select a  
9 telecommunications company to operate all or a portion of the port  
10 district's telecommunications facilities. For the purposes of this  
11 section, "telecommunications company" means any for-profit entity  
12 owned by investors that sells telecommunications services to end  
13 users. Nothing in this subsection (7) is intended to limit or  
14 otherwise restrict any other authority provided by law.

15 (8) A port district that has not exercised the authorities  
16 provided in this section prior to the effective date of this act must  
17 develop a business case plan before exercising the authorities  
18 provided in this section. The port district must procure an  
19 independent qualified consultant to review the business case plan,  
20 including the use of public funds in the provision of wholesale  
21 telecommunications services. Any recommendations or adjustments to  
22 the business case plan made during third-party review must be  
23 received and either rejected or accepted by the port commission in an  
24 open meeting.

25 (9) A port district exercising authority under this section must  
26 prioritize telecommunications services that promote the development  
27 of broadband internet access for unserved or underserved areas  
28 located within the port district's limits.

29 (10) A port district with telecommunications facilities for use  
30 in the provision of wholesale telecommunications in accordance with  
31 subsection (1)(b) of this section may be subject to local leasehold  
32 excise taxes under RCW 82.29A.040.

33 **Sec. 3.** RCW 53.08.380 and 2000 c 81 s 9 are each amended to read  
34 as follows:

35 (1) A person or entity that has requested wholesale  
36 telecommunications services from a (~~rural~~) port district may  
37 petition the commission under the procedures set forth in RCW  
38 80.04.110 (1) through (3) if it believes the district's rates, terms,  
39 and conditions are unduly or unreasonably discriminatory or

1 preferential. The person or entity shall provide the district notice  
2 of its intent to petition the commission and an opportunity to review  
3 within thirty days the rates, terms, and conditions as applied to it  
4 prior to submitting its petition. In determining whether a district  
5 is providing discriminatory or preferential rates, terms, and  
6 conditions, the commission may consider such matters as service  
7 quality, technical feasibility of connection points on the district's  
8 telecommunications facilities, time of response to service requests,  
9 system capacity, and other matters reasonably related to the  
10 provision of wholesale telecommunications services. If the  
11 commission, after notice and hearing, determines that a ((~~rural~~))  
12 port district's rates, terms, and conditions are unduly or  
13 unreasonably discriminatory or preferential, it shall issue a final  
14 order finding noncompliance with this section and setting forth the  
15 specific areas of apparent noncompliance. An order imposed under this  
16 section shall be enforceable in any court of competent jurisdiction.

17 (2) The commission may order a ((~~rural~~)) port district to pay a  
18 share of the costs incurred by the commission in adjudicating or  
19 enforcing this section.

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

23 (4) Nothing in this section shall be construed to affect the  
24 commission's authority and jurisdiction with respect to actions,  
25 proceedings, or orders permitted or contemplated for a state  
26 commission under the federal telecommunications act of 1996, P.L.  
27 104-104 (110 Stat. 56)."

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28 On page 1, line 4 of the title, after "infrastructure;" strike  
29 the remainder of the title and insert "and amending RCW 53.08.005,  
30 53.08.370, and 53.08.380."

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