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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)

READ FIRST TIME 02/17/17.

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

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

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

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

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

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

19 **Sec. 2.** RCW 53.08.370 and 2000 c 81 s 7 are each amended to read  
20 as follows:

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

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

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

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

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

36 (4) When a (~~rural~~) port district establishes a separate utility  
37 function for the provision of wholesale telecommunications services  
38 under this section, all telecommunications services rendered by the  
39 separate function to the district for the district's internal  
40 telecommunications needs shall be charged at its true and full value.

1 A (~~rural~~) port district may not charge its nontelecommunications  
2 operations rates that are preferential or discriminatory compared to  
3 those it charges entities purchasing wholesale telecommunications  
4 services.

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

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

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

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

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

34 (1) A person or entity that has requested wholesale  
35 telecommunications services from a rural port district or port  
36 district as identified in RCW 53.08.370(1) may petition the  
37 commission under the procedures set forth in RCW 80.04.110 (1)  
38 through (3) if it believes the district's rates, terms, and  
39 conditions are unduly or unreasonably discriminatory or preferential.

1 except as provided in RCW 53.08.370. The person or entity shall  
2 provide the district notice of its intent to petition the commission  
3 and an opportunity to review within thirty days the rates, terms, and  
4 conditions as applied to it prior to submitting its petition. In  
5 determining whether a district is providing discriminatory or  
6 preferential rates, terms, and conditions, the commission may  
7 consider such matters as service quality, technical feasibility of  
8 connection points on the district's telecommunications facilities,  
9 time of response to service requests, system capacity, and other  
10 matters reasonably related to the provision of wholesale  
11 telecommunications services. If the commission, after notice and  
12 hearing, determines that a rural port district's rates, terms, and  
13 conditions are unduly or unreasonably discriminatory or preferential,  
14 it shall issue a final order finding noncompliance with this section  
15 and setting forth the specific areas of apparent noncompliance. An  
16 order imposed under this section shall be enforceable in any court of  
17 competent jurisdiction.

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

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

25 (4) Nothing in this section shall be construed to affect the  
26 commission's authority and jurisdiction with respect to actions,  
27 proceedings, or orders permitted or contemplated for a state  
28 commission under the federal telecommunications act of 1996, P.L.  
29 104-104 (110 Stat. 56).

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