
SUBSTITUTE HOUSE BILL 2664

State of Washington

65th Legislature

2018 Regular Session

By House Technology & Economic Development (originally sponsored by Representatives Dye, Doglio, Jenkin, Chapman, Vick, Stonier, Wylie, and Walsh)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to extending existing telecommunications
2 authority to all ports in Washington state in order to facilitate
3 public-private partnerships in wholesale telecommunications services
4 and infrastructure; and amending RCW 53.08.005, 53.08.370, and
5 53.08.380.

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

7 **Sec. 1.** RCW 53.08.005 and 2000 c 81 s 6 are each amended to read
8 as follows:

9 The definitions in this section apply throughout this chapter
10 unless the context clearly requires otherwise.

11 (1) "Commission" means the Washington utilities and
12 transportation commission.

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

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

18 ~~((4))~~ (3) "Telecommunications facilities" means lines,
19 conduits, ducts, poles, wires, cables, crossarms, receivers,
20 transmitters, instruments, machines, appliances, instrumentalities
21 and all devices, real estate, easements, apparatus, property, and

1 routes used, operated, owned, or controlled by any entity to
2 facilitate the provision of telecommunications services.

3 ((+5)) (4) "Wholesale telecommunications services" means the
4 provision of telecommunications services or facilities for resale by
5 an entity authorized to provide telecommunications services to the
6 general public and internet service providers. Wholesale
7 telecommunications services includes the provision of unlit or dark
8 optical fiber for resale, but not the provision of lit optical fiber.

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

11 (1) A ((~~rural~~)) port district in existence on June 8, 2000, may
12 construct, purchase, acquire, develop, finance, lease, license,
13 handle, provide, add to, contract for, interconnect, alter, improve,
14 repair, operate, and maintain any telecommunications facilities
15 within or without the district's limits for the following purposes:

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

17 (b) For the provision of wholesale telecommunications services
18 within the district's limits. Nothing in this subsection shall be
19 construed to authorize ((~~rural~~)) port districts to provide
20 telecommunications services to end users.

21 (2) A ((~~rural~~)) port district providing wholesale
22 telecommunications services under this section shall ensure that
23 rates, terms, and conditions for such services are not unduly or
24 unreasonably discriminatory or preferential. Rates, terms, and
25 conditions are discriminatory or preferential when a ((~~rural~~)) port
26 district offering such rates, terms, and conditions to an entity for
27 wholesale telecommunications services does not offer substantially
28 similar rates, terms, and conditions to all other entities seeking
29 substantially similar services.

30 (3) When a ((~~rural~~)) port district establishes a separate utility
31 function for the provision of wholesale telecommunications services,
32 it shall account for any and all revenues and expenditures related to
33 its wholesale telecommunications facilities and services separately
34 from revenues and expenditures related to its internal
35 telecommunications operations. Any revenues received from the
36 provision of wholesale telecommunications services must be dedicated
37 to the utility function that includes the provision of wholesale
38 telecommunications services for costs incurred to build and maintain
39 the telecommunications facilities until such time as any bonds or

1 other financing instruments executed after June 8, 2000, and used to
2 finance the telecommunications facilities are discharged or retired.

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

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

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

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

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

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

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

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

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

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

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

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