
Community & Economic Development Committee

HB 1336

Brief Description: Creating and expanding unrestricted authority for public entities to provide telecommunications services to end users.

Sponsors: Representatives Hansen, Ybarra, Berry, Simmons, Ramel, Valdez, Leavitt, Morgan, Ryu, Peterson, Shewmake, Davis, Ormsby, Gilday, Stonier, Eslick, Pollet and Harris-Talley.

<p>Brief Summary of Bill</p> <ul style="list-style-type: none">• Authorizes public utility districts, ports districts, cities and towns, and counties to provide retail telecommunications services.

Hearing Date: 1/27/21

Staff: Cassie Jones (786-7303).

Background:

Public Utility Districts and Port Districts - Telecommunications.

"Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

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

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

A public utility district (PUD) and a port district in existence on June 8, 2000, may construct, purchase, acquire, operate, and maintain telecommunications facilities within or without the district limits for purposes of internal telecommunications needs and for the provision of wholesale telecommunications services within the district. PUDs have limited authority to provide retail telecommunications services. Port districts do not have that authority.

In providing telecommunications services, PUDs and port districts must:

- ensure that the rates, terms, and conditions are not unduly or unreasonably discriminatory or preferential;
- keep accounting of revenues and expenditures of the telecommunications activities separate from the internal telecommunications operations;
- dedicate the revenues from the telecommunications activities to paying off the costs incurred in building and maintaining the telecommunications facilities; and
- charge themselves the true and full value of telecommunications services provided by the separate telecommunications functions to the district.

If a person or entity receiving wholesale telecommunications services from a PUD or a port district has a complaint regarding the reasonableness of rates, terms, and conditions, the person or entity may petition the Utilities and Transportation Commission (UTC). If a person or entity receiving retail services from a PUD has a complaint regarding the reasonableness of rates, terms, and conditions, the person or entity may file a complaint with the PUD's commission.

A port district that has not exercised its authority to provide telecommunications services before June 7, 2018 must develop a business case plan before exercising that authority. The port district must procure an independent qualified consultant to review the business case plan, including the use of public funds in the provision of wholesale telecommunications services. Any recommendations or adjustments to the business case plan made during third-party review must be received and either rejected or accepted by the port commission in an open meeting.

Public Utility Districts - Retail Telecommunications Services.

A PUD has limited authority to provide retail telecommunications services.

Temporary Authority. A PUD that provides wholesale telecommunications services but not retail telecommunications service may provide retail telecommunications to the customers of an internet service provider (ISP) if the ISP:

- was operating on telecommunications facilities of the PUD; and
- has ceased to provide access to the internet to its customers.

The PUD may only provide the retail telecommunications if there are no other willing retail service providers. The PUD, within 30 days of the ISP ceasing to provide service, must initiate a process to find a replacement ISP to resume providing access to the internet using the telecommunications facilities of the PUD. The PUD may provide the service for up to five months after the PUD begins the replacement search or until a replacement ISP is in operation,

whichever is earlier. For the applicable period, the PUD may charge its retail customers to cover expenses for providing internet access. The tax treatment of the temporary retail services provided by a PUD must be the same as if provided by the defunct ISP.

Authority for certain PUDs. A PUD that as of June 7, 2018 provides only water, sewer, and wholesale telecommunications services in a county with an area less than 500 square miles and is located west of the Puget Sound may provide retail internet service on the PUD's broadband network located within the PUDs boundaries only when all of the existing providers of end-user internet service on the PUD's broadband network cease to provide end-user service or inadequate end-user service. This authority expires five years after June 7, 2018 for any PUD that has not entered into a partnership payment structure to finance broadband deployment or been petitioned to provide retail internet service within that time period.

After a PUD board of commissioners receives a petition requesting provision of retail internet services, the PUD commissioners may hold three meetings to: (1) verify property owners' signatures; (2) determine and submit findings regarding the existence or adequacy of retail internet services on the PUD's broadband network; (3) receive a business case plan; and (4) by resolution, authorize the PUD to provide retail internet service on its broadband network. Authorization is contingent on the development of the business case plan and a determination of no or inadequate service. A petition requesting provision of retail internet services may be submitted by either of the following that has developed a partnership payment structure to finance broadband deployment with the PUD: (1) a majority of a group, including homeowners associations, of a geographical area within the district; or (2) an individual.

Cities, Towns, and Counties - Telecommunications.

There are several classifications of cities and towns under Washington law: (1) first class cities; (2) second class cities; (3) code cities; (4) unclassified cities; and (5) towns. First class cities are those that have a population of 10,000 or more and have adopted a charter pursuant to a provision of the Washington Constitution (Constitution). Second-class cities and towns do not have their own charters and are governed by statute. Unclassified cities include those that were created by special charter prior to the adoption of the Constitution; statutory enactments supplement their territorial charters. Code cities are those that have incorporated under the statutory framework known as the Optional Municipal Code. Washington counties may organize under a home rule charter pursuant to the Constitution. Those counties that have not adopted a charter are governed by statute.

Generally, the powers of municipal corporations are limited to those powers that are: (1) expressly granted by statute or by the Constitution; (2) necessarily implied in or incident to powers expressly granted; and (3) essential to the declared purposes and objects of the municipal corporation. However, this general rule does not apply to cities and counties that have adopted charters pursuant to the Constitution or the Optional Municipal Code. These municipalities have "home rule powers," which do not need express or implied statutory authority to enact local legislation.

According to a 2003 Attorney General Opinion, first class cities, code cities, and charter counties may provide telecommunications services as part of their "home rule powers," except as may be limited by specific statutory language governing particular services. Second class cities and towns, however, do not have the authority to provide telecommunication services.

Summary of Bill:

"Retail telecommunications services" means the sale, lease, license, or indivisible right of use of telecommunications services or telecommunications facilities directly to end users.

A PUD is authorized to provide retail telecommunications services and telecommunications facilities within the district and outside of the district by contract with another PUD, a political subdivision of Washington that is authorized to provide retail telecommunications services, or with any federally recognized tribe located in Washington.

The authority granted to PUDs that allowed them to temporarily provide internet service to customers of a defunct ISP is repealed. The authority for certain PUDs, those that only provide water, sewer, and wholesale telecommunications services in a county with an area less than 500 square miles located west of the Puget Sound, to provide retail internet service is also repealed.

Port districts are authorized to provide retail telecommunications services within and outside the district's limits. The requirement that a port district develop a business case plan if exercising its wholesale telecommunications authority for the first time after June 7, 2018 is repealed.

Cities, towns, and counties are authorized to provide telecommunications services.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.