
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-4781.3/00 3rd draft

ATTY/TYPIST: KB:mos

BRIEF DESCRIPTION:

2 **SHB 2880** - H AMD
3 By Representative

4

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** The legislature makes the following
8 findings:

9 (1) Access to advanced telecommunications facilities and services
10 is essential to the economic and educational well-being of all persons
11 and entities in both rural and urban areas.

12 (2) Many persons and entities, particularly in rural areas, do not
13 have adequate access to advanced telecommunications facilities and
14 services.

15 (3) Public utility districts and rural port districts are well-
16 positioned to construct and operate advanced telecommunications
17 facilities in a cost-effective manner, particularly in rural areas,
18 because of existing rights-of-way, infrastructure ownership, experience
19 delivering utility services, and economies of scale achieved by fully
20 utilizing utility telecommunications systems.

21 (4) Provision of wholesale telecommunications services by public
22 utility districts and rural port districts will stimulate competition
23 among telecommunications providers, to the benefit of all
24 telecommunications consumers and users.

25 (5) Economic development and educational opportunities,
26 particularly in rural areas, will be increased by public utility
27 districts and rural port districts providing cost-effective wholesale
28 telecommunications services, thus reducing the economic and educational
29 disparity between rural and urban areas.

30 NEW SECTION. **Sec. 2.** A new section is added to chapter 54.16 RCW
31 to read as follows:

32 (1) The definitions in this subsection apply throughout this
33 section and sections 3 and 4 of this act unless the context clearly
34 requires otherwise.

1 (a) "Commission" means the Washington utilities and transportation
2 commission.

3 (b) "Telecommunications" has the same meaning as that contained in
4 RCW 80.04.010.

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

11 (d) "Wholesale telecommunications services" means the provision of
12 telecommunications services or facilities for resale by an entity
13 authorized to provide telecommunications services to the general public
14 or by an enhanced service provider.

15 (2) A public utility district may construct, purchase, acquire,
16 develop, finance, lease, license, handle, provide, add to, alter,
17 improve, repair, operate, and maintain any telecommunications
18 facilities for its internal telecommunications needs and for the
19 provision of wholesale telecommunications services within the
20 district's boundaries, or by contract to other public utility
21 districts.

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

31 (4) A public utility district shall account for any and all
32 revenues and expenditures related to its wholesale telecommunications
33 facilities and services separately from revenues and expenditures
34 related to its internal operations. Any revenues received from the
35 provisions of wholesale telecommunications services must be dedicated
36 to reimbursing the district for costs incurred to build and maintain
37 the telecommunications facilities until such time as any bonds or other
38 financing instruments used to finance the telecommunications facilities

1 are discharged or retired, after which such revenues must continue to
2 support the activities defined in subsection (2) of this section.

3 (5) A public utility district shall not exercise powers of eminent
4 domain granted under this title to acquire telecommunications
5 facilities owned by any other person or entity or contractual rights
6 held by any other person or entity to telecommunications facilities.

7 (6) Except as otherwise specifically provided, a public utility
8 district may exercise any of the powers granted to it under this title
9 and other applicable law in carrying out the powers authorized under
10 this section.

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 54.16 RCW
12 to read as follows:

13 Prior to exercising the authority to provide wholesale
14 telecommunications services, the commission of a public utility
15 district by resolution shall submit to the voters of the district for
16 their approval or rejection the proposal that the public utility
17 district be authorized to provide such services. The legislative
18 authority of the county in which the public utility district is
19 located, upon receipt of the resolution of the public utility district
20 commission, shall submit such a proposal to the voters of the district
21 at the next general election in substantially the following terms:

22 Shall Public Utility District No. of
23 County be authorized to sell and provide wholesale
24 telecommunications services?
25 Yes . . .
26 No . . .

27 Within ten days after such an election, the election board of the
28 county shall canvass the returns, and if at such an election a majority
29 of voters voting on the proposition shall vote in favor of such
30 authority, the district shall have the powers to provide wholesale
31 telecommunications services.

32 NEW SECTION. **Sec. 4.** A new section is added to chapter 54.16 RCW
33 to read as follows:

34 (1) A person or entity that has requested wholesale
35 telecommunications services from a public utility district providing
36 wholesale telecommunications services under this chapter may petition

1 the commission under the procedures set forth in RCW 80.04.110 (1)
2 through (3) if it believes the district's rates, terms, and conditions
3 are unduly or unreasonably discriminatory or preferential. The person
4 or entity shall provide the public utility district notice of its
5 intent to petition the commission and an opportunity to review within
6 thirty days the rates, terms, and conditions as applied to it prior to
7 submitting its petition. In determining whether a district is
8 providing discriminatory or preferential rates, terms, and conditions,
9 the commission may consider such matters as service quality, cost of
10 service, technical feasibility of connection points on the district's
11 facilities, time of response to service requests, system capacity, and
12 other matters reasonably related to the provision of wholesale
13 telecommunications services. If the commission, after notice and
14 hearing, determines that a public utility district's rates, terms, and
15 conditions are unduly or unreasonably discriminatory or preferential,
16 it shall issue a final order finding noncompliance with this section
17 and setting forth the specific areas of apparent noncompliance. An
18 order imposed under this section shall be enforceable in any court of
19 competent jurisdiction.

20 (2) The commission may order a public utility district to pay a
21 share of the costs incurred by the commission in connection with
22 adjudicating or enforcing the provisions of this section.

23 (3) The commission procedures exercised under this section shall be
24 in accordance with the administrative procedure act, chapter 34.05 RCW,
25 and a public utility district may obtain judicial review of the
26 commission's actions under chapter 34.05 RCW. The commission and
27 prevailing party may also seek injunctive relief to compel compliance
28 with an order.

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

34 NEW SECTION. **Sec. 5.** A new section is added to chapter 53.08 RCW
35 to read as follows:

36 (1) The definitions in this subsection apply throughout this
37 section and sections 6 and 7 of this act unless the context clearly
38 requires otherwise.

1 (a) "Commission" means the Washington utilities and transportation
2 commission.

3 (b) "Rural port district" means a port district formed under
4 chapter 53.04 RCW and located in a county with an average population
5 density of fewer than one hundred persons per square mile.

6 (c) "Telecommunications" has the same meaning as that contained in
7 RCW 80.04.010.

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

14 (e) "Wholesale telecommunications services" means the provision of
15 telecommunications services or facilities for resale by an entity
16 authorized to provide telecommunications services to the general public
17 or by an enhanced service provider.

18 (2) A rural port district may construct, purchase, acquire,
19 develop, finance, lease, license, handle, provide, add to, alter,
20 improve, repair, operate, and maintain any telecommunications
21 facilities for its own use and for the provision of wholesale
22 telecommunications services within the district's boundaries.

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

32 (4) A rural port district shall account for any and all revenues
33 and expenditures related to its wholesale telecommunications facilities
34 and services separately from revenues and expenditures related to its
35 internal operations. Any revenues received from the provisions of
36 wholesale telecommunications services must be dedicated to reimbursing
37 the district for costs incurred to build and maintain the
38 telecommunications facilities until such time as any bonds or other
39 financing instruments used to finance the telecommunications facilities

1 are discharged or retired, after which such revenues must continue to
2 support the activities defined in subsection (2) of this section.

3 (5) A rural port district shall not exercise powers of eminent
4 domain granted under this title to acquire telecommunications
5 facilities owned by any other person or entity or contractual rights
6 held by any other person or entity to telecommunications facilities.

7 (6) Except as otherwise provided, a rural port district may
8 exercise any of the powers granted to it under this title and other
9 applicable law in carrying out the powers authorized under this
10 section.

11 NEW SECTION. **Sec. 6.** A new section is added to chapter 53.08 RCW
12 to read as follows:

13 Prior to exercising the authority to provide wholesale
14 telecommunications services, the commission of a rural port district by
15 resolution shall submit to the voters of the district for their
16 approval or rejection the proposal that the rural port district be
17 authorized to provide such services. The legislative authority of the
18 county in which the rural port district is located, upon receipt of the
19 resolution of the rural port district commission, shall submit such a
20 proposal to the voters of the district at the next general election in
21 substantially the following terms:

22 Shall Port District No. of County be
23 authorized to sell and provide wholesale telecommunications
24 services?
25 Yes . . .
26 No . . .

27 Within ten days after such an election, the election board of the
28 county shall canvass the returns, and if at such an election a majority
29 of voters voting on the proposition shall vote in favor of such
30 authority, the district shall have the powers to provide wholesale
31 telecommunications services.

32 NEW SECTION. **Sec. 7.** A new section is added to chapter 53.08 RCW
33 to read as follows:

34 (1) A person or entity that has requested wholesale
35 telecommunications services from a rural port district may petition the
36 commission under the procedures set forth in RCW 80.04.110 (1) through

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

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

22 (3) The commission procedures exercised under this section shall be
23 in accordance with the administrative procedure act, chapter 34.05 RCW,
24 and a district may obtain judicial review of the commission's actions
25 under chapter 34.05 RCW. The commission and prevailing party may also
26 seek injunctive relief to compel compliance with an order.

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

32 NEW SECTION. **Sec. 8.** A new section is added to chapter 80.01 RCW
33 to read as follows:

34 The commission is authorized to perform the duties required by
35 sections 4 and 7 of this act."

36 Correct the title.

EFFECT: Enhanced service providers are included in the definition of "wholesale telecommunications services." The PUDs and rural port districts must keep an account of revenues derived from telecommunications separate from other internal operations revenues. If a public utility district or rural port district wants to provide wholesale telecommunications services, they must receive an affirmative vote of the people to have such authority.

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