

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 6675

Chapter 81, Laws of 2000
(partial veto)

56th Legislature
2000 Regular Session

TELECOMMUNICATIONS--PUBLIC UTILITY DISTRICTS--RURAL PORT DISTRICTS

EFFECTIVE DATE: 6/8/00

Passed by the Senate March 8, 2000
YEAS 46 NAYS 1

BRAD OWEN
President of the Senate

Passed by the House March 2, 2000
YEAS 70 NAYS 28

CLYDE BALLARD
**Speaker of the
House of Representatives**

FRANK CHOPP
**Speaker of the
House of Representatives**

Approved March 24, 2000, with the
exception of sections 4 and 8, which
are vetoed.

GARY F. LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the
Senate of the State of Washington, do
hereby certify that the attached is
SUBSTITUTE SENATE BILL 6675 as passed
by the Senate and the House of
Representatives on the dates hereon
set forth.

TONY M. COOK
Secretary

FILED

March 24, 2000 - 11:15 a.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6675

AS AMENDED BY THE HOUSE

Passed Legislature - 2000 Regular Session

State of Washington 56th Legislature 2000 Regular Session

By Senate Committee on Energy, Technology & Telecommunications
(originally sponsored by Senators Brown, Hochstatter, Hargrove, Costa
and Sheahan; by request of Governor Locke)

Read first time 02/04/2000.

1 AN ACT Relating to the provision of telecommunications services by
2 public utility districts and rural port districts; adding new sections
3 to chapter 54.16 RCW; adding new sections to chapter 53.08 RCW; adding
4 a new section to chapter 80.01 RCW; and creating a new section.

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

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

8 (1) Access to telecommunications facilities and services is
9 essential to the economic well-being of both rural and urban areas.

10 (2) Many persons and entities, particularly in rural areas, do not
11 have adequate access to telecommunications facilities and services.

12 (3) Public utility districts and rural port districts may be well-
13 positioned to construct and operate telecommunications facilities.

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

16 The definitions in this section apply throughout this chapter
17 unless the context clearly requires otherwise.

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

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

5 (3) "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 (4) "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 and internet service providers.

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

17 (1) A public utility district in existence on the effective date of
18 this act may construct, purchase, acquire, develop, finance, lease,
19 license, handle, provide, add to, contract for, interconnect, alter,
20 improve, repair, operate, and maintain any telecommunications
21 facilities within or without the district's limits for the following
22 purposes:

23 (a) For the district's internal telecommunications needs; and

24 (b) For the provision of wholesale telecommunications services
25 within the district and by contract with another public utility
26 district.

27 Nothing in this subsection shall be construed to authorize public
28 utility districts to provide telecommunications services to end users.

29 (2) A public utility district providing wholesale
30 telecommunications services shall ensure that rates, terms, and
31 conditions for such services are not unduly or unreasonably
32 discriminatory or preferential. Rates, terms, and conditions are
33 discriminatory or preferential when a public utility district offering
34 rates, terms, and conditions to an entity for wholesale
35 telecommunications services does not offer substantially similar rates,
36 terms, and conditions to all other entities seeking substantially
37 similar services.

1 (3) When a public utility district establishes a separate utility
2 function for the provision of wholesale telecommunications services, it
3 shall account for any and all revenues and expenditures related to its
4 wholesale telecommunications facilities and services separately from
5 revenues and expenditures related to its internal telecommunications
6 operations. Any revenues received from the provision of wholesale
7 telecommunications services must be dedicated to the utility function
8 that includes the provision of wholesale telecommunications services
9 for costs incurred to build and maintain the telecommunications
10 facilities until such time as any bonds or other financing instruments
11 executed after the effective date of this act and used to finance the
12 telecommunications facilities are discharged or retired.

13 (4) When a public utility district establishes a separate utility
14 function for the provision of wholesale telecommunications services,
15 all telecommunications services rendered by the separate function to
16 the district for the district's internal telecommunications needs shall
17 be charged at its true and full value. A public utility district may
18 not charge its nontelecommunications operations rates that are
19 preferential or discriminatory compared to those it charges entities
20 purchasing wholesale telecommunications services.

21 (5) A public utility district shall not exercise powers of eminent
22 domain to acquire telecommunications facilities or contractual rights
23 held by any other person or entity to telecommunications facilities.

24 (6) Except as otherwise specifically provided, a public utility
25 district may exercise any of the powers granted to it under this title
26 and other applicable laws in carrying out the powers authorized under
27 this section. Nothing in this act limits any existing authority of a
28 public utility district under this title.

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

31 ***(1) Prior to financing or constructing telecommunications***
32 ***facilities for the provision of wholesale telecommunications services,***
33 ***a public utility district shall:***

34 ***(a) Develop a written implementation plan stating the district's***
35 ***intent to provide wholesale telecommunications services which must***
36 ***include:***

1 (i) A general description of how the district intends to engage in
2 the provision of wholesale telecommunications services under section 3
3 of this act; and

4 (ii) A discussion of how the public interest shall be served by the
5 provision of wholesale telecommunications services; and

6 (b) Present the implementation plan to the district's commission,
7 and make the plan available to the general public. The commission
8 shall conduct at least three public hearings throughout the district to
9 take public comment on the implementation plan. At least two weeks
10 prior to each public hearing, a notice that includes a general
11 description of the implementation plan and the date and place of
12 hearing shall be published in a newspaper of general circulation in the
13 county in which the district is located.

14 (2) After the public hearings, the commission may adopt, alter, or
15 reject the implementation plan by resolution. Within ninety days after
16 the adoption of such resolution, a petition signed by at least ten
17 percent of the registered voters in the district may be submitted to
18 the commission requiring the subject of the resolution be put to a vote
19 of the people in the district.

20 (3) If a petition meets the requirements of subsection (2) of this
21 section, the commission shall submit the resolution to the legislative
22 authority of the county in which the district is located. Upon receipt
23 of the resolution, the legislative authority shall submit a proposal to
24 the voters of the district at the next general election regarding the
25 question of providing wholesale telecommunications services in the
26 district in substantially the following terms:

27 Shall Public Utility District No. of
28 County be authorized to provide wholesale telecommunications
29 services within the boundaries of the district?
30 Yes . . .
31 No . . .

32 Within ten days after such an election, the election board of the
33 county shall canvass the returns, and if at such an election a majority
34 of voters voting on the proposition shall vote in favor of such
35 authority, the district shall have the authority to provide wholesale
36 telecommunications services.

1 (4) A public utility district providing wholesale
2 telecommunications services shall submit a report to the appropriate
3 committees of the legislature by December 1st of the second year of
4 each biennium. The report must include, at a minimum, a description of
5 the following activities:

6 (a) All activities relating to the construction, acquisition,
7 operation, marketing, and leasing of telecommunications facilities and
8 wholesale telecommunications services; and

9 (b) The number of new locations connected to the telecommunications
10 facilities resulting from the provision of wholesale telecommunications
11 services to enhanced service providers and entities authorized to
12 provide telecommunications services to the general public.

13 *Sec. 4 was vetoed. See message at end of chapter.

14 NEW SECTION. **Sec. 5.** A new section is added to chapter 54.16 RCW
15 to read as follows:

16 (1) A person or entity that has requested wholesale
17 telecommunications services from a public utility district providing
18 wholesale telecommunications services under this chapter may petition
19 the commission under the procedures set forth in RCW 80.04.110 (1)
20 through (3) if it believes the district's rates, terms, and conditions
21 are unduly or unreasonably discriminatory or preferential. The person
22 or entity shall provide the public utility district notice of its
23 intent to petition the commission and an opportunity to review within
24 thirty days the rates, terms, and conditions as applied to it prior to
25 submitting its petition. In determining whether a district is
26 providing discriminatory or preferential rates, terms, and conditions,
27 the commission may consider such matters as service quality, cost of
28 service, technical feasibility of connection points on the district's
29 facilities, time of response to service requests, system capacity, and
30 other matters reasonably related to the provision of wholesale
31 telecommunications services. If the commission, after notice and
32 hearing, determines that a public utility district's rates, terms, and
33 conditions are unduly or unreasonably discriminatory or preferential,
34 it shall issue a final order finding noncompliance with this section
35 and setting forth the specific areas of apparent noncompliance. An
36 order imposed under this section shall be enforceable in any court of
37 competent jurisdiction.

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

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

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

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

14 The definitions in this section apply throughout this chapter
15 unless the context clearly requires otherwise.

16 (1) "Commission" means the Washington utilities and transportation
17 commission.

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

21 (3) "Telecommunications" has the same meaning as contained in RCW
22 80.04.010.

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

29 (5) "Wholesale telecommunications services" means the provision of
30 telecommunications services or facilities for resale by an entity
31 authorized to provide telecommunications services to the general public
32 and internet service providers.

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

35 (1) A rural port district in existence on the effective date of
36 this act may construct, purchase, acquire, develop, finance, lease,
37 license, handle, provide, add to, contract for, interconnect, alter,

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

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

5 (b) For the provision of wholesale telecommunications services
6 within the district's limits. Nothing in this subsection shall be
7 construed to authorize rural port districts to provide
8 telecommunications services to end users.

9 (2) A rural 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 offering such
14 rates, terms, and conditions to an entity for wholesale
15 telecommunications services does not offer substantially similar rates,
16 terms, and conditions to all other entities seeking substantially
17 similar services.

18 (3) When a rural port district establishes a separate utility
19 function for the provision of wholesale telecommunications services, it
20 shall account for any and all revenues and expenditures related to its
21 wholesale telecommunications facilities and services separately from
22 revenues and expenditures related to its internal telecommunications
23 operations. Any revenues received from the provision of wholesale
24 telecommunications services must be dedicated to the utility function
25 that includes the provision of wholesale telecommunications services
26 for costs incurred to build and maintain the telecommunications
27 facilities until such time as any bonds or other financing instruments
28 executed after the effective date of this act and used to finance the
29 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 shall
34 be charged at its true and full value. A rural port district may not
35 charge its nontelecommunications operations rates that are preferential
36 or discriminatory compared to those it charges entities purchasing
37 wholesale telecommunications services.

1 (5) A rural port district shall not exercise powers of eminent
2 domain to acquire telecommunications facilities or contractual rights
3 held by any other person or entity to telecommunications facilities.

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

9 ****NEW SECTION.** Sec. 8. A new section is added to chapter 53.08 RCW
10 to read as follows:*

11 *(1) Prior to financing or constructing telecommunications
12 facilities for the provision of wholesale telecommunications services,
13 a rural port district shall:*

14 *(a) Develop a written implementation plan stating the district's
15 intent to provide wholesale telecommunications services which must
16 include:*

17 *(i) A general description of how the district intends to engage in
18 the provision of wholesale telecommunications services under section 7
19 of this act; and*

20 *(ii) A discussion of how the public interest shall be served by the
21 provision of wholesale telecommunications services; and*

22 *(b) Present the implementation plan to the district's commission,
23 and make the plan available to the general public. The commission
24 shall conduct at least three public hearings throughout the district to
25 take public comment on the implementation plan. At least two weeks
26 prior to each public hearing, a notice that includes a general
27 description of the implementation plan and the date and place of
28 hearing shall be published in a newspaper of general circulation in the
29 county in which the district is located.*

30 *(2) After the public hearings, the commission may adopt, alter, or
31 reject the implementation plan by resolution. Within ninety days after
32 adoption of such resolution, a petition signed by at least ten percent
33 of the registered voters in the district may be submitted to the
34 commission requiring the subject of the resolution be put to a vote of
35 the people in the district.*

36 *(3) If a petition meets the requirements of subsection (2) of this
37 section, the commission shall submit the resolution to the legislative
38 authority of the county in which the district is located. Upon receipt*

1 of the resolution, the legislative authority shall submit a proposal to
2 the voters of the district at the next general election regarding the
3 question of providing wholesale telecommunications services in the
4 district in substantially the following terms:

5 Shall Port District No. of County be
6 authorized to provide wholesale telecommunications services
7 within the boundaries of the district?

8 Yes . . .

9 No . . .

10 Within ten days after such an election, the election board of the
11 county shall canvass the returns, and if at such an election a majority
12 of voters voting on the proposition shall vote in favor of such
13 authority, the district shall have the authority to provide wholesale
14 telecommunications services.

15 (4) A rural port district providing wholesale telecommunications
16 services shall submit a report to the appropriate committees of the
17 legislature by December 1st of the second year of each biennium. The
18 report must include, at a minimum, a description of the following
19 activities:

20 (a) All activities relating to the construction, acquisition,
21 operation, marketing, and leasing of telecommunications facilities and
22 wholesale telecommunications services; and

23 (b) The number of new locations connected to the telecommunications
24 facilities resulting from the provision of wholesale telecommunications
25 services to enhanced service providers and entities authorized to
26 provide telecommunications services to the general public.

27 *Sec. 8 was vetoed. See message at end of chapter.

28 NEW SECTION. **Sec. 9.** A new section is added to chapter 53.08 RCW
29 to read as follows:

30 (1) A person or entity that has requested wholesale
31 telecommunications services from a rural port district may petition the
32 commission under the procedures set forth in RCW 80.04.110 (1) through
33 (3) if it believes the district's rates, terms, and conditions are
34 unduly or unreasonably discriminatory or preferential. The person or
35 entity shall provide the district notice of its intent to petition the
36 commission and an opportunity to review within thirty days the rates,

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

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

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

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

26 NEW SECTION. Sec. 10. A new section is added to chapter 80.01 RCW
27 to read as follows:

28 The commission is authorized to perform the duties required by
29 sections 5 and 9 of this act.

Passed the Senate March 8, 2000.

Passed the House March 2, 2000.

Approved by the Governor March 24, 2000, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 24, 2000.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 4 and
3 8, Substitute Senate Bill No. 6675 entitled:

4 "AN ACT Relating to the provision of telecommunications services by
5 public utility districts and rural port districts;"

1 This bill gives public utility districts and rural port districts
2 express authority to be wholesalers of telecommunications services
3 within their districts. I support this legislation as a key step in
4 promoting advanced telecommunications facilities and services in
5 underserved areas of Washington.

6 Sections 4 and 8 of the bill would impose overly restrictive
7 requirements on public utility and rural port districts before
8 financing or constructing telecommunications facilities, and would not
9 significantly improve accountability. I strongly support the goal of
10 ensuring accountability to the public. However, I believe that some of
11 the requirements of sections 4 and 8 could impair districts' current
12 activities and significantly complicate or delay the facilities and
13 services that our rural areas so urgently need.

14 I fully expect that public utility and port districts will respond
15 appropriately to requests for information from the Legislature
16 regardless of any statutory requirement to do so.

17 For these reasons, I have vetoed sections 4 and 8 of Substitute
18 Senate Bill No. 6675.

19 With the exception of sections 4 and 8, Substitute Senate Bill No.
20 6675 is approved."