

SENATE BILL REPORT

SB 5899

As Reported By Senate Committee On:
Technology & Communications, March 3, 2003

Title: An act relating to the provision of wholesale telecommunications services by public utility districts.

Brief Description: Regulating the provision of wholesale telecommunications services by public utility districts.

Sponsors: Senators Finkbeiner, Reardon, Esser, Hewitt and Schmidt.

Brief History:

Committee Activity: Technology & Communications: 2/27/03, 3/3/03 [DPS, DNP].

SENATE COMMITTEE ON TECHNOLOGY & COMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 5899 be substituted therefor, and the substitute bill do pass.

Signed by Senators Esser, Chair; Finkbeiner, Vice Chair; Reardon, Schmidt and Stevens.

Minority Report: Do not pass.

Signed by Senators Eide and Poulsen.

Staff: William Bridges (786-7424)

Background: The powers of public utility districts (PUDs) and port districts are governed by statutes and a long history of court decisions. PUDs are expressly authorized, among other things, to provide electricity, water, and sewer service. They have additional incidental and implied authorities that are necessary for accomplishing their primary purposes.

A law passed in 2000 authorizes PUDs and rural port districts, which were in existence in 2000, to acquire and operate telecommunications facilities for their own internal telecommunications needs and to provide wholesale telecommunications services within their district limits. PUDs are also allowed to provide wholesale services to other PUDs by contract.

The subsections authorizing districts to provide wholesale telecommunications services include this provision: "Nothing in this subsection shall be construed to authorize public utility districts [or rural port districts] to provide telecommunications services to end users." The term "end user" is not defined in statute. In 2001, an Attorney General Opinion concluded that "end user" means "retail customer," and that a PUD or rural port district may not use an interlocal agreement to sell or lease telecommunications facilities or services to other public agencies.

In addition to authorizing wholesale telecommunications services, the 2000 law requires PUDs and rural port districts to ensure their rates, terms, and conditions on wholesale services are not unduly or unreasonably discriminatory or preferential. In addition, districts must keep separate accountings of revenues and expenditures for their wholesale telecommunications activities when they establish a separate utility function to provide wholesale telecommunications services. Revenues from the wholesale activities must be used to pay off the costs incurred in building and maintaining the telecommunications facilities.

Districts must charge themselves the true and full value of telecommunications services provided by their separate telecommunications functions to the district. PUDs and rural port districts may not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights to such facilities. The 2000 law also establishes a process for reviewing a district's wholesale telecommunications rates, terms, and conditions by the Washington Utilities and Transportation Commission.

A savings clause was included in the 2000 law clarifying that PUDs and rural port districts may exercise any of the powers granted to them under their current enabling statutes and other applicable law, and that nothing in the 2000 law limits any existing legal authority of the districts.

The Governor vetoed two provisions in the 2000 law: (1) a process for public review of a PUD or rural port district's plans for wholesale telecommunications projects; and (2) a requirement that PUDs and rural port districts providing wholesale telecommunications services report biennially to the Legislature on their activities.

Summary of Substitute Bill: A public utility district may not provide telecommunications services to end users, nor market the services of other authorized entities except for information concerning the district's network capabilities and a listing of private providers. A public utility district may not provide wholesale telecommunications services to a public entity unless the entity is authorized by statute to provide telecommunications services to end users.

In addition to revenues and expenditures, a public utility district providing wholesale telecommunications services must separately account for the following: property, the allocation of costs to its internal telecommunications needs, and the amount of funds required from other utility functions to support the provision of wholesale telecommunications services.

A public utility district providing wholesale telecommunications services must provide, at a just and reasonable rate, nondiscriminatory access for private providers of telecommunications services to PUD-owned permanent distribution facilities such as poles and conduits. Access may be denied, however, if: (1) the PUD facilities have insufficient capacity and additional capacity cannot reasonably be added to the facilities; or (2) access would violate standard industry safety and operational requirements. A public utility district may not require the removal or prohibit the replacement of privately-owned telecommunications facilities from PUD facilities, except as provided by contract.

When the State Auditor makes a finding that a public utility district has violated this act, the district must submit a report to the appropriate committees of the Legislature within 30 days

of the issue date of the finding. The report must describe the activities relating to the implementation of the district's wholesale telecommunications services.

An intent section declares that the purpose of this act is to adopt in statute the conclusions of Attorney General Opinion, Number 3 (2001). "End user" is defined to mean a retail customer, whether a person or public or private entity, that purchases telecommunications services. The definition of "telecommunications" is clarified to include internet services.

Substitute Bill Compared to Original Bill: An intent section and a definition of "end user" are added. The definition of "telecommunications" is clarified. The subsection concerning the provision and marketing of telecommunications services to end users is modified. The requirement that a public utility district providing wholesale telecommunications services establish a separate utility function is removed. The subsection requiring access to public utility district facilities is modified. The reporting requirements are modified.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The purpose of the 2000 law was to encourage the deployment of broadband services to rural areas by allowing PUDs to lay fiber and then leasing the dark, excess capacity to private companies. This private/public partnership has not happened. Some PUDs are bypassing private Internet service providers and marketing directly to end users. PUDs are investing large amounts of money in facilities that may become technologically obsolete. The anticipated revenues from these new facilities may not justify the expenditures. Rate payers may not understand this because the financial accounting requirements in the current law are inadequate.

Testimony Against: Fast, reliable, and affordable broadband access is a necessary economic development tool for rural areas. It can also be a tool to alleviate traffic congestion. The bill's new requirements and prohibitions will inhibit these economic development efforts. Since 2000, about half of all PUDs have implemented telecommunications projects under the watchful eyes of rate payers, elected commissioners, and the State Auditor's office. Not-for-profit PUDs provide rural citizens with low-cost, reliable, and locally-controlled electricity and water. Fast and reliable Internet connections are the new electricity and water. The Internet is also like the public highway system that should be open to all.

Testified: John Agnew, Titan Ultra Secure Data Center, Seattle (con); Scott Berglin, Berglin Corp., Douglas County (con); Mike Bookey, citizen, Issaquah (con); Elaine Davis, Fair Competition Alliance (pro); Rosemary Davis, Verizon (pro); Gary Gardner, Wash. Assn. of ISPs (pro); Patrick Haley, Port of Douglas County (con); Dean Mary Hunt, Commissioner, Douglas County (con); Longanecker, Mid State Bank, Waterville (con); Ron Main, Broadband Communications Assn. (pro); Toni McKinley, Wash. State Grange (con); Dan Peterson, President, Wash. PUD Assn. (con); Jim Sanders, Wash. PUD Assn. (con); Scott Sipe, Techline, Grays Harbor (con); Ed Stern, City of Poulsbo, Kitsap County, Kitsap EDC (con); Keith Soderstrom, citizen, Waterville (con); Barb Young, SPRINT (pro).