**5679-S.E AMH TED H2703.1 - NOT FOR FLOOR USE**

**ESSB 5679** - H COMM AMD

By Committee on Technology & Economic Development

**NOT CONSIDERED 01/05/2018**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  The legislature finds that:

(1) Adequate access to telecommunications facilities and services, comparable to those offered in urban areas, is essential to the economic well-being of communities in rural Washington state.

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

(3) Specifying that port districts in these areas have authority to enter into contracts to attract private telecommunications companies may help to create a sufficient market for the provision of adequate retail telecommunications services.

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

(1) A rural port district in existence on June 8, 2000, ((~~may~~)) and port districts located in counties with a population less than seven hundred thousand are eligible to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits utilizing unlit optical fiber for the following purposes:

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

(b) For the provision of wholesale telecommunications services within the district's limits. Wholesale telecommunications services may be provided beyond the district's limits for back haul services if the district is unable to procure similar services from a telecommunications company. Nothing in this subsection shall be construed to authorize ((~~rural~~)) eligible port districts to provide telecommunications services outside the state or to end users.

(2) ((~~A rural~~)) Except as provided in subsection (7) of this section, port districts providing wholesale telecommunications services under this section shall ensure that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a ((~~rural~~)) port district offering such rates, terms, and conditions to an entity for wholesale telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) When a ((~~rural~~)) port district establishes a separate utility function for the provision of wholesale telecommunications services under this section, it shall account for any and all revenues and expenditures related to its wholesale telecommunications facilities and services separately from revenues and expenditures related to its internal telecommunications operations. Any revenues received from the provision of wholesale telecommunications services must be dedicated to the utility function that includes the provision of wholesale telecommunications services for costs incurred to build and maintain the telecommunications facilities until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance the telecommunications facilities are discharged or retired.

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

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

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

(7) A port district under this section may select a telecommunications company to operate all or a portion of the port district's telecommunications facilities that serve an underserved area as defined in subsection (10) of this section. The company may be the exclusive provider of telecommunications services to end users in an underserved area under terms specified in the contract with the port district. For purposes of this section, "telecommunications company" means any for-profit entity owned by investors that sells telecommunications services to end users. Nothing in this subsection (7) is intended to limit or otherwise restrict any other authority provided by law.

(8) Before exercising the authority provided in subsection (7) of this section, a port district must file a business case plan with the utilities and transportation commission. The utilities and transportation commission must retain a third party at cost to review the business case plan. 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.

(9) The business case plan required under subsection (8) of this section must include an audited statement of the market value of the additional provision of wholesale services provided under the authority specified in subsection (7) of this section, and a determination, based on an assessment using appropriate methodology, of the option to sell or surplus the additional provision of wholesale services. A port district must reassess any determination of the option to sell or surplus as required by this subsection at a minimum interval of every ten years for the duration of the contract.

(10) As used in this subsection, "underserved area" means an area that, at the time the contract with the exclusive provider is entered into, the port district has reasonable grounds to believe has no private telecommunications company offering fixed broadband internet access to a majority of residential customers at a download speed of fifteen megabytes per second and an upload speed of three megabytes per second. The existence and boundaries of the underserved area must be determined following a public hearing. The determination of the existing level of service must be supported by an independent third-party study of broadband service commissioned within the twelve-month period immediately preceding a vote to designate the underserved area.

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

(1) A person or entity that has requested wholesale telecommunications services from a rural port district or port district as identified in RCW 53.08.370(1) may petition the commission under the procedures set forth in RCW 80.04.110 (1) through (3) if it believes the district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential, except as provided in RCW 53.08.370. The person or entity shall provide the district notice of its intent to petition the commission and an opportunity to review within thirty days the rates, terms, and conditions as applied to it prior to submitting its petition. In determining whether a district is providing discriminatory or preferential rates, terms, and conditions, the commission may consider such matters as service quality, technical feasibility of connection points on the district's telecommunications facilities, time of response to service requests, system capacity, and other matters reasonably related to the provision of wholesale telecommunications services. If the commission, after notice and hearing, determines that a rural port district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential, it shall issue a final order finding noncompliance with this section and setting forth the specific areas of apparent noncompliance. An order imposed under this section shall be enforceable in any court of competent jurisdiction.

(2) The commission may order a rural port district or port district as identified in RCW 53.08.370(1) to pay a share of the costs incurred by the commission in adjudicating or enforcing this section.

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

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

Correct the title.

EFFECT: Limits the authority to provide wholesale telecommunications services to within the port district unless the port district is unable to procure a telecommunications company to provide back haul services. Limits the authority to provide wholesale telecommunications services to within the state. Requires a port district to submit a business case plan with the Utilities and Transportation Commission that includes an audited statement of market value and an assessed determination of the option to sell or surplus. A determination of the option to sell or surplus must be reassessed at a minimum interval of every ten years for the duration of the contract.

Limits a port district's authority to select an exclusive provider of telecommunications services to end users in an underserved area. Defines "underserved area." Requires that the existence and boundaries of an underserved area be determined following a public hearing and supported by a third-party study commissioned within the previous twelve months.