**2664-S AMS EENT S5425.1 - NOT FOR FLOOR USE**

**SHB 2664** - S COMM AMD

By Committee on Energy, Environment & Technology

**ADOPTED AS AMENDED 02/27/2018**

Strike everything after the enacting clause and insert the following:

"**Sec.**  RCW 53.08.005 and 2000 c 81 s 6 are each amended to read as follows:

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

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

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

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

((~~(4)~~)) (3) "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.

((~~(5)~~)) (4) "Wholesale telecommunications services" means the provision of telecommunications services or facilities for resale by an entity authorized to provide telecommunications services to the general public and internet service providers. Wholesale telecommunications services includes the provision of unlit or dark optical fiber for resale, but not the provision of lit optical fiber.

**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 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 for the following purposes:

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

(b) For the provision of wholesale telecommunications services within or without the district's limits. Nothing in this subsection shall be construed to authorize ((~~rural~~)) port districts to provide telecommunications services to end users.

(2) ((~~A rural~~)) Except as provided in subsection (7) of this section, port district 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, 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, 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 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. For the 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) A port district that has not exercised the authorities provided in this section prior to the effective date of this act must develop a business case plan before exercising the authorities provided in this section. 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.

(9) A port district with telecommunications facilities for use in the provision of wholesale telecommunications in accordance with subsection (1)(b) of this section may be subject to local leasehold excise taxes under RCW 82.29A.040.

**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 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. 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 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)."

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On page 1, line 4 of the title, after "infrastructure;" strike the remainder of the title and insert "and amending RCW 53.08.005, 53.08.370, and 53.08.380."

EFFECT: Authorizes port districts to: Provide wholesale telecommunications services outside of their district; and to select a telecommunications company to operate all or a portion of the port district's telecommunications facilities.