

ESSB 5679 - H COMM AMD

By Committee on Technology & Economic Development

NOT CONSIDERED 01/05/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that:

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

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

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

13 **Sec. 2.** RCW 53.08.370 and 2000 c 81 s 7 are each amended to read
14 as follows:

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

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

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

30 (2) (~~A rural~~) Except as provided in subsection (7) of this
31 section, port districts providing wholesale telecommunications

1 services under this section shall ensure that rates, terms, and
2 conditions for such services are not unduly or unreasonably
3 discriminatory or preferential. Rates, terms, and conditions are
4 discriminatory or preferential when a ((~~rural~~)) port district
5 offering such rates, terms, and conditions to an entity for wholesale
6 telecommunications services does not offer substantially similar
7 rates, terms, and conditions to all other entities seeking
8 substantially similar services.

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

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

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

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

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

12 (8) Before exercising the authority provided in subsection (7) of
13 this section, a port district must file a business case plan with the
14 utilities and transportation commission. The utilities and
15 transportation commission must retain a third party at cost to review
16 the business case plan. Any recommendations or adjustments to the
17 business case plan made during third-party review must be received
18 and either rejected or accepted by the port commission in an open
19 meeting.

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

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

1 **Sec. 3.** RCW 53.08.380 and 2000 c 81 s 9 are each amended to read
2 as follows:

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

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

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

33 (4) Nothing in this section shall be construed to affect the
34 commission's authority and jurisdiction with respect to actions,
35 proceedings, or orders permitted or contemplated for a state
36 commission under the federal telecommunications act of 1996, P.L.
37 104-104 (110 Stat. 56)."

38 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.

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