

SHB 2664 - S COMM AMD

By Committee on Energy, Environment & Technology

ADOPTED AS AMENDED 02/27/2018

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

3 "Sec. 1. RCW 53.08.005 and 2000 c 81 s 6 are each amended to
4 read as follows:

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

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

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

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

14 ~~((4))~~ (3) "Telecommunications facilities" means lines,
15 conduits, ducts, poles, wires, cables, crossarms, receivers,
16 transmitters, instruments, machines, appliances, instrumentalities
17 and all devices, real estate, easements, apparatus, property, and
18 routes used, operated, owned, or controlled by any entity to
19 facilitate the provision of telecommunications services.

20 ~~((5))~~ (4) "Wholesale telecommunications services" means the
21 provision of telecommunications services or facilities for resale by
22 an entity authorized to provide telecommunications services to the
23 general public and internet service providers. Wholesale
24 telecommunications services includes the provision of unlit or dark
25 optical fiber for resale, but not the provision of lit optical fiber.

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

28 (1) A (~~rural~~) port district in existence on June 8, 2000, may
29 construct, purchase, acquire, develop, finance, lease, license,
30 handle, provide, add to, contract for, interconnect, alter, improve,

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

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

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

8 (2) (~~A rural~~) Except as provided in subsection (7) of this
9 section, 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
14 offering such rates, terms, and conditions to an entity for wholesale
15 telecommunications services does not offer substantially similar
16 rates, terms, and conditions to all other entities seeking
17 substantially similar services.

18 (3) When a (~~rural~~) port district establishes a separate utility
19 function for the provision of wholesale telecommunications services,
20 it shall account for any and all revenues and expenditures related to
21 its wholesale telecommunications facilities and services separately
22 from revenues and expenditures related to its internal
23 telecommunications operations. Any revenues received from the
24 provision of wholesale telecommunications services must be dedicated
25 to the utility function that includes the provision of wholesale
26 telecommunications services for costs incurred to build and maintain
27 the telecommunications facilities until such time as any bonds or
28 other financing instruments executed after June 8, 2000, and used to
29 finance the 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
34 shall be charged at its true and full value. A (~~rural~~) port
35 district may not charge its nontelecommunications operations rates
36 that are preferential or discriminatory compared to those it charges
37 entities purchasing wholesale telecommunications services.

38 (5) A (~~rural~~) port district shall not exercise powers of
39 eminent domain to acquire telecommunications facilities or

1 contractual rights held by any other person or entity to
2 telecommunications facilities.

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

8 (7) A port district under this section may select a
9 telecommunications company to operate all or a portion of the port
10 district's telecommunications facilities. For the purposes of this
11 section, "telecommunications company" means any for-profit entity
12 owned by investors that sells telecommunications services to end
13 users. Nothing in this subsection (7) is intended to limit or
14 otherwise restrict any other authority provided by law.

15 (8) A port district that has not exercised the authorities
16 provided in this section prior to the effective date of this act must
17 develop a business case plan before exercising the authorities
18 provided in this section. The port district must procure an
19 independent qualified consultant to review the business case plan,
20 including the use of public funds in the provision of wholesale
21 telecommunications services. Any recommendations or adjustments to
22 the business case plan made during third-party review must be
23 received and either rejected or accepted by the port commission in an
24 open meeting.

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

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

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

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

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

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

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

SHB 2664 - S COMM AMD

By Committee on Energy, Environment & Technology

ADOPTED AS AMENDED 02/27/2018

24 On page 1, line 4 of the title, after "infrastructure;" strike
25 the remainder of the title and insert "and amending RCW 53.08.005,
26 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.

--- END ---