

HOUSE BILL REPORT

HB 2880

As Reported By House Committee On:
Technology, Telecommunications & Energy

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

Brief Description: Allowing public utility districts and rural port districts to provide telecommunications services.

Sponsors: Representatives Cooper, Poulsen, Crouse, McDonald, DeBolt, Wolfe, Kastama, Bush, G. Chandler, Mielke, Schindler, Cox, Ruderman, Miloscia, Rockefeller, Eickmeyer, Doumit, Ogden, Mulliken, Linville, Hatfield, Constantine, Gombosky, Lovick, Stensen, Edwards, O'Brien, Keiser, Conway, D. Sommers, McIntire, Haigh, Santos, Wood and Kagi; by request of Governor Locke.

Brief History:

Committee Activity:

Technology, Telecommunications & Energy: 2/1/00, 2/4/00 [DPS].

Brief Summary of Substitute Bill

- Public utility districts (PUDs) and rural port districts are each authorized to provide wholesale telecommunications services within its district limits. Public utility districts are also authorized to contract with other public utility districts to provide such services.
- PUDs and rural port districts are specifically not authorized to sell or provide retail telecommunications services.
- Districts are required to provide similar rates, terms, and conditions for entities seeking similar services.
- A petition process is created through the Utilities and Transportation Commission if an entity feels it has received unfair treatment.
- Districts are prohibited from exercising eminent domain to acquire telecommunications facilities.
- Districts are required to keep separate accountings of revenues and expenditures from wholesale telecommunications activities, and that revenue from such services must be used for costs incurred in building and maintaining such activities.

HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Crouse, Republican Co-Chair; Poulsen, Democratic Co-Chair; DeBolt, Republican Vice Chair; Ruderman, Democratic Vice Chair; Bush; Cooper; Delvin; Kastama; McDonald; Reardon and Wolfe.

Minority Report: Do not pass. Signed by 2 members: Representatives Morris and Thomas.

Staff: Scott MacColl (786-7106)

Background:

Public Utility Districts (PUDs) have the authority to construct, maintain, operate and develop all lands, plants and plant facilities, and systems for generating electric

energy by water power, steam, or other methods. PUDs are authorized to construct and operate the entire system for distributing water for domestic use and irrigation. PUDs also have authority to raise revenue by the levy of an annual tax, and to exercise the right of eminent domain.

Port districts are authorized to construct, maintain, and develop harbor improvements, rail or motor vehicle transfer and terminal facilities, water transfer and terminal facilities, and other commercial transportation and industrial improvements. Port districts also have the power to levy and collect charges, and to exercise the right of eminent domain.

The Washington Utilities and Transportation Commission (WUTC) is authorized to regulate in the public interest the rates, services, facilities, and practices of all persons engaging in transportation. The WUTC also regulates the rates, services, facilities, and practices of people in the business of supplying any utility service or commodity including electric companies, gas companies, irrigation companies, telecommunication companies, and water companies.

Summary of Substitute Bill:

A PUD or rural port district that is in existence on the effective date of this act is authorized to provide wholesale telecommunication services within its district limits. PUDs are also authorized to contract wholesale telecommunication services to other PUDs. PUDs and rural port districts are specifically not authorized to sell or provide retail telecommunications services. The districts are required to ensure that rates, terms, and conditions for services are not unduly or unreasonably discriminatory or preferential.

Districts are required to keep separate accountings of revenues and expenditures from wholesale telecommunications activities, and that revenue from such services must be used for costs incurred in building and maintaining such activities.

Discriminatory or preferential is described to be when a PUD or rural port district does not offer similar rates, terms and conditions to all entities seeking substantially similar services. A person or entity receiving wholesale telecommunication services from a PUD or rural port district may petition the Washington Utilities and Transportation Commission (WUTC) if it believes the districts' rates, terms, and conditions are unduly or unreasonably discriminatory or preferential. The WUTC powers exercised in this process must follow the Administrative Procedures Act (APA). The person or entity must provide the PUD or rural port district notice of intent to petition the WUTC, and the opportunity for the district to review within 30 days the rates, fees, and conditions in place prior to the petition.

The WUTC may consider things like service quality, cost of service, technical feasibility of connection points on the districts' facilities, time of response to service requests, system capacity, and other matters related to telecommunication services. After the hearing, if the WUTC determines that a PUD or rural port district is providing unduly or unreasonably discriminatory or preferential services, the WUTC shall issue a final order finding noncompliance. The finding of noncompliance is enforceable in any court of competent jurisdiction.

The WUTC may order a PUD or rural port district to pay a share of the costs incurred by the WUTC in connection with the petition. A PUD or rural port district may obtain judicial review of the WUTC's actions after a finding against the district. The WUTC and prevailing party may also seek injunctive relief to compel compliance with an order. Nothing about this process is construed to affect the WUTC's authority and jurisdiction with respect to actions, proceedings, or orders permitted or contemplated under the 1996 Federal Telecommunications Act.

PUDs and rural port districts are specifically prohibited from exercising the powers of eminent domain to acquire telecommunication facilities or contractual rights to telecommunication facilities owned or held by another person or entity.

The following definitions refer to this act:

"Telecommunications" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. Information in this definition means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or by any other symbols.

"Telecommunications facilities" means all equipment and devices, real estate, easements, property, and routes owned, operated or controlled by any entity to facilitate the provision of telecommunications services.

"Wholesale telecommunications services" means the provisions of telecommunication services or facilities for resale by an entity authorized to provide telecommunication services to the general public.

"Rural Port District" means a port district located in a county with an average population density of fewer than one hundred persons per square mile.

Substitute Bill Compared to Original Bill: PUDs and rural port districts are specifically not authorized to sell or provide retail telecommunications services.

Districts are required to keep separate accountings of revenues and expenditures from wholesale telecommunications activities, and also requires that revenue from such services must be used for costs incurred in building and maintaining such activities.

Appropriation: None.

Fiscal Note: Requested on January 26, 2000.

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

Testimony For: This bill allows public utility districts to use dark fibre to light the last mile. This is one more opportunity to expand services to rural areas, and provide basic telephone and Internet access to the whole state.

This is part of the Governor's telecommunication package to provide telecommunication services to rural areas. Public Utility Districts and rural port districts are very capable of providing this service. There are communities all over this state without a dial tone. Port districts also provide much more than economic development. With the definition of wholesale in the bill, the district would have to partner with a private sector company. This promotes competition at the retail level, in that all companies have the same access. The Governor wants a package that doesn't foreclose competition.

The state and federal governments encourage competition for telecommunication. The bill limits condemnation for telecommunication facilities, requires open access, and sets up a structure with the Utilities and Transportation Commission so that those terms can be enforced. It doesn't allow the districts to set rates or regulate services, and the petition process has to give the district 30 days to respond to petitions. This is specifically designed to serve underserved or totally unserved areas.

PUDs are electric and water utilities, and part of the function is telecommunications for their own uses. Electricity upgrades and deregulation require the districts to update their systems, and there is no reason not to add extra capacity to give customers competition. Snohomish PUD has no intention of competing with incumbent providers. Chambers of commerce, ports, economic development corporations, and granges in rural areas are all for the bill. Each PUD will look at their own internal needs first, and then to their customers. Regarding the lawsuit, customers were in need of services, and the Attorney General's Opinion said that PUDs may lease access as long as it is needed for future use. They are more interested in giving access to small businesses.

Grant County strings cable, puts up poles, and constructs ariel stringing lines. Grant County can't get a cable modem, wireless internet, or DSL. As a backbone gets installed, provider are showing up. There is a lot of growth in Grant County, and that puts a lot of stress on the current system. In order to connect with all their facilities over the county, they began a backbone fiber system that will have excess

capacity. The PUD is in process of pricing out to users in order to pay for the backbone. It may take up to 15 years to put in the whole backbone and \$100 million. They don't want to provide cable, phone, etc.

The PUD has objectives of:

- Aggregate bills for fibre and cable (electric) to put it all in a single bill;
- networking schools together that wish to be part of the system;
- providing service outside county lines to access pockets of isolated areas; and
- keeping the complaint process within the district, through the local utility or port commission that the people elected.

The number one local economic development issue is high speed access, or the lack of adequate bandwidth. Public and private partnerships will deploy advanced telecommunications much quicker with the passage of this bill. Port officials say that advanced telecommunications is necessary to attract business.

There are children in classrooms that have no interconnection to other classrooms for high speed data. Also, new businesses won't locate without high speed access, which currently doesn't exist for some areas. It is the Microsoft vision to have high speed access to technology around the world. This bill will also help expand the K-20 network, and connect community colleges to the four-year colleges and universities. In light of I-695, local governments need to be cost-effective.

As agriculture prices are declining, rural areas are trying to figure out how to provide new jobs.

There is also some concern about access to holes and ducts owned by PUDs for other providers.

Testimony Against: This bill is not limited to the rural areas of utility districts. This allows government to compete directly in places like Everett, using tax free bonds, cross subsidies, and undercutting prices due to the better rates government entities receive.

The GTE filed suit against Douglas PUD for clarification of an Attorney General's Opinion relating to the authority to provide internet service or telecommunications. Douglas asked GTE if they would like to lease bandwidth, and GTE said "no." The court should decide this issue prior to any new laws being passed.

There is opposition to any bills that permit PUDs and port districts to combine public and private enterprise. Monopolies are not in the best interest of the public, and the public entities shouldn't be able to subsidize themselves to undermine private ones.

The section about UTC disputes will cost the taxpayers money. The authority to provide this service should require a super majority vote of the people.

When PUDs takes risks like the former WPPS project, the whole thing needs to be reconsidered. Regulation is the barrier to infrastructure in the rural areas.

Testified: (In support) J. Vander Stoep, Grant Public Utility District/Microsoft; Bart Phillips, Clallam County/Washington Association of Economic Development Councils; Mike Doherty, Clallam County; Ed Williams, Grant County Public Utility District; Collins Sprague, Avista Corporation; Lew McMurrin, Washington Public Utility Districts Association; Jim Haase, Washington State Grange; Scott Taylor, Washington Public Ports Association; Gary Gardner, Washington Association of Internet Service Providers; Dave Arbaugh, Chelan County Public Utility District; Mike Tracy, Puget Sound Energy; Rick Mattoon, Washington Utilities and Transportation Commission; Dave Danner, Governor's office; and Ron Main, Washington State Cable Association.

(Concerns) Rosemary Williamson, GTE.

(Opposed) Paul Telford, Reform Party; and Gary Strannigan, Citizens for a Sound Economy.

(In support with amendments) Don Dennis, CenturyTel; Steve Appelo, Wahkiakum West Telephone; Ray Shindler, Washington Independent Telephone Association;