

SENATE BILL REPORT

SSB 6675

As Passed Senate, February 11, 2000

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: Senate Committee on Energy, Technology & Telecommunications (originally sponsored by Senators Brown, Hochstatter, Hargrove, Costa and Sheahan; by request of Governor Locke).

Brief History:

Committee Activity: Energy, Technology & Telecommunications: 1/20/2000, 2/3/2000 [DPS].

Passed Senate, 2/11/2000, 44-1.

SENATE COMMITTEE ON ENERGY, TECHNOLOGY & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 6675 be substituted therefor, and the substitute bill do pass.

Signed by Senators Brown, Chair; Goings, Vice Chair; Fairley, Fraser, Hochstatter, Roach and Rossi.

Staff: Andrea McNamara (786-7483)

Background: Under Washington law, the authority of Public Utility Districts (PUDs) and port districts are limited to the powers they are granted by statute. PUDs are authorized, among other things, to provide electricity, water, and/or sewer service within and outside their boundaries. Ports are authorized, among other things, to construct and operate sewer and water utilities, pollution control facilities, and waste treatment facilities to serve their own property and other property owners.

Many Public Utility Districts, like other utilities, utilize extensive telecommunications networks for their internal operations, including such purposes as remote monitoring of their distribution lines, demand side management, electronic billing, and customer relations. Some PUDs have upgraded, and others are planning to upgrade their telecommunications networks to fiber optic systems.

A November 1998 Attorney General Opinion requested by the State Auditor states that, under current law, a PUD may sell or lease excess capacity on its fiber optic cable system assuming that the excess capacity was acquired to serve the district's future needs and not for the purposes of resale to others. The opinion further states that a PUD lacks the statutory authority to offer and provide Internet access, home security services, telephone services, cell phone and paging services, or to install telephone or cable equipment for the

public. Two recent lawsuits have been filed in state superior court challenging different Washington PUDs' activities in the area of telecommunications service.

Many port districts are involved in arranging or providing infrastructure and utility services as part of their industrial development activities.

Summary of Bill: Legislative declarations are made that, among other things, Public Utility Districts (PUDs) and rural port districts are well positioned to provide cost-effective telecommunications facilities and services, and that allowing PUDs and rural port districts to provide such facilities and services will stimulate competition among telecommunications providers to the benefit of all customers and users.

Currently existing PUDs and rural port districts may acquire and operate telecommunications facilities and provide wholesale telecommunications services within the districts' limits. PUDs may also provide wholesale services to other PUDs by contract. Districts may not exercise powers of eminent domain to acquire telecommunications facilities.

PUDs and rural port districts providing wholesale services must ensure that their rates, terms, and conditions are not unduly or unreasonably discriminatory or preferential. Districts must keep separate accountings of revenues and expenditures from their wholesale telecommunications activities as compared to their internal telecommunications operations, and dedicate the revenues from the wholesale activities toward paying off the costs incurred in building and maintaining the excess capacity.

A process is established whereby any entity requesting wholesale telecommunications services from a district may seek review of a district's rates, terms, and conditions by the Washington Utilities and Transportation Commission (WUTC) if it believes the district is acting in an unduly or unreasonably discriminatory or preferential manner and has given the district 30 days' notice to review and act on the allegations. The WUTC may, after a hearing and procedures consistent with the administrative procedures act, issue remedial orders that are enforceable in court. Both the WUTC and prevailing parties may seek injunctive relief to compel a district's compliance with an order. The WUTC may order a district to pay a share of the costs incurred by the commission in adjudicating or enforcing nondiscriminatory rates, terms, and conditions.

Definitions are established for relevant terms, including telecommunications facilities,-- wholesale telecommunication services,-- and rural port districts.--

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Many business leaders in rural areas see the issue of getting access to advanced telecommunications as their highest public policy priority. PUDs were originally created to solve problems in rural areas that the private sector was unwilling or unable to address, and expanding into telecommunications infrastructure is a logical extension of their original purpose. Allowing PUDs into the wholesale telecommunications business will

stimulate competition and investment by other private telecommunications companies. All private electric companies, and municipal and mutual electric companies have the authority to provide telecommunications service. The tenants and customers of port districts are increasingly demanding infrastructure for advanced telecommunications services, and ports want to be part of the solution.

Testimony Against (original bill): Need to clarify and limit the definition of "wholesale" to just facilities, not services. PUDs should only be allowed to provide advanced services, not basic services. PUDs should not be allowed to cross subsidize their wholesale telecommunications operations with money from their electric rate payers or provide preferential treatment to certain affiliates. Costs should be identified to customers and subject to a public vote. PUDs should be limited to PUDs in rural counties in the same way port districts are limited to ports in rural counties.

Testified: PRO: Senator Stevens; Scott Taylor, WA Public Ports Assn.; Gary Gardner, WA Assn of Internet Service Providers; Bruce Shaull, Sprint (w/amendments); Collins Sprague, Avista Corp.; Dave Danner, Governor's Policy Office; Lew McMurrin, WA PUD Assn.; Larry Weis, Pond Oreille PUD; Dean Longanecker, Mid State Bank; Bart Phillips, Clallam Co. EDC; G. Tyler; Rosemary Williams, GTE; Amber Balch, AWB; Jim Haase, WA State Grange; Terry Vann, WIA (w/amendments); Steve Appelo, Wahkiakum West Telco; Dori Dennis, Century Telephone; Ron Main, WA State Cable Assn.; Bo Wandell, Safe Harbor Com.

House Amendment(s): The House striking amendment is substantially the same as the Senate version, with the following exceptions: (1) two findings are eliminated; (2) the definition of "wholesale telecommunications services" is expanded to include facilities or services for resale by Internet service providers; (3) PUD's and rural port districts' authority to contract for and interconnect with facilities outside of their districts is clarified, and their authority to provide services is limited to within the boundaries of their district or, for PUDs, within the district of another PUD; (4) an express prohibition against providing retail services to end users is added; (5) clarification is made to the separate accounting requirements; (6) a provision is added requiring that districts charge themselves the true and full value of any services their wholesale telecommunications operations provide to other district operations; (7) clarifications are made to the prohibitions against the exercise of eminent domain; (8) a preservation clause is added clarifying that nothing in the act limits any existing authority of a PUD or rural port district; (9) a formal process of public review and referendum provision are added; (10) PUDs and rural port districts providing wholesale telecommunications services are required to report biennially to the Legislature on their activities; and (11) clarification is added that the injunctive relief available through the WUTC's remedial procedures are not exclusive remedies.