

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6675

56th Legislature
2000 Regular Session

Passed by the Senate March 8, 2000
YEAS 46 NAYS 1

President of the Senate

Passed by the House March 2, 2000
YEAS 70 NAYS 28

**Speaker of the
House of Representatives**

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6675** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6675

AS AMENDED BY THE HOUSE

Passed Legislature - 2000 Regular Session

State of Washington 56th Legislature 2000 Regular Session

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

Read first time 02/04/2000.

1 AN ACT Relating to the provision of telecommunications services by
2 public utility districts and rural port districts; adding new sections
3 to chapter 54.16 RCW; adding new sections to chapter 53.08 RCW; adding
4 a new section to chapter 80.01 RCW; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature makes the following
7 findings:

8 (1) Access to telecommunications facilities and services is
9 essential to the economic well-being of both rural and urban areas.

10 (2) Many persons and entities, particularly in rural areas, do not
11 have adequate access to telecommunications facilities and services.

12 (3) Public utility districts and rural port districts may be well-
13 positioned to construct and operate telecommunications facilities.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 54.16 RCW
15 to read as follows:

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

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

3 (2) "Telecommunications" has the same meaning as that contained in
4 RCW 80.04.010.

5 (3) "Telecommunications facilities" means lines, conduits, ducts,
6 poles, wires, cables, crossarms, receivers, transmitters, instruments,
7 machines, appliances, instrumentalities and all devices, real estate,
8 easements, apparatus, property, and routes used, operated, owned, or
9 controlled by any entity to facilitate the provision of
10 telecommunications services.

11 (4) "Wholesale telecommunications services" means the provision of
12 telecommunications services or facilities for resale by an entity
13 authorized to provide telecommunications services to the general public
14 and internet service providers.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 54.16 RCW
16 to read as follows:

17 (1) A public utility district in existence on the effective date of
18 this act may construct, purchase, acquire, develop, finance, lease,
19 license, handle, provide, add to, contract for, interconnect, alter,
20 improve, repair, operate, and maintain any telecommunications
21 facilities within or without the district's limits for the following
22 purposes:

23 (a) For the district's internal telecommunications needs; and

24 (b) For the provision of wholesale telecommunications services
25 within the district and by contract with another public utility
26 district.

27 Nothing in this subsection shall be construed to authorize public
28 utility districts to provide telecommunications services to end users.

29 (2) A public utility district providing wholesale
30 telecommunications services shall ensure that rates, terms, and
31 conditions for such services are not unduly or unreasonably
32 discriminatory or preferential. Rates, terms, and conditions are
33 discriminatory or preferential when a public utility district offering
34 rates, terms, and conditions to an entity for wholesale
35 telecommunications services does not offer substantially similar rates,
36 terms, and conditions to all other entities seeking substantially
37 similar services.

1 (3) When a public utility district establishes a separate utility
2 function for the provision of wholesale telecommunications services, it
3 shall account for any and all revenues and expenditures related to its
4 wholesale telecommunications facilities and services separately from
5 revenues and expenditures related to its internal telecommunications
6 operations. Any revenues received from the provision of wholesale
7 telecommunications services must be dedicated to the utility function
8 that includes the provision of wholesale telecommunications services
9 for costs incurred to build and maintain the telecommunications
10 facilities until such time as any bonds or other financing instruments
11 executed after the effective date of this act and used to finance the
12 telecommunications facilities are discharged or retired.

13 (4) When a public utility district establishes a separate utility
14 function for the provision of wholesale telecommunications services,
15 all telecommunications services rendered by the separate function to
16 the district for the district's internal telecommunications needs shall
17 be charged at its true and full value. A public utility district may
18 not charge its nontelecommunications operations rates that are
19 preferential or discriminatory compared to those it charges entities
20 purchasing wholesale telecommunications services.

21 (5) A public utility district shall not exercise powers of eminent
22 domain to acquire telecommunications facilities or contractual rights
23 held by any other person or entity to telecommunications facilities.

24 (6) Except as otherwise specifically provided, a public utility
25 district may exercise any of the powers granted to it under this title
26 and other applicable laws in carrying out the powers authorized under
27 this section. Nothing in this act limits any existing authority of a
28 public utility district under this title.

29 NEW SECTION. **Sec. 4.** A new section is added to chapter 54.16 RCW
30 to read as follows:

31 (1) Prior to financing or constructing telecommunications
32 facilities for the provision of wholesale telecommunications services,
33 a public utility district shall:

34 (a) Develop a written implementation plan stating the district's
35 intent to provide wholesale telecommunications services which must
36 include:

1 (i) A general description of how the district intends to engage in
2 the provision of wholesale telecommunications services under section 3
3 of this act; and

4 (ii) A discussion of how the public interest shall be served by the
5 provision of wholesale telecommunications services; and

6 (b) Present the implementation plan to the district's commission,
7 and make the plan available to the general public. The commission
8 shall conduct at least three public hearings throughout the district to
9 take public comment on the implementation plan. At least two weeks
10 prior to each public hearing, a notice that includes a general
11 description of the implementation plan and the date and place of
12 hearing shall be published in a newspaper of general circulation in the
13 county in which the district is located.

14 (2) After the public hearings, the commission may adopt, alter, or
15 reject the implementation plan by resolution. Within ninety days after
16 the adoption of such resolution, a petition signed by at least ten
17 percent of the registered voters in the district may be submitted to
18 the commission requiring the subject of the resolution be put to a vote
19 of the people in the district.

20 (3) If a petition meets the requirements of subsection (2) of this
21 section, the commission shall submit the resolution to the legislative
22 authority of the county in which the district is located. Upon receipt
23 of the resolution, the legislative authority shall submit a proposal to
24 the voters of the district at the next general election regarding the
25 question of providing wholesale telecommunications services in the
26 district in substantially the following terms:

27 Shall Public Utility District No. of
28 County be authorized to provide wholesale telecommunications
29 services within the boundaries of the district?
30 Yes . . .
31 No . . .

32 Within ten days after such an election, the election board of the
33 county shall canvass the returns, and if at such an election a majority
34 of voters voting on the proposition shall vote in favor of such
35 authority, the district shall have the authority to provide wholesale
36 telecommunications services.

37 (4) A public utility district providing wholesale
38 telecommunications services shall submit a report to the appropriate

1 committees of the legislature by December 1st of the second year of
2 each biennium. The report must include, at a minimum, a description of
3 the following activities:

4 (a) All activities relating to the construction, acquisition,
5 operation, marketing, and leasing of telecommunications facilities and
6 wholesale telecommunications services; and

7 (b) The number of new locations connected to the telecommunications
8 facilities resulting from the provision of wholesale telecommunications
9 services to enhanced service providers and entities authorized to
10 provide telecommunications services to the general public.

11 NEW SECTION. **Sec. 5.** A new section is added to chapter 54.16 RCW
12 to read as follows:

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

35 (2) The commission may order a public utility district to pay a
36 share of the costs incurred by the commission in connection with
37 adjudicating or enforcing the provisions of this section.

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

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

9 NEW SECTION. **Sec. 6.** A new section is added to chapter 53.08 RCW
10 to read as follows:

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

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

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

18 (3) "Telecommunications" has the same meaning as contained in RCW
19 80.04.010.

20 (4) "Telecommunications facilities" means lines, conduits, ducts,
21 poles, wires, cables, crossarms, receivers, transmitters, instruments,
22 machines, appliances, instrumentalities and all devices, real estate,
23 easements, apparatus, property, and routes used, operated, owned, or
24 controlled by any entity to facilitate the provision of
25 telecommunications services.

26 (5) "Wholesale telecommunications services" means the provision of
27 telecommunications services or facilities for resale by an entity
28 authorized to provide telecommunications services to the general public
29 and internet service providers.

30 NEW SECTION. **Sec. 7.** A new section is added to chapter 53.08 RCW
31 to read as follows:

32 (1) A rural port district in existence on the effective date of
33 this act may construct, purchase, acquire, develop, finance, lease,
34 license, handle, provide, add to, contract for, interconnect, alter,
35 improve, repair, operate, and maintain any telecommunications
36 facilities within or without the district's limits for the following
37 purposes:

1 (a) For the district's own use; and
2 (b) For the provision of wholesale telecommunications services
3 within the district's limits. Nothing in this subsection shall be
4 construed to authorize rural port districts to provide
5 telecommunications services to end users.

6 (2) A rural port district providing wholesale telecommunications
7 services under this section shall ensure that rates, terms, and
8 conditions for such services are not unduly or unreasonably
9 discriminatory or preferential. Rates, terms, and conditions are
10 discriminatory or preferential when a rural port district offering such
11 rates, terms, and conditions to an entity for wholesale
12 telecommunications services does not offer substantially similar rates,
13 terms, and conditions to all other entities seeking substantially
14 similar services.

15 (3) When a rural port district establishes a separate utility
16 function for the provision of wholesale telecommunications services, it
17 shall account for any and all revenues and expenditures related to its
18 wholesale telecommunications facilities and services separately from
19 revenues and expenditures related to its internal telecommunications
20 operations. Any revenues received from the provision of wholesale
21 telecommunications services must be dedicated to the utility function
22 that includes the provision of wholesale telecommunications services
23 for costs incurred to build and maintain the telecommunications
24 facilities until such time as any bonds or other financing instruments
25 executed after the effective date of this act and used to finance the
26 telecommunications facilities are discharged or retired.

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

35 (5) A rural port district shall not exercise powers of eminent
36 domain to acquire telecommunications facilities or contractual rights
37 held by any other person or entity to telecommunications facilities.

38 (6) Except as otherwise specifically provided, a rural port
39 district may exercise any of the powers granted to it under this title

1 and other applicable laws in carrying out the powers authorized under
2 this section. Nothing in this act limits any existing authority of a
3 rural port district under this title.

4 NEW SECTION. **Sec. 8.** A new section is added to chapter 53.08 RCW
5 to read as follows:

6 (1) Prior to financing or constructing telecommunications
7 facilities for the provision of wholesale telecommunications services,
8 a rural port district shall:

9 (a) Develop a written implementation plan stating the district's
10 intent to provide wholesale telecommunications services which must
11 include:

12 (i) A general description of how the district intends to engage in
13 the provision of wholesale telecommunications services under section 7
14 of this act; and

15 (ii) A discussion of how the public interest shall be served by the
16 provision of wholesale telecommunications services; and

17 (b) Present the implementation plan to the district's commission,
18 and make the plan available to the general public. The commission
19 shall conduct at least three public hearings throughout the district to
20 take public comment on the implementation plan. At least two weeks
21 prior to each public hearing, a notice that includes a general
22 description of the implementation plan and the date and place of
23 hearing shall be published in a newspaper of general circulation in the
24 county in which the district is located.

25 (2) After the public hearings, the commission may adopt, alter, or
26 reject the implementation plan by resolution. Within ninety days after
27 adoption of such resolution, a petition signed by at least ten percent
28 of the registered voters in the district may be submitted to the
29 commission requiring the subject of the resolution be put to a vote of
30 the people in the district.

31 (3) If a petition meets the requirements of subsection (2) of this
32 section, the commission shall submit the resolution to the legislative
33 authority of the county in which the district is located. Upon receipt
34 of the resolution, the legislative authority shall submit a proposal to
35 the voters of the district at the next general election regarding the
36 question of providing wholesale telecommunications services in the
37 district in substantially the following terms:

1 Shall Port District No. of County be
2 authorized to provide wholesale telecommunications services
3 within the boundaries of the district?

4 Yes . . .

5 No . . .

6 Within ten days after such an election, the election board of the
7 county shall canvass the returns, and if at such an election a majority
8 of voters voting on the proposition shall vote in favor of such
9 authority, the district shall have the authority to provide wholesale
10 telecommunications services.

11 (4) A rural port district providing wholesale telecommunications
12 services shall submit a report to the appropriate committees of the
13 legislature by December 1st of the second year of each biennium. The
14 report must include, at a minimum, a description of the following
15 activities:

16 (a) All activities relating to the construction, acquisition,
17 operation, marketing, and leasing of telecommunications facilities and
18 wholesale telecommunications services; and

19 (b) The number of new locations connected to the telecommunications
20 facilities resulting from the provision of wholesale telecommunications
21 services to enhanced service providers and entities authorized to
22 provide telecommunications services to the general public.

23 NEW SECTION. **Sec. 9.** A new section is added to chapter 53.08 RCW
24 to read as follows:

25 (1) A person or entity that has requested wholesale
26 telecommunications services from a rural port district may petition the
27 commission under the procedures set forth in RCW 80.04.110 (1) through
28 (3) if it believes the district's rates, terms, and conditions are
29 unduly or unreasonably discriminatory or preferential. The person or
30 entity shall provide the district notice of its intent to petition the
31 commission and an opportunity to review within thirty days the rates,
32 terms, and conditions as applied to it prior to submitting its
33 petition. In determining whether a district is providing
34 discriminatory or preferential rates, terms, and conditions, the
35 commission may consider such matters as service quality, technical
36 feasibility of connection points on the district's telecommunications
37 facilities, time of response to service requests, system capacity, and
38 other matters reasonably related to the provision of wholesale

1 telecommunications services. If the commission, after notice and
2 hearing, determines that a rural port district's rates, terms, and
3 conditions are unduly or unreasonably discriminatory or preferential,
4 it shall issue a final order finding noncompliance with this section
5 and setting forth the specific areas of apparent noncompliance. An
6 order imposed under this section shall be enforceable in any court of
7 competent jurisdiction.

8 (2) The commission may order a rural port district to pay a share
9 of the costs incurred by the commission in adjudicating or enforcing
10 this section.

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

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

19 NEW SECTION. **Sec. 10.** A new section is added to chapter 80.01 RCW
20 to read as follows:

21 The commission is authorized to perform the duties required by
22 sections 5 and 9 of this act.

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