

# FINAL BILL REPORT

## ESB 6598

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### C 158 L 04

Synopsis as Enacted

**Brief Description:** Regulating the provision of wholesale telecommunications services by public utility districts.

**Sponsors:** Senators Esser, Schmidt, Mulliken, Rasmussen, Parlette and Stevens.

**Senate Committee on Technology & Communications**

**House Committee on Technology, Telecommunications & Energy**

**Background:** The powers of public utility districts (PUDs) and port districts are governed by statutes and a long history of court decisions. PUDs are expressly authorized, among other things, to provide electricity, water, and sewer service. They have additional incidental and implied authorities that are necessary for accomplishing their primary purposes.

A law passed in 2000 authorizes PUDs and rural port districts, which were in existence in 2000, to acquire and operate telecommunications facilities for their own internal telecommunications needs and to provide wholesale telecommunications services within their district limits. PUDs are also allowed to provide wholesale services to other PUDs by contract.

The subsections authorizing districts to provide wholesale telecommunications services include this provision: "Nothing in this subsection shall be construed to authorize public utility districts [or rural port districts] to provide telecommunications services to end users." The term "end user" is not defined in statute. In 2001, Attorney General Opinion No. 3 concluded that "end user" means "retail customer," and that a PUD or rural port district may not use an interlocal agreement to sell or lease telecommunications facilities or services to other public agencies.

In addition to authorizing wholesale telecommunications services, the 2000 law requires PUDs and rural port districts to ensure their rates, terms, and conditions on wholesale services are not unduly or unreasonably discriminatory or preferential. Furthermore, districts must keep separate accountings of revenues and expenditures for their wholesale telecommunications activities when they establish a separate utility function to provide wholesale telecommunications services. Revenues from the wholesale activities must be used to pay off the costs incurred in building and maintaining the telecommunications facilities.

Districts must charge themselves the true and full value of telecommunications services provided by their separate telecommunications functions to the district. PUDs and rural port districts may not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights to such facilities. The 2000 law also establishes a process for reviewing a district's wholesale telecommunications rates, terms, and conditions by the Washington Utilities and Transportation Commission.

A savings clause was included in the 2000 law clarifying that PUDs and rural port districts may exercise any of the powers granted to them under their current enabling statutes and other applicable law, and that nothing in the 2000 law limits any existing legal authority of the districts.

The Governor vetoed two provisions in the 2000 law: (1) a process for public review of a PUD or rural port district's plans for wholesale telecommunications projects; and (2) a requirement that PUDs and rural port districts providing wholesale telecommunications services report biennially to the Legislature on their activities.

**Summary:** A PUD providing wholesale telecommunications services is not required to establish a separate utility system or function. But a PUD providing wholesale telecommunication services must separately account for any revenues and expenditures for the services according to standards established by the State Auditor. The accounting standards must be consistent with the provisions of Title 54 RCW, establishing PUD powers and duties.

Under conditions set forth in the existing law, a PUD's revenues from the provision of wholesale telecommunications services must be dedicated to the costs incurred to build and maintain any telecommunications facilities constructed, installed, or acquired to provide the services.

When a PUD provides wholesale telecommunications services, all telecommunications services rendered to the district for the district's internal telecommunications needs must be allocated or charged at their true and full value.

**Votes on Final Passage:**

Senate	47	0
House	96	0

**Effective:** June 10, 2004