

SENATE BILL REPORT

ESB 6598

As Passed Senate, February 16, 2004

Title: An act relating to accounting for the provision of wholesale telecommunications services by public utility districts.

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

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

Brief History:

Committee Activity: Technology & Communications: 2/2/04 [DPS].

Passed Senate: 2/16/04, 47-0.

SENATE COMMITTEE ON TECHNOLOGY & COMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 6598 be substituted therefor, and the substitute bill do pass.

Signed by Senators Schmidt, Chair; Esser, Vice Chair; Eide, McCaslin and Stevens.

Staff: William Bridges (786-7424)

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 Number 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 of Bill: 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.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: There appears to be a consensus that the issue of separate accounting of wholesale telecommunications activities by PUDs is feasible in a bill this session; therefore, the original bill has been narrowed to this issue. Separate accounting is important to rate payers and businesses wishing to partner with PUDs. Rate payers in Grant County fought for five years to get the local PUD to separately account for the millions of dollars spent on the fiber network. Separate accounting may have prevented the Grant County PUD from breaking the law and misleading its rate payers. One of the reasons the Grant County PUD got into trouble is because, without the requirements of separate accounting, it did not need to perform

due diligence on its build out. High rates paid by irrigation farmers in Grant County are subsidizing the PUD's fiber network, and these farmers cannot pass these costs on.

Testimony Against: The bill in its current form requires separate accounting even if a PUD does not establish a separate telecommunications utility. This means that facilities, such as pole attachments utilizing excess capacity, will have to conform with burdensome accounting requirements. PUDs accept the prohibition on providing content, but they want a better definition of facilities. The Legislature should not micro-manage PUDs. PUDs are county entities that should be locally managed. Critics should not use a broad brush to paint all PUDs as law breaking. PUD telecommunications services are still needed to attract businesses to rural Washington, and some have already come. The problems arising in the Grant County PUD were resolved by the elected PUD commissioners. Some PUDs are already accounting separately. The wholesale provision of PUD telecommunications services help retard monopolistic practices in the market.

Testified: Senator Luke Esser, prime sponsor (pro); Terrence Stapleton, WITA (pro); Gary Gardner, Wash. Assn. of ISPs & Comcast (pro); Bill Judge, rate payer, Grant County PUD (pro); Cliff Webster, Verizon (pro); Dave Arbaugh, Snohomish PUD (con); Craig Jungers, Network Essentials, Royal City (pro); Larry Williamson, rate payer, Grant County PUD (pro); Elaine Davis, Fair Competition Alliance (pro); Pat Haley, Port of Douglas County (con); Ray Poorman, CSS Investigation & Communications, Bellingham (con); Dave Warren, Wash. PUD Assn. (con); Don Cohen, Wash. PUD Assn. (con); Gary McCullum, Benton County PUD (con); Keith Soderstrom, Bainbridge Mfg., Waterville (con); Ron Main, Wash. Cable Assn. (pro); Brian Walters, Whatcom PUD (con).