

HOUSE BILL REPORT

ESSB 5679

As Reported by House Committee On: Technology & Economic Development

Title: An act relating to the authority of port districts to provide telecommunications services.

Brief Description: Concerning the authority of port districts to provide telecommunications services.

Sponsors: Senate Committee on Energy, Environment & Telecommunications (originally sponsored by Senators Warnick, Wellman, Sheldon, Rivers, Wilson, Cleveland, Walsh, Takko and Rolfes).

Brief History:

Committee Activity:

Technology & Economic Development: 3/16/17, 4/14/17 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by Committee)

- Authorizes rural port districts to acquire and operate telecommunications facilities for wholesale telecommunications services outside of their district for backhaul services.
- Authorizes certain port districts to acquire and operate telecommunications facilities for: (1) their own internal use; and (2) wholesale telecommunications services outside of their district for backhaul services.
- Authorizes rural and certain port districts to select a telecommunications company as the sole provider of telecommunications services to end users in underserved areas.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: Do pass as amended. Signed by 17 members: Representatives Morris, Chair; Kloba, Vice Chair; Tarleton, Vice Chair; Smith, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Doglio, Fey, Harmsworth, Hudgins, Manweller, McDonald, Nealey, Santos, Slatter, Steele, Wylie and Young.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Lily Smith (786-7175).

Background:

There are 75 port districts in Washington, located in 33 of its 39 counties. Port districts are a type of special purpose district, authorized in 1911, for the purpose of constructing harbor improvements, developing rail and terminal facilities, and undertaking other industrial improvements.

Ports have the authority to develop marine terminals, airports, and other cargo facilities; establish foreign trade zones; operate or lease marinas; provide environmental protection and enhancement; and provide public access. Among the general powers granted to ports are the following:

- acquire land, property, leases, and easements;
- condemn property and exercise the power of eminent domain;
- develop lands for industrial and commercial uses;
- impose taxes, rates, and other charges;
- sell or otherwise convey rights to property; and
- construct and maintain specified types of park and recreation facilities.

The Federal Telecommunications Act of 1996 requires the Federal Communications Commission to report annually on the deployment of advanced telecommunications capability. The 2016 report found that 14 percent of rural areas in Washington lack access to fixed advanced telecommunications capability, compared to 3 percent of all areas and 1 percent of urban areas in the state.

The Washington Utilities and Transportation Commission (UTC) is authorized to regulate in the public interest the rates, services, facilities, and practices of all persons supplying a utility service within the state.

In 2000 legislation was passed authorizing rural port districts to provide telecommunications services for their own use. Rural port districts were also authorized to provide wholesale telecommunications services within district limits, but are specifically prohibited from providing telecommunications services to end users. The districts must ensure that rates, terms, and conditions for services are not unduly or unreasonably discriminatory or preferential.

Rates, terms, and conditions are considered discriminatory or preferential when not similarly offered to all entities seeking substantially similar services. A person or entity receiving wholesale telecommunications services from a rural port district may petition the UTC if it believes the district's rates, terms, and conditions are unduly or unreasonably discriminatory or preferential.

"Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. "Information" refers to knowledge or intelligence represented by any form of writing, including signs, signals, or any other symbols.

"Telecommunications facilities" refers to the lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances, instrumentalities, devices, real estate, easements, apparatus, property, and routes used, operated, owned, or controlled by any entity to facilitate the provision of telecommunications services.

"Wholesale telecommunications services" is the provision of telecommunications services or facilities for resale by an entity authorized to provide telecommunications services to the general public and Internet service providers.

"Rural port district" is a port district formed under chapter 53.04 RCW and located in a county with an average population density of fewer than 100 persons per square mile.

Summary of Amended Bill:

In addition to rural port districts, port districts located in counties with a population less than 700,000 are authorized to provide telecommunications services, subject to existing requirements for rural port districts. Both types of port districts may use unlit optical fiber:

- for the district's own use;
- to provide wholesale telecommunications services within the district's limits; and
- to provide backhaul wholesale telecommunications services beyond the district's limits, if the similar services from a company are unavailable.

A port district authorized to provide wholesale telecommunications may select a telecommunications company to operate its telecommunications facilities in underserved areas. Under contract terms specified with the port district, the telecommunications company may be the exclusive provider of services to end users in an underserved area. Before exercising this authority, a port district must submit a business plan to the Utilities and Transportation Commission (UTC) that includes an assessed determination of the option to sell or surplus the additional provision of services. The determination must be reassessed at a minimum of every 10 years for the duration of the contract.

A legislative finding is made regarding adequate access to telecommunications services for certain areas.

Amended Bill Compared to Engrossed Substitute Bill:

A port district's authority to provide wholesale telecommunications services is limited to within the district, except for backhaul services when the port is unable to procure similar services from a telecommunications company. The authority to provide wholesale telecommunications services outside the state is specifically prohibited.

The authority to select an exclusive provider of telecommunications services to end users is limited to underserved areas, as defined. Before exercising this authority, a port district must submit a business case plan with the UTC that includes an audited statement of market value and an assessed determination of the option to sell or surplus the additional provision of

services. The determination of the option to sell or surplus must be reassessed at a minimum interval of every 10 years for the duration of the contract.

The existence and boundaries of an underserved area must be determined following a public hearing and supported by a third-party study commissioned within the previous 12 months.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Ports are leading examples of public-private partnerships, and want to build fiber in rural communities where no one else will. There are many underserved areas. Children in rural communities cannot participate in educational opportunities or compete at the same level as those with access. Industrial areas need adequate infrastructure to attract businesses. People in rural areas increasingly need to be able to work from home. Access to broadband Internet at an adequate speed is an equalizer. This is an economic development opportunity at local and state levels. Privately built infrastructure in some places is prohibitively expensive. Redundant, reliable, and affordable fiber lines are necessary for emergency services. This is not an attempt to compete with the private sector.

(Opposed) This is a competitive market, and scarce public resources should not be spent on overbuilding on existing broadband. Public utility districts and ports have had authority in this area for years and it has resulted in overbuilding while rural areas remain underserved. The use of the word "exclusive" implies that some smaller providers will have difficulty in a monopoly situation.

Persons Testifying: (In support) Senator Warnick, prime sponsor; Senator Wellman; Representative Dye; William Bridges, CenturyLink; Amber Carter, Port of Vancouver and Identity Clark County; Kenneth Dahlstedt, Skagit County Commission; Patsy Martin, Port of Skagit; Brent Grening, Port of Ridgefield; Ron Onslow, City of Ridgefield; David Morgan, Plas Newydd; Stephen McFadden, Adams County; Shawn Logan, City of Othello; Nanette Konishi, Town of Rosalia; John McDonagh, Greater Vancouver Chamber of Commerce; and John Marshall, Adams County Commission.

(Opposed) Betty Buckley, Washington Independent Telecommunications Association; and Ron Main, Broadband Communications Association of Washington.

Persons Signed In To Testify But Not Testifying: None.