

HOUSE BILL REPORT

ESSB 6034

As Reported by House Committee On:
Technology & Economic Development
Finance

Title: An act relating to authorizing limited retail telecommunications services for public utility districts that provide only sewer, water, and telecommunications on the effective date of this act.

Brief Description: Authorizing limited retail telecommunications services for public utility districts that provide only sewer, water, and telecommunications on the effective date of this act.

Sponsors: Senate Committee on Energy, Environment & Technology (originally sponsored by Senators Rolfes, Sheldon, Angel, Hunt, Chase, Kuderer and Hasegawa).

Brief History:

Committee Activity:

Technology & Economic Development: 2/22/18 [DPA];
Finance: 2/26/18 [DPA(TED)].

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

- Authorizes certain public utility districts (PUDs) to provide retail Internet telecommunications services.
- Imposes a privilege tax on PUD sales of retail Internet service.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: Do pass as amended. Signed by 12 members: Representatives Morris, Chair; Kloba, Vice Chair; Tarleton, Vice Chair; Doglio, Fey, Hudgins, Manweller, Santos, Slatter, Steele, Wylie and Young.

Minority Report: Without recommendation. Signed by 2 members: Representatives Harmsworth and Nealey.

Staff: Lily Smith (786-7175).

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.

Background:

Public utility districts (PUDs) in existence on June 8, 2000, are authorized to acquire and operate telecommunications facilities for their own internal telecommunications needs and to provide wholesale telecommunications services within their district limits. Public utility districts may also provide wholesale services to other PUDs by contract. Public utility districts are not authorized to provide telecommunications services to end users.

Public utility districts are required to ensure that their rates, terms, and conditions on wholesale services are not unduly or unreasonably discriminatory or preferential. The Utilities and Transportation Commission (UTC) is authorized to review petitions brought by consumers concerning a PUD's wholesale telecommunications rates, terms, and conditions.

Public utility districts must charge themselves the true and full value of telecommunications services provided by their separate telecommunications functions.

A privilege tax is applied to PUDs that generate, transit, or distribute electricity. For retail sales of electricity, the tax rate is 2 percent of gross revenues from the sales, with a surtax equal to 7 percent multiplied by the rate.

Summary of Amended Bill:

A PUD that provides limited services in a county less than 500 square miles and west of Puget Sound is authorized to provide end user ("retail") Internet services on its broadband network within the district's boundaries, if the existing end user Internet service providers cease or provide inadequate service.

After a PUD board of commissioners receives a petition requesting provision of retail Internet services, the PUD commissioners may hold three meetings to verify property owners' signatures; determine and submit findings regarding the existence or adequacy of retail Internet services on the PUD's broadband network; receive a business case plan; and by resolution, authorize the PUD to provide retail Internet service on its broadband network. Authorization is contingent on the development of the business case plan and a determination of no or inadequate service.

Adequate retail Internet service is determined by measuring retail Internet service on the PUD's broadband network and comparing it to service standards in the PUD service level agreement used for other PUD network providers. A petition may be submitted by a majority of a group, including homeowners associations, within the district, or an individual who has developed a partnership payment structure to finance broadband deployment with the PUD. The business case plan must be reviewed by an independent qualified consultant.

The PUD commissioners must request an administrative law judge to hear Internet service adequacy disputes. The commissioners must provide written notice and may require disputing parties to attend the hearing. The administrative law judge must make and file a determination on the adequacy of retail Internet service with the commissioners. A company

regulated by the UTC may request resolution of Internet service disputes through the UTC process for reviewing wholesale telecommunications.

Public utility district retail Internet service rates must be just, fair, and reasonable, but may set tiers of charges based on end user service demands. Revenues and expenditures for retail Internet services must be accounted for separately from other services.

A privilege tax is imposed on PUDs for operating a broadband network for the purpose of selling retail Internet services. The tax rate imposed is 2 percent of the gross revenues of sales of retail Internet services, with a surtax equal to 7 percent multiplied by the rate. Municipalities are also authorized to impose business taxes on the operation of a broadband network for the sale of retail Internet services.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill modifies the rates standard from "fair and nondiscriminatory" to "just, fair and reasonable."

Development of a business case plan is required prior to authorization to provide retail Internet service.

Retail Internet service must be provided to all entities reasonably entitled to service within the authorized geographical area, and PUDs are prohibited from conditioning the cost or availability of other services on purchase or use of retail Internet services. Separate accounting must be used for retail Internet service revenues and expenditures.

A tax is imposed on PUDs for the privilege of operating a broadband network for the purpose of selling retail Internet services.

Appropriation: None.

Fiscal Note: Not requested.

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) The bill is another solution to bringing broadband to rural areas, and protects investments by the PUD and citizens. Kitsap PUD has installed a fiber backbone to hospitals, military cities, schools, and libraries. Citizens are now petitioning the PUD to bring this broadband to them, who have paid for the cost of the final mile themselves. Kitsap is committed to continue building fiber to unserved and underserved communities, and does not want stranded investments. This bill represents significant stakeholder work, all of whom are neutral on the bill. The taxing piece is not right, but if there is a tax paid by private entities, Kitsap PUD would be willing to make it clear it would assume the same obligation.

(Opposed) None.

Persons Testifying: Debra Lester, Lisa Thatcher, and Paul Avis, Kitsap Public Utility District.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass as amended by Committee on Technology & Economic Development. Signed by 6 members: Representatives Lytton, Chair; Frame, Vice Chair; Dolan, Pollet, Springer and Wylie.

Minority Report: Do not pass. Signed by 3 members: Representatives Orcutt, Assistant Ranking Minority Member; Condotta and Wilcox.

Minority Report: Without recommendation. Signed by 2 members: Representatives Nealey, Ranking Minority Member; Stokesbary.

Staff: Serena Dolly (786-7150).

Summary of Recommendation of Committee On Finance Compared to Recommendation of Committee On Technology & Economic Development:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Requested on February 24, 2018.

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) The bill is not perfect, but it should be moved forward. It may not have the appropriate tax. It takes the energy taxes and applies them to telecommunications. There are other ways to create parity with private telecommunications taxes. The Department of Revenue may be able to find a formula. Kitsap County Public Utility District is committed to solving the tax parity issue.

(Opposed) None.

Persons Testifying: Lisa Thatcher, Kitsap Public Utility District; and Bill Clarke, Washington Public Utility District Association.

Persons Signed In To Testify But Not Testifying: None.