
ENGROSSED SUBSTITUTE SENATE BILL 5679

State of Washington

65th Legislature

2017 Regular Session

By Senate Energy, Environment & Telecommunications (originally sponsored by Senators Warnick, Wellman, Sheldon, Rivers, Wilson, Cleveland, Walsh, Takko, and Rolfes)

READ FIRST TIME 02/17/17.

1 AN ACT Relating to the authority of port districts to provide
2 telecommunications services; amending RCW 53.08.370 and 53.08.380;
3 and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that:

6 (1) Adequate access to telecommunications facilities and
7 services, comparable to those offered in urban areas, is essential to
8 the economic well-being of communities in rural Washington state.

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

11 (3) Specifying that port districts in these areas have authority
12 to enter into contracts to attract private telecommunications
13 companies may help to create a sufficient market for the provision of
14 adequate retail telecommunications services.

15 **Sec. 2.** RCW 53.08.370 and 2000 c 81 s 7 are each amended to read
16 as follows:

17 (1) A rural port district in existence on June 8, 2000, (~~may~~)
18 and port districts located in counties with a population less than
19 seven hundred thousand are eligible to construct, purchase, acquire,
20 develop, finance, lease, license, handle, provide, add to, contract

1 for, interconnect, alter, improve, repair, operate, and maintain any
2 telecommunications facilities within or without the district's limits
3 utilizing unlit optical fiber for the following purposes:

4 (a) For the district's own use; and

5 (b) For the provision of wholesale telecommunications services
6 within or without the district's limits. Nothing in this subsection
7 shall be construed to authorize ((~~rural~~)) eligible port districts to
8 provide telecommunications services to end users.

9 (2) ((~~A rural~~)) Except as provided in subsection (7) of this
10 section, port districts providing wholesale telecommunications
11 services under this section shall ensure that rates, terms, and
12 conditions for such services are not unduly or unreasonably
13 discriminatory or preferential. Rates, terms, and conditions are
14 discriminatory or preferential when a ((~~rural~~)) port district
15 offering such rates, terms, and conditions to an entity for wholesale
16 telecommunications services does not offer substantially similar
17 rates, terms, and conditions to all other entities seeking
18 substantially similar services.

19 (3) When a ((~~rural~~)) port district establishes a separate utility
20 function for the provision of wholesale telecommunications services
21 under this section, it shall account for any and all revenues and
22 expenditures related to its wholesale telecommunications facilities
23 and services separately from revenues and expenditures related to its
24 internal telecommunications operations. Any revenues received from
25 the provision of wholesale telecommunications services must be
26 dedicated to the utility function that includes the provision of
27 wholesale telecommunications services for costs incurred to build and
28 maintain the telecommunications facilities until such time as any
29 bonds or other financing instruments executed after June 8, 2000, and
30 used to finance the telecommunications facilities are discharged or
31 retired.

32 (4) When a ((~~rural~~)) port district establishes a separate utility
33 function for the provision of wholesale telecommunications services
34 under this section, all telecommunications services rendered by the
35 separate function to the district for the district's internal
36 telecommunications needs shall be charged at its true and full value.
37 A ((~~rural~~)) port district may not charge its nontelecommunications
38 operations rates that are preferential or discriminatory compared to
39 those it charges entities purchasing wholesale telecommunications
40 services.

1 (5) A (~~rural~~) port district under this section shall not
2 exercise powers of eminent domain to acquire telecommunications
3 facilities or contractual rights held by any other person or entity
4 to telecommunications facilities.

5 (6) Except as otherwise specifically provided, a (~~rural~~) port
6 district may exercise any of the powers granted to it under this
7 title and other applicable laws in carrying out the powers authorized
8 under this section. Nothing in chapter 81, Laws of 2000 limits any
9 existing authority of a rural port district under this title.

10 (7) A port district under this section may select a
11 telecommunications company to operate all or a portion of the port
12 district's telecommunications facilities. The company may be the
13 exclusive provider of telecommunications services to end users under
14 terms specified in the contract with the port district. For purposes
15 of this section, "telecommunications company" means any for-profit
16 entity owned by investors that sells telecommunications services to
17 end users. Nothing in this subsection (7) is intended to limit or
18 otherwise restrict any other authority provided by law.

19 **Sec. 3.** RCW 53.08.380 and 2000 c 81 s 9 are each amended to read
20 as follows:

21 (1) A person or entity that has requested wholesale
22 telecommunications services from a rural port district or port
23 district as identified in RCW 53.08.370(1) may petition the
24 commission under the procedures set forth in RCW 80.04.110 (1)
25 through (3) if it believes the district's rates, terms, and
26 conditions are unduly or unreasonably discriminatory or preferential,
27 except as provided in RCW 53.08.370. The person or entity shall
28 provide the district notice of its intent to petition the commission
29 and an opportunity to review within thirty days the rates, terms, and
30 conditions as applied to it prior to submitting its petition. In
31 determining whether a district is providing discriminatory or
32 preferential rates, terms, and conditions, the commission may
33 consider such matters as service quality, technical feasibility of
34 connection points on the district's telecommunications facilities,
35 time of response to service requests, system capacity, and other
36 matters reasonably related to the provision of wholesale
37 telecommunications services. If the commission, after notice and
38 hearing, determines that a rural port district's rates, terms, and
39 conditions are unduly or unreasonably discriminatory or preferential,

1 it shall issue a final order finding noncompliance with this section
2 and setting forth the specific areas of apparent noncompliance. An
3 order imposed under this section shall be enforceable in any court of
4 competent jurisdiction.

5 (2) The commission may order a rural port district or port
6 district as identified in RCW 53.08.370(1) to pay a share of the
7 costs incurred by the commission in adjudicating or enforcing this
8 section.

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

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

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