
HOUSE BILL 1711

State of Washington

62nd Legislature

2011 Regular Session

By Representatives McCoy, Hasegawa, Rolfes, and Walsh

Read first time 01/31/11. Referred to Committee on Technology, Energy & Communications.

1 AN ACT Relating to the provision of telecommunications services by
2 public entities; amending RCW 54.16.005, 54.16.330, 53.08.005,
3 53.08.370, and 35A.80.010; adding a new section to chapter 35.92 RCW;
4 and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that there are areas
7 of the state that are not being served with telecommunications or
8 broadband services. The legislature further finds that many public
9 utility districts in the state maintain telecommunications facilities
10 in these underserved or unserved areas but are restricted from
11 providing telecommunications services directly to retail, end-use
12 customers. In an effort to reach those areas of the state that are
13 unserved or underserved, it is the intent of the legislature to grant
14 public utility districts the authority to provide retail
15 telecommunications services, including broadband, with the expectation
16 that these services will be subject to the same telecommunications
17 taxes, fees, and surcharges that are applicable to other
18 telecommunications providers in the state.

1 **Sec. 2.** RCW 54.16.005 and 2000 c 81 s 2 are each amended to read
2 as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

5 (1) "Commission" means the Washington utilities and transportation
6 commission.

7 (2) "Telecommunications" has the same meaning as that contained in
8 RCW 80.04.010.

9 (3) "Telecommunications facilities" means lines, conduits, ducts,
10 poles, wires, cables, crossarms, receivers, transmitters, instruments,
11 machines, appliances, instrumentalities and all devices, real estate,
12 easements, apparatus, property, and routes used, operated, owned, or
13 controlled by any entity to facilitate the provision of
14 telecommunications services.

15 (4) "Wholesale telecommunications services" means the provision of
16 telecommunications services or facilities for resale by an entity
17 authorized to provide telecommunications services to the general public
18 and internet service providers.

19 (5) "Public agency" has the same meaning as defined in RCW
20 39.34.020.

21 (6) "Retail telecommunications services" means the sale or lease of
22 telecommunications services or facilities directly to public agencies,
23 individuals, nonprofit organizations, libraries, schools, institutions
24 of higher education, or other public or private entities.

25 **Sec. 3.** RCW 54.16.330 and 2004 c 158 s 1 are each amended to read
26 as follows:

27 (1) A public utility district in existence on June 8, 2000, may
28 construct, purchase, acquire, develop, finance, lease, license, handle,
29 provide, add to, contract for, interconnect, alter, improve, repair,
30 operate, and maintain any telecommunications facilities within or
31 ~~((without))~~ outside of the district's limits for the following
32 purposes:

33 (a) For the district's internal telecommunications needs; ~~((and))~~

34 (b) For the provision of wholesale telecommunications services
35 within or adjacent to the district and by contract with another public
36 utility district; and

1 (c) For the provision of retail telecommunications services within
2 or adjacent to the district.

3 (~~Nothing in this subsection shall be construed to authorize public~~
4 ~~utility districts to provide telecommunications services to end~~
5 ~~users.))~~

6 (2) A public utility district providing wholesale or retail
7 telecommunications services shall ensure that rates, terms, and
8 conditions for such services are not unduly or unreasonably
9 discriminatory or preferential. Rates, terms, and conditions are
10 discriminatory or preferential when a public utility district offering
11 rates, terms, and conditions to an entity for wholesale or retail
12 telecommunications services does not offer substantially similar rates,
13 terms, and conditions to all other entities seeking substantially
14 similar services.

15 (3) A public utility district providing wholesale or retail
16 telecommunications services shall not be required to but may establish
17 a separate utility system or function for such purpose. In either
18 case, a public utility district providing wholesale or retail
19 telecommunications services shall separately account for any revenues
20 and expenditures for those services according to standards established
21 by the state auditor pursuant to its authority in chapter 43.09 RCW and
22 consistent with the provisions of this title. Any revenues received
23 from the provision of wholesale or retail telecommunications services
24 must be dedicated to costs incurred to build and maintain any
25 telecommunications facilities constructed, installed, or acquired to
26 provide such services, including payments on debt issued to finance
27 such services, until such time as any bonds or other financing
28 instruments executed after June 8, 2000, and used to finance such
29 telecommunications facilities are discharged or retired.

30 (4) When a public utility district provides wholesale or retail
31 telecommunications services, all telecommunications services rendered
32 to the district for the district's internal telecommunications needs
33 shall be allocated or charged at its true and full value. A public
34 utility district may not charge its nontelecommunications operations
35 rates that are preferential or discriminatory compared to those it
36 charges entities purchasing wholesale or retail telecommunications
37 services.

1 (5) If a person or entity receiving retail telecommunications
2 services from a public utility district under this chapter has a
3 complaint regarding the reasonableness of the rates, terms, conditions,
4 or service provided, the person or entity may file a complaint with the
5 public utility district.

6 (6) A public utility district shall not exercise powers of eminent
7 domain to acquire telecommunications facilities or contractual rights
8 held by any other person or entity to telecommunications facilities.

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

15 **Sec. 4.** RCW 53.08.005 and 2000 c 81 s 6 are each amended to read
16 as follows:

17 The definitions in this section apply throughout this chapter
18 unless the context clearly requires otherwise.

19 (1) "Commission" means the Washington utilities and transportation
20 commission.

21 (2) "Rural port district" means a port district formed under
22 chapter 53.04 RCW and located in a county with an average population
23 density of fewer than one hundred persons per square mile.

24 (3) "Telecommunications" has the same meaning as contained in RCW
25 80.04.010.

26 (4) "Telecommunications facilities" means lines, conduits, ducts,
27 poles, wires, cables, crossarms, receivers, transmitters, instruments,
28 machines, appliances, instrumentalities and all devices, real estate,
29 easements, apparatus, property, and routes used, operated, owned, or
30 controlled by any entity to facilitate the provision of
31 telecommunications services.

32 (5) "Wholesale telecommunications services" means the provision of
33 telecommunications services or facilities for resale by an entity
34 authorized to provide telecommunications services to the general public
35 and internet service providers.

36 (6) "Public agency" has the same meaning as defined in RCW
37 39.34.020.

1 (7) "Retail telecommunications services" means the sale of
2 telecommunications services or facilities directly to public agencies,
3 individuals, nonprofit organizations, libraries, schools, institutions
4 of higher education, or other public or private entities.

5 **Sec. 5.** RCW 53.08.370 and 2000 c 81 s 7 are each amended to read
6 as follows:

7 (1) A rural port district in existence on June 8, 2000, may
8 construct, purchase, acquire, develop, finance, lease, license, handle,
9 provide, add to, contract for, interconnect, alter, improve, repair,
10 operate, and maintain any telecommunications facilities within or
11 ~~((without))~~ outside of the district's limits for the following
12 purposes:

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

14 (b) For the provision of wholesale or retail telecommunications
15 services within or adjacent to the district's limits. ~~((Nothing in~~
16 ~~this subsection shall be construed to authorize rural port districts to~~
17 ~~provide telecommunications services to end users.))~~

18 (2) A rural port district providing wholesale or retail
19 telecommunications services under this section shall ensure that rates,
20 terms, and conditions for such services are not unduly or unreasonably
21 discriminatory or preferential. Rates, terms, and conditions are
22 discriminatory or preferential when a rural port district offering such
23 rates, terms, and conditions to an entity for wholesale or retail
24 telecommunications services does not offer substantially similar rates,
25 terms, and conditions to all other entities seeking substantially
26 similar services.

27 (3) When a rural port district establishes a separate utility
28 function for the provision of wholesale or retail telecommunications
29 services, it shall account for any and all revenues and expenditures
30 related to its wholesale or retail telecommunications facilities and
31 services separately from revenues and expenditures related to its
32 internal telecommunications operations. Any revenues received from the
33 provision of wholesale or retail telecommunications services must be
34 dedicated to the utility function that includes the provision of
35 wholesale or retail telecommunications services for costs incurred to
36 build and maintain the telecommunications facilities until such time as

1 any bonds or other financing instruments executed after June 8, 2000,
2 and used to finance the telecommunications facilities are discharged or
3 retired.

4 (4) When a rural port district establishes a separate utility
5 function for the provision of wholesale or retail telecommunications
6 services, all telecommunications services rendered by the separate
7 function to the district for the district's internal telecommunications
8 needs shall be charged at its true and full value. A rural port
9 district may not charge its nontelecommunications operations rates that
10 are preferential or discriminatory compared to those it charges
11 entities purchasing wholesale or retail telecommunications services.

12 (5) If a person or entity receiving retail telecommunications
13 services from a rural port district under this chapter has a complaint
14 regarding the reasonableness of the rates, terms, conditions, or
15 service provided, the person or entity may file a complaint with the
16 rural port district.

17 (6) A rural port district shall not exercise powers of eminent
18 domain to acquire telecommunications facilities or contractual rights
19 held by any other person or entity to telecommunications facilities.

20 ~~((+6+))~~ (7) Except as otherwise specifically provided, a rural port
21 district may exercise any of the powers granted to it under this title
22 and other applicable laws in carrying out the powers authorized under
23 this section. Nothing in chapter 81, Laws of 2000 limits any existing
24 authority of a rural port district under this title.

25 NEW SECTION. Sec. 6. A new section is added to chapter 35.92 RCW
26 to read as follows:

27 A city or town may construct, purchase, acquire, develop, finance,
28 lease, license, provide, contract for, interconnect, alter, improve,
29 repair, operate, and maintain telecommunications services or facilities
30 for the purpose of furnishing the city or town and its inhabitants with
31 telecommunications services. The city or town has full authority to
32 regulate and control the use, distribution, and price of the service.

33 **Sec. 7.** RCW 35A.80.010 and 1988 c 127 s 2 are each amended to read
34 as follows:

35 (1) A code city may provide utility service within and without its
36 limits and exercise all powers to the extent authorized by general law

1 for any class of city or town. The cost of such improvements may be
2 financed by procedures provided for financing local improvement
3 districts in chapters 35.43 through 35.54 RCW and by revenue and
4 refunding bonds as authorized by chapters 35.41, 35.67 and 35.89 RCW
5 and Title 85 RCW. A code city may protect and operate utility services
6 as authorized by chapters 35.88, 35.91, 35.92, and 35.94 RCW and may
7 acquire and damage property in connection therewith as provided by
8 chapter 8.12 RCW and shall be governed by the regulations of the
9 department of ecology as provided in RCW 90.48.110.

10 (2) For the purposes of this section, "utility service" may include
11 water, sewer, solid waste, electricity, or telecommunications services.

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