

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 240

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE AUTHORITY OF PORT DISTRICTS TO PROVIDE FIBER OPTIC SERVICE;  
2 AMENDING TITLE 70, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 1, TITLE  
3 70, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE FINDINGS, TO PROVIDE AUTHOR-  
4 ITY, TO PROVIDE FOR RATES, TERMS AND CONDITIONS, TO PROVIDE FOR A SEPA-  
5 RATE UTILITY FUNCTION, TO PROVIDE FOR BONDS AND USE OF REVENUE, TO PRO-  
6 VIDE APPLICATION OF EMINENT DOMAIN, TO PROVIDE FOR USE OF PUBLIC RIGHTS-  
7 OF-WAY AND TO PROVIDE FOR REVIEW BY PETITION TO THE IDAHO PUBLIC UTILI-  
8 TIES COMMISSION.  
9

10 Be It Enacted by the Legislature of the State of Idaho:

11 SECTION 1. That Title 70, Idaho Code, be, and the same is hereby amended  
12 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
13 ter 1, Title 70, Idaho Code, and to read as follows:

14 CHAPTER 1

15 PORT DISTRICTS TO PROVIDE FIBER OPTIC SERVICE

16 70-101. DEFINITIONS. As used in this act, the following terms shall  
17 have the following meanings unless the context clearly indicates otherwise:

18 (1) "Commission" means the Idaho public utilities commission.

19 (2) "Fiber optic service" means lines, conduits, ducts, poles, wires,  
20 fiber optic cable of any kind, wires, crossarms, equipment buildings, in-  
21 struments, machines, appliances, pedestals, instrumentalities and all de-  
22 vices required to maintain and account for the operations of the fiber optic  
23 cable, real estate, easements, apparatus, property and routes used, oper-  
24 ated or owned by a port district for the provision of optical fiber transmis-  
25 sion services.

26 (3) "Governmental entity" means a city, county, school district, high-  
27 way district, state agency, or other political subdivision or unit of gov-  
28 ernment.

29 (4) "Information" means knowledge or intelligence represented by any  
30 form of writing, sign, signal, picture, sound or any other symbols.

31 (5) "Person" means an individual or a business entity including, but  
32 not limited to, a partnership, corporation or limited liability company.

33 (6) "Port district" means a port district organized and operating under  
34 title 70, Idaho Code.

35 (7) "Service" means services in the broadest and most inclusive sense.

36 70-102. FINDINGS. The legislature makes the following findings:

37 (1) Access to fiber optic service is essential to the economic well-be-  
38 ing of the citizens of Idaho.

39 (2) Port districts may be well-positioned to construct and operate  
40 wholesale fiber optic service to portions of the state.

1 (3) The financing, acquisition and operation of wholesale fiber optic  
2 service by port districts promote and further an important public purpose.

3 (4) The provision of fiber optic service by port districts constitutes  
4 industrial and economic development facilities within the meaning of sec-  
5 tion 70-1501, Idaho Code, and are "reasonably incident to the operation  
6 of a modern, efficient and competitive port, together with industrial and  
7 economic development facilities of any kind or nature which maintain or in-  
8 crease employment opportunities in a port district" within the meaning of  
9 that section.

10 70-103. AUTHORITY. A port district may own, construct, purchase, ac-  
11 quire, develop, finance, lease, operate, contract for, interconnect, alter,  
12 improve, repair, extend and maintain any fiber optic service within or with-  
13 out the port district's boundaries for the following purposes:

- 14 (1) For the port district's own use;  
15 (2) For the use of other governmental entities; and  
16 (3) For the provision of wholesale fiber optic service. Nothing in this  
17 act shall be construed to authorize port districts to provide fiber optic  
18 service to end users.

19 70-104. RATES, TERMS AND CONDITIONS. A port district providing fiber  
20 optic service under this act may charge rates and provide terms and condi-  
21 tions for such service, provided that such rates, terms and conditions shall  
22 not be unduly or unreasonably discriminatory or preferential.

23 70-105. SEPARATE UTILITY FUNCTION. A port district providing fiber  
24 optic service under this act shall establish a separate utility function for  
25 such service and shall account for all revenues and expenditures related to  
26 its fiber optic service separately from its other port operations.

27 70-106. BONDS -- USE OF REVENUE. Fiber optic service shall constitute  
28 "industrial and economic development facilities" within the meaning of sec-  
29 tion 70-1802, Idaho Code. A port district may issue revenue bonds and war-  
30 rants in the manner provided in chapter 18, title 70, Idaho Code, payable  
31 from the revenues of its fiber optic service, to the acquisition, construc-  
32 tion, purchase, improvement, extension and repair of fiber optic service,  
33 and may utilize the revenue from its fiber optic service for the following  
34 purposes:

35 (1) To pay all expenses of operation, maintenance, replacement and de-  
36 preciation of such facilities, including reserves therefor;

37 (2) To pay when due all bonds and warrants and interest thereon, for the  
38 payment of which such revenue is or shall have been pledged, including re-  
39 serves therefor;

40 (3) To pay and discharge notes, bonds, warrants or other obligations  
41 and interest thereon issued for the purpose of financing the acquisition,  
42 construction, purchase, improvement, extension and repair of fiber optic  
43 service, whether or not such notes, bonds, warrants or other obligations  
44 constitute a lien upon such revenue; and

45 (4) After adequate provision has been made for the foregoing purposes,  
46 to transfer any excess revenue to its general fund.

1           70-107. EMINENT DOMAIN. A port district shall not exercise its power  
2 of eminent domain to acquire fiber optic service or contractual rights to  
3 fiber optic service held by another person or entity.

4           70-108. USE OF PUBLIC RIGHTS-OF-WAY. The state or a local unit of gov-  
5 ernment having maintenance and operation responsibility over the public  
6 rights-of-way shall allow the port district to install, construct, operate  
7 and maintain fiber optic service within the public rights-of-way over which  
8 such unit of government has jurisdiction, to enable the port district to  
9 provide fiber optic service within its boundaries. No provision of this act  
10 shall diminish or otherwise limit the authority of the state or local unit  
11 of government having jurisdiction over the public rights-of-way, nor limit,  
12 abrogate or supersede the provisions of any applicable local ordinance or  
13 other regulation governing the use of the public right-of-way. The state or  
14 local unit of government having jurisdiction over the public right-of-way  
15 may impose reasonable and nondiscriminatory franchise, permit or license  
16 fees relating to the opening, closing, inspection or repair of public  
17 rights-of-way by a port district, but only to the extent that it imposes such  
18 a fee on other public utilities or franchises.

19           70-109. REVIEW. (1) A person or entity that has requested or that is  
20 receiving fiber optic service from a port district may petition the commis-  
21 sion for review under the procedures set forth in chapter 6, title 62, Idaho  
22 Code, if it believes that the port district's rates, terms and conditions are  
23 unduly and unreasonably discriminatory and preferential.

24           (2) The person or entity requesting review shall first provide the  
25 port district notice of its intent to petition the commission and an oppor-  
26 tunity to review within thirty (30) days the rates, terms and conditions as  
27 applied to it prior to submitting its petition.

28           (3) In determining whether the port district is providing unduly dis-  
29 criminatory or preferential rates, terms and conditions, the commission  
30 shall consider such matters as service quality, technical feasibility of  
31 connection points on the port district's fiber optic facilities, time of  
32 response to service requests, system capacity and other matters reasonably  
33 related to the provision of fiber optic service.

34           (4) If the commission, after notice and hearing, determines that a port  
35 district's rates, terms and conditions are unduly discriminatory or prefer-  
36 ential, it shall issue a final order finding noncompliance with this section  
37 and setting forth the specific areas of noncompliance. An order issued under  
38 this section shall be enforceable in any court of competent jurisdiction.

39           (5) Nothing in this section shall be construed as affecting the com-  
40 mission's authority and jurisdiction with respect to actions, proceedings  
41 or orders permitted or contemplated under the federal communications act of  
42 1996 or other applicable federal law.