

# HOUSE BILL REPORT

## SHB 2175

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### As Passed Legislature

**Title:** An act relating to removing barriers to economic development in the telecommunications industry.

**Brief Description:** Removing barriers to economic development in the telecommunications industry.

**Sponsors:** House Committee on Technology & Economic Development (originally sponsored by Representatives Morris, Morrell and Stanford).

#### **Brief History:**

##### **Committee Activity:**

Technology & Economic Development: 1/17/14, 1/30/14 [DPS].

##### **Floor Activity:**

Passed House: 2/14/14, 96-0.

Senate Amended.

Passed Senate: 3/6/14, 34-15.

House Refused to Concur.

Senate Amended.

Passed Senate: 3/12/14, 47-2.

House Concurred.

Passed House: 3/13/14, 95-3.

Passed Legislature.

#### **Brief Summary of Substitute Bill**

- Authorizes local governments to allow applicants for "small cell networks" to file a consolidated application and receive a single permit, instead of filing separate applications for each individual small cell facility.
- Limits municipal authority to charge personal wireless service providers for use of the right-of-way in installing certain personal wireless services replacement structures, when such structures are not higher than the replaced structure.

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### HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

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*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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Morris, Chair; Habib, Vice Chair; Smith, Ranking Minority Member; Short, Assistant Ranking Minority Member; Dahlquist, Freeman, Kochmar, Magendanz, Ryu, Stonier, Tarleton and Wylie.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Morrell, Vick, Walsh and Zeiger.

**Staff:** Jasmine Vasavada (786-7301).

### **Background:**

#### Siting of Personal Wireless Services Facilities.

In 1996 the Legislature categorically exempted from the State Environmental Policy Act (SEPA) the siting, in areas not designated as environmentally sensitive, of certain antenna facilities defined as “microcells” and “minor facilities.” In addition, the Legislature encouraged local governments to allow the filing of a single set of SEPA and land use documents for the siting of these antenna facilities in a single geographic area.

In 2013 the Legislature replaced the categorical SEPA exemption for microcells with an exemption for the collocation, removal, or replacement of wireless service facilities that do not: (1) increase the height of the structure by the greater of 10 percent or 20 feet; or (2) add a component to the structure that protrudes more than 20 feet, or more than the width of the structure at the level it is placed.

#### Authority to Impose Site-Specific Charges.

The authority of cities and towns to require personal wireless services providers to pay franchise fees or other fees or charges for the use of the right-of-way is limited.

Municipalities may generally impose a site-specific charge, pursuant to an agreement with a personal wireless services provider, for the following: (1) placement of new structures in the right-of-way; (2) placement of personal wireless facilities on structures owned by the municipality; and (3) placement of replacement structures, when the replacement is necessary for attachment or installation of wireless facilities and the overall height of the replacement structure and the wireless facility is more than 60 feet. A personal wireless service company may seek binding arbitration if a municipality and the company cannot agree on site-specific charges.

#### Federal Laws and Rulemaking Concerning Siting of Wireless Communication Facilities.

In the Federal Telecommunications Act of 1996 Congress directed the FCC to encourage the deployment of telecommunications facilities by working to remove barriers to infrastructure investment in a manner consistent with the public interest, convenience, and necessity. In 2012 an amendment required state and local governments to approve requests for the modification of an existing wireless tower or base station for certain facilities, if the modification does not substantially change the physical dimensions of the tower or base. In September 2013 the FCC issued a notice of proposed rule-making designed to promote the rapid deployment of wireless facilities and services generally and particularly "small cell" networks and distributed antenna systems that expand capacity and wireless coverage in a local area through a series of small, low-mounted antennas.

## **Summary of Substitute Bill:**

### Requiring Single Permits for Small Cell Networks.

Local governments may allow a provider of a small cell network to file a consolidated application and receive a single permit for the interrelated facilities that comprise the network within a jurisdiction, instead of filing separate applications for each individual small cell facility. Relevant terms are defined as follows:

- "Small cell network" means a collection of interrelated small cell facilities designed to deliver personal wireless services.
- "Small cell facility" means a wireless service facility that meets both of the following elements: (1) each antenna is located inside an antenna enclosure of no more than 3 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than 3 cubic feet; and (2) primary equipment enclosures are no larger than 17 cubic feet in volume; however, the following associated equipment may be located outside the primary equipment enclosure and are not included in the calculation of equipment volume: electric meter, concealment, telecom demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch.
- "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

### Modifying Municipal Authority to Impose Site-Specific Charges for the Use of the Right-of-Way.

The authority of cities and towns to require personal wireless service providers to pay a site-specific charge for use of the right-of-way is modified. In addition to the previous limitations established by statute, a site-specific charge for placement in the right-of-way of replacement structures with an overall height greater than 60 feet is now only authorized when the replacement structure is also higher than the structure that is being replaced.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** 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 intent of this bill is to eliminate barriers that keep money from being invested in the telecommunications infrastructure in this state. The "microcell" definition has not been updated in many years. Agencies have not filed required reports with the Legislature. There is a problem with how disputes are settled under the pole attachment rate statute. Leasehold excise tax issues for pole attachments are also problematic. The goal is to increase money that is put in on the ground in Washington.

Last year the committee looked at House Bill 1183 and allowed for additional work to be done on site modifications to existing structures. Today's bill creates an opportunity for the telecommunications industry to look at some of the definitions and work with interested parties. In Washington, a significant percentage of households have no landline telephone and are wireless only. This number nearly doubles among young adults 18 to 29 years of age. Mobile devices are used for much more than voice. People take pictures and record videos. The demands for data capacity have increased many times over. Early on, microcells just provided coverage gaps. In this day and age data capacity issues and small cell technologies are a great complement to provider networks.

(In support with concerns) The pole attachment rate statute is now the subject of litigation. Investor-owned utilities (IOUs) are treated differently than public utilities. The IOUs go through a review by the Utilities and Transportation Commission (UTC) before a dispute goes to court. With respect to public pole owners, there is no third-party chance to resolve those disputes. Broadband companies would prefer giving jurisdiction to resolving these disputes to the UTC. Nonetheless, allowing arbitration would be helpful. Requiring binding arbitration however raises a number of concerns. It would be better if arbitration was offered as a step, but retaining the option to proceed to the courts. There are also some technical amendments intended to reflect changing times. It is unclear whether any disputes arising under the pole attachment statute have ever involved worker safety. Those types of issues can be excluded from arbitration.

(Opposed) Workers at public utility districts feel this bill takes away opportunities from our employers to make decisions into which employees currently have input. Worker safety should not be decided by arbitration; there are well-established systems in place to take care of such concerns.

Binding arbitration is unnecessary. Over decades, there have only been two lawsuits concerning pole attachment rates. Pacific County Public Utility District (PUD) brought an action and prevailed in superior court, in a case that is currently under appeal. The PUD had not raised pole attachment rates for 20 years, so before changing rates, the PUD board hired a third-party, independent consultant to develop a report with a recommendation on rates. The consultant recommended rates higher than those that the board adopted. Prior to the litigation, the PUD negotiated with some of the attachers over 16 months, and at that point the parties could not decide on a finalized agreement on rates. In conclusion, a mechanism is in place that already works well for disputes. No other pole owner has binding authority.

This is the five-year anniversary of the last time the Legislature grappled with pole attachment rates. This bill amends a statute that deals with PUDs only. It is discriminatory and it does not include municipal cooperatives or IOUs. The last lawsuit was brought by a PUD, not a pole attacher. The bill takes away the right to sue or be sued. The binding arbitration statutes apply only to parties where both have agreed to binding arbitration. Furthermore, arbitration is not a replacement for litigation, because you cannot establish legal precedents with arbitration. The bill mandates Thurston County Superior Court as a venue. You can only appeal to have that arbitration decision enforced. Private attachers on PUD poles are not subject to that. It could overturn electrical codes that deal with the safety of people. One member PUD did an audit of their poles, and after the audit they found there were thousands of illegal attachments for which the PUD had never received notification or

payment by the attachers. The PUD does not know how long those attachments have been in place. This bill is not needed.

**Persons Testifying:** (In support) Representative Morris, prime sponsor; Bob Bass, AT&T.

(In support with concerns) Ron Main, Broadband Communications Association of Washington.

(Opposed) Bob Guenther, International Brotherhood of Electrical Workers; Doug Miller, Pacific County Public Utilities District; and Dave Warren, Washington Public Utilities District Association.

**Persons Signed In To Testify But Not Testifying:** None.