5935-S2.E AMH MORR SMIL 129

**E2SSB 5935** - H AMD TO TED COMM AMD (H-5116.1/18) **1394**

By Representative Morris

On page 1, after line 2 of the striking amendment, insert the following:

"NEW SECTION. **Sec.**  A new section is added to chapter 35.99 RCW to read as follows:

(1)(a) It is the policy of the state to promote the efficient deployment of small cell facilities and small cell network infrastructure by offering predictability for wireless service providers and wireless infrastructure providers so communities across the state have access to wireless communications technologies and create a framework for the deployment of wireless communications services. It is also the policy of the state that cities and towns maintain sufficient authority to manage the public rights-of-way for the health, safety, and welfare of their citizens and the general public.

(b) It is the intent of the legislature that cities and towns may require wireless service providers and wireless infrastructure providers seeking to deploy small cell facilities or small cell networks infrastructure to obtain a master permit or equivalent authority under RCW 35.99.030. Additionally, a city or town may require a wireless service provider or wireless infrastructure provider to obtain appropriate permits to enter and use the specified right-of-way for the purpose of installing, maintaining, repairing, or removing identified small cell network facilities.

(2) Except as provided for in subsection (7) of this section, cities and towns with a population equal to or greater than fifteen thousand shall enact a small cell facility deployment ordinance, or develop a small cell facility deployment policy establishing a process for siting small cell facilities and small cell networks within the right-of-way under this chapter, provided the city or town has received a complete application and application fee for a master permit from a wireless service provider or wireless infrastructure provider for a small cell facility.

(3) A city or town may not require an applicant proposing to site a small cell facility on an existing pole or structure to apply for a conditional use permit except where:

(a) Such a proposal would require original installation of a new pole or structure;

(b) Such a proposal would require an existing pole or structure to be extended or replaced at a height more than ten feet above the original height, as of the effective date of this act, of a pole or structure, except where the applicant can demonstrate that the requested pole height is the minimum needed to achieve necessary safety clearances or the requirement of the pole owner; or

(c) The proposed facility does not meet established design standards for small cell facilities or small cell networks.

(4)(a) A city or town that updates an existing small cell facility deployment ordinance or policy, or adopts a small cell facility deployment ordinance or policy must outline the process that wireless service providers and wireless infrastructure providers are required to follow in seeking a master permit to deploy small cell facilities and small cell networks.

(b) The small cell facility deployment ordinance or policy must treat wireless service providers and wireless infrastructure providers in a competitively neutral and nondiscriminatory manner.

(5) The small cell facility deployment ordinance or policy must include:

(a) Initial fees or deposits required for filing the master permit application. The use of a deposit for administrative costs in lieu of a set fee is not prohibited if the final, total administrative fee charged complies with the requirements of RCW 35.21.860. The fee schedule may allow a permit applicant to pay an additional fee for expedited permit processing if the city has deployed such a process. This provision is not intended to require jurisdictions to create an expedited permitting process when one does not already exist; and

(b) An example fee schedule for leasing city or town-owned poles in order to allow for nonbinding cost estimates. The fee schedule must detail the specific factors or combination of factors driving the lease rates.

(6) A small cell facility deployment ordinance or policy may include the following provisions, at the discretion of the city or town: Standards for the installation of small cell facilities and small cell networks on city or town-owned structures located outside of the right-of-way and other terms and conditions for these installations.

(7) A city or town that, as of the effective date of this section, has previously adopted an ordinance or policy, consistent with this act, governing the siting of small cell network infrastructure is not required to adopt or amend a small cell facility deployment ordinance or policy as otherwise required under subsection (2) of this section.

(8) A small cell facility deployment ordinance or policy enacted as required by this section has no effect on previously adopted franchises, permits, or agreements for small cell facilities or small cell networks deployments made or entered into by any city or town.

(9) Nothing in this section limits a city or town from issuing master permits or use permits in accordance with other provisions of this chapter.

(10) Nothing in this section may be construed as creating a duty on cities or towns with a population less than fifteen thousand. However, cities with a population of less than fifteen thousand may adopt a small cell facility deployment ordinance or policy and the provisions under subsection (2) of this section.

(11) A city or town subject to the requirements in the section that has not complied with this section by December 1, 2020 must submit a letter to the appropriate committees of the legislature by December 31, 2020 detailing the reasons for noncompliance.

(12) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Small cell facility" has the same meaning as defined in RCW 80.36.375(2)(d).

(b) "Small cell network" has the same meaning as defined in RCW 80.36.375(2)(e).

(c) "Wireless infrastructure provider" means any person, including a person authorized to provide telecommunications service in this state, that builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless service provider.

(d) "Wireless services" means any services, whether at a fixed location or mobile, provided using wireless facilities.

(e) "Wireless service provider" means a person who provides wireless services."

Renumber the remaining sections consecutively, correct any internal references accordingly, and correct the title.

On page 6, beginning on line 21 of the striking amendment, after "access" strike ", including funding grants under section 5 of this act"

On page 9, line 15 of the striking amendment, after "(c)" insert ""Broadband" has the same meaning as defined in section 2 of this act.

(d)"

Renumber the remaining subsections consecutively and correct any internal references accordingly.

On page 10, line 3 of the striking amendment, after "(k)" insert ""Underserved areas" has the same meaning as defined in section 2 of this act.

(l) "Unserved areas" has the same meaning as defined in section 2 of this act.

(m)"

Correct any internal references accordingly.

On page 11, line 23 of the striking amendment, after "area" insert "at comparable levels to the existing service"

On page 11, line 24 of the striking amendment, after "provided." insert "To be eligible to receive support a communications provider must agree to provide service without delay to every person and business within each exchange for which program support is requested and to be subject to regulation by the commission comparable to the existing provider."

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|  | EFFECT:   Adds small cell siting ordinance requirements for cities and towns with populations at or over 15,000, including a permitting process, limits on the use of conditional use permits, neutral treatment of service providers, and inclusion of initial fee requirements and example leasing rates. Requires cities that have not complied with the requirements by 2020 to notify the Legislature of the reasons for noncompliance. Removes an obsolete internal reference. Incorporates definitions from the Broadband Office for "broadband," "underserved areas," and "unserved areas" for the Universal Communications Services (UCS) program. Modifies the UCS program eligibility criteria after July 1, 2022, to require provision of service at comparable levels to the existing service, provision of service within each exchange without delay, and regulation by the Utilities and Transportation Commission comparable to the existing provider. |

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