
HOUSE BILL 1440

State of Washington

67th Legislature

2021 Regular Session

By Representatives Boehnke, Sutherland, Chambers, Graham, Volz, Eslick, and Jacobsen

Read first time 02/01/21. Referred to Committee on Community & Economic Development.

1 AN ACT Relating to bringing innovation and investment to
2 Washington's economy by streamlining the requirements for deployment
3 of small wireless facilities; and adding a new chapter to Title 80
4 RCW.

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

6 NEW SECTION. **Sec. 1.** The legislature finds and declares that:

7 (1) As a result of COVID-19, Washington state schools are largely
8 operating on a distance learning model and many citizens are working
9 remotely. Communications networks, including both wired and wireless,
10 have done much work to meet these growing needs, but additional work
11 is required to facilitate widespread deployment of next-generation
12 wireless and broadband network facilities;

13 (2) Wireless and broadband products and services are a
14 significant and continually growing part of the state's economy.
15 Accordingly, encouraging the development of strong and robust
16 wireless and broadband communications networks throughout the state
17 is integral to the state's economic competitiveness;

18 (3) Rapid deployment of small wireless facilities will serve
19 numerous important statewide goals and the public policy, including:
20 Meeting growing consumer demand for wireless data; increasing
21 competitive options for communications services available to the

1 state's residents; promoting the ability of the state's citizens to
2 communicate with other citizens and with their schools, state, and
3 local governments; and promoting public safety;

4 (4) Small wireless facilities, including facilities commonly
5 referred to as small cells and distributed antenna systems, are
6 deployed most effectively in the rights-of-way;

7 (5) To meet the key objectives of this chapter and federal law,
8 wireless providers must have access to the rights-of-way and the
9 ability to attach to infrastructure in the rights-of-way to densify
10 their networks and provide next-generation wireless services;

11 (6) Rates and fees for the permitting and deployment of small
12 wireless facilities in rights-of-way and on authority infrastructure,
13 including poles, throughout the state, consistent with federal law,
14 is reasonable and will encourage the development of robust next-
15 generation wireless and broadband networks for the benefit of
16 citizens throughout the state; and

17 (7) The procedures, rates, and fees in this chapter are
18 consistent with federal law and are fair and reasonable when viewed
19 from the perspective of the state's citizens and the state's interest
20 in having robust, reliable, and technologically advanced wireless and
21 broadband networks and reflect a balancing of the interests of the
22 wireless providers deploying new facilities and the interests of
23 authorities in recovering their costs of managing access to the
24 rights-of-way and the attachment space provided on authority
25 infrastructure in the rights-of-way.

26 NEW SECTION. **Sec. 2.** The definitions in this section apply
27 throughout this chapter unless the context clearly requires
28 otherwise.

29 (1) "Antenna" means an apparatus designed for the purpose of
30 emitting radio frequency signals to be operated or operating from a
31 fixed location pursuant to the federal communications commission
32 authorization for the provision of wireless services.

33 (2) "Antenna equipment" means equipment, switches, wiring,
34 cabling, power sources, shelters, or cabinets associated with an
35 antenna, located at the same fixed location as the antenna, and when
36 collocated on a structure. Antenna equipment does not include:

37 (a) The structure or improvements on, under, or within which the
38 equipment is collocated; or

1 (b) Wireline backhaul facilities, coaxial or fiber optic cable
2 that is between wireless support structures or utility poles or
3 coaxial, or fiber optic cable that is otherwise not immediately
4 adjacent to or directly associated with an antenna.

5 (3) "Antenna facility" means an antenna and associated antenna
6 equipment.

7 (4) "Applicable codes" means uniform building, fire, electrical,
8 plumbing, or mechanical codes adopted by a recognized national code
9 organization, or local amendments to those codes that are of general
10 application, address public safety, and are consistent with this
11 chapter.

12 (5) "Applicant" means any person who submits an application as or
13 on behalf of a wireless provider.

14 (6) "Application" means a request submitted by an applicant to an
15 authority for a permit to:

16 (a) Collocate small wireless facilities; or

17 (b) Install, modify, or replace a structure on which to collocate
18 a small wireless facility, where required.

19 (7) "Authority" means the state or any agency, county,
20 municipality, district, or subdivision thereof or any instrumentality
21 of the same including, but not limited to, public utility districts,
22 irrigation districts, and municipal electric utilities. "Authority"
23 does not include state courts having jurisdiction over an authority.

24 (8) "Authority structure" means a structure, or conduit facility
25 suitable for placing fiber required to provide backhaul to a small
26 wireless facility, owned, managed, or operated by or on behalf of an
27 authority.

28 (9) "Collocate" means either (a) mounting or installing an
29 antenna facility on a preexisting structure; or (b) modifying a
30 structure for the purpose of mounting or installing an antenna
31 facility on that structure, or both.

32 (10) "Communications facility" means the set of equipment and
33 network components, including wires, cables, and associated
34 facilities used by a cable operator, as defined in 47 U.S.C. Sec.
35 522(5); a telecommunications carrier, as defined in 47 U.S.C. Sec.
36 153(51); a provider of information service, as defined in 47 U.S.C.
37 Sec. 153(24); or a wireless services provider to provide
38 communications services, including cable service, as defined in 47
39 U.S.C. Sec. 522(6), telecommunications service, as defined in 47
40 U.S.C. Sec. 153(53), or an information service, as defined in 47

1 U.S.C. Sec. 153(24) wireless service; or other one-way or two-way
2 communications service.

3 (11) "Communications service provider" means a cable operator, as
4 defined in 47 U.S.C. Sec. 522(5); a provider of information service,
5 as defined in 47 U.S.C. Sec. 153(24); a telecommunications carrier,
6 as defined in 47 U.S.C. Sec. 153(51); or a wireless provider.

7 (12) "Decorative pole" means an authority structure that is
8 specially designed and placed for aesthetic purposes and on which no
9 appurtenances or attachments, other than a small wireless facility,
10 lighting, specially designed informational or directional signage, or
11 temporary holiday or special event attachments have been placed or
12 are permitted to be placed according to nondiscriminatory authority
13 rules or codes.

14 (13) "Facility" means an antenna facility or a structure that is
15 used for the provision of wireless services.

16 (14) "Fee" means a one-time, nonrecurring charge.

17 (15) "Historic district" means a group of buildings, properties,
18 or sites that are either: (a) Listed in the national register of
19 historic places or formally determined eligible for listing by the
20 keeper of the national register, in accordance with Section
21 VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47
22 C.F.R. Part 1, Appendix C, as it existed on the effective date of
23 this section; or (b) a registered historic district by the state
24 historic preservation officer as of the effective date of this
25 section.

26 (16) "Law" includes applicable federal, state, or local law,
27 statute, common law, code, rule, regulation, order, or ordinance.

28 (17) "Micro wireless facility" means a small wireless facility
29 that meets the following qualifications: (a) Is not larger in
30 dimension than 24 inches in length, 15 inches in width, and 12 inches
31 in height; and (b) any exterior antenna is no longer than 11 inches.

32 (18) "Permit" means any and all authorizations, written or
33 otherwise, required by an authority to perform an action or initiate,
34 continue, or complete a project for the deployment of wireless
35 services at a specified location.

36 (19) "Person" means an individual, corporation, limited liability
37 company, partnership, association, trust, or other entity or
38 organization, including an authority.

39 (20)(a) "Pole" means a type of similar structure in the rights-
40 of-way that is or may be used in whole or in part by or for wireline

1 communications, electric distribution, lighting, traffic control,
2 signage, or a similar function, or for the collocation of small
3 wireless facilities.

4 (b) "Pole" does not include wireless support structures or
5 electric transmission structures.

6 (21) "Rate" means a recurring charge.

7 (22) "Rights-of-way" means the area on, below, or above a public
8 utility easement, roadway, highway, street, sidewalk, alley, or
9 similar property, but not including a federal interstate highway.

10 (23) "Small wireless facility" means a facility that meets each
11 of the following conditions:

12 (a) The facilities: (i) Are mounted on structures 50 feet or less
13 in height including the antennas; (ii) are mounted on structures no
14 more than 10 percent taller than other adjacent structures; or (iii)
15 do not extend existing structures on which they are located to a
16 height of more than 50 feet or by more than 10 percent, whichever is
17 greater;

18 (b) Each antenna associated with the deployment, excluding
19 associated antenna equipment, is no more than three cubic feet in
20 volume;

21 (c) All other wireless equipment associated with the structure,
22 including wireless equipment associated with the antenna and any
23 preexisting associated equipment on the structure, is no more than 28
24 cubic feet in volume; and

25 (d) The facilities do not result in human exposure to radio
26 frequency in excess of the applicable safety standards specified in
27 47 C.F.R. Sec. 1.1307(b), as it existed on the effective date of this
28 section.

29 (24) "Structure" means a wireless support structure or other
30 building, whether or not it has an existing antenna facility, that is
31 used or is to be used for the provision of wireless services.

32 (25) "Technically feasible" means that by virtue of engineering
33 or spectrum usage the proposed placement for a small wireless
34 facility, or its design, concealment measures, or site location can
35 be implemented without a reduction in the functionality of the small
36 wireless facility.

37 (26) "Wireless infrastructure provider" means any person,
38 including a person authorized to provide telecommunications service
39 in the state, that builds or installs wireless communication

1 transmission equipment, wireless facilities, or wireless support
2 structures, but that is not a wireless services provider.

3 (27) "Wireless provider" means a wireless infrastructure provider
4 or a wireless services provider.

5 (28) "Wireless services" means any services using licensed or
6 unlicensed spectrum, including the use of wi-fi, whether at a fixed
7 location or mobile, provided to the public.

8 (29) "Wireless services provider" means a person who provides
9 wireless services.

10 (30)(a) "Wireless support structure" means a structure, such as
11 a: Monopole; tower, either guyed or self-supporting; billboard;
12 building; or other existing or proposed structure designed to support
13 or capable of supporting wireless facilities, other than a structure
14 designed solely for the collocation of small wireless facilities.

15 (b) "Wireless support structure" does not include a pole.

16 NEW SECTION. **Sec. 3.** (1) This section applies to activities of
17 a wireless provider within the rights-of-way to deploy small wireless
18 facilities and associated poles.

19 (2) An authority may not enter into an exclusive arrangement with
20 any person for use of the rights-of-way for the collocation of small
21 wireless facilities or the installation, operation, marketing,
22 modification, maintenance, or replacement of poles for such
23 collocation.

24 (3) Subject to this section, a wireless provider has the right,
25 as a permitted use not subject to zoning review or approval, to
26 collocate small wireless facilities and install, maintain, modify,
27 operate, and replace poles along, across, upon, and under the rights-
28 of-way. Such structures and facilities must be installed and
29 maintained so as not to obstruct or hinder the usual travel or public
30 safety on the rights-of-way or obstruct the legal use of the rights-
31 of-way by utilities.

32 (4) Each new or modified pole installed in the rights-of-way for
33 the purpose of collocation of small wireless facilities may not
34 exceed the greater of: (a) 50 feet in height above ground level; or
35 (b) ten percent taller than the tallest existing structure in place
36 in the rights-of-way, as of the effective date of this section,
37 located within 500 feet of the new structure in the same rights-of-
38 way. A wireless provider has the right to collocate a small wireless
39 facility and install, maintain, modify, operate, and replace a pole

1 that exceeds these height limits along, across, upon, and under the
2 rights-of-way, subject to this section and applicable zoning
3 regulations.

4 (5) An authority may adopt standards in its code governing the
5 deployment of small wireless facilities and associated poles in the
6 rights-of-way, subject to the following conditions:

7 (a) The aesthetic requirements must be: (i) Reasonable, in that
8 they are technically feasible and reasonably directed to avoiding or
9 remedying the intangible public harm of unsightly or out-of-character
10 deployments; (ii) no more burdensome than those applied to other
11 types of infrastructure deployments; and (iii) objective and
12 published in advance.

13 (b) An authority may deny a permit for not complying with
14 aesthetic requirements only if the authority has found that a denial
15 does not create an effective prohibition of wireless services.

16 (c) Aesthetic requirements applicable to deployment on decorative
17 poles and in historic districts must also comply with the following
18 requirements:

19 (i) A wireless provider must be permitted to collocate on or
20 replace decorative poles when necessary to deploy a small wireless
21 facility. An authority may require the collocation or decorative pole
22 replacement to reasonably conform to the design aesthetics of the
23 original decorative pole or poles, provided that these requirements
24 are technically feasible.

25 (ii) A wireless provider shall be permitted to collocate small
26 wireless facilities or replace poles in historic districts.
27 Consistent with this subsection, an authority may require design or
28 concealment measures for small wireless facilities and associated
29 poles in historic districts. Any such design or concealment measures
30 may not be considered a part of the small wireless facility for
31 purposes of the size parameters in the definition of small wireless
32 facility. New poles must be permitted if collocation is not an
33 option.

34 (iii) A wireless provider must be permitted to place a new pole,
35 subject to the terms of this subsection, where to deny placement of
36 the new pole would be an effective prohibition of service.

37 (6) A wireless provider must comply with undergrounding
38 requirements where:

1 (a) The authority has required all electric and communications
2 lines to be placed underground by three months prior to the
3 submission of the application;

4 (b) Structures the authority allows to remain must be made
5 available to wireless providers for the collocation of small wireless
6 facilities, and may be replaced by a wireless provider to accommodate
7 the collocation of small wireless facilities, in compliance with this
8 chapter;

9 (c) A wireless provider may install a new pole in the designated
10 area that otherwise complies with this section when it is not able to
11 provide wireless services by collocating on a remaining pole or other
12 structure; and

13 (d) For small wireless facilities installed before an authority
14 adopts requirements that communications and electric lines be placed
15 underground, an authority adopting such requirements must permit: (i)
16 A wireless provider to maintain the small wireless facilities in
17 place on any structure not required to be removed, subject to any
18 applicable pole attachment agreement with the pole owner; or (ii) the
19 wireless provider to replace an existing pole within 50 feet of the
20 prior location.

21 (7) The authority may require a wireless provider to repair all
22 damage to the rights-of-way directly caused by the activities of the
23 wireless provider in the rights-of-way and to return the rights-of-
24 way to its functional equivalence before the damage pursuant to the
25 competitively neutral, reasonable requirements and specifications of
26 the authority. If the wireless provider fails to make the repairs
27 required by the authority within a reasonable time after written
28 notice, the authority may make those repairs and charge the
29 applicable party the reasonable, documented cost of such repairs.

30 (8) A wireless provider may not be required to replace or upgrade
31 an existing pole or the electrical components supporting the pole
32 except for reasons of structural necessity or compliance with
33 applicable codes. A wireless provider may, with the permission of the
34 pole owner, replace or modify existing poles, but any such
35 replacement or modification must be consistent with the design
36 aesthetics of the pole being modified or replaced.

37 (9) A wireless provider is required to notify the authority at
38 least 30 days before its abandonment of a small wireless facility.
39 Following receipt of such a notice, the authority shall direct the
40 wireless provider to remove all or any portion of the small wireless

1 facility that the authority determines would be in the best interest
2 of the public safety and public welfare to remove. If the wireless
3 provider fails to remove the abandoned facility within 90 days after
4 such a notice, the authority may undertake to do so and recover the
5 actual and reasonable expenses of doing so from the wireless provider
6 or its successors or assigns.

7 NEW SECTION. **Sec. 4.** (1) This section applies to all permits
8 required for the collocation of small wireless facilities and to the
9 permitting of the installation, modification, and replacement of
10 associated poles by a wireless provider.

11 (2) Except as provided in this chapter, an authority may not
12 prohibit, regulate, or charge for the collocation of small wireless
13 facilities or the installation, modification, or replacement of
14 associated poles that may be permitted in this section.

15 (3) An authority may require an applicant to obtain one or more
16 permits to collocate a small wireless facility or install a new,
17 modified, or replacement pole associated with a small wireless
18 facility as provided in section 3 of this act, provided that such
19 permits are of general applicability and do not apply exclusively to
20 wireless facilities. An authority must receive and process
21 applications subject to the following requirements:

22 (a) An authority may not directly or indirectly require an
23 applicant to perform services or provide goods unrelated to the
24 permit, such as in-kind contributions to the authority including, but
25 not limited to, reserving fiber, conduit, or pole space for the
26 authority.

27 (b) An applicant may not be required to provide more information
28 to obtain a permit than communications service providers that are not
29 wireless providers are required to provide, provided that an
30 applicant may be required to include construction and engineering
31 drawings and information demonstrating compliance with the criteria
32 in (h) of this subsection.

33 (c) An authority may not require the: (i) Collocation of small
34 wireless facilities on any specific pole or category of poles; (ii)
35 use of specific pole types or configurations when installing new or
36 replacement poles; or (iii) underground placements of small wireless
37 facilities that are designated in an application to be pole-mounted
38 or ground-mounted.

1 (d) An authority may not limit the collocation of small wireless
2 facilities by minimum horizontal separation distance requirements
3 from existing small wireless facilities, poles, or other structures.

4 (e) The authority may require an applicant to include an
5 attestation that the small wireless facilities will be operational
6 for use by a wireless services provider within one year after the
7 permit issuance date, unless the authority and the applicant agree to
8 extend this period or delay is caused by lack of commercial power,
9 communications transport facilities to the site, or any other factors
10 outside of the applicant's control.

11 (f) Within 10 days of receiving an application, an authority must
12 determine and notify the applicant in writing whether the application
13 is complete. If an application is incomplete, an authority must
14 specifically identify the missing information in writing. The
15 processing deadline in (g) of this subsection must restart at zero on
16 the date the applicant provides the missing information to complete
17 the application.

18 (g) An application must be processed on a nondiscriminatory
19 basis. The authority shall approve or deny an application within (i)
20 60 days of receipt of an application for the collocation of a small
21 wireless facility using an existing structure; and (ii) 90 days for
22 an application to collocate a small wireless facility on a new
23 structure. The processing deadline may be tolled by agreement of the
24 applicant and the authority. An authority's approval of an
25 application may not be conditioned in a way that limits the
26 technology utilized for such a facility nor to limit the technology
27 that may be utilized in the future.

28 (h) If an authority does not approve or deny an application
29 within the processing time frames provided in (g) of this subsection,
30 the application is deemed approved and, upon notice to the authority,
31 the applicant may construct the facility applied for and is not
32 required to receive any further authorization from the authority.

33 (i) An authority may deny a proposed collocation of a small
34 wireless facility or installation, modification, or replacement of a
35 pole that meets the requirements in section 3(6) of this act only if
36 the proposed application:

37 (i) Materially interferes with the safe operation of traffic
38 control equipment;

39 (ii) Materially interferes with sight lines or clear zones for
40 transportation or pedestrians;

1 (iii) Materially interferes with compliance with the Americans
2 with disabilities act or similar federal or state standards regarding
3 pedestrian access or movement;

4 (iv) Fails to comply with reasonable and nondiscriminatory
5 horizontal spacing requirements of general application adopted by
6 ordinance that concern the location of ground-mounted equipment and
7 new poles. Such spacing requirements may not prevent a wireless
8 provider from serving any location;

9 (v) Designates the location of a new pole for the purpose of
10 collocating a small wireless facility within seven feet in any
11 direction of an electrical conductor, unless the wireless provider
12 obtains the written consent of the power supplier that owns or
13 manages the electrical conductor;

14 (vi) Fails to comply with applicable codes; or

15 (vii) Fails to comply with section 3 (4), (5), or (6) of this
16 act.

17 (j) The authority must document the basis for a denial, including
18 the specific code, rule, or statutory provisions on which the denial
19 was based, and send the documentation to the applicant on or before
20 the day the authority denies an application. The applicant may cure
21 the deficiencies identified by the authority and resubmit the
22 application within 30 days of the denial without paying an additional
23 application fee. The authority shall approve or deny the revised
24 application within 30 days of resubmission and limit its review to
25 the deficiencies cited in the denial.

26 (k) An applicant seeking to collocate small wireless facilities
27 within the jurisdiction of a single authority may file a consolidated
28 application for small wireless facilities and associated poles and
29 receive a single permit for the collocation of multiple small
30 wireless facilities and the placement of associated poles. However,
31 the denial of one or more small wireless facilities in a consolidated
32 application may not delay processing of any other small wireless
33 facilities or poles in the same consolidated application. Batch
34 applications must be collectively processed in accordance with the
35 procedures in this section. A batch application that includes new
36 pole deployments is subject to a 90-day time frame for approval.

37 (l) Installation or collocation for which a permit is granted
38 pursuant to this section must be completed within one year after the
39 permit issuance date unless the authority and the applicant agree to
40 extend this period, or a delay is caused by the lack of commercial

1 power or communications facilities at the site. Approval of an
2 application authorizes the applicant to:

3 (i) Undertake the installation or collocation; and

4 (ii) Subject to applicable relocation requirements and the
5 applicant's right to terminate at any time, operate and maintain the
6 small wireless facilities and any associated pole covered by the
7 permit for a period of not less than 10 years, which must be renewed
8 for equivalent durations so long as the facilities comply with the
9 criteria set forth in (h) of this subsection.

10 (m) An authority may not institute, either expressly or de facto,
11 a moratorium on (i) filing, receiving, or processing applications; or
12 (ii) issuing permits or other required approvals, if any, for the
13 collocation of small wireless facilities or the installation,
14 modification, or replacement of associated poles.

15 (4) An authority may not require an application for: (a) Routine
16 maintenance; (b) the replacement of small wireless facilities with
17 small wireless facilities that are substantially similar or the same
18 size or smaller; or (c) the installation, placement, maintenance,
19 operation, or replacement of micro wireless facilities that are
20 suspended on cables that are strung between existing utility poles,
21 in compliance with the applicable codes. However, an authority may
22 require a permit for work that requires excavation or closure of
23 sidewalks or vehicular lanes within the rights-of-way for such
24 activities. Such a permit must be issued to the applicant on a
25 nondiscriminatory basis upon terms and conditions applied to any
26 other person's activities in the rights-of-way that require
27 excavation, closing of sidewalks, or vehicular lanes.

28 NEW SECTION. **Sec. 5.** (1) This section applies to activities of
29 a wireless provider accessing authority poles to collocate small
30 wireless facilities.

31 (2) A person owning, managing, or controlling authority
32 structures in the rights-of-way may not enter into an exclusive
33 arrangement with any person for the right to attach to such
34 structures. A person who purchases or otherwise acquires an authority
35 structure is subject to the requirements of this section.

36 (3) An authority shall allow the collocation of small wireless
37 facilities on authority structures on nondiscriminatory terms and
38 conditions using the standards in section 3(5) of this act and the
39 process in section 4 of this act.

1 (4) The rate to collocate on authority structures is provided in
2 section 6 of this act.

3 (5) (a) The rates, fees, and terms and conditions for the make-
4 ready work to collocate on an authority structure must be
5 nondiscriminatory, competitively neutral, and commercially reasonable
6 and must comply with this chapter.

7 (b) The authority shall provide a good faith estimate for any
8 make-ready work necessary to enable the pole to support the requested
9 collocation by a wireless provider, including pole replacement if
10 necessary, within 60 days after receipt of a complete application.
11 Make-ready work, including any pole replacement, must be completed
12 within 60 days of written acceptance of the good faith estimate by
13 the applicant. An authority may require replacement of the authority
14 pole only if it demonstrates that the collocation would make the
15 authority pole structurally unsound.

16 (c) The person owning, managing, or controlling the authority
17 structure may not require more make-ready work than required to meet
18 applicable codes or industry standards. Fees for make-ready work may
19 not include costs related to preexisting or prior damage or
20 noncompliance. Fees for make-ready work, including any pole
21 replacement, may not exceed either actual costs or the amount charged
22 to other communications service providers for similar work and may
23 not include any revenue or contingency-based consultant's fees or
24 expenses of any kind.

25 NEW SECTION. **Sec. 6.** (1) This section governs an authority's
26 rates and fees for use of an authority's structures and the placement
27 of a small wireless facility or associated poles.

28 (2) An authority may not require a wireless provider to pay any
29 rates, fees, or compensation to the authority or other person other
30 than what is expressly authorized by this chapter for the right to
31 use or occupy a rights-of-way, for collocation of small wireless
32 facilities on or in structures in the rights-of-way, or for the
33 installation, maintenance, modification, operation, and replacement
34 of poles in the rights-of-way.

35 (3) The application fee for a permit may not collectively exceed
36 the following:

37 (a) \$500 for up to the first five small wireless facilities in
38 the same application with an additional \$100 for each small wireless
39 facility beyond five in the same application.

1 (b) \$1,000 for the installation, modification, or replacement of
2 a pole together with the collocation of an associated small wireless
3 facility in the rights-of-way.

4 (4) A wireless provider shall pay an authority compensation for
5 use of the rights-of-way and collocation on authority structures in
6 the rights-of-way an annual rate not to exceed \$270 per small
7 wireless facility. This rate, together with the one-time application
8 fee, is the total compensation that the wireless provider is required
9 to pay the authority for the deployment of each small wireless
10 facility in the rights-of-way and any associated pole. In addition,
11 an authority may not charge a rate for the wireline backhaul
12 facilities, coaxial, or fiber optic cable associated with a small
13 wireless facility.

14 NEW SECTION. **Sec. 7.** This section applies to activities in the
15 rights-of-way only. Nothing in this chapter may be interpreted to
16 allow any entity to provide services regulated under 47 U.S.C. Sec.
17 521 through 573, without compliance with all laws applicable to such
18 providers. Nor may this chapter be interpreted to impose any new
19 requirements on cable providers for the provision of such service.

20 NEW SECTION. **Sec. 8.** Subject to this chapter and applicable
21 law, an authority may continue to exercise zoning, land use,
22 planning, and permitting authority within its territorial boundaries
23 with respect to wireless support structures and other structures,
24 including the enforcement of applicable codes. An authority may not
25 have or exercise any jurisdiction or authority over the design,
26 engineering, construction, installation, or operation of a small
27 wireless facility located in an interior structure or upon the site
28 of a campus, stadium, or athletic facility not owned or controlled by
29 the authority, other than to require compliance with applicable
30 codes. Nothing in this chapter authorizes the state or any political
31 subdivision, including an authority, to require wireless facility
32 deployment or to regulate wireless services.

33 NEW SECTION. **Sec. 9.** This chapter does not apply to poles owned
34 by an investor-owned utility, except as it concerns a wireless
35 provider's access to the rights-of-way and permits for the
36 collocation of small wireless facilities on such utility poles

1 pursuant to a pole attachment agreement between the wireless provider
2 and the investor-owned utility.

3 NEW SECTION. **Sec. 10.** (1) An authority may adopt an ordinance
4 that makes available to wireless providers rates, fees, and other
5 terms that comply with this chapter. Subject to the other provisions
6 of this section, in the absence of an ordinance or agreement that
7 fully complies with this chapter and until such a compliant ordinance
8 is adopted, if at all, a wireless provider may install and operate
9 small wireless facilities and associated poles under the requirements
10 of this chapter. An authority may not require a wireless provider to
11 enter into an agreement to implement this chapter, but such an
12 agreement is permissible if voluntary and nondiscriminatory.

13 (2) Ordinances and agreements implementing this chapter are
14 public/private arrangements and are matters of legitimate and
15 significant statewide concern.

16 (3) An agreement or ordinance that does not fully comply with
17 this chapter applies only to small wireless facilities and associated
18 poles that were operational before the effective date of this section
19 and are deemed invalid and unenforceable beginning on the 181st day
20 after the effective date of this section unless amended to fully
21 comply with this chapter. If an agreement or ordinance is invalid in
22 accordance with this subsection, small wireless facilities and
23 associated poles that became operational before the effective date of
24 this section, pursuant to such an agreement or ordinance, may remain
25 installed and be operated under the requirements of this chapter.

26 (4) An agreement or ordinance that applies to small wireless
27 facilities and associated poles that become operational on or after
28 the effective date of this section is invalid and unenforceable
29 unless it fully complies with this chapter. In the absence of an
30 ordinance or agreement that fully complies with this chapter, a
31 wireless provider may install and operate small wireless facilities
32 and associated poles in the rights-of-way under the requirements of
33 this chapter.

34 NEW SECTION. **Sec. 11.** The utilities and transportation
35 commission, binding arbitration, or any court or agency of competent
36 jurisdiction, has jurisdiction to determine disputes arising under
37 this chapter. Pending resolution of a dispute concerning rates for
38 collocation of small wireless facilities on authority structures, the

1 person owning or controlling the pole must allow the collocating
2 person to collocate on its poles at annual rates of no more than \$270
3 for both collocation on authority structures and use of the rights-
4 of-way with rates to be trued up upon final resolution of the
5 dispute. Any disputes, wherever filed, must be pursued in accordance
6 with accelerated docket or complaint procedures, where available.

7 NEW SECTION. **Sec. 12.** (1) An authority may adopt reasonable
8 indemnification, insurance, and bonding requirements related to small
9 wireless facility and associated pole permits subject to the
10 requirements of this section and section 3(5) of this act.

11 (2) An authority may not require a wireless provider to indemnify
12 and hold the authority and its officers and employees harmless
13 against any claims, lawsuits, judgments, costs, liens, losses,
14 expenses, or fees, except when a court of competent jurisdiction has
15 found that the negligence of the wireless provider while installing,
16 repairing, or maintaining caused the harm that created such claims,
17 lawsuits, judgments, costs, liens, losses, expenses, or fees.

18 (3) An authority may require a wireless provider to have in
19 effect insurance coverage consistent with subsection (2) of this
20 section, as long as the authority imposes similar requirements on
21 other rights-of-way users and these requirements are reasonable and
22 nondiscriminatory.

23 (a) An authority may not require a wireless provider to obtain
24 insurance naming the authority or its officers and employees an
25 additional insured.

26 (b) An authority may require a wireless provider to furnish proof
27 of insurance, if required, prior to the effective date of any permit
28 issued for a small wireless facility.

29 (c) An authority may adopt bonding requirements for small
30 wireless facilities if the authority imposes similar requirements in
31 connection with permits issued for other rights-of-way users.

32 (d) The purpose of such bonds must be to:

33 (i) Provide for the removal of abandoned or improperly maintained
34 small wireless facilities, including those that an authority
35 determines need to be removed to protect public health, safety, or
36 welfare;

37 (ii) Restore the rights-of-way in connection with removals as
38 provided for in this chapter; or

1 (iii) Recoup rates or fees that have not been paid by a wireless
2 provider in over 12 months, as long as the wireless provider has
3 received reasonable notice from the authority of any of the
4 noncompliance listed in this subsection and an opportunity to cure.

5 (4) Bonding requirements may not exceed \$200 per small wireless
6 facility. For wireless providers with multiple small wireless
7 facilities within the jurisdiction of a single authority, the total
8 bond amount across all facilities may not exceed \$10,000, which
9 amount may be combined into one bond instrument.

10 NEW SECTION. **Sec. 13.** This act may be known and cited as the
11 small wireless facilities deployment act.

12 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
13 constitute a new chapter in Title 80 RCW.

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