

HOUSE BILL REPORT

HB 2828

As Reported By House Committee On:

Energy & Utilities
Appropriations

Title: An act relating to personal wireless service facilities.

Brief Description: Regulating wireless telephone services.

Sponsors: Representative Crouse.

Brief History:

Committee Activity:

Energy & Utilities: 1/30/96, 1/31/96 [DP];
Appropriations: 2/3/96 [DPS].

HOUSE COMMITTEE ON ENERGY & UTILITIES

Majority Report: Do pass. Signed by 7 members: Representatives Casada, Chairman; Crouse, Vice Chairman; Hankins, Vice Chairman; Patterson, Ranking Minority Member; Poulsen, Assistant Ranking Minority Member; Kessler and Mitchell.

Staff: Margaret Allen (786-7110).

Background: The wireless industry reportedly signs up 28,000 new customers daily and, as of February 1995, had a 10-percent market penetration. As the demand for cellular services has increased, the need for additional, smaller cell sites has increased correspondingly.

Small, numerous cell sites help the cellular industry address two major concerns: (1) capacity (more users wanting to use a cellular system at a given time than the system can accommodate); and (2) coverage (providing coverage in all areas and preventing "dropped calls" because cell sites do not overlap). The emerging microcell technology potentially will use several small microcells to replace and provide greater capacity than a single cellular tower. Also, the new personal communications services (PCS) will employ smaller cell sites than cellular services have in the past.

A cell site consists of radio transmitters, receivers, and antennas. Most cell sites are created by placing antennas on existing structures. Other sites are created by placing

antennas on cellular towers or monopoles. The receivers and transmitters usually are housed in small equipment shelters or rooms. The transmitters operate at low power levels and transmit ultra-high frequency radio waves. A cell site connects with other facilities by transmitting radio waves to a mobile switching office, which routes calls to the intended destinations.

The specific locations chosen by wireless companies to site antennas depend on a variety of factors, such as the proximity of adjacent cell sites, engineering and topographical considerations, community response, and the existence of a willing property owner. Antenna siting is often contentious, in large part due to neighborhood concerns about possible health, safety, and aesthetic effects.

Some persons have suggested siting only PCS cells or microcells in residential areas or near schools, on the belief exposure to electromagnetic radiation is lower near microcells or PCS cells than near other cellular antennas. Few citizens have expressed concern about the siting of antennas in nonresidential areas away from schools. Some citizens are frustrated with the difficulty of locating and interpreting reports of studies concerning such health or behavioral effects.

ANSI Standards

As health concerns are raised repeatedly at public meetings on siting proposals, some wireless companies and some local governments have proposed adoption of the American National Standards Institute (ANSI) standards for exposure to electromagnetic energy as the test for determining whether radiation from a proposed facility will endanger human health. Radiation from antennas generally falls well below the ANSI standards.

Current Regulatory Structure

Each cell site is subject to State Environmental Policy Act (SEPA) review, land use laws and ordinances, and state building and barrier-free access codes. (Each cell site also is subject to the federal Americans with Disabilities Act or "ADA.") Wireless service providers would like unstaffed cell site equipment shelters to be exempt from state energy efficiency and barrier-free access requirements.

Pending Federal Legislation

Pending federal telecommunications legislation, currently in conference committee, may restrict the authority of states and local jurisdictions to regulate cellular antenna siting on the basis of the environmental effects of radiation exposure, if the antenna facilities comply with Federal Communications Commission (FCC) radiation regulations.

The legislation may expressly require state and local jurisdictions to act on siting requests within a reasonable period of time, and to maintain a written record with substantial evidence if a siting request is denied. Also, the legislation may prohibit state and local jurisdictions from unreasonably discriminating among providers of functionally equivalent services, or disallowing or having the effect of disallowing the provision of personal wireless services.

Finally, the legislation may provide for a legal cause of action against a state or local government for actions inconsistent with the federal law, which a court would be required to hear and decide on an expedited basis.

Summary of Bill: "Personal wireless service" is defined as any wireless telecommunications service licensed by the FCC.

Unless preempted by federal law, the siting of personal wireless service antennas is exempt from SEPA requirements if the antennas to be sited (1) are microcells or PCS antennas, and are to be attached to an existing structure that is not a residence or school; (2) are other antennas that are to be attached to an existing structure that is not a residence or school, and that is not located in a residential zone; and (3) involve constructing, or collocation of an antenna on, a cellular tower shorter than 60 feet in height that is not located in a residential zone. In addition, the project must not be in a designated environmentally sensitive area, and must not consist of a series of actions some of which are not categorically exempt from SEPA requirements, or that together may have a significant adverse environmental impact.

The siting of such antennas is still subject to the local land-use permitting process.

Again unless preempted by federal law, when a telecommunications service provider applies to site several microcells or PCS antennas in a single geographical area, local governments are encouraged to (1) allow the applicant to file a single set of SEPA documents, if applicable, and a single set of land use permit documents, that will apply to all the microcells or PCS antennas to be sited; and (2) render decisions in a single administrative proceeding.

Equipment shelters are exempt from state building envelope insulation and mechanical systems efficiency requirements. Also, unstaffed shelters are exempt from state barrier-free accessibility requirements, if the shelters are not attached to structures subject to barrier-free access requirements, and if employees who visit the shelters for maintenance activities must be able to climb.

No personal wireless service facility, by itself or in combination with others, may expose the public to non-ionizing electromagnetic radiation in an amount exceeding the 1992 ANSI standards.

The Department of Health is directed to survey scientific literature regarding possible adverse effects of human exposure to non-ionizing electromagnetic radiation. The department also must prepare a summary of that survey and make the summary available to the public. The department is to update the survey and summary in even-numbered years. Fifty thousand dollars is appropriated to the Department of Health for this purpose.

Appropriation: The sum of \$50,000 is appropriated from the state general fund to the Department of Health.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Over 400 wireless facilities are sited in Washington State; each received a determination of nonsignificance under SEPA review. SEPA review is not the proper place for addressing citizens' concerns about the siting of wireless antennas. Microcells need to be defined, language made consistent, and the applicability of the SEPA exemption clarified. The intent of the wireless industry is to make antennas as unobtrusive on the landscape as possible. Current insulation requirements for equipment shelters are nonsensical, as the equipment must be cooled, not kept warm. Also, current barrier-free access requirements are impractical, as the shelters are unstaffed, and employees must be able to climb to service the equipment in the shelters. ANSI standards are widely accepted and provide a significant margin of safety. A literature review by the Department of Health will be beneficial, as citizens tend to distrust information provided by wireless service providers. The bill should be amended explicitly to limit the review to the radiofrequency spectrum.

Testimony Against: The body of scientific literature regarding the effects of human exposure to radiofrequency radiation is fragmented, and deals mostly with acute exposure. Unnecessary exposure to radiofrequency electromagnetic radiation should be minimized. ANSI standards protect from thermal, not nonthermal, effects. Also, ANSI standards assume no segment of the population is more susceptible than others to the effects of exposure to radiofrequency radiation; ask the Department of Health to address these issues. Modulated radiofrequency radiation can have the same effect as low frequency electromagnetic radiation. Different parts of the body are affected differently. Ask the Department of Health to report on studies at levels below the ANSI standards regarding what is safe for animals. There is a need to determine what people are already being exposed to in the way of radiation. Ask state agencies and universities about satellites, and what radiation will not penetrate the brain. Employ ground fiber-optic links rather than additional cell sites; promote the use of digital technology so fewer cell towers are necessary. Local governments are trying to streamline the SEPA process. This bill may set a precedent in creating SEPA exemptions when the SEPA process itself needs to be addressed.

Testified: (Pro) Representative Crouse, prime sponsor; Ross Baker, AT&T Wireless; Ron Smith, U.S. West; Dr. Bill Guy, University of Washington; Chris Van Gorkom, Department of Health; and Randi Hilleso, Sprint and VCI. (Con) Scott Merriman, Washington Environmental Council; and David Fichtenberg, ACTION. (With Concerns) Victoria Lincoln, Association of Washington Cities; Doug Levy, City of Everett; and Bennie Barnes and Matt Lampe, City of Seattle.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 28 members: Representatives Huff, Chairman; Clements, Vice Chairman; Pelesky, Vice Chairman; H. Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Beeksma; Brumsickle; Carlson; Chappell; Cooke; Crouse; Dellwo; Dyer; Foreman; Grant; Hargrove; Hickel; Kessler; Lambert; Linville; McMorris; Poulsen; Reams; Rust; Sehlin; Sheahan; Talcott and Wolfe.

Staff: Beth Redfield (786-7130).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Energy & Utilities: Personal wireless services are redefined, and personal wireless service facilities defined, using federal definitions. Microcells are also defined.

References to personal communications service (PCS) antennas are removed from sections regarding SEPA exemptions and encouraging local governments to streamline review of applications to site multiple small antennas. The result is that under the bill, PCS antennas will be treated like any antenna other than a microcell. To qualify for a SEPA exemption, if a microcell is to be attached to an existing structure, that structure may be an existing tower, but may not be a structure that contains a residence or a school.

The State Building Code Council is not required to exempt unstaffed equipment shelters from mechanical systems efficiency requirements. Also, the council is to amend its rules to exempt unstaffed equipment shelters from barrier-free access requirements only to the extent doing so does not jeopardize the federal certification of those rules under the Americans with Disabilities Act.

The Department of Ecology is directed to adopt rules that (1) Create a categorical exemption from SEPA for the siting of personal wireless service facilities meeting specified conditions; and (2) exempt unstaffed equipment shelters meeting specified criteria from barrier-free access regulations.

The state does not adopt standards for limiting exposure to electromagnetic radiation caused by personal wireless service facilities.

The Department of Health is required to survey only scientific literature concerning the radio frequency part of the electromagnetic spectrum, and only needs to update the survey only periodically (rather than every other year). The department must report the survey results to the Legislature. The department need conduct the survey only if the department receives an appropriation from the Legislature for that purpose. The appropriation is removed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The substitute bill reflects the passage of new federal telecommunications legislation. The legislation will help the wireless industry. There is no conclusive evidence that there is a negative caused by electromagnetic radiation.

Testimony Against: None.

Testified: Representative Larry Crouse, prime sponsor; and Steve Gano, AT&T Wireless.