

SB 5711 - S AMD TO S AMD (S-1947.3/17) 72  
By Senator Carlyle

1 Beginning on page 1, after line 3 of the amendment, strike all  
2 material through page 12, line 32 and insert the following:

3 "NEW SECTION. **Sec. 101.** A new section is added to chapter 35.99  
4 RCW to read as follows:

5 (1) It is the policy of the state to promote the efficient  
6 deployment of small cell network infrastructure by offering  
7 predictability for wireless service providers so that the number and  
8 types of services offered by wireless service providers continues to  
9 increase. It is also the policy of the state that cities have the  
10 fiduciary duty, as a trustee, to manage the public rights-of-way for  
11 the health, safety, and welfare of the public, subject to state law.

12 (2) By January 1, 2018, cities and towns comprising more than  
13 twenty thousand in population, and by July 1, 2018, cities and towns  
14 comprising a population of five thousand to twenty thousand shall  
15 enact a small cell facility deployment ordinance establishing a  
16 process whereby the city or town shall issue a small cell facility  
17 right-of-way permit to service providers seeking to permit  
18 microcells, small cell facilities, and small cell networks as defined  
19 in RCW 80.36.375 in the city or town right-of-way as defined in RCW  
20 35.99.010.

21 (3) The ordinance must be adopted following the requirements  
22 outlined in this title and Title 35A RCW. A city or town may require  
23 in its small cell facility deployment ordinance that a service  
24 provider participate in additional public meetings prior to the  
25 approval of a small cell facility right-of-way permit. However, the  
26 additional public meetings may not delay issuance of the small cell  
27 facility right-of-way permit outlined in subsection (7) of this  
28 section.

29 (4) In a city or town with an adopted small cell facility  
30 deployment ordinance, the issuance of a small cell facility right-of-  
31 way permit is exempt from land use review including but not limited  
32 to review under RCW 36.70B.060, 36.70B.070, and 36.70B.130, with the

1 exception of RCW 36.70A.172 and chapters 90.58 and 43.21C RCW, and is  
2 not appealable or subject to further city or town legislative  
3 authority approval.

4 (5) A small cell facility deployment ordinance must outline the  
5 process for the issuance of a small cell facility right-of-way permit  
6 to service providers of personal wireless services seeking to deploy  
7 microcells, small cell facilities, and small cell networks as defined  
8 in RCW 80.36.375. The ordinance must treat service providers in a  
9 competitively neutral and nondiscriminatory manner.

10 (a) The ordinance must provide design review guidelines for  
11 microcells, small cell facilities, and small cell networks that any  
12 application for a small cell facility right-of-way permit shall  
13 comply with.

14 (i) Design review guidelines must be feasible, reasonable, and  
15 objective, and may require concealment, stealth, or aesthetic  
16 requirements.

17 (ii) Design review guidelines need not be consistent throughout  
18 the entire city or town, and may vary by geographic areas. However,  
19 the applicability of design review guidelines in various geographic  
20 areas must be clearly delineated in the ordinance as an overlay on a  
21 map of the city or town.

22 (iii) The small cell facility ordinance may include pictorial  
23 representation of the adopted design review guidelines.

24 (iv) The application of design review guidelines may not have the  
25 effect of prohibiting small cell facility installations within the  
26 city or town overall.

27 (b) The ordinance must outline small cell facility right-of-way  
28 permit approval timelines for permit applications that exceed thirty  
29 small cell network site locations. For small cell facility right-of-  
30 way permits that are fewer than thirty small cell network site  
31 locations, approval timelines for permit applications must be  
32 consistent with subsection (7) of this section.

33 (c) The ordinance must outline additional public meetings that  
34 the service provider is required to participate in prior to the  
35 approval of a small cell facility right-of-way permit. However, any  
36 additional public process may not present opportunities for the  
37 public to appeal the issuance of a permit and may not delay the  
38 issuance of a permit in accordance with subsection (7) of this  
39 section.

1 (d) The ordinance must outline the city or town's notification  
2 and preferred communication protocols with a service provider to  
3 coordinate work being completed within the city or town right-of-way  
4 with the deployment of microcells, small cell facilities, and small  
5 cell networks, and to ensure that work within the right-of-way does  
6 not inconvenience the public use of the right-of-way or adversely  
7 affect the public health, safety, and welfare. Small cell facility  
8 right-of-way permit applicants are required to comply with these  
9 protocols.

10 (e)(i) The ordinance must include: Installation, modification,  
11 extension, and replacement standards for city or town and noncity or  
12 town owned poles. The standards must include a process for service  
13 providers to request a modification, extension, or replacement of an  
14 existing pole; however, the pole cannot exceed the greater of:

15 (A) Ten feet in height above the tallest existing utility pole  
16 located within five hundred linear feet of the new pole in the same  
17 public right-of-way; or

18 (B) Fifty feet above ground level; and

19 (C) Each pole must be spaced at least three hundred linear feet  
20 from the nearest existing pole that is capable of supporting small  
21 cell facilities and is located in a public right-of-way, including  
22 differentiating among pole types and infrastructure, as well as  
23 location and height standards.

24 (ii) The standards may include nondiscriminatory undergrounding  
25 requirements including prohibiting installation of above ground  
26 structures in a public right-of-way under a small cell facility  
27 right-of-way permit and must address new poles that are needed in  
28 locations where there are locally adopted undergrounding  
29 requirements. Small cell facility right-of-way permit applicants are  
30 required to comply with these standards.

31 (f) The ordinance must include a fee schedule outlining the  
32 necessary fees for the city or town to recover costs. The fee  
33 schedule must allow the city or town to recover actual costs of  
34 processing small cell facility right-of-way permits. Additionally,  
35 the fee schedule must allow the city or town to recover its costs  
36 associated with the development of the small cell facility deployment  
37 ordinance amortized over the first five years following adoption of  
38 the ordinance. The ordinance must also allow a permit applicant to  
39 pay an additional fee for expedited permit processing.

1 (g) The ordinance must include a fee schedule for the use of the  
2 city or town right-of-way that will be permitted in a small cell  
3 facility right-of-way permit.

4 (h) A small cell facility deployment ordinance must comply with  
5 federal, state, and local regulation, including, without limitation,  
6 requirements under chapters 90.58 and 43.21C RCW and critical areas  
7 ordinances adopted under RCW 36.70A.172.

8 (6) A small cell facility deployment ordinance may include the  
9 following sections, at the discretion of the city or town:

10 (a) Guidelines for the installation of microcells, small cell  
11 facilities, and small cell networks, as defined in RCW 80.36.375, on  
12 city or town-owned structures located outside of the right-of-way.  
13 The city or town may establish reasonable rates, terms, and  
14 conditions for these installations.

15 (b) Guidelines for the installation of fiber optic cables  
16 connecting small cell facilities, and other required make-ready work.

17 (7) The following process may be memorialized in the small cell  
18 facility deployment ordinance for the approval of small cell facility  
19 right-of-way permits for fewer than thirty facilities.

20 (a) The city or town shall review small cell facility right-of-  
21 way permits to install facilities approved by the ordinance. City or  
22 town staff, without city or town legislative authority approval, may  
23 authorize minor deviations from the small cell facility deployment  
24 ordinance, as long as the deviations represent the least intrusive  
25 means, utilize the best available technology, and no reasonable  
26 alternatives exist.

27 (b) A city or town must determine whether an application for a  
28 small cell facility right-of-way permit for up to thirty small cell  
29 facility locations is complete within thirty days of submission,  
30 unless a service provider consents to a different time period.

31 (c) A service provider may resubmit an incomplete application  
32 within twenty-eight days of notice by the city or town.

33 (d) The service provider may modify its initial application, the  
34 application as modified will be considered a new application subject  
35 to the commencement of a new application review period.

36 (e) A service provider must be notified if the application has  
37 been approved or denied within ninety days for a service provider's  
38 complete application.

39 (f) If a city or town denies a permit, the city or town must  
40 state, in writing, the reasons for the denial, which must be limited

1 to noncompliance with the standards established in the city or town's  
2 small cell facility deployment ordinance or related permit  
3 requirements.

4 (g) A service provider adversely affected by the final action  
5 denying a permit, or by an unreasonable failure to act on a permit as  
6 set forth in this section, may commence an action within thirty days  
7 to seek relief, which is limited to injunctive relief.

8 (h) If denied, the applicant has forty-five days to cure the  
9 permit application and resubmit the application, and the city or town  
10 must approve or deny that resubmittal within thirty days from the  
11 date the resubmittal is received.

12 (i) If a service provider submits multiple applications for small  
13 cell facility right-of-way permits, the city or town reserves the  
14 right to adjust the timelines in this subsection to ensure that city  
15 or town staff and resources are available to adequately review all  
16 permit applications.

17 (8) Nothing in this section may be construed to limit cities from  
18 imposing fees for use of public right-of-way or for requiring  
19 nondiscriminatory regulatory permits, including without limitation,  
20 right-of-way, building, electrical, and other permits that may be  
21 required for construction, installation, or maintenance of individual  
22 small cell facilities.

23 (9) A city or town that has adopted an ordinance governing the  
24 siting of small cell network infrastructure, as of the effective date  
25 of this section as required under this section, is not required to  
26 establish a small cell facility deployment ordinance.

27 (10) A small cell facility deployment ordinance enacted as  
28 required by this section has no effect on previously adopted  
29 franchises, permits, or agreements for small cell facility  
30 deployments made or entered into by any city or town."

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31 Beginning on page 46, line 32 of the title amendment, after "RCW"  
32 strike all material through "35A.21.245," on page 47, line 1 and  
33 beginning on line 2, after "80.36.690;" strike all material through

1 "80.36 RCW;" on line 3 and insert "adding a new section to chapter  
2 35.99 RCW;"

EFFECT: Requires cities and towns with populations greater than 20,000 to adopt small cell facility deployment ordinance by January 1, 2018, and cities and towns with populations of 5,000 to 20,000 by July 1, 2018. Provides that a small cell facility right-of-way permit issued through a small cell facility deployment ordinance is exempt from land use review, except the SMA and SEPA requirements, and is not appealable or subject to further city or town legislative approval. Provides timelines for processing applications, design review guidelines, and a fee schedule. A service provider adversely affected by a denial of a permit may seek injunctive relief.

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