
SENATE BILL 5110

State of Washington

67th Legislature

2021 Regular Session

By Senator Ericksen

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1 AN ACT Relating to promoting greater access to the internet by
2 modifying permitting, taxation, and other standards for
3 telecommunications companies and facilities; amending RCW
4 43.21C.0384, 43.70.605, 80.36.375, 47.04.045, 47.04.047, 47.52.001,
5 47.52.220, 35.99.010, 35.99.020, 35.99.030, 35.99.040, 35.99.050,
6 35.99.060, 35.99.080, 35A.21.245, 80.36.320, 77.12.210, 79.36.530,
7 79.110.240, 54.16.300, 54.16.330, and 54.16.420; adding a new section
8 to chapter 79A.05 RCW; adding a new section to chapter 82.04 RCW; and
9 creating a new section.

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

11 **Part 1**

12 **Wireless Facilities**

13 **Sec. 101.** RCW 43.21C.0384 and 2013 c 317 s 1 are each amended to
14 read as follows:

15 (1) Decisions pertaining to applications to site wireless service
16 facilities are not subject to the requirements of RCW
17 43.21C.030(2)(c), if those facilities meet the following
18 requirements:

19 (a) The collocation of new equipment, removal of equipment, or
20 replacement of existing equipment on existing or replacement

1 structures does not substantially change the physical dimensions of
2 such structures; or

3 (b) The siting project involves constructing a wireless service
4 tower (~~((less than sixty feet in height))~~) that is located in a
5 commercial, industrial, manufacturing, forest, or agricultural zone.
6 ~~((This))~~ The exemption in this subsection (1)(b) does not apply to
7 projects within a designated critical area.

8 (2) The exemptions authorized under subsection (1) of this
9 section may only be applied to a project consisting of a series of
10 actions when all actions in the series are categorically exempt and
11 the actions together do not have a probable significant adverse
12 environmental impact.

13 (3) The department of ecology shall adopt rules to create a
14 categorical exemption for wireless service facilities that meet the
15 conditions set forth in subsections (1) and (2) of this section.

16 (4) ~~((By January 1, 2020, all wireless service providers granted
17 an exemption to RCW 43.21C.030(2)(c) must provide the legislature
18 with the number of permits issued pertaining to wireless service
19 facilities, the number of exemptions granted under this section, and
20 the total dollar investment in wireless service facilities between
21 July 1, 2013, and June 30, 2019.~~

22 ~~(5))~~ The definitions in this subsection apply throughout this
23 section unless the context clearly requires otherwise.

24 (a) "Collocation" means the mounting or installation of equipment
25 on an existing tower, building, or structure for the purpose of
26 either transmitting or receiving, or both, radio frequency signals
27 for communications purposes.

28 (b) "Existing structure" means any existing tower, pole,
29 building, or other structure capable of supporting wireless service
30 facilities.

31 (c) "Substantially change the physical dimensions" means:

32 (i) The mounting of equipment on a structure that would increase
33 the height of the structure by more than ten percent, or twenty feet,
34 whichever is greater; or

35 (ii) The mounting of equipment that would involve adding an
36 appurtenance to the body of the structure that would protrude from
37 the edge of the structure more than twenty feet, or more than the
38 width of the structure at the level of the appurtenance, whichever is
39 greater.

1 (d) "Wireless service facilities" means facilities for the
2 provision of wireless services.

3 (e) "Wireless services" means wireless data and
4 telecommunications services, including commercial mobile services,
5 commercial mobile data services, unlicensed wireless services, and
6 common carrier wireless exchange access services, as defined by
7 federal laws and regulations.

8 **Sec. 102.** RCW 43.70.605 and 1996 c 323 s 7 are each amended to
9 read as follows:

10 Unless this section is preempted by applicable federal
11 (~~statutes~~) law, the department may require that in residential
12 zones or areas, all providers of personal wireless services, as the
13 term "wireless services" is defined in (~~section 1 of this act~~) RCW
14 43.21C.0384, provide random test results on power density analysis
15 for the provider's licensed frequencies showing radio frequency
16 levels before and after development of the personal wireless service
17 antenna facilities, following national standards or protocols of the
18 federal communications commission or other federal agencies. This
19 section shall not apply to microcells as defined in RCW 80.36.375.
20 The department may adopt rules to implement this section.

21 **Sec. 103.** RCW 80.36.375 and 2014 c 118 s 1 are each amended to
22 read as follows:

23 (1) If a personal wireless service provider applies to site
24 several microcells, minor facilities, or a small cell network in a
25 single geographical area:

26 (a) If one or more of the microcells and/or minor facilities are
27 not exempt from the requirements of RCW 43.21C.030(2)(c), local
28 governmental entities are (~~encouraged~~) required: (i) To allow the
29 applicant, at the applicant's discretion, to file a single set of
30 documents required by chapter 43.21C RCW that will apply to all the
31 microcells and/or minor facilities to be sited; and (ii) to render
32 decisions under chapter 43.21C RCW regarding all the microcells
33 and/or minor facilities in a single administrative proceeding;

34 (b) Local governmental entities are (~~encouraged~~) required: (i)
35 To allow the applicant, at the applicant's discretion, to file a
36 single set of documents for land use permits that will apply to all
37 the microcells and/or minor facilities to be sited; and (ii) to

1 render decisions regarding land use permits for all the microcells
2 and/or minor facilities in a single administrative proceeding; and

3 (c) For small cell networks involving multiple individual small
4 cell facilities, local governmental entities (~~may~~) shall allow the
5 applicant, if the applicant so chooses, to file a consolidated
6 application and receive a single permit for the small cell network in
7 a single jurisdiction instead of filing separate applications for
8 each individual small cell facility.

9 (2) For the purposes of this section:

10 (a) "Personal wireless services" means commercial mobile
11 services, commercial mobile data services, unlicensed wireless
12 services, and common carrier wireless exchange access services, as
13 defined by federal laws and regulations.

14 (b) "Microcell" means a wireless communication facility
15 consisting of an antenna that is either: (i) Four feet in height and
16 with an area of not more than five hundred eighty square inches; or
17 (ii) if a tubular antenna, no more than four inches in diameter and
18 no more than six feet in length.

19 (c) "Minor facility" means a wireless communication facility
20 consisting of up to three antennas, each of which is either: (i) Four
21 feet in height and with an area of not more than five hundred eighty
22 square inches; or (ii) if a tubular antenna, no more than four inches
23 in diameter and no more than six feet in length; and the associated
24 equipment cabinet that is six feet or less in height and no more than
25 forty-eight square feet in floor area.

26 (d) "Small cell facility" means a personal wireless services
27 facility that meets both of the following qualifications:

28 (i) Each antenna is located inside an antenna enclosure of no
29 more than three cubic feet in volume or, in the case of an antenna
30 that has exposed elements, the antenna and all of its exposed
31 elements could fit within an imaginary enclosure of no more than
32 three cubic feet; and

33 (ii) Primary equipment enclosures are no larger than seventeen
34 cubic feet in volume. The following associated equipment may be
35 located outside the primary equipment enclosure and if so located,
36 are not included in the calculation of equipment volume: Electric
37 meter, concealment, telecomm demarcation box, ground-based
38 enclosures, battery back-up power systems, grounding equipment, power
39 transfer switch, and cut-off switch.

1 (e) "Small cell network" means a collection of interrelated small
2 cell facilities designed to deliver personal wireless services.

3 **Part 2**

4 **Department of Transportation Permit Process**

5 **Sec. 201.** RCW 47.04.045 and 2003 c 244 s 5 are each amended to
6 read as follows:

7 (1) (~~For the purposes of this section:~~) The definitions in this
8 subsection apply throughout this section unless the context clearly
9 requires otherwise.

10 (a) "Right-of-way" means all state-owned land within a state
11 highway corridor.

12 (b) "Service provider" means every corporation, company,
13 association, joint stock association, firm, partnership, or person
14 that owns, operates, or manages any personal wireless service
15 facility. "Service provider" includes a service provider's
16 contractors, subcontractors, and legal successors.

17 (2) The department shall establish a process for issuing a lease
18 for the use of the right-of-way by a service provider and shall
19 require that telecommunications equipment be colocated on the same
20 structure whenever practicable. Consistent with federal highway
21 administration approval, the lease must include the right of direct
22 ingress and egress from the highway for construction and maintenance
23 of the personal wireless service facility during nonpeak hours if
24 public safety is not adversely affected. Direct ingress and egress
25 may be allowed at any time for the construction of the facility if
26 public safety is not adversely affected and if construction will not
27 substantially interfere with traffic flow during peak traffic
28 periods. The lease may specify an indirect ingress and egress to the
29 facility if it is reasonable and available for the particular
30 location.

31 (3) (a) The cost of the lease must be limited to the fair market
32 value of the portion of the right-of-way being used by the service
33 provider and the direct administrative expenses incurred by the
34 department in processing the lease application.

35 (b) If the department and the service provider are unable to
36 agree on the cost of the lease, the service provider may submit the
37 cost of the lease to binding arbitration by serving written notice on
38 the department. Within thirty days of receiving the notice, each

1 party shall furnish a list of acceptable arbitrators. The parties
2 shall select an arbitrator; failing to agree on an arbitrator, each
3 party shall select one arbitrator and the two arbitrators shall
4 select a third arbitrator for an arbitration panel. The arbitrator or
5 panel shall determine the cost of the lease based on comparable
6 siting agreements. Costs of the arbitration, including compensation
7 for the arbitrator's services, must be borne equally by the parties
8 participating in the arbitration and each party shall bear its own
9 costs and expenses, including legal fees and witness expenses, in
10 connection with the arbitration proceeding.

11 (4) The department shall act on an application for a lease within
12 (~~sixty~~) thirty days of receiving a completed application, unless a
13 service provider consents to a different time period.

14 (5) The reasons for a denial of a lease application must be
15 supported by substantial evidence contained in a written record.

16 (6) The department may adopt rules to implement this section.

17 (7) All lease money paid to the department under this section
18 shall be deposited in the motor vehicle fund created in RCW
19 46.68.070.

20 **Sec. 202.** RCW 47.04.047 and 2004 c 131 s 2 are each amended to
21 read as follows:

22 Personal wireless service is a critical part of the state's
23 infrastructure. The rapid deployment of personal wireless service
24 facilities is critical to ensure public safety, network access,
25 quality of service, (~~and~~) rural economic development, and access to
26 educational opportunities.

27 It is the declared policy of this state to assure that the use of
28 rights-of-way of state highways accommodate the deployment of
29 personal wireless service facilities consistent with highway safety
30 and the preservation of the public investment in state highway
31 facilities.

32 **Sec. 203.** RCW 47.52.001 and 2004 c 131 s 1 are each amended to
33 read as follows:

34 (1) Unrestricted access to and from public highways has resulted
35 in congestion and peril for the traveler. It has caused undue slowing
36 of all traffic in many areas. The investment of the public in highway
37 facilities has been impaired and highway facilities costing vast sums
38 of money will have to be relocated and reconstructed.

1 (2) Personal wireless service is a critical part of the state's
2 infrastructure. The rapid deployment of personal wireless service
3 facilities is critical to ensure public safety, network access,
4 quality of service, ~~((and))~~ rural economic development, and access to
5 educational opportunities.

6 (3) It is, therefore, the declared policy of this state to limit
7 access to the highway facilities of this state in the interest of
8 highway safety and for the preservation of the investment of the
9 public in such facilities, and to assure that the use of rights-of-
10 way of limited access facilities accommodate the deployment of
11 personal wireless service facilities consistent with these interests.

12 **Sec. 204.** RCW 47.52.220 and 2003 c 188 s 2 are each amended to
13 read as follows:

14 (1) The department shall authorize an off and on approach to
15 partially controlled limited access highways for the placement and
16 service of facilities providing personal wireless services.

17 (a) The approach shall be in a legal manner not to exceed thirty
18 feet in width.

19 (b) The approach may be specified at a point satisfactory to the
20 department at or between designated highway stations.

21 (c) The permit holder may use the approach for ingress and egress
22 from the highway for construction or maintenance of the personal
23 wireless service facility during nonpeak traffic hours so long as
24 public safety is not adversely affected. The permit holder may use
25 the approach for ingress and egress at any time for the construction
26 of the facility if public safety is not adversely affected and if
27 construction will not substantially interfere with traffic flow
28 during peak traffic periods.

29 (2) The department shall authorize the approach by an annual
30 permit, which may only be canceled upon one hundred eighty days'
31 written notice to the permit holder.

32 (a) The department shall set the yearly cost of a permit in rule.

33 (b) The permit shall be assignable to the contractors and
34 subcontractors of the permit holder. The permit shall also be
35 transferable to a new owner following the sale or merger of the
36 permit holder.

37 (3) For the purposes of this section:

38 (a) "Personal wireless services" means any federally licensed
39 personal wireless service.

1 (b) "Facilities" means unstaffed facilities that are used for the
2 transmission or reception, or both, of wireless communication
3 services including, but not necessarily limited to, antenna arrays,
4 transmission cables, equipment shelters, and support structures.

5 (4) The department shall present a report (~~(to the house of~~
6 ~~representatives technology, telecommunications, and energy committee~~
7 ~~and the senate technology and communications committee))~~) on the
8 implementation of the permit process and the cost of permits (~~(by~~
9 ~~January 15, 2004, and)~~) to the appropriate standing committees of the
10 house of representatives and senate by the first day of the next
11 legislative session following adoption of any rule increasing the
12 cost of permits.

13 Part 3

14 City and Town Permit Process

15 **Sec. 301.** RCW 35.99.010 and 2000 c 83 s 1 are each amended to
16 read as follows:

17 The definitions in this section apply throughout this chapter
18 unless the context clearly requires otherwise.

19 (1) "Cable television service" means the one-way transmission to
20 subscribers of video programming and other programming service and
21 subscriber interaction, if any, that is required for the selection or
22 use of the video programming or other programming service.

23 (2) "Facilities" means all of the plant, equipment, fixtures,
24 appurtenances, antennas, and other facilities necessary to furnish
25 and deliver telecommunications services and cable television
26 services, including but not limited to poles with crossarms, poles
27 without crossarms, wires, lines, conduits, cables, communication and
28 signal lines and equipment, braces, guys, anchors, vaults, and all
29 attachments, appurtenances, and appliances necessary or incidental to
30 the distribution and use of telecommunications services and cable
31 television services.

32 (3) "Master permit" means the agreement in whatever form whereby
33 a city or town may grant general permission to a service provider to
34 enter, use, and occupy the right-of-way for the purpose of locating
35 facilities. This definition is not intended to limit, alter, or
36 change the extent of the existing authority of a city or town to
37 require a franchise nor does it change the status of a service
38 provider asserting an existing statewide grant based on a predecessor

1 telephone or telegraph company's existence at the time of the
2 adoption of the Washington state Constitution to occupy the
3 right-of-way. For the purposes of this subsection, a franchise,
4 except for a cable television franchise, is a master permit. A master
5 permit does not include cable television franchises.

6 (4) "Personal wireless services" means commercial mobile
7 services, commercial mobile data services, unlicensed wireless
8 services, and common carrier wireless exchange access services, as
9 defined by federal laws and regulations.

10 (5) "Right-of-way" means land acquired or dedicated for public
11 roads and streets, but does not include:

12 (a) State highways;

13 (b) Land dedicated for roads, streets, and highways not opened
14 and not improved for motor vehicle use by the public;

15 (c) Structures, including poles and conduits, located within the
16 right-of-way;

17 (d) Federally granted trust lands or forest board trust lands;

18 (e) Lands owned or managed by the state parks and recreation
19 commission; or

20 (f) Federally granted railroad rights-of-way acquired under 43
21 U.S.C. Sec. 912 and related provisions of federal law that are not
22 open for motor vehicle use.

23 (6) "Service provider" means every corporation, company,
24 association, joint stock association, firm, partnership, person,
25 city, or town owning, operating, or managing any facilities used to
26 provide and providing telecommunications or cable television service
27 for hire, sale, or resale to the general public. Service provider
28 includes the legal successor to any such corporation, company,
29 association, joint stock association, firm, partnership, person,
30 city, or town.

31 (7) "Telecommunications service" means the transmission of
32 information by wire, radio, optical cable, electromagnetic, or other
33 similar means for hire, sale, or resale to the general public. For
34 the purpose of this subsection, "information" means knowledge or
35 intelligence represented by any form of writing, signs, signals,
36 pictures, sounds, or any other symbols. For the purpose of this
37 chapter, telecommunications service excludes the over-the-air
38 transmission of broadcast television or broadcast radio signals.

39 (8) "Use permit" means the authorization in whatever form whereby
40 a city or town may grant permission to a service provider to enter

1 and use the specified right-of-way for the purpose of installing,
2 maintaining, repairing, or removing identified facilities.

3 **Sec. 302.** RCW 35.99.020 and 2000 c 83 s 2 are each amended to
4 read as follows:

5 A city or town may grant, issue, or deny permits for the use of
6 the right-of-way by a service provider for installing, maintaining,
7 repairing, or removing facilities for telecommunications services or
8 cable television services pursuant to ordinances, consistent with
9 this chapter ((83, Laws of 2000)) and RCW 35.21.860 and 35A.21.245.

10 **Sec. 303.** RCW 35.99.030 and 2000 c 83 s 3 are each amended to
11 read as follows:

12 (1) Cities and towns may require a service provider to obtain a
13 master permit. A city or town may request, but not require, that a
14 service provider with an existing statewide grant to occupy the
15 right-of-way obtain a master permit for wireline facilities.

16 (a) The procedures for the approval of a master permit and the
17 requirements for a complete application for a master permit shall be
18 available in written form.

19 (b) Where a city or town requires a master permit, the city or
20 town shall act upon a complete application within ((one hundred
21 twenty)) sixty days from the date a service provider files the
22 complete application for the master permit to use the right-of-way,
23 except:

24 (i) With the agreement of the applicant; or

25 (ii) Where the master permit requires action of the legislative
26 body of the city or town and such action cannot reasonably be
27 obtained within the ((one hundred twenty)) sixty day period.

28 (2) A city or town may require that a service provider obtain a
29 use permit. A city or town must act on a request for a use permit by
30 a service provider within thirty days of receipt of a completed
31 application, unless a service provider consents to a different time
32 period or the service provider has not obtained a master permit
33 requested by the city or town.

34 (a) For the purpose of this section, "act" means that the city or
35 town makes the decision to grant, condition, or deny the use permit,
36 which may be subject to administrative appeal, or notifies the
37 applicant in writing of the amount of time that will be required to
38 make the decision and the reasons for this time period.

1 (b) Requirements otherwise applicable to holders of master
2 permits shall be deemed satisfied by a holder of a cable franchise in
3 good standing.

4 (c) Where the master permit does not contain procedures to
5 expedite approvals and the service provider requires action in less
6 than thirty days, the service provider shall advise the city or town
7 in writing of the reasons why a shortened time period is necessary
8 and the time period within which action by the city or town is
9 requested. The city or town shall reasonably cooperate to meet the
10 request where practicable.

11 (d) A city or town may not deny a use permit to a service
12 provider with an existing statewide grant to occupy the right-of-way
13 for wireline facilities on the basis of failure to obtain a master
14 permit.

15 (3) The reasons for a denial of a master permit shall be
16 supported by substantial evidence contained in a written record. A
17 service provider adversely affected by the final action denying a
18 master permit, or by an unreasonable failure to act on a master
19 permit as set forth in subsection (1) of this section, may commence
20 an action within thirty days to seek relief, which shall be limited
21 to injunctive relief.

22 (4) A service provider adversely affected by the final action
23 denying a use permit may commence an action within thirty days to
24 seek relief, which shall be limited to injunctive relief. In any
25 appeal of the final action denying a use permit, the standard for
26 review and burden of proof shall be as set forth in RCW 36.70C.130.

27 (5) A city or town shall:

28 (a) In order to facilitate the scheduling and coordination of
29 work in the right-of-way, provide as much advance notice as
30 reasonable of plans to open the right-of-way to those service
31 providers who are current users of the right-of-way or who have filed
32 notice with the clerk of the city or town within the past twelve
33 months of their intent to place facilities in the city or town. A
34 city or town is not liable for damages for failure to provide this
35 notice. Where the city or town has failed to provide notice of plans
36 to open the right-of-way consistent with this subsection, a city or
37 town may not deny a use permit to a service provider on the basis
38 that the service provider failed to coordinate with another project.

39 (b) Have the authority to require that facilities are installed
40 and maintained within the right-of-way in such a manner and at such

1 points so as not to inconvenience the public use of the right-of-way
2 or to adversely affect the public health, safety, and welfare.

3 (6) A service provider shall:

4 (a) Obtain all permits required by the city or town for the
5 installation, maintenance, repair, or removal of facilities in the
6 right-of-way;

7 (b) Comply with applicable ordinances, construction codes,
8 regulations, and standards subject to verification by the city or
9 town of such compliance;

10 (c) Cooperate with the city or town in ensuring that facilities
11 are installed, maintained, repaired, and removed within the
12 right-of-way in such a manner and at such points so as not to
13 inconvenience the public use of the right-of-way or to adversely
14 affect the public health, safety, and welfare;

15 (d) Provide information and plans as reasonably necessary to
16 enable a city or town to comply with subsection (5) of this section,
17 including, when notified by the city or town, the provision of
18 advance planning information pursuant to the procedures established
19 by the city or town;

20 (e) Obtain the written approval of the facility or structure
21 owner, if the service provider does not own it, prior to attaching to
22 or otherwise using a facility or structure in the right-of-way;

23 (f) Construct, install, operate, and maintain its facilities at
24 its expense; and

25 (g) Comply with applicable federal and state safety laws and
26 standards.

27 (7) Nothing in this section shall be construed as:

28 (a) Creating a new duty upon (~~(city-[cities])~~) cities or towns to
29 be responsible for construction of facilities for service providers
30 or to modify the right-of-way to accommodate such facilities;

31 (b) Creating, expanding, or extending any liability of a city or
32 town to any third-party user of facilities or third-party
33 beneficiary; or

34 (c) Limiting the right of a city or town to require an
35 indemnification agreement as a condition of a service provider's
36 facilities occupying the right-of-way.

37 (8) Nothing in this section creates, modifies, expands, or
38 diminishes a priority of use of the right-of-way by a service
39 provider or other utility, either in relation to other service

1 providers or in relation to other users of the right-of-way for other
2 purposes.

3 **Sec. 304.** RCW 35.99.040 and 2000 c 83 s 4 are each amended to
4 read as follows:

5 (1) A city or town shall not adopt or enforce regulations or
6 ordinances specifically relating to use of the right-of-way by a
7 service provider that:

8 (a) Impose requirements that regulate the services or business
9 operations of the service provider, except where otherwise authorized
10 in state or federal law;

11 (b) Conflict with federal or state laws, rules, or regulations
12 that specifically apply to the design, construction, and operation of
13 facilities or with federal or state worker safety or public safety
14 laws, rules, or regulations;

15 (c) Regulate the services provided based upon the content or kind
16 of signals that are carried or are capable of being carried over the
17 facilities, except where otherwise authorized in state or federal
18 law; or

19 (d) Unreasonably deny the use of the right-of-way by a service
20 provider for installing, maintaining, repairing, or removing
21 facilities for telecommunications services or cable television
22 services.

23 (2) Nothing in this chapter, including but not limited to the
24 provisions of subsection (1)(d) of this section, limits the authority
25 of a city or town to regulate the placement of facilities through its
26 local zoning or police power, if the regulations do not otherwise:

27 (a) Prohibit the placement of all wireless or of all wireline
28 facilities within the city or town;

29 (b) Prohibit the placement of all wireless or of all wireline
30 facilities within city or town rights-of-way, unless the city or town
31 is less than five square miles in size and has no commercial areas,
32 in which case the city or town may make available land other than
33 city or town rights-of-way for the placement of wireless facilities;
34 or

35 (c) Violate (~~section 253 of the telecommunications act of 1996,~~
36 ~~P.L. 104-104 (110 Stat. 56)) 47 U.S.C. Sec. 253.~~

37 (3) This section does not amend, limit, repeal, or otherwise
38 modify the authority of cities or towns to regulate cable television
39 services pursuant to federal law.

1 **Sec. 305.** RCW 35.99.050 and 2000 c 83 s 5 are each amended to
2 read as follows:

3 A city or town shall not place or extend a moratorium on the
4 acceptance and processing of applications, permitting, construction,
5 maintenance, repair, replacement, extension, operation, or use of any
6 facilities for personal wireless services (~~(, except as consistent~~
7 ~~with the guidelines for facilities siting implementation, as agreed~~
8 ~~to on August 5, 1998, by the federal communications commission's~~
9 ~~local and state government advisory committee, the cellular~~
10 ~~telecommunications industry association, the personal communications~~
11 ~~industry association, and the American mobile telecommunications~~
12 ~~association. Any city or town implementing such a moratorium shall,~~
13 ~~at the request of a service provider impacted by the moratorium,~~
14 ~~participate with the service provider in the informal dispute~~
15 ~~resolution process included with the guidelines for facilities siting~~
16 ~~siting implementation)).~~

17 **Sec. 306.** RCW 35.99.060 and 2000 c 83 s 6 are each amended to
18 read as follows:

19 (1) Cities and towns may require service providers to relocate
20 authorized facilities within the right-of-way when reasonably
21 necessary for construction, alteration, repair, or improvement of the
22 right-of-way for purposes of public welfare, health, or safety.

23 (2) Cities and towns shall notify service providers as soon as
24 practicable of the need for relocation and shall specify the date by
25 which relocation shall be completed. In calculating the date that
26 relocation must be completed, cities and towns shall consult with
27 affected service providers and consider the extent of facilities to
28 be relocated, the services requirements, and the construction
29 sequence for the relocation, within the city's or town's overall
30 project construction sequence and constraints, to safely complete the
31 relocation. Service providers shall complete the relocation by the
32 date specified, unless the city or town, or a reviewing court,
33 establishes a later date for completion, after a showing by the
34 service provider that the relocation cannot be completed by the date
35 specified using best efforts and meeting safety and service
36 requirements.

37 (3) Service providers may not seek reimbursement for their
38 relocation expenses from the city or town requesting relocation under
39 subsection (1) of this section except:

1 (a) Where the service provider had paid for the relocation cost
2 of the same facilities at the request of the city or town within the
3 past five years, the service provider's share of the cost of
4 relocation will be paid by the city or town requesting relocation;

5 (b) Where aerial to underground relocation of authorized
6 facilities is required by the city or town under subsection (1) of
7 this section, for service providers with an ownership share of the
8 aerial supporting structures, the additional incremental cost of
9 underground compared to aerial relocation, or as provided for in the
10 approved tariff if less, will be paid by the city or town requiring
11 relocation; and

12 (c) Where the city or town requests relocation under subsection
13 (1) of this section solely for aesthetic purposes, unless otherwise
14 agreed to by the parties.

15 (4) Where a project in subsection (1) of this section is
16 primarily for private benefit, the private party or parties shall
17 reimburse the cost of relocation in the same proportion to their
18 contribution to the costs of the project. Service providers will not
19 be precluded from recovering their costs associated with relocation
20 required under subsection (1) of this section, provided that the
21 recovery is consistent with subsection (3) of this section and other
22 applicable laws.

23 (5) A city or town may require the relocation of facilities at
24 the service provider's expense in the event of an unforeseen
25 emergency that creates an immediate threat to the public safety,
26 health, or welfare.

27 **Sec. 307.** RCW 35.99.080 and 2000 c 83 s 9 are each amended to
28 read as follows:

29 (~~Chapter 83, Laws of 2000~~) This chapter and RCW 35.21.860 and
30 35A.21.245 shall not preempt specific provisions in existing
31 franchises or contracts between cities or towns and service
32 providers.

33 **Sec. 308.** RCW 35A.21.245 and 2000 c 83 s 10 are each amended to
34 read as follows:

35 Each code city is subject to the requirements and restrictions
36 regarding facilities and rights-of-way under (~~this~~) chapter 35.99
37 RCW.

1 **Part 4**

2 **Regulation of Telecommunications Companies**

3 **Sec. 401.** RCW 80.36.320 and 2008 c 181 s 408 are each amended to
4 read as follows:

5 (1) (a) The commission shall classify a telecommunications company
6 as a competitive telecommunications company if the services it offers
7 are subject to effective competition. Effective competition means
8 that the company's customers have reasonably available alternatives,
9 including alternatives that utilize technologies other than
10 traditional landline telephone service, and that the company does not
11 have a significant captive customer base. In determining whether a
12 company is competitive, factors the commission shall consider include
13 but are not limited to:

14 ~~((a))~~ (i) The number and sizes of alternative providers of
15 service;

16 ~~((b))~~ (ii) The extent to which services are available from
17 alternative providers in the relevant market;

18 ~~((c))~~ (iii) The ability of alternative providers to make
19 functionally equivalent or substitute services readily available at
20 competitive rates, terms, and conditions; and

21 ~~((d))~~ (iv) Other indicators of market power which may include
22 market share, growth in market share, ease of entry, and the
23 affiliation of providers of services.

24 (b) The commission shall conduct the initial classification and
25 any subsequent review of the classification in accordance with such
26 procedures as the commission may establish by rule.

27 (2) Competitive telecommunications companies shall be subject to
28 minimal regulation. The commission may waive any regulatory
29 requirement under this title for competitive telecommunications
30 companies when it determines that competition will serve the same
31 purposes as public interest regulation. The commission may waive
32 different regulatory requirements for different companies if such
33 different treatment is in the public interest. A competitive
34 telecommunications company shall at a minimum:

35 (a) Keep its accounts according to regulations as determined by
36 the commission;

37 (b) File financial reports with the commission as required by the
38 commission and in a form and at times prescribed by the commission;
39 and

1 (c) Cooperate with commission investigations of customer
2 complaints.

3 (3) The commission may revoke any waivers it grants and may
4 reclassify any competitive telecommunications company if it finds
5 that the company is no longer subject to effective competition and it
6 determines that the revocation or reclassification would protect the
7 public interest.

8 (4) The commission may waive the requirements of RCW 80.36.170
9 and 80.36.180 in whole or in part for a competitive
10 telecommunications company if it finds that competition will serve
11 the same purpose and protect the public interest.

12 (5) During a state of emergency declared under RCW 43.06.010(12),
13 the governor may waive or suspend the operation or enforcement of
14 this section or any portion of this section or under any
15 administrative rule, and issue any orders to facilitate the operation
16 of state or local government or to promote and secure the safety and
17 protection of the civilian population.

18 (6) In addition to the process in subsection (1) of this section,
19 an incumbent local exchange carrier may elect to be classified as a
20 competitive telecommunications company by providing written notice to
21 the commission if the carrier is operating under an alternative form
22 of regulation authorized by RCW 80.36.135 and the carrier does not
23 receive universal communications services program distributions under
24 RCW 80.36.650. Once competitive classification has been elected under
25 this subsection, the company's alternative form of regulation will
26 automatically terminate.

27 Part 5

28 Easements on State Lands

29 **Sec. 501.** RCW 77.12.210 and 2020 c 148 s 9 are each amended to
30 read as follows:

31 (1) The director shall maintain and manage real or personal
32 property owned, leased, or held by the department and shall control
33 the construction of buildings, structures, and improvements in or on
34 the property. The director may adopt rules for the operation and
35 maintenance of the property.

36 (2) The commission may authorize the director to sell, lease,
37 convey, or grant concessions upon real or personal property under the
38 control of the department. This includes the authority to sell

1 timber, gravel, sand, and other materials or products from real
2 property held by the department, and to sell or lease the
3 department's real or personal property or grant concessions or
4 rights-of-way for roads or utilities in the property. Oil and gas
5 resources owned by the state which lie below lands owned, leased, or
6 held by the department shall be offered for lease by the commissioner
7 of public lands pursuant to chapter 79.14 RCW with the proceeds being
8 deposited in the fish, wildlife, and conservation account created in
9 RCW 77.12.170(3): PROVIDED, That the commissioner of public lands
10 shall condition such leases at the request of the department to
11 protect wildlife and its habitat.

12 (3) If the commission determines that real or personal property
13 held by the department cannot be used advantageously by the
14 department, the director may dispose of that property if it is in the
15 public interest.

16 (4) If the state acquired real property with use limited to
17 specific purposes, the director may negotiate terms for the return of
18 the property to the donor or grantor. Other real property shall be
19 sold to the highest bidder at public auction. After appraisal, notice
20 of the auction shall be published at least once a week for two
21 successive weeks in a newspaper of general circulation within the
22 county where the property is located at least twenty days prior to
23 sale.

24 (5) Proceeds from the sales shall be deposited in the fish,
25 wildlife, and conservation account created in RCW 77.12.170(3).

26 (6) Notwithstanding subsection (2) of this section, and until
27 July 1, 2030, the charge for the term of an easement granted under
28 this section for a local public utility line owned by a
29 nongovernmental entity must be determined as follows and must be paid
30 in advance upon grant of the easement:

31 (a) No more than five thousand dollars for individual easement
32 crossings that are no longer than one mile in length;

33 (b) No more than twelve thousand five hundred dollars for
34 individual easement crossings that are more than one but less than
35 five miles in length; or

36 (c) No more than twenty thousand dollars for individual easement
37 crossings that are five miles or more in length.

38 (7) The term of the easement under subsection (6) of this section
39 is thirty years or a period of less than thirty years if requested by
40 the person or entity seeking the easement.

1 (8) In addition to the charge for the easement under subsection
2 (6) of this section, the department may recover its administrative
3 costs incurred in receiving an application for the easement,
4 approving the easement, and reviewing plans for and construction of
5 the public utility lines. For the purposes of this subsection,
6 "administrative costs" is equivalent to twenty percent of the fee for
7 the easement as determined under subsection (6) of this section. When
8 multiple public utility lines are owned by the same entity and are
9 authorized under the same easement, the administrative cost for the
10 easement must be equal to twenty percent of the easement fee for the
11 single longest public utility line. Administrative costs recovered by
12 the department must be deposited into the fish, wildlife, and
13 conservation account.

14 (9) Applicants under this section providing a residence with an
15 individual service connection for electrical, natural gas, cable
16 television, or telecommunications service are not required to pay the
17 charge for the easement under subsection (6) of this section but
18 shall pay administrative costs under subsection (8) of this section.

19 (10) A final decision on applications for an easement must be
20 made within sixty days after the department receives the completed
21 application and after all applicable regulatory permits for the
22 easement have been acquired. Upon request of the applicant, the
23 department may reach a decision on an application within thirty days
24 and charge an additional fee for an expedited processing. The fee for
25 an expedited processing is ten percent of the combined total of the
26 easement charge and administrative costs.

27 **Sec. 502.** RCW 79.36.530 and 2003 c 334 s 392 are each amended to
28 read as follows:

29 (1) Upon the filing of the plat and field notes, as provided in
30 RCW 79.36.520, the land applied for and the valuable materials on the
31 right-of-way applied for, and the marked danger trees to be felled
32 off the right-of-way, if any, and the improvements included in the
33 right-of-way applied for, if any, shall be appraised as in the case
34 of an application to purchase state lands. Upon full payment of the
35 appraised value of the land applied for, or upon payment of an annual
36 rental when the department deems a rental to be in the best interests
37 of the state, and upon full payment of the appraised value of the
38 valuable materials and improvements, if any, the department shall
39 issue to the applicant a certificate of the grant of such right-of-

1 way stating the terms and conditions thereof and shall enter the same
2 in the abstracts and records in its office, and thereafter any sale
3 or lease of the lands affected by such right-of-way shall be subject
4 to the easement of such right-of-way. Should the corporation,
5 company, association, individual, state agency, political subdivision
6 of the state, or the United States of America, securing such right-
7 of-way ever abandon the use of the same for a period of sixty months
8 or longer for the purposes for which it was granted, the right-of-way
9 shall revert to the state, or the state's grantee.

10 (2) Notwithstanding subsection (1) of this section, and until
11 July 1, 2030, the charge for the term of an easement granted under
12 RCW 79.36.510 for a local public utility line owned by a
13 nongovernmental entity must be determined as follows and must be paid
14 in advance upon grant of the easement:

15 (a) No more than five thousand dollars for individual easement
16 crossings that are no longer than one mile in length;

17 (b) No more than twelve thousand five hundred dollars for
18 individual easement crossings that are more than one but less than
19 five miles in length; or

20 (c) No more than twenty thousand dollars for individual easement
21 crossings that are five miles or more in length.

22 (3) The term of the easement is thirty years or a period of less
23 than thirty years if requested by the person or entity seeking the
24 easement.

25 (4) In addition to the charge for the easement under subsection
26 (2) of this section, the department may recover its administrative
27 costs incurred in receiving an application for the easement,
28 approving the easement, and reviewing plans for and construction of
29 the public utility lines. For the purposes of this subsection,
30 "administrative costs" is equivalent to twenty percent of the fee for
31 the easement as determined under subsection (2) of this section. When
32 multiple public utility lines are owned by the same entity and are
33 authorized under the same easement, the administrative cost for the
34 easement must be equal to twenty percent of the easement fee for the
35 single longest public utility line. Administrative costs recovered by
36 the department must be deposited into the resource management cost
37 account.

38 (5) Applicants under this section providing a residence with an
39 individual service connection for electrical, natural gas, cable
40 television, or telecommunications service are not required to pay the

1 charge for the easement under subsection (2) of this section but
2 shall pay administrative costs under subsection (4) of this section.

3 (6) A final decision on applications for an easement must be made
4 within sixty days after the department receives the completed
5 application and after all applicable regulatory permits for the
6 easement have been acquired. Upon request of the applicant, the
7 department may reach a decision on an application within thirty days
8 and charge an additional fee for an expedited processing. The fee for
9 an expedited processing is ten percent of the combined total of the
10 easement charge and administrative costs.

11 **Sec. 503.** RCW 79.110.240 and 2017 c 19 s 1 are each amended to
12 read as follows:

13 (1) Until July 1, 2030, the charge for the term of an easement
14 granted under RCW 79.110.230(2) will be determined as follows and
15 will be paid in advance upon grant of the easement:

16 (a) ~~((Five))~~ No more than five thousand dollars for individual
17 easement crossings that are no longer than one mile in length;

18 (b) ~~((Twelve))~~ No more than twelve thousand five hundred dollars
19 for individual easement crossings that are more than one mile but
20 less than five miles in length; or

21 (c) ~~((Twenty))~~ No more than twenty thousand dollars for
22 individual easement crossings that are five miles or more in length.

23 ~~((The charge for easements under subsection (1) of this~~
24 ~~section must be adjusted annually by the rate of yearly change in the~~
25 ~~most recently published Seattle-Tacoma-Bremerton consumer price~~
26 ~~index, all urban consumers (CPI-U), over the consumer price index for~~
27 ~~the same period of the preceding year, as compiled by the bureau of~~
28 ~~labor statistics, United States department of labor for the state of~~
29 ~~Washington rounded up to the nearest fifty dollars.~~

30 ~~((3))~~) The term of the easement is thirty years or a period of
31 less than thirty years if requested by the person or entity seeking
32 the easement.

33 ~~((4))~~ (3) In addition to the charge for the easement under
34 subsection (1) of this section, the department may recover its
35 administrative costs incurred in receiving an application for the
36 easement, approving the easement, and reviewing plans for and
37 construction of the public utility lines. For the purposes of this
38 subsection, "administrative costs" is equivalent to twenty percent of
39 the fee for the easement as determined under subsection (1) of this

1 section (~~and adjusted under subsection (2) of this section~~). For
2 public utility lines owned by a governmental entity, the
3 administrative costs will be calculated based on the length of the
4 easement and the fee that it would be charged if it were subject to
5 the easement charges in this section. When multiple public utility
6 lines are owned by the same entity and are authorized under the same
7 easement, the administrative fee for the easement shall be equal to
8 twenty percent of the easement fee for the single longest public
9 utility line. Administrative costs recovered by the department must
10 be deposited into the resource management cost account.

11 ~~((5))~~ (4) Applicants under RCW 79.110.230(2) providing a
12 residence with an individual service connection for electrical,
13 natural gas, cable television, or telecommunications service are not
14 required to pay the charge for the easement under subsection (1) of
15 this section but shall pay administrative costs under subsection
16 ~~((4))~~ (3) of this section.

17 ~~((6))~~ (5) A final decision on applications for an easement must
18 be made within ~~((one hundred twenty))~~ sixty days after the department
19 receives the completed application and after all applicable
20 regulatory permits for the aquatic easement have been acquired.
21 ~~((This subsection applies to applications submitted before June 13,~~
22 ~~2002, as well as to applications submitted on or after June 13,~~
23 ~~2002.))~~ Upon request of the applicant, the department may reach a
24 decision on an application within ~~((sixty))~~ thirty days and charge an
25 additional fee for an expedited processing. The fee for an expedited
26 processing is ten percent of the combined total of the easement
27 charge and administrative costs.

28 ~~((7) Beginning December 31, 2021, every four years the~~
29 ~~legislature shall review the granting of easements on state-owned~~
30 ~~aquatic lands under this chapter and determine whether all~~
31 ~~applications for easements are processed within one hundred twenty~~
32 ~~days for normal processing of applications and sixty days for~~
33 ~~expedited processing of applications, and whether the granting of~~
34 ~~easements on state-owned aquatic lands generates reasonable income~~
35 ~~for the aquatic lands enhancement account.))~~

36 NEW SECTION. Sec. 504. A new section is added to chapter 79A.05
37 RCW to read as follows:

38 (1) Until July 1, 2030, the charge for the term of an easement
39 granted for local public utility lines owned by a nongovernmental

1 entity must be determined as follows and must be paid in advance upon
2 grant of the easement:

3 (a) No more than five thousand dollars for individual easement
4 crossings that are no longer than one mile in length;

5 (b) No more than twelve thousand five hundred dollars for
6 individual easement crossings that are more than one but less than
7 five miles in length; or

8 (c) No more than twenty thousand dollars for individual easement
9 crossings that are five miles or more in length.

10 (2) The term of the easement is thirty years or a period of less
11 than thirty years if requested by the person or entity seeking the
12 easement.

13 (3) In addition to the charge for the easement under subsection
14 (1) of this section, the commission may recover its administrative
15 costs incurred in receiving an application for the easement,
16 approving the easement, and reviewing plans for and construction of
17 the public utility lines. For the purposes of this subsection,
18 "administrative costs" is equivalent to twenty percent of the fee for
19 the easement as determined under subsection (1) of this section. When
20 multiple public utility lines are owned by the same entity and are
21 authorized under the same easement, the administrative fee for the
22 easement must be equal to twenty percent of the easement fee for the
23 single longest public utility line. Administrative costs recovered by
24 the commission must be deposited into the state parks renewal and
25 stewardship account.

26 (4) Applicants under this section providing a residence with an
27 individual service connection for electrical, natural gas, cable
28 television, or telecommunications service are not required to pay the
29 charge for the easement under subsection (1) of this section but
30 shall pay administrative costs under subsection (3) of this section.

31 (5) A final decision on applications for an easement must be made
32 within sixty days after the commission receives the completed
33 application and after all applicable regulatory permits for the
34 easement have been acquired. Upon request of the applicant, the
35 commission may reach a decision on an application within thirty days
36 and charge an additional fee for an expedited processing. The fee for
37 an expedited processing is ten percent of the combined total of the
38 easement charge and administrative costs.

1 **Public Utility Districts**

2 **Sec. 601.** RCW 54.16.300 and 1987 c 18 s 1 are each amended to
3 read as follows:

4 A public utility district by resolution may combine two or more
5 of its separate utility functions into a single utility and combine
6 its related funds or accounts into a single fund or account. The
7 separate utility functions include electrical energy systems,
8 domestic water systems, irrigation systems, sanitary sewer systems,
9 (~~and~~) storm sewer systems, and broadband systems. All powers
10 granted to public utility districts to acquire, construct, maintain,
11 and operate such systems may be exercised in the joint acquisition,
12 construction, maintenance, and operation of such combined systems.
13 The establishment, maintenance, and operation of the combined system
14 shall be governed by the public utility district statutes relating to
15 one of the utility systems that is being combined, as specified in
16 the resolution combining the utility systems.

17 **Sec. 602.** RCW 54.16.330 and 2019 c 365 s 9 are each amended to
18 read as follows:

19 (1)(a) A public utility district in existence on June 8, 2000,
20 may construct, purchase, acquire, develop, finance, lease, license,
21 handle, provide, add to, contract for, interconnect, alter, improve,
22 repair, operate, and maintain any telecommunications facilities
23 within or without the district's limits for the following purposes:

- 24 (i) For the district's internal telecommunications needs;
- 25 (ii) For the provision of wholesale telecommunications services
26 within the district and by contract with another public utility
27 district.

28 (b) Except as provided in subsection (8) of this section, nothing
29 in this section shall be construed to authorize public utility
30 districts to provide telecommunications services to end users.

31 (2) A public utility district providing wholesale or retail
32 telecommunications services shall ensure that rates, terms, and
33 conditions for such services are not unduly or unreasonably
34 discriminatory or preferential. Rates, terms, and conditions are
35 discriminatory or preferential when a public utility district
36 offering rates, terms, and conditions to an entity for wholesale or
37 retail telecommunications services does not offer substantially

1 similar rates, terms, and conditions to all other entities seeking
2 substantially similar services.

3 (3) A public utility district providing wholesale or retail
4 telecommunications services shall not be required to, but may,
5 establish a separate utility system or function for such purpose.
6 ~~((In either case, a public utility district providing wholesale or
7 retail telecommunications services shall separately account for any
8 revenues and expenditures for those services according to standards
9 established by the state auditor pursuant to its authority in chapter
10 43.09 RCW and consistent with the provisions of this title. Any
11 revenues received from the provision of wholesale or retail
12 telecommunications services must be dedicated to costs incurred to
13 build and maintain any telecommunications facilities constructed,
14 installed, or acquired to provide such services, including payments
15 on debt issued to finance such services, until such time as any bonds
16 or other financing instruments executed after June 8, 2000, and used
17 to finance such telecommunications facilities are discharged or
18 retired.))~~

19 (4) When a public utility district provides wholesale or retail
20 telecommunications services, all telecommunications services rendered
21 to the district for the district's internal telecommunications needs
22 shall be allocated or charged at its true and full value. A public
23 utility district may not charge its nontelecommunications operations
24 rates that are preferential or discriminatory compared to those it
25 charges entities purchasing wholesale or retail telecommunications
26 services.

27 (5) If a person or entity receiving retail telecommunications
28 services from a public utility district under this section has a
29 complaint regarding the reasonableness of the rates, terms,
30 conditions, or services provided, the person or entity may file a
31 complaint with the district commission.

32 (6) A public utility district shall not exercise powers of
33 eminent domain to acquire telecommunications facilities or
34 contractual rights held by any other person or entity to
35 telecommunications facilities.

36 (7) Except as otherwise specifically provided, a public utility
37 district may exercise any of the powers granted to it under this
38 title and other applicable laws in carrying out the powers authorized
39 under this section. Nothing in chapter 81, Laws of 2000 limits any
40 existing authority of a public utility district under this title.

1 (8) (a) If an internet service provider operating on
2 telecommunications facilities of a public utility district that
3 provides wholesale telecommunications services but does not provide
4 retail telecommunications services, ceases to provide access to the
5 internet to its end-use customers, and no other retail service
6 providers are willing to provide service, the public utility district
7 may provide retail telecommunications services to the end-use
8 customers of the defunct internet service provider in order for end-
9 use customers to maintain access to the internet until a replacement
10 internet service provider is, or providers are, in operation.

11 (b) Within thirty days of an internet service provider ceasing to
12 provide access to the internet, the public utility district must
13 initiate a process to find a replacement internet service provider or
14 providers to resume providing access to the internet using
15 telecommunications facilities of a public utility district.

16 (c) For a maximum period of five months, following initiation of
17 the process begun in (b) of this section, or, if earlier than five
18 months, until a replacement internet service provider is, or
19 providers are, in operation, the district commission may establish a
20 rate for providing access to the internet and charge customers to
21 cover expenses necessary to provide access to the internet.

22 (9) The tax treatment of the retail telecommunications services
23 provided by a public utility district to the end-use customers during
24 the period specified in subsection (8) of this section must be the
25 same as if those retail telecommunications services were provided by
26 the defunct internet service provider.

27 **Sec. 603.** RCW 54.16.420 and 2018 c 186 s 1 are each amended to
28 read as follows:

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

31 (a) "Broadband" means high-speed internet access and other
32 advanced telecommunications services.

33 (b) "Broadband network" means networks of deployed
34 telecommunications equipment and technologies necessary to provide
35 broadband.

36 (c) "Inadequate" means internet retail service that does not meet
37 one hundred percent of the standards detailed in the service level
38 agreement.

1 (d) "Partnership payment structure" means a group of or
2 individual property owners who agree to pay a term payment structure
3 for infrastructure improvements to their property.

4 (e) "Petition" means a formal written request for retail internet
5 service by property owners on the public utility district broadband
6 network.

7 (f) "Retail internet service" means the provision of broadband to
8 end users.

9 (g) "Service level agreement" means a standard agreement, adopted
10 during an open public meeting, between the retail internet service
11 provider and the public utility that describes the required
12 percentage of broadband download and upload speed and system
13 availability, customer service, and transmission time.

14 (2) Any public utility district that, as of June 7, 2018,
15 provides only water, sewer, and wholesale telecommunications services
16 in a county with an area less than five hundred square miles and is
17 located west of the Puget Sound may provide retail internet service
18 on the public utility district's broadband network located within the
19 public utility district boundaries only when all of the existing
20 providers of end-user internet service on the public utility
21 district's broadband network cease to provide end-user service or
22 provide inadequate end-user service as determined in the manner
23 prescribed by this section. The authority provided in this subsection
24 expires five years after June 7, 2018, for any public utility
25 district that has not either entered into a partnership payment
26 structure to finance broadband deployment or been petitioned to
27 provide retail internet service within that time period.

28 (3) Upon receiving a petition meeting the requirements of
29 subsection (4) of this section, a public utility district board of
30 commissioners may hold up to three meetings to:

31 (a) Verify the signature or signatures of the property owners on
32 the petition and certify the petition;

33 (b) Determine and submit findings that the retail internet
34 service available to the petitioners served by the public utility
35 district's broadband network is either nonexistent or inadequate as
36 defined in the service level agreement adopted by the commissioners
37 for all existing internet service providers on the public utility
38 district's broadband network;

1 (c) Receive, and either reject or accept any recommendations or
2 adjustments to, a business case plan developed in accordance with
3 subsection (7) of this section; and

4 (d) By resolution, authorize the public utility district to
5 provide retail internet service on the public utility district's
6 broadband network.

7 (4) A petition meets the requirements of subsection (3) of this
8 section if it is delivered to a public utility district board of
9 commissioners, declares that the signatories on the public utility
10 district's broadband network have no or inadequate retail internet
11 service providers, requests the public utility district to provide
12 the retail internet service, and is signed by one of the following:

13 (a) A majority of a group, including homeowners' associations, of
14 any geographical area within the public utility district, who have
15 developed a partnership payment structure to finance broadband
16 deployment with the public utility district; or

17 (b) Any individual who has developed a partnership payment
18 structure to finance broadband deployment with the public utility
19 district.

20 (5) For the purposes of this section, the adequacy of retail
21 internet service is determined by measuring retail internet service
22 to end users on the public utility district's broadband network and
23 comparing it with service standards in the public utility district
24 service level agreement used for all public utility district network
25 providers. Measurement of the existing retail internet service
26 provider's service must be quantified by measuring the service with
27 speed and capacity devices and software. Additionally, a retail
28 internet service provider may submit its own assessment of its
29 service level for consideration by the commission within thirty days
30 of the first meeting conducted under subsection (3) of this section.

31 (6) The commissioners of a public utility district may by
32 resolution authorize the public utility district to provide or
33 contract for provision of retail internet services on the public
34 utility district's broadband network:

35 (a) After development of a business case plan in accordance with
36 subsection (7) of this section; and

37 (b) When it is determined that no service or inadequate service
38 exists for the individual or petitioners identified in subsection (4)
39 of this section.

1 (7) The business case plan under subsection (6) of this section
2 must be reviewed by an independent qualified consultant. The review
3 must include the use of public funds in the provision of retail
4 internet service. Any recommendations or adjustments to the business
5 case plan made during third-party review must be received and either
6 rejected or accepted by the district board of commissioners in an
7 open meeting.

8 (8) (a) Except as provided in subsection (9) of this section, in
9 case of failure to reach an agreement on the adequacy of retail
10 internet service, the commissioners must request an appointment of an
11 administrative law judge under Title 34 RCW to hear the dispute.

12 (b) The commissioners must provide a written notice, together
13 with a copy of the dispute, and may require the disputing parties to
14 attend a hearing before the administrative law judge, at a time and
15 place to be specified in the written notice.

16 (c) The place of any such hearing may be the office of the
17 commissioners or another place designated by the commissioners. The
18 disputed information must be presented at the hearing.

19 (d) Upon review and consideration of all of the evidence, the
20 administrative law judge must determine if the retail internet
21 service is inadequate or nonexistent as defined in this section. Upon
22 making a determination, the administrative law judge must state
23 findings of fact and must issue and file a determination with the
24 commissioners.

25 (9) If a provider of end-user service is a company regulated by
26 the utilities and transportation commission, the company may choose
27 to have the commission resolve disputes concerning the service level
28 agreement under the process established in RCW 54.16.340. For the
29 purposes of this subsection, "company" includes subsidiaries or
30 affiliates.

31 (10) Any public utility district providing cable television
32 service under this section must secure a cable television franchise,
33 pay franchise fees, and any applicable taxes to the local cable
34 franchise authority as required by federal law.

35 (11) Except as provided in subsection (9) of this section,
36 nothing in this section may be construed or is intended to confer
37 upon the utilities and transportation commission any authority to
38 exercise jurisdiction over locally regulated utilities.

39 (12) All rates for retail internet services offered by a public
40 utility district under this section must be just, fair, and

1 reasonable, except the public utility district may set tiers of
2 service charges based on service demands of the end user, including
3 commercial and residential rates.

4 (13) A public utility district must not condition the
5 availability or cost of other services upon the purchase or use of
6 retail internet service.

7 (14) A public utility district authorized to provide retail
8 internet service within a specific geographical area must, upon
9 reasonable notice, furnish to all persons and entities within that
10 geographical area meeting the provisions of subsections (2) and (4)
11 of this section proper facilities and connections for retail internet
12 service as requested.

13 ~~((15) A public utility district providing retail internet
14 service must separately account for any revenues and expenditures for
15 those services according to standards established by the state
16 auditor pursuant to its authority in chapter 43.09 RCW and consistent
17 with the provisions of this title.))~~

18 Part 7

19 Tax Credit for Providing Broadband Service

20 NEW SECTION. **Sec. 701.** (1) This section is the tax preference
21 performance statement for the tax preference in section 702 of this
22 act. This performance statement is intended only to be used for
23 subsequent evaluation of the tax preference. It is not intended to
24 create a private right of action by any party or be used to determine
25 eligibility for preferential tax treatment.

26 (2) The legislature categorizes the tax preference as intended to
27 expand internet service in unserved areas of Washington, as indicated
28 in RCW 82.32.808(2)(f).

29 (3) It is the legislature's specific public policy objective to
30 expand access to the internet in unserved areas of Washington and
31 thereby provide more access to educational opportunities.

32 (4) If a review finds that the number of individuals receiving
33 internet access in unserved areas of Washington has increased by ten
34 percent in ten years compared to the number of individuals receiving
35 such access on the effective date of this section, then the
36 legislature intends to extend the expiration date of the tax
37 preference.

1 (5) In order to obtain the data necessary to perform the review
2 in subsection (4) of this section, the joint legislative audit and
3 review committee may refer to data provided by the governor's
4 statewide broadband office, the utilities and transportation
5 commission, the public works board, the community economic
6 revitalization board, the national telecommunications and information
7 administration, and the federal communications commission.

8 NEW SECTION. **Sec. 702.** A new section is added to chapter 82.04
9 RCW to read as follows:

10 (1) Subject to the limitations in this section, a credit is
11 allowed against the taxes imposed under this chapter for the capital
12 costs associated with providing broadband service to unserved areas
13 using broadband infrastructure, including taxes paid under chapters
14 82.08 and 82.12 RCW.

15 (2) A person claiming the credit for taxes paid under chapters
16 82.08 and 82.12 RCW on the capital costs associated with providing
17 broadband service to unserved areas using broadband infrastructure
18 must have paid the taxes under chapters 82.08 and 82.12 RCW in order
19 to claim the credit under this section.

20 (3) The credit under this section is equal to fifty percent of
21 the capital costs, including associated sales and use taxes paid, to
22 be divided equally over fifteen years.

23 (4) Credits earned under this section may be claimed against
24 taxes due or paid for the calendar year in which the tax contribution
25 is made. The amount of credit claimed for a reporting period may not
26 exceed the tax otherwise due under this chapter for that reporting
27 period and is limited to five million dollars total per person
28 claiming a credit.

29 (5) Any amount of tax credit allowable under this section not
30 claimed by the person in any calendar year may be carried over and
31 claimed against the person's tax liability for the next succeeding
32 calendar year. Any credit remaining unused in the next succeeding
33 calendar year may be carried forward and claimed against the person's
34 tax liability for the second succeeding calendar years and may be
35 carried forward and claimed against the person's tax liability for
36 the next thirteen succeeding calendar years from the year the credit
37 was first claimed, but may not be carried over for any calendar year
38 thereafter.

1 (6) Credits are available on a first-in-time basis. The
2 department must disallow any credits, or portions thereof, that would
3 cause the total amount of credits claimed under this section to
4 exceed fifty million dollars. If this limitation is reached, the
5 department must provide notice on its web site that the statewide
6 limit has been met. In addition, the department must provide written
7 notice to any person who has claimed tax credits in excess of the
8 limitation in this subsection. The notice must indicate the amount of
9 tax due and provide that the tax be paid within thirty days from the
10 date of the notice. The department may not assess penalties and
11 interest as provided in chapter 82.32 RCW on the amount due in the
12 initial notice if the amount due is paid by the due date specified in
13 the notice, or any extension thereof.

14 (7) To claim a credit under this section, a person must
15 electronically file with the department all returns, forms, and any
16 other information required by the department in an electronic format
17 as provided or approved by the department. Any return, form, or
18 information required to be filed in an electronic format under this
19 section is not filed until received by the department in an
20 electronic format. As used in this subsection, "returns" has the same
21 meaning as "return" in RCW 82.32.050.

22 (8) No application is necessary for the tax credit. The person
23 must keep records necessary for the department to verify eligibility
24 under this section.

25 (9) A person receiving a credit under this section must provide
26 to the department, upon request, such information needed to verify
27 eligibility for credit under this section, including information
28 regarding capital costs that are claimed for credits under this
29 section.

30 (10) The department may not allow any credit under this section
31 before July 1, 2021.

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

34 (a) "Broadband" or "broadband service" has the same meaning as
35 provided in RCW 43.330.530.

36 (b) "Broadband infrastructure" has the same meaning as provided
37 in RCW 43.330.530.

1 (c) "Unserved areas" has the same meaning as provided in RCW
2 43.330.530.

--- **END** ---