HOUSE BILL REPORT
SHB 2175

As Amended by the Senate

Title: An act relating to removing barriers to economic development in the telecommunications industry.

Brief Description: Removing barriers to economic development in the telecommunications industry.

Sponsors: House Committee on Technology & Economic Development (originally sponsored by Representatives Morris, Morrell and Stanford).

Brief History:
Committee Activity:
Technology & Economic Development: 1/17/14, 1/30/14 [DPS].
Floor Activity:
Passed House: 2/14/14, 96-0.
Senate Amended.
Passed Senate: 3/6/14, 34-15.

Brief Summary of Substitute Bill

- Replaces definitions and broadens the types of telecommunications facilities for which local governments are encouraged to expedite siting and land use permitting to include "wireless service facilities."
- Requires local governments to allow applicants for "small cell networks" to file a consolidated application and receive a single permit, instead of filing separate applications for each individual small cell facility.
- Establishes a new limitation on the authority of cities and towns to charge personal wireless service providers for use of the right-of-way in installing certain replacement structures.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Morris, Chair; Habib, Vice Chair; Smith, Ranking

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This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Member; Short, Assistant Ranking Minority Member; Dahlquist, Freeman, Kochmar, Magendanz, Ryu, Stonier, Tarleton and Wylie.

Minority Report: Do not pass. Signed by 4 members: Representatives Morrell, Vick, Walsh and Zeiger.

Staff: Jasmine Vasavada (786-7301).

Background:

Wireless Telecommunications Services and Technologies.
According to the Federal Communications Commission (FCC), over the past two decades, as the demand for wireless telecommunications services has increased, the demand for wireless antenna sites has correspondingly increased. There has also been rapid growth in demand for new infrastructure technologies that are significantly smaller in coverage area than traditional macrocells (antennas with large geographic range, often mounted on cell towers). Such technologies are more able to reuse scarce wireless frequencies and can help increase data capacity within the network footprint. These technologies include but are not limited to microcells, small cell networks, and Distributed Antenna Systems that expand capacity and wireless coverage in a local area through small, low-mounted antennas.

The specific locations chosen by wireless companies to site antennas depend on a variety of factors, such as the proximity of adjacent antenna sites, engineering and topographical considerations, community response, and the existence of a willing property owner. Antenna siting may be contentious due to neighborhood concerns about possible health, safety, and aesthetic effects. In 1996 the Legislature enacted a statute authorizing the Department of Health to require that providers of personal wireless services provide random test results showing radio frequency levels before and after development of the personal wireless service antenna facilities in residential areas. This statute expressly excludes from the Department of Health's authority to require such test results for "microcells" as defined in RCW 80.36.375.

Expedited Local Government Permitting of Certain Telecommunications Facilities.
In 1996 and 1997 Washington enacted legislation to encourage local governmental entities, when a telecommunications service provider applies to site several microcells and/or minor facilities in a single geographical area: (1) to allow the applicant to file a single set of State Environmental Policy Act (Chapter 43.21C RCW) documents and land use permit documents that would apply to all the microcells and/or minor facilities to be sited; and (2) to render decisions in a single administrative proceeding. The legislation, now codified in RCW 80.36.375, defines a "microcell" based on the size and shape of the antennas, and defines "minor facility" as a wireless communication of up to three antennas of specific heights and diameters.

Authority to Impose Site-Specific Charges.
The authority of cities and towns to require personal wireless services providers to pay franchise fees or other fees or charges for the use of the right-of-way is limited. However, cities and towns may generally impose a site-specific charge, pursuant to an agreement with a personal wireless services provider, for the following: (1) placement of new structures in the right-of-way; (2) placement of personal wireless facilities on structures owned by the city or

town located in the right-of-way; and (3) placement of replacement structures, when the replacement is necessary for attachment or installation of wireless facilities and the overall height of the replacement structure and the wireless facility is more than 60 feet.

Federal Laws and Rulemaking Concerning Siting of Wireless Communication Facilities.
In the Federal Telecommunications Act of 1996 Congress directed the FCC to encourage the deployment of telecommunications facilities by working to "remove barriers to infrastructure investment" in a manner consistent with the public interest, convenience, and necessity. In 2012 an amendment to this law required state and local governments to approve requests for the modification of an existing wireless tower or base station for certain facilities, if the modification does not substantially change the physical dimensions of the tower or base. In September 2013 the FCC issued a notice of proposed rule-making discussing various proposals to expedite environmental permit processing for various distributed antenna systems and small cell facilities.

Summary of Substitute Bill:

Expedited Permitting and Siting By Local Governments.
Local governmental entities are encouraged to allow telecommunications service providers to file a single set of State Environmental Policy Act documents and land use permit documents for all wireless service facilities. "Wireless service facilities" mean facilities for the provision of "data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations." "Wireless service facilities" replaces previous references to "microcells" and "minor facilities," the definitions of which were more restrictive.

In addition, local governmental entities are required to allow applicants for a "small cell network" to file a consolidated application and receive a single permit, instead of filing separate applications for each individual small cell facility. "Small cell network" means a collection of interrelated small cell facilities designed to deliver wireless service to a defined geographic area. A "small cell facility" is either a wireless service facility as defined by the Federal Telecommunications Act of 1996, as amended as of the effective date of the bill's enactment, or a wireless service facility for which: (1) each antenna is located inside an antenna enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and (2) primary equipment enclosures are no larger than 17 cubic feet in volume. Certain designated equipment may be located outside the primary equipment enclosure without being included in the volume calculation.

City and Town Authority to Impose Site-Specific Charges.
The authority of cities and towns to require personal wireless service providers to pay a site-specific charge for use of the right-of-way is further limited. In addition to the previous limitations established by statute, a site-specific charge for placement in the right-of-way of replacement structures is now only authorized when the replacement structure is higher than the structure that is being replaced.

EFFECT OF SENATE AMENDMENT(S):

Removes provisions in the underlying bill that broadened the types of telecommunications facilities for which expedited permitting is encouraged to include "wireless service facilities." Clarifies that the requirement to allow applicants for small cell networks to file a consolidated application and receive a single permit applies within a jurisdiction, but not across jurisdictions.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The intent of this bill is to eliminate barriers that keep money from being invested in the telecommunications infrastructure in this state. It's time to revisit a number of issues. The "microcell" definition has not been updated in many years. Agencies have not filed required reports with the Legislature. There is a problem with how disputes are settled under the pole attachment rate statute. Leasehold excise tax issues for pole attachments are also problematic. The goal here is to increase money that is put in on the ground in Washington.

Last year the committee looked at House Bill 1183 and allowed for additional work to be done on site modifications to existing structures. Today's bill creates an opportunity for the telecommunications industry to look at some of the definitions and work with interested parties. In Washington, a significant percentage of households have no landline telephone and are wireless only. This number nearly doubles among young adults 18 to 29 years of age. Mobile devices are used for much more than voice. People take pictures and record videos. The demands for data capacity have increased many times over. Early on, microcells just provided coverage gaps. In this day and age data capacity issues and small cell technologies are a great complement to provider networks.

(In support with concerns) The pole attachment rate statute is now the subject of litigation. Investor-owned utilities (IOUs) are treated differently than public utilities. The IOUs go through a review by the Utilities and Transportation Commission (UTC) before a dispute goes to court. With respect to public pole owners, there is no third-party chance to resolve those disputes. Broadband companies would prefer giving jurisdiction to resolving these disputes to the UTC. Nonetheless, allowing arbitration would be helpful. Requiring binding arbitration however raises a number of concerns. It would be better if arbitration was offered as a step, but retaining the option to proceed to the courts. There are also some technical amendments intended to reflect changing times. It is unclear whether any disputes arising under the pole attachment statute have ever involved worker safety. Those types of issues can be excluded from arbitration.

(Opposed) Workers at public utility districts feel this bill takes away opportunities from our employers to make decisions into which employees currently have input. Worker safety

should not be decided by arbitration; there are well-established systems in place to take care of such concerns.

Binding arbitration is unnecessary. Over decades, there have only been two lawsuits concerning pole attachment rates. Pacific County Public Utility District (PUD) brought an action and prevailed in superior court, in a case that is currently under appeal. The PUD had not raised pole attachment rates for 20 years, so before changing rates, the PUD board hired a third-party, independent consultant to develop a report with a recommendation on rates. The consultant recommended rates higher than those that the board adopted. Prior to the litigation, the PUD negotiated with some of the attachers over 16 months, and at that point the parties could not decide on a finalized agreement on rates. In conclusion, a mechanism is in place that already works well for disputes. No other pole owner has binding authority.

This is the five-year anniversary of the last time the Legislature grappled with pole attachment rates. This bill amends a statute that deals with PUDs only. It is discriminatory and it does not include municipal cooperatives or IOUs. The last lawsuit was brought by a PUD, not a pole attacher. The bill takes away the right to sue or be sued. The binding arbitration statutes apply only to parties where both have agreed to binding arbitration. Furthermore, arbitration is not a replacement for litigation, because you cannot establish legal precedents with arbitration. The bill mandates Thurston County Superior Court. You can only appeal to have that arbitration decision enforced. Private attachers on PUDs are not subject to that. It could overturn electrical codes that deal with the safety of people. One member PUD did an audit of their poles, and after the audit they found there were thousands of illegal attachments for which the PUD had never received notification or payment by the attachers. The PUD does not know how long those attachments have been in place. This bill is not needed.

Persons Testifying: (In support) Representative Morris, prime sponsor; Bob Bass, AT&T.

(In support with concerns) Ron Main, Broadband Communications Association of Washington.

(Opposed) Bob Guenther, International Brotherhood of Electrical Workers; Doug Miller, Pacific County Public Utilities District; and Dave Warren, Washington Public Utilities District Association.

Persons Signed In To Testify But Not Testifying: None.