

# SENATE BILL REPORT

## SB 5935

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As of February 5, 2018

**Title:** An act relating to enhancing consumer access, affordability, and quality of broadband and advanced telecommunications services.

**Brief Description:** Enhancing consumer access, affordability, and quality of broadband and advanced telecommunications services.

**Sponsors:** Senators Sheldon and Carlyle.

**Brief History:**

**Committee Activity:** Energy, Environment & Telecommunications: 11/14/17.

Energy, Environment & Technology: 1/25/18, 2/01/18 [DPS-WM].

Ways & Means: 2/05/18.

**Brief Summary of First Substitute Bill**

- Requires cities and towns to enact an ordinance for issuing master permits for siting and installing small cell facilities.
- Creates the Governor's Office on Broadband Access.
- Authorizes certain public utility districts (PUDs) to provide end user internet services on the PUD's broadband network.
- Authorizes certain port districts to provide wholesale internet services.
- Provides \$10 million to CERB for rural broadband deployment.

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**SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS**

**Staff:** Jan Odano (786-7486)

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**SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TECHNOLOGY**

**Majority Report:** That Substitute Senate Bill No. 5935 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Ericksen, Ranking Member; Brown, Hawkins, Hobbs, McCoy, Ranker, Sheldon and Wellman.

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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.*

**Staff:** Jan Odano (786-7486)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Julie Murray (786-7711)

**Background:** Site-Specific Charges for Using Municipal Rights-of-Way. 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. A municipality may not generally impose fees for the use of a right-of-way by a personal wireless service company. However, the following site-specific charges are allowed if specified in an agreement between the municipality and company for:

- the placement of new structures;
- the placement of replacement structures when the replacement is necessary for the installation or attachment of wireless facilities; or
- the placement of personal wireless facilities on structures owned by the municipality.

A municipality may charge a fee to cover actual administrative costs for approving a permit, inspecting plans, or preparation of a state environmental review plan.

A personal wireless service company may seek binding arbitration if a municipality and the company cannot agree on site-specific charges. Personal wireless services are commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

Municipal Permitting Authority. Cities and towns may require service providers to obtain master permits and use permits for installing, maintaining, repairing, or removing facilities for telecommunications services. However, a city or town may not require a master permit from a service provider with a franchise for use of a right-of-way. Cities and towns must have written procedures for issuing master permits. Denials of master permits must be supported by substantial evidence contained in a written record.

Local governments may allow a provider of a small cell network to file a consolidated application and receive a single permit for the interrelated facilities that comprise the network within a jurisdiction, instead of filing separate applications for each individual small cell facility.

A small cell network is a collection of interrelated small cell facilities designed to deliver personal wireless services. A small cell facility is a wireless service facility that meets both of the following elements:

- 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
- primary equipment enclosures are no larger than 17 cubic feet in volume.

Cities and towns may use their zoning authority to regulate the placement of facilities, so long as they do not violate the federal Telecommunications Act or prohibit the placement of all facilities within their jurisdictions.

Service Provider Duties Regarding Rights-of-Way. Service providers must: obtain necessary permits; follow local, state, and federal laws; cooperate with cities and towns to maintain safe conditions in the right-of-way; provide necessary information to cities and towns; obtain written permission before using another's structures; and construct and maintain their facilities at their own expense.

Relocation of Facilities. Service providers must relocate facilities by established deadlines unless they cannot meet the deadlines using best efforts. When reasonably necessary for construction or during an emergency, cities and towns may require service providers to relocate facilities at their own expense. But a service provider may seek reimbursement from a municipality if:

- the municipality required the service provider to move the same facilities within the past five years; or
- the relocation was required for aesthetic reasons.

Private parties must reimburse a service provider if the relocation was required for private purposes.

Broadband Office. In 2009, the Legislature authorized the Department of Information Services to oversee implementation of federally funded or mandated broadband programs for Washington State. The Legislature later transferred these functions to the Department of Commerce (Commerce). The programs were subject to federal or state funding. At that time, the American Reinvestment and Recovery Act provided funding for infrastructure, competitive grants to encourage adoption of broadband service, a grant program, and development of a national broadband inventory map. The office provided oversight and administration of a wide range of functions pertaining to high-speed Internet activities. Until 2014, the office was responsible for:

- coordination, programming, and outreach on broadband issues;
- procurement of a state broadband map;
- duties relating to the creation of a geographic information system map of all high-speed Internet infrastructure owned or leased by the state;
- the Community Technology Opportunity Program; and
- oversight of implementation of federally funded or mandated broadband programs for the state.

Rural Port Districts. A rural port district in existence on June 8, 2000, may acquire and operate telecommunications facilities for their own internal telecommunications needs within and outside of its district, and to provide wholesale telecommunications services within its district limits.

Rural port districts providing wholesale services must:

- ensure that their rates, terms, and conditions are not unduly or unreasonably discriminatory or preferential;

- keep accountings of revenues and expenditures of their wholesale telecommunications activities separate from their internal telecommunications operations;
- dedicate the revenues from the wholesale activities to paying off the costs incurred in building and maintaining the telecommunications facilities; and
- charge themselves the true and full value of telecommunications services provided by their separate telecommunications functions to the district.

Rural port districts may not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights to such facilities.

A rural port district is defined as one located in a county with an average population density of less than 100 persons per square mile.

PUDs. PUDs are expressly authorized, among other things, to provide electricity, water, and sewer service. They have additional incidental and implied authorities that are necessary for accomplishing their primary purposes.

PUDs that were in existence on June 8, 2000, are authorized to acquire and operate telecommunications facilities for their own internal telecommunications needs and to provide wholesale telecommunications services within their district limits. PUDs are also allowed to provide wholesale services to other PUDs by contract.

PUDs must charge themselves the true and full value of telecommunications services provided by their separate telecommunications functions to the district. PUDs and rural port districts may not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights to such facilities.

State Universal Service Program. In 2011, the Federal Communications Commission (FCC) approved a process to end the complex system of fees, surcharges, and subsidies that support rural telephone companies, and transitioned federal monies toward expanding broadband Internet capability in underserved areas. To assist rural companies in this transition period, the Legislature established a temporary universal service program operated by the Utilities and Transportation Commission (UTC). The program expires in July 2019.

The Universal Service Program is funded by legislative appropriations to the Universal Communications Services Account (Universal Services Account). The maximum amount appropriated each year cannot exceed \$5 million. A telephone company is eligible to receive distributions from the Universal Services Account if:

- the company has fewer than 40,000 access lines in the state;
- the company's customers are at risk of rate instability or service interruptions absent distributions to the company; and
- the company meets any other criteria established by the UTC.

Distributions from the Universal Services Account are made according to a formula developed by the UTC. The first round of distributions occurred in fiscal year 2015 and totaled \$3.3 million. Future distributions will increase annually. By the fourth year, the amount projected to be distributed will exceed the \$5 million annual cap. If less than \$5

million is spent from the Universal Services Account in any fiscal year, the unspent portion must be carried over to subsequent fiscal years. Any money carried over is in addition to the \$5 million allotted for any subsequent year.

Washington imposes a business and occupation tax (B&O tax) on the gross receipts of business activities conducted within the state. B&O tax revenues are deposited into the state general fund. There are several categories of B&O tax rates that apply to businesses engaged in different activities; in addition, credits against B&O tax obligations are available to businesses involved in certain types of activities.

FCC Goals For Broadband. The FCC has adopted national goals for broadband. These goals include:

- all households have affordable access to download speeds of at least 25 megabits per second and actual upload speeds of at least three megabits per second;
- a majority of households have access to speeds of 150 megabits; and
- every community should have affordable access to at least one gigabit per second broadband service to anchor institutions such as schools, hospitals and government buildings.

The FCC requires companies receiving Connect America funding for fixed broadband to offer speeds of at least 10 megabits per second (Mbps) for downloads and 1 Mbps for uploads.

Connect America Fund (CAF). In 2011, the FCC created the CAF to support the expansion of broadband Internet capability to underserved areas of the nation. Underserved areas are identified at the census-block level. The FCC initially disbursed approximately \$1.8 billion annually to a class of large telecommunications carriers known as price cap carriers. There are two price cap carriers in Washington: CenturyLink and Frontier.

In September 2015, the FCC announced that 10 telecommunications companies nationwide would receive approximately \$9 billion over the next six years as part of CAF-II to expand broadband networks throughout rural areas of the U.S. Under CAF-II, the FCC funding will target census blocks that meet two criteria:

- where the cost of providing service according to the cost model exceeds \$52.50 a month; and
- those that are not served by unsubsidized competitors offering service at speeds of at least 4 Mbps downstream and 1 Mbps upstream.

Service providers accepting CAF-II funds will be required to build out broadband services to 40 percent of funded locations by the end of 2017, 60 percent by end of 2018, and 100 percent by the end of 2020.

CenturyLink and Frontier have made commitments and will receive funding over the next six years under CAF II. For Washington State, CenturyLink has committed to provide service to 58,961 homes or businesses and will receive \$24.4 million. Frontier has committed to provide service to 19,713 homes or businesses and will receive \$8.7 million.

**Summary of Bill (First Substitute):** Small Cell Network Infrastructure Siting Ordinance. Cities and towns with populations over 5000 must enact an ordinance or policy to establish a permitting process for siting small cell facilities when the city or town has received a completed application and application fee for a master permit from a small cell wireless service provider. However, cities or towns that have previously adopted a small cell facility ordinance or policy consistent with the requirements of this act are not required to adopt a new ordinance or policy.

A city or town may not require an applicant proposing to site a small cell facility on an existing pole or structure to apply for a conditional use permit except where:

- the proposal would require installation of a new pole or structure;
- the proposal would require an existing pole or structure to be extended or replaced at a height greater than 15 feet above the existing pole height, except when the applicant can demonstrate that the request pole height is the minimum needed to achieve safety clearances or meet the pole owner's requirements; or
- the proposed facility does not meet established design standards for small cell facilities or networks.

A small cell facility ordinance or policy must:

- outline the process to obtain a master permit to deploy small cell facilities and networks—a city or town must include the process when updating ordinances and policies;
- treat service providers in a competitively neutral and nondiscriminatory manner; and
- include initial fees required for filing a master permit application.

A small cell facility ordinance or policy may include installation standards for small cell facilities and networks.

Office on Broadband Access. The Governor's Office on Broadband Access (OBA) is created within the Department of Commerce. The OBA is responsible for all matters regarding the adoption of statewide broadband access and deployment. It is the coordinating entity for public and private efforts to ensure statewide broadband access and deployment.

The duties of OBA include:

- coordinating with communities, public and private entities, and consumer and investor owned utilities to develop strategies for deployment of broadband infrastructure and access to broadband services;
- reviewing existing initiatives, policies, and public and private investments and making recommendations to advance the state's broadband goals;
- updating the state's goals and standards for broadband service as technological advances become available;
- taking comprehensive actions to advance the state's broadband access goals;
- developing standards for defining levels of service for broadband access;
- identifying unserved and underserved areas of the state on an annual basis;
- developing a small cell permitting model ordinance for cities and towns; and
- conducting a study on tax credits for capital costs for broadband deployment.

As the OBA develops plans or strategies for broadband deployment, it must consider:

- partnerships between communities, nonprofit organizations, and consumer and investor owned utilities.
- funding opportunities that provide coordination of public, private, and state and federal funds for broadband capable infrastructure or broadband services available to underserved or unserved areas of the state;
- barriers to adoption of broadband service;
- unserved or underserved populations in the state; and
- requiring minimum broadband access service of 25 Mbps download speed and 3 mbps upload speed and faster speeds as technology advances.

The OBA must develop a list of broadband deployment projects for grant supports. Beginning November 1, 2018, through December 31, 2020, first priority must be given to projects in unserved areas of the state.

Broadband Advisory Group. The OBA may convene an advisory group to make recommendations on developing a state-wide rural broadband strategy. The advisory group must conduct a gap analysis on the deployment of broadband services in unserved and underserved areas of the state. The analysis must include a review of:

- deployment projects and strategies by local governments, private partnerships, and private entities;
- economic development opportunities that could be realized with access to broadband services; and
- availability of broadband services in unserved and underserved areas of the state.

Broadband Services Deployment Grant Program. The OBA must establish a competitive grant program to assist qualified local governments and tribes to build infrastructure for open access, high speed broadband services in unserved and underserved areas of the state. Uses of the grant funds must be prioritized for assistance to public and private partnerships deploying broadband in unserved and underserved areas of the state; projects that are ready to permit and have identified capital costs; countywide or subcounty strategic planning; technical analysis to address barriers and interoperability between private and public infrastructure; and for public and private partnerships deploying broadband for public safety communications in remote, high cost island counties. The OBA must develop rules for grant eligibility and for program implementation.

Broadband Access Account. The account is funded by the business and occupation taxes paid by telecommunications service providers receiving federal funds for making broadband-capable infrastructure available to underserved and unserved areas of the state and federal grants received for this purpose.

State Universal Service Program. The UTC must include in its report an analysis of the need for future program funding and recommendations on potential funding mechanisms to improve availability of communication services, including broadband service in unserved and underserved areas of the state by December 1, 2019. The State Universal Service Program is extended until June 30, 2020.

Rural Port Districts. A port district, located in a county bordering a foreign nation or in a county bordering the Columbia River that has completed feasibility studies for deploying broadband, is authorized to provide wholesale telecommunications.

PUDs. A PUD that provides only water, sewer, and telecommunications services in a county with an area less than 500 square miles, and is located west of the Puget Sound may provide end user internet services on the PUD's broadband network.

After receiving a petition requesting retail internet services, the commissioners may hold up to three meetings to verify petitioners' signatures; determine the existence or adequacy of retail internet services; and by resolution, authorize the PUD to provide retail internet services on its broadband network.

The petition must declare that there are no or inadequate retail internet service providers on the PUD's broadband network. The petition to request retail internet services may be submitted by a majority of a group, including homeowner associations, or an individual who has developed a partnership payment structure to finance broadband deployment with a PUD.

Adequate retail internet service is determined by measuring retail internet service to end users on the PUD's broadband network and comparing it to service standards in the PUD service level agreement used for all PUD district network providers. The service measurement must be quantified by measuring the service with speed and capacity devices and software. A retail internet service provider may submit its own service assessment to the commissioners for consideration. The service assessment must be submitted within 30 days of the commissioners' first meeting on the petition requesting retail internet services.

The commissioners may authorize a PUD to provide or contract for internet services, as petitioned by the end users, when it has determined that service is inadequate or non-existent after reviewing and evaluating the retail internet service.

When the commissioners fail to reach an agreement on adequacy of retail internet service, they must request an administrative law judge to hear the dispute. The administrative law judge must issue a determination with the commissioners after reviewing and considering all evidence.

The PUD must offer fair and nondiscriminatory rates for retail internet service. The PUD may set tiers of charges based on user service demands.

Regulated telecommunications companies may use the alternative form of regulation process to modify its carrier of last resort obligations in certain markets.

Definitions are provided for certain terms.

Findings. The Legislature finds that the national goals adopted by the FCC are appropriate for Washington State.

The requirements under Commerce for the Broadband Office and related provisions are repealed.

**EFFECT OF CHANGES MADE BY ENERGY, ENVIRONMENT & TECHNOLOGY COMMITTEE (First Substitute):**

1. Requires the broadband office to:
  - a. develop a small cell facility permitting model ordinance for cities and towns; and
  - b. study tax credits for capital costs for broadband infrastructure.
2. Provides \$10 million to CERB for rural broadband deployment.
3. Allows regulated telecommunications providers to use the alternative form of regulation process to modify its carrier of last resort obligations.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Proposed Substitute (Energy, Environment & Technology):** *The committee recommended a different version of the bill than what was heard.* PRO: This bill will fix the disparity of service residents receive. It encourages expansion of services to rural areas. This allows cities to retain control and manage services fairly.

CON: The timeframe needs to be extended to the disbursement of Universal Services Fund.

OTHER: This should go further to remove barriers and create incentives. There needs to be sideboards on permitting by cities. It is silent on capping fees imposed by cities for permits and there should be timeframes for deployment. This bill leaves out some ports that are not designated as rural because there is a large city within the county.

**Persons Testifying (Energy, Environment & Technology):** PRO: Senator Tim Sheldon, Prime Sponsor; Scott Reynvaan, Quinault Indian Nation; Christina Schuck, Assistant City Attorney, City of Kent; Dave Asher, Councilmember, City of Kirkland; Jill Boudreau, Mayor, Mount Vernon; Joel Myer, Mason PUD 3; Alex Mccracken, Pioneer Hills Community Association; Milt Doumit, Verizon; Nelson Holmberg, Port of Ridgefield; William Bridges, Centurylink; Carolyn Logue, Washington Library Association; Rhonda Weaver, Comcast and Broadband Communications Association of Washington.

CON: Dale Merten, ToledoTel; Mike Oblizalo, Hood Canal Communications.

OTHER: Scott Richards, Washington Public Utility Districts Association; Jim Blundell, T-Mobile.

**Persons Signed In To Testify But Not Testifying (Energy, Environment & Technology):** PRO: Will Saunders, Office of Privacy & Data Protection.

OTHER: Eric Johnson, Washington Public Ports Association.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** PRO: We are supportive of the bill. Model ordinance would be nice. Support the grants and programs within the Governor's Office and Community Economic Revitalization Board program.

OTHER: Support the creation of the Governor's Office on broadband. Funding should be technology and provider neutral. Funding should focus on "digging once" so that broadband projects are completely concurrent with other road and other infrastructure projects to leverage the funds and timeline of other projects. We believe a set-aside for tribes is appropriate for tribes are located in truly remote areas.

**Persons Testifying (Ways & Means):** PRO: David Williams, Association of Washington Cities.

OTHER: Mara Machulsky, Hoh Indian Tribe.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.