

SHB 2175 - S AMD 631

By Senators Billig, Ericksen, Ranker

ADOPTED 03/06/2014

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 80.36.375 and 1997 c 219 s 2 are each amended to read
4 as follows:

5 (1) If a personal wireless service provider applies to site several
6 microcells (~~(and/or)~~), minor facilities, or a small cell network in a
7 single geographical area:

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

16 (b) Local governmental entities are encouraged: (i) To allow the
17 applicant, at the applicant's discretion, to file a single set of
18 documents for land use permits that will apply to all the microcells
19 and/or minor facilities to be sited; and (ii) to render decisions
20 regarding land use permits for all the microcells and/or minor
21 facilities in a single administrative proceeding; and

22 (c) For small cell networks involving multiple individual small
23 cell facilities, local governmental entities shall allow the applicant,
24 if the applicant so chooses, to file a consolidated application and
25 receive a single permit for the small cell network in a single
26 jurisdiction instead of filing separate applications for each
27 individual small cell facility.

28 (2) For the purposes of this section:

29 (a) "Personal wireless services" means commercial mobile services,

1 unlicensed wireless services, and common carrier wireless exchange
2 access services, as defined by federal laws and regulations.

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

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

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

17 (i) Each antenna is located inside an antenna enclosure of no more
18 than three cubic feet in volume or, in the case of an antenna that has
19 exposed elements, the antenna and all of its exposed elements could fit
20 within an imaginary enclosure of no more than three cubic feet; and

21 (ii) Primary equipment enclosures are no larger than seventeen
22 cubic feet in volume. The following associated equipment may be
23 located outside the primary equipment enclosure and if so located, are
24 not included in the calculation of equipment volume: Electric meter,
25 concealment, telecomm demarcation box, ground-based enclosures, battery
26 back-up power systems, grounding equipment, power transfer switch, and
27 cut-off switch.

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

30 **Sec. 2.** RCW 35.21.860 and 2007 c 6 s 1020 are each amended to read
31 as follows:

32 (1) No city or town may impose a franchise fee or any other fee or
33 charge of whatever nature or description upon the light and power, or
34 gas distribution businesses, as defined in RCW 82.16.010, or telephone
35 business, as defined in RCW 82.16.010, or service provider for use of
36 the right-of-way, except:

37 (a) A tax authorized by RCW 35.21.865 may be imposed;

1 (b) A fee may be charged to such businesses or service providers
2 that recovers actual administrative expenses incurred by a city or town
3 that are directly related to receiving and approving a permit, license,
4 and franchise, to inspecting plans and construction, or to the
5 preparation of a detailed statement pursuant to chapter 43.21C RCW;

6 (c) Taxes permitted by state law on service providers;

7 (d) Franchise requirements and fees for cable television services
8 as allowed by federal law; and

9 (e) A site-specific charge pursuant to an agreement between the
10 city or town and a service provider of personal wireless services
11 acceptable to the parties for:

12 (i) The placement of new structures in the right-of-way regardless
13 of height, unless the new structure is the result of a mandated
14 relocation in which case no charge will be imposed if the previous
15 location was not charged;

16 (ii) The placement of replacement structures when the replacement
17 is necessary for the installation or attachment of wireless facilities,
18 the replacement structure is higher than the replaced structure, and
19 the overall height of the replacement structure and the wireless
20 facility is more than sixty feet; or

21 (iii) The placement of personal wireless facilities on structures
22 owned by the city or town located in the right-of-way. However, a
23 site-specific charge shall not apply to the placement of personal
24 wireless facilities on existing structures, unless the structure is
25 owned by the city or town.

26 A city or town is not required to approve the use permit for the
27 placement of a facility for personal wireless services that meets one
28 of the criteria in this subsection absent such an agreement. If the
29 parties are unable to agree on the amount of the charge, the service
30 provider may submit the amount of the charge to binding arbitration by
31 serving notice on the city or town. Within thirty days of receipt of
32 the initial notice, each party shall furnish a list of acceptable
33 arbitrators. The parties shall select an arbitrator; failing to agree
34 on an arbitrator, each party shall select one arbitrator and the two
35 arbitrators shall select a third arbitrator for an arbitration panel.
36 The arbitrator or arbitrators shall determine the charge based on
37 comparable siting agreements involving public land and rights-of-way.
38 The arbitrator or arbitrators shall not decide any other disputed

1 issues, including but not limited to size, location, and zoning
2 requirements. Costs of the arbitration, including compensation for the
3 arbitrator's services, must be borne equally by the parties
4 participating in the arbitration and each party shall bear its own
5 costs and expenses, including legal fees and witness expenses, in
6 connection with the arbitration proceeding.

7 (2) Subsection (1) of this section does not prohibit franchise fees
8 imposed on an electrical energy, natural gas, or telephone business, by
9 contract existing on April 20, 1982, with a city or town, for the
10 duration of the contract, but the franchise fees shall be considered
11 taxes for the purposes of the limitations established in RCW 35.21.865
12 and 35.21.870 to the extent the fees exceed the costs allowable under
13 subsection (1) of this section."

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14 On page 1, line 2 of the title, after "industry;" strike the
15 remainder of the title and insert "and amending RCW 80.36.375 and
16 35.21.860."

EFFECT: Removes provisions encouraging consolidated applications for all wireless facilities, but still requires local governments to allow consolidated applications for small cell networks. Clarifies that consolidated siting applications for small cell networks are limited to single jurisdictions. Keeps the provision in the underlying substitute bill that authorizes agreements between municipalities and personal wireless service companies to specify site-specific charges for certain wireless replacement structures.

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