**5935-S2 AMS SHEL S5126.1 - NOT FOR FLOOR USE**

**2SSB 5935** - S AMD **523**

By Senator Sheldon

**ADOPTED AS AMENDED 02/14/2018**

Strike everything after the enacting clause and insert the following:

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

(1)(a) It is the policy of the state to promote the efficient deployment of small cell facilities and small cell networks, as defined in RCW 80.36.375, infrastructure by offering predictability for wireless service providers so communities across the state have access to wireless communications technologies and create a framework for the deployment of wireless communications services. It is also the policy of the state that cities and towns maintain sufficient authority to manage the public rights-of-way for the health, safety, and welfare of their citizens and the general public.

(b) It is the intent of the legislature that cities and towns may require personal wireless service providers seeking to deploy small cell facilities or small cell networks infrastructure to obtain a master permit or equivalent authority under RCW 35.99.030. Additionally, a city or town may require a wireless service provider to obtain appropriate permits to enter and use the specified right-of-way for the purpose of installing, maintaining, repairing, or removing identified small cell network facilities.

(2) Except as provided for in subsection (7) of this section, cities and towns with a population greater than five thousand shall enact a small cell facility deployment ordinance, or develop a small cell facility deployment policy establishing a process for siting small cell facilities and small cell networks within the right-of-way under this chapter, provided the city or town has received a complete application and application fee for a master permit from a wireless service provider for a small cell facility as defined in RCW 80.36.375.

(3) 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:

(a) Such a proposal would require original installation of a new pole or structure;

(b) Such a proposal would require an existing pole or structure to be extended or replaced at a height more than fifteen feet above the existing height of a pole or structure, except where the applicant can demonstrate that the requested pole height is the minimum needed to achieve necessary safety clearances or the requirement of the pole owner; or

(c) The proposed facility does not meet established design standards for small cell facilities or small cell networks, as defined in RCW 80.36.375.

(4)(a) A city or town that updates an existing small cell facility deployment ordinance or policy, or adopts a small cell facility deployment ordinance or policy must outline the process that personal wireless service providers are required to follow in seeking a master permit to deploy small cell facilities and small cell networks, as defined in RCW 80.36.375.

(b) The small cell facility deployment ordinance or policy must treat service providers in a competitively neutral and nondiscriminatory manner.

(5) The small cell facility deployment ordinance or policy must include initial fees or deposits required for filing the master permit application. The use of a deposit for administrative costs in lieu of a set fee is not prohibited if the final, total administrative fee charged complies with the requirements of RCW 35.21.860. The fee schedule may allow a permit applicant to pay an additional fee for expedited permit processing if the city has deployed such a process. This provision is not intended to require jurisdictions to create an expedited permitting process when one does not already exist.

(6) A small cell facility deployment ordinance or policy may include the following provisions, at the discretion of the city or town: Standards for the installation of small cell facilities and small cell networks, as defined in RCW 80.36.375, on city or town-owned structures located outside of the right-of-way and other terms and conditions for these installations.

(7) A city or town that, as of the effective date of this section, has previously adopted an ordinance or policy, consistent with this act, governing the siting of small cell network infrastructure is not required to adopt or amend a small cell facility deployment ordinance or policy as otherwise required under subsection (2) of this section.

(8) A small cell facility deployment ordinance or policy enacted as required by this section has no effect on previously adopted franchises, permits, or agreements for small cell facilities or small cell networks deployments made or entered into by any city or town.

(9) Nothing in this section limits a city or town from issuing master permits or use permits in accordance with other provisions of this chapter.

(10) Nothing in this section may be construed as creating a duty on cities or towns with a population less than five thousand. However, cities with a population of less than five thousand may adopt a small cell facility deployment ordinance or policy and the provisions under subsection (2) of this section.

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

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

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

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

(3) "Master permit" means the agreement in whatever form whereby a city or town may grant general permission to a service provider to enter, use, and occupy the right‑of‑way for the purpose of locating facilities. This definition is not intended to limit, alter, or change the extent of the existing authority of a city or town to require a franchise nor does it change the status of a service provider asserting an existing statewide grant based on a predecessor telephone or telegraph company's existence at the time of the adoption of the Washington state Constitution to occupy the right‑of‑way. For the purposes of this subsection, a franchise, except for a cable television franchise, is a master permit. A master permit does not include cable television franchises.

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

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

(a) State highways;

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

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

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

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

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

(6) "Service provider" means every corporation, company, association, joint stock association, firm, partnership, person, city, or town owning, operating, or managing any facilities used to provide and providing personal wireless services, telecommunications, or cable television service for hire, sale, or resale to the general public. Service provider includes the legal successor to any such corporation, company, association, joint stock association, firm, partnership, person, city, or town. A personal wireless service provider includes entities providing infrastructure, including but not limited to fiber, conduit, poles, or other structures to another service provider, but does not include electrical utility entities.

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

(8) "Use permit" means the authorization in whatever form whereby a city or town may grant permission to a service provider to enter and use the specified right‑of‑way for the purpose of installing, maintaining, repairing, or removing identified facilities.

NEW SECTION. **Sec.**  The legislature finds that:

(1) The federal communications commission has adopted a national broadband plan that includes recommendations directed to federal, state, and local governments, including recommendations to:

(a) Design policies to ensure robust competition and maximizing consumer welfare, innovation, and investment;

(b) Ensure efficient allocation and management of assets that government controls or influences, such as poles and rights-of-way, to encourage network upgrades and competitive entry;

(c) Reform current universal service mechanisms to support deployment in high-cost areas; ensuring that low-income Americans can afford broadband; and supporting efforts to boost adoption and utilization; and

(d) Reform laws, policies, standards, and incentives to maximize the benefits of broadband in sectors that government influences significantly, such as public education, health care, and government operations;

(2) The federal communications commission has also adopted a goal that all of the country's households have affordable access to actual download speeds of at least twenty-five megabits per second and actual upload speeds of at least three megabits per second; that a majority of households have access to speeds of one hundred fifty megabits, respectively; and that 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;

(3) These national goals are presently appropriate for Washington state, and recognizes that as technology advances the goals will require changes over time;

(4) Extensive investments have been made by the telecommunications industry and the public sector, as well as policies and programs adopted to provide affordable broadband services throughout the state, that will provide a foundation to build a comprehensive statewide framework for additional actions needed to advance state's broadband goals.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

The definitions in this section apply throughout sections 5 through 8 of this act unless the context clearly requires otherwise.

(1) "Broadband" means networks of deployed telecommunications equipment and technologies necessary to provide high-speed internet access and other advanced telecommunications services.

(2) "Local governments" includes cities, towns, counties, municipal corporations, public port districts, quasi-municipal corporations, and special purpose districts.

(3) "Office" means the governor's office on broadband access.

(4) "Underserved areas" means areas lacking adequate broadband service.

(5) "Unserved areas" means areas without access to broadband.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1) The governor's office on broadband access is created within the department. The mission of the office is to improve economic vitality, health care access, and education through greater access to broadband services.

(2) The office, in collaboration with the utilities and transportation commission, the office of the chief information officer, and the community economic revitalization board, shall serve as the coordinating body for public and private efforts to ensure statewide broadband access and deployment. The office is responsible for all matters regarding the adoption of statewide broadband access and deployment.

(3) The duties of the office include:

(a) Coordinating with local governments, communities, public and private entities, and consumer-owned and investor-owned utilities to develop strategies and plans for deployment of broadband infrastructure and access to broadband services;

(b) Reviewing existing broadband initiatives, policies, and public and private investments;

(c) Taking comprehensive actions to advance the state's broadband access goals;

(d) Updating the state's goals and standards for broadband service as technological advances become available;

(e) Identifying, on an annual basis, unserved and underserved areas of the state;

(f) Implementing actions necessary to develop and maintain a detailed inventory of the deployment of broadband services, including monitoring and tracking the availability of broadband services and internet speeds across the state, with an emphasis upon identifying and assessing progress made towards achieving the goals for internet speeds in unserved and underserved areas;

(g) Developing standards for defining levels of service for broadband access, including unserved and underserved areas, and revising these standards as technological advances are made and services are expanded;

(h) Fostering public sector and telecommunications industry actions to bring sustainable broadband access to areas that are unserved or underserved;

(i) Prioritizing and sequencing delivery of quality broadband service to unserved and underserved areas of the state; and

(j) Coordinating public, private, state, and federal funds or other funds, for deployment of broadband services in underserved and unserved areas of the state.

(4) When developing plans or strategies for broadband deployment, the office must consider:

(a) Partnerships between communities, tribes, nonprofit organizations, consumer-owned and investor-owned utilities, and public and private entities;

(b) Funding opportunities that provide for the coordination of public, private, state, and federal funds for the purposes of making broadband-capable infrastructure or broadband services available to underserved or unserved areas of the state;

(c) Barriers to the adoption of broadband service;

(d) Unserved or underserved populations in the state; and

(e) Requiring minimum broadband access service of twenty-five mbps download speed and three mbps upload speed and faster speeds as technology advances.

(5) By November 1, 2018, the office must develop a list of projects for grant support as authorized under section 7 of this act that will advance high speed broadband access in unserved rural areas of the state. Beginning November 1, 2018, through December 31, 2020, the office must give first priority to projects deploying end-user broadband services in unserved or underserved rural areas of the state.

(6) The office may conduct research as provided under RCW 43.330.050(8) as it applies to the development and deployment of broadband access throughout the state. Information provided to the office in the course of research and analysis is not subject to disclosure subject to RCW 42.56.270(12)(a)(i).

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1) The office may take all appropriate steps to seek federal funding in order to maximize investment in broadband deployment and adoption in the state.

(2) The office may apply for federal funds and other grants or donations and must deposit the funds in the broadband access account created in section 10 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1)(a) The office must establish a competitive grant program to assist qualified local governments and tribes to build infrastructure for open access, high speed broadband services, with download speeds of at least twenty-five megabits per second and upload speeds of at least three megabits per second, in unserved and underserved areas of the state.

(b) Eligible uses of grant funds must be prioritized as follows:

(i) Assistance to public and private partnerships deploying broadband infrastructure between areas with broadband service to unserved or underserved areas of the state;

(ii) Broadband deployment projects that are ready to permit and have identified capital costs;

(iii) Countywide or subcounty strategic planning for deploying broadband services in unserved and underserved areas of the state;

(iv) Technical analysis to address barriers and interoperability between private and public infrastructure; and

(v) Assistance to public and private partnerships deploying broadband to improve public safety communications for remote, high-cost counties consisting entirely of islands.

(2) The office must assist applicants with seeking federal funding or matching grants and other grant opportunities for deploying broadband services.

(3) The office must develop rules for grant eligibility and as necessary to implement and administer a grant program. The office may adopt rules under RCW 34.05.350, as necessary, to ensure grants are available as provided under section 5(5) of this act.

(4) The obligation of the department to make grant payments is contingent upon the availability of the amount of funding available for this purpose as required under section 5 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1) The office may convene an advisory group to make recommendations on developing a statewide rural broadband strategy to ensure broadband access statewide by January 1, 2026. The advisory committee must conduct a gap analysis on the deployment of broadband services in underserved and unserved areas of the state. The analysis must include a review of:

(a) Deployment of broadband services and deployment strategies by public utility districts, port districts, public and private partnerships, and private entities;

(b) Economic development opportunities that could be realized with access to broadband services; and

(c) Broadband access availability in unserved and underserved areas of the state.

(2) The members of the advisory committee must include experts from the utilities and transportation commission, the office of the chief information officer, and the department of commerce. The office may invite, as necessary, subject matter experts to participate in the advisory group.

NEW SECTION. **Sec.**  A new section is added to chapter 82.32 RCW to read as follows:

(1) Beginning January 1, 2019, the department must:

(a) Estimate the annual amount of taxes paid under chapter 82.04 RCW associated with federal funds received by telecommunications service providers for making broadband-capable infrastructure available to unserved or underserved areas of the state;

(b) Instruct the state treasurer to deposit the estimated amounts in (a) of this subsection into the broadband access account created in section 10 of this act.

(2) Beginning December 1, 2018, and by December 1st each subsequent year, a person receiving federal funding for the purposes of making broadband-capable infrastructure available to underserved or unserved areas of the state must notify the department of the amount of federal funding received for this purpose.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1) The broadband access account is created in the state treasury. All receipts from sections 6 and 9 of this act must be deposited into the account. Moneys in the account may be spent only after appropriation.

(2) Expenditures from the account may be used only for the expansion of broadband access, including funding grants under section 7 of this act.

**Sec.**  RCW 80.36.135 and 2008 c 181 s 414 are each amended to read as follows:

(1) The legislature declares that:

(a) Changes in technology and the structure of the telecommunications industry may produce conditions under which traditional rate of return, rate base regulation of telecommunications companies may not in all cases provide the most efficient and effective means of achieving the public policy goals of this state as declared in RCW 80.36.300, this section, and RCW 80.36.145. The commission should be authorized to employ an alternative form of regulation if that alternative is better suited to achieving those policy goals.

(b) Because of the great diversity in the scope and type of services provided by telecommunications companies, alternative regulatory arrangements that meet the varying circumstances of different companies and their ratepayers may be desirable.

(c) Increasing competition from private and public telecommunications providers may require the modification of obligations arising under RCW 80.36.090 in certain markets.

(2) Subject to the conditions set forth in this chapter and RCW 80.04.130, the commission may regulate telecommunications companies subject to traditional rate of return, rate base regulation by authorizing an alternative form of regulation. The commission may determine the manner and extent of any alternative forms of regulation as may in the public interest be appropriate. In addition to the public policy goals declared in RCW 80.36.300, the commission shall consider, in determining the appropriateness of any proposed alternative form of regulation, whether it will:

(a) Facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes;

(b) Improve the efficiency of the regulatory process;

(c) Preserve or enhance the development of effective competition and protect against the exercise of market power during its development;

(d) Preserve or enhance service quality and protect against the degradation of the quality or availability of efficient telecommunications services;

(e) Provide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential; and

(f) Not unduly or unreasonably prejudice or disadvantage any particular customer class.

(3) A telecommunications company or companies subject to traditional rate of return, rate base regulation may petition the commission to establish an alternative form of regulation. The company or companies shall submit with the petition a plan for an alternative form of regulation. The plan shall contain a proposal for transition to the alternative form of regulation and the proposed duration of the plan. The plan must also contain a proposal for ensuring adequate carrier-to-carrier service quality, including service quality standards or performance measures for interconnection, and appropriate enforcement or remedial provisions in the event the company fails to meet service quality standards or performance measures. The commission also may initiate consideration of alternative forms of regulation for a company or companies on its own motion. The commission, after notice and hearing, shall issue an order accepting, modifying, or rejecting the plan within nine months after the petition or motion is filed, unless extended by the commission for good cause. The commission shall order implementation of the alternative plan of regulation unless it finds that, on balance, an alternative plan as proposed or modified fails to meet the considerations stated in subsection (2) of this section.

(4) Not later than sixty days from the entry of the commission's order, the company or companies affected by the order may file with the commission an election not to proceed with the alternative form of regulation as authorized by the commission.

(5) The commission may waive such regulatory requirements under Title 80 RCW for a telecommunications company subject to an alternative form of regulation as may be appropriate to facilitate the implementation of this section. However, the commission may not waive any grant of legal rights to any person contained in this chapter and chapter 80.04 RCW. The commission may waive different regulatory requirements for different companies or services if such different treatment is in the public interest.

(6) Upon petition by the company, and after notice and hearing, the commission may rescind or modify an alternative form of regulation in the manner requested by the company.

(7) The commission or any person may file a complaint under RCW 80.04.110 alleging that a telecommunications company under an alternative form of regulation has not complied with the terms and conditions set forth in the alternative form of regulation. The complainant shall bear the burden of proving the allegations in the complaint.

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

**Sec.**  RCW 80.36.630 and 2013 2nd sp.s. c 8 s 202 are each amended to read as follows:

(1) The definitions in this section apply throughout this section and RCW 80.36.650 through 80.36.690 and 80.36.610 unless the context clearly requires otherwise.

(a) "Basic residential service" means those services set out in 47 C.F.R. Sec. 54.101(a) (2011), as it existed on the effective date of this section, and mandatory extended area service approved by the commission.

(b) "Basic telecommunications services" means the following services:

(i) Single-party service;

(ii) Voice grade access to the public switched network;

(iii) Support for local usage;

(iv) Dual tone multifrequency signaling (touch-tone);

(v) Access to emergency services (911);

(vi) Access to operator services;

(vii) Access to interexchange services;

(viii) Access to directory assistance; and

(ix) Toll limitation services.

(c) "Broadband service" means communications that provide consumers advanced access to high quality voice, data, graphics, and video offerings.

(d) "Communications provider" means a provider of communications services that assigns a working telephone number to a final consumer for intrastate wireline or wireless communications services or interconnected voice over internet protocol service, and includes local exchange carriers.

((~~(d)~~)) (e) "Communications services" includes telecommunications services and information services and any combination thereof.

((~~(e)~~)) (f) "Incumbent local exchange carrier" has the same meaning as set forth in 47 U.S.C. Sec. 251(h).

((~~(f)~~)) (g) "Incumbent public network" means the network established by incumbent local exchange carriers for the delivery of communications services to customers that is used by communications providers for origination or termination of communications services by or to customers.

((~~(g)~~)) (h) "Interconnected voice over internet protocol service" means an interconnected voice over internet protocol service that: ((~~(a) [(i)]~~)) (i) Enables real-time, two-way voice communications; ((~~(b) [(ii)]~~)) (ii) requires a broadband connection from the user's location; ((~~(c) [(iii)]~~)) (iii) requires internet protocol-compatible customer premises equipment; and ((~~(d) [(iv)]~~)) (iv) permits users generally to receive calls that originate on the public network and to terminate calls to the public network.

((~~(h)~~)) (i) "Program" means the state universal communications services program created in RCW 80.36.650.

((~~(i)~~)) (j) "Telecommunications" has the same meaning as defined in 47 U.S.C. Sec. 153(43).

((~~(j)~~)) (k) "Telecommunications act of 1996" means the telecommunications act of 1996 (P.L. 104-104, 110 Stat. 56).

((~~(k)~~)) (l) "Working telephone number" means a north American numbering plan telephone number, or successor dialing protocol, that is developed for use in placing calls to or from the public network, that enables a consumer to make or receive calls.

(2) This section expires July 1, 2020.

**Sec.**  RCW 80.36.650 and 2016 c 145 s 1 are each amended to read as follows:

(1) A state universal communications services program is established. The program is established to protect public safety and welfare under the authority of the state to regulate telecommunications under Article XII, section 19 of the state Constitution. The purpose of the program is to support continued provision of basic telecommunications services under rates, terms, and conditions established by the commission during the time over which incumbent communications providers in the state are adapting to changes in federal universal service fund and intercarrier compensation support.

(2) Under the program, eligible communications providers may receive distributions from the universal communications services account created in RCW 80.36.690 in exchange for the affirmative agreement to provide continued services under the rates, terms, and conditions established by the commission under this chapter for the period covered by the distribution. The commission must implement and administer the program under terms and conditions established in RCW 80.36.630 through 80.36.690. Expenditures for the program may not exceed five million dollars per fiscal year; provided, however, that if less than five million dollars is expended in any fiscal year, the unexpended portion must be carried over to subsequent fiscal years and, unless fully expended, must be available for program expenditures in such subsequent fiscal years in addition to the five million dollars allotted for each of those subsequent fiscal years.

(3) A communications provider is eligible to receive distributions from the account if:

(a) The communications provider is: (i) An incumbent local exchange carrier serving fewer than forty thousand access lines in the state; or (ii) a radio communications service company providing wireless two-way voice communications service to less than the equivalent of forty thousand access lines in the state. For purposes of determining the access line threshold in this subsection, the access lines or equivalents of all affiliates must be counted as a single threshold, if the lines or equivalents are located in Washington;

(b) The customers of the communications provider are at risk of rate instability or service interruptions or cessations absent a distribution to the provider that will allow the provider to maintain rates reasonably close to the benchmark; and

(c) The communications provider meets any other requirements established by the commission pertaining to the provision of communications services, including basic telecommunications services.

(4)(a) Distributions to eligible communications providers are based on ((~~a benchmark~~)) criteria established by the commission. ((~~The benchmark is the rate the commission determines to be a reasonable amount customers should pay for basic residential service provided over the incumbent public network. However, if an incumbent local exchange carrier is charging rates above the benchmark for the basic residential service, that provider may not seek distributions from the fund for the purpose of reducing those rates to the benchmark.~~))

(b) To receive a distribution under the program, an eligible communications provider must affirmatively consent to continue providing communications services to its customers under rates, terms, and conditions established by the commission pursuant to this chapter for the period covered by the distribution.

(5) The program is funded from amounts deposited by the legislature in the universal communications services account established in RCW 80.36.690. The commission must operate the program within amounts appropriated for this purpose and deposited in the account.

(6) The commission must periodically review the accounts and records of any communications provider that receives distributions under the program to ensure compliance with the program and monitor the providers' use of the funds.

(7) The commission must establish an advisory board, consisting of a reasonable balance of representatives from different types of stakeholders, including but not limited to communications providers and consumers, to advise the commission on any rules and policies governing the operation of the program.

(8) The program terminates on June 30, ((~~2019~~)) 2020, and no distributions may be made after that date.

(9) This section expires July 1, ((~~2020~~)) 2021.

**Sec.**  RCW 80.36.690 and 2013 2nd sp.s. c 8 s 208 are each amended to read as follows:

(1) The universal communications services account is created in the custody of the state treasurer. Revenues to the account consist of moneys deposited in the account by the legislature and any penalties or other recoveries received pursuant to RCW 80.36.670. Expenditures from the account may be used only for the purposes of the universal communications services program established in RCW 80.36.650 and commission expenses related to implementation and administration of the provisions of RCW 80.36.620 through 80.36.690, and section 212, chapter 8, Laws of 2013 2nd sp. sess. Only the secretary of the commission or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) This section expires July 1, 2020.

**Sec.**  2013 2nd sp.s. c 8 s 212 (uncodified) is amended to read as follows:

By December 1, ((~~2017~~)) 2019, and in compliance with RCW 43.01.036, the Washington utilities and transportation commission must report to the appropriate committees of the legislature, on the following: (1) Whether funding levels for each small telecommunications company have been adequate to maintain reliable universal service; (2) the future impacts on small telecommunications companies from the elimination of funding under this act; (3) the impacts on customer rates from the current level of funding and the future impacts when the funding terminates under this act; and (4) the impacts on line and service delivery investments when the funding is terminated under this act. The report must also include an analysis of the need for future program funding and recommendations on potential funding mechanisms to improve availability of communications services, including broadband service, in unserved and underserved areas. Commission expenses related to conducting all analysis in preparation of this report must be expended from the universal communications services account.

NEW SECTION. **Sec.**  A new section is added to chapter 54.16 RCW to read as follows:

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

(a) "Broadband" means networks of deployed telecommunications equipment and technologies necessary to provide high-speed internet access and other advanced telecommunications services.

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

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

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

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

(2) Any public utility district that, as of the effective date of this section, provides only water, sewer, and wholesale telecommunications services in a county with an area less than five hundred square miles and is located west of the Puget Sound may provide end-user internet services to end users on the public utility district's broadband network located within the public utility district boundaries only when the existing providers of end-user internet service on the public utility district's broadband network cease to provide end-user service or provide inadequate end-user service as determined in the manner prescribed by this section.

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

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

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

(c) By resolution, authorize the public utility district to provide retail internet service to end users on the public utility district's broadband network.

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

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

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

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

(6) The commissioners of a public utility district may by resolution authorize the public utility district to provide or contract for provision of internet services to end users on the public utility district's broadband network when it is determined that no service or inadequate service exists for the individual or petitioners identified in subsection (4) of this section.

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

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

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

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

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

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

(10) Except as provided in subsection (8) of this section, nothing in this section may be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities.

(11) All rates for retail internet services offered by a public utility district under this section must be fair and nondiscriminatory, except the public utility district may set tiers of service charges based on service demands of the end user, including commercial and residential rates.

NEW SECTION. **Sec.**  A new section is added to chapter 34.12 RCW to read as follows:

When requested by the public utility district commissioners, the chief administrative law judge shall assign an administrative law judge to conduct proceedings under section 16 of this act.

**Sec.**  RCW 53.08.370 and 2000 c 81 s 7 are each amended to read as follows:

(1) A rural port district in existence on June 8, 2000, a port district located in a county that borders a foreign nation, and a port district located in a county that borders the Columbia river that has completed feasibility studies for a wholesale telecommunications network, may construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the district's limits for the following purposes:

(a) For the district's own use; and

(b) For the provision of wholesale telecommunications services within the district's limits. Nothing in this subsection shall be construed to authorize rural port districts to provide telecommunications services to end users.

(2) Except as provided in subsection (7) of this section, a rural port district providing wholesale telecommunications services under this section shall ensure that rates, terms, and conditions for such services are not unduly or unreasonably discriminatory or preferential. Rates, terms, and conditions are discriminatory or preferential when a rural port district offering such rates, terms, and conditions to an entity for wholesale telecommunications services does not offer substantially similar rates, terms, and conditions to all other entities seeking substantially similar services.

(3) When a rural port district establishes a separate utility function for the provision of wholesale telecommunications services, it shall account for any and all revenues and expenditures related to its wholesale telecommunications facilities and services separately from revenues and expenditures related to its internal telecommunications operations. Any revenues received from the provision of wholesale telecommunications services must be dedicated to the utility function that includes the provision of wholesale telecommunications services for costs incurred to build and maintain the telecommunications facilities until such time as any bonds or other financing instruments executed after June 8, 2000, and used to finance the telecommunications facilities are discharged or retired.

(4) When a rural port district establishes a separate utility function for the provision of wholesale telecommunications services, all telecommunications services rendered by the separate function to the district for the district's internal telecommunications needs shall be charged at its true and full value. A rural port district may not charge its nontelecommunications operations rates that are preferential or discriminatory compared to those it charges entities purchasing wholesale telecommunications services.

(5) A rural port district shall not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights held by any other person or entity to telecommunications facilities.

(6) Except as otherwise specifically provided, a rural port district may exercise any of the powers granted to it under this title and other applicable laws in carrying out the powers authorized under this section. Nothing in chapter 81, Laws of 2000 limits any existing authority of a rural port district under this title.

(7) A port district under this section may select a telecommunications company to operate the port district's telecommunications facilities. The company may be the exclusive provider of telecommunications services to end users under terms specified in the contract with the port district. For purposes of this section, "telecommunications company" means any for-profit entity owned by investors that sells telecommunications services to end users. Nothing in this subsection (7) is intended to limit or otherwise restrict any other authority provided by law.

**Sec.**  2018 c 2 s 1021 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF COMMERCE**

CERB Administered Broadband Infrastructure (91000943)

The appropriation in this section is subject to the following conditions and limitations: During the 2017-2019 fiscal biennium, the community economic revitalization board may make grants and loans to local governments and federally recognized tribes to build infrastructure to provide high-speed, open-access broadband service, with a minimum of 25 megabits per second download speed, to rural and underserved communities, for the purpose of economic development.

(1) "Local governments" means cities, towns, counties, municipal corporations, public port districts, quasi-municipal corporations, and special purpose districts.

(2) "Broadband" means networks of deployed telecommunications equipment and technologies necessary to provide high-speed Internet access and other advanced telecommunications services.

(3) The board is authorized to make rural broadband loans to local governments and to federally recognized Indian tribes for the purposes of financing the cost to build infrastructure to provide high-speed, open-access broadband service, to rural and underserved communities, for the purpose of economic development. Grants may also be authorized for purposes designated in this chapter, but only when, and to the extent that, a loan is not reasonably possible, given the limited resources of the local government or the federally recognized Indian tribe, and subject to a finding by the board that financial circumstances require grant assistance to enable the project to move forward. However, no more than 25 percent of all financial assistance approved by the board in any biennium may consist of grants to local governments and federally recognized Indian tribes.

(4) Application for funding must be made in the form and manner as the board may prescribe. In making grants or loans the board must conform to the following requirements:

(a) The board may not provide financial assistance:

(i) For a project the primary purpose of which is to facilitate or promote a retail shopping development or expansion.

(ii) For any project that evidence exists would result in a development or expansion that would displace existing jobs in any other community in the state.

(iii) For a project the primary purpose of which is to facilitate or promote gambling.

(iv) For a project located outside the jurisdiction of the applicant local government or federally recognized Indian tribe.

(v) For equipment or facilities which would enable a public entity to provide retail telecommunications services or services that the entity is not authorized by statute to provide.

(vi) For the deployment of publicly-owned telecommunication network infrastructure ("backbone") solely for the sake of creating competitive, publicly-owned telecommunication network infrastructure.

(b) The board may provide financial assistance only((~~:~~

~~(i) For projects demonstrating convincing evidence that a specific private development or expansion is ready to occur and will occur only if the public facility improvement is made that:~~

~~(A) Results in the creation of significant private sector jobs or significant private sector capital investment as determined by the board;~~

~~(B) Will improve the opportunities for the successful maintenance, establishment, or expansion of industrial or commercial plants or will otherwise assist in the creation or retention of long-term economic opportunities; and~~

~~(C) Is located in a rural community as defined by the board, or a rural county; or~~

~~(ii) For a project that does not meet the requirements of (b)(i) of this subsection but is a project that:~~

~~(A) Results in the creation of significant private sector jobs or significant private sector capital investment as determined by the board;~~

~~(B) Is part of a local economic development plan consistent with applicable state planning requirements;~~

~~(C) Can demonstrate project feasibility using standard economic principles; and~~

~~(D) Is located in a rural community as defined by the board, or a rural county;~~

~~(c) The board must develop guidelines for local participation and allowable match and activities.~~

~~(d) An application must demonstrate local match and local participation, in accordance with guidelines developed by the board.~~

~~(e)~~)) for projects located in a rural community as defined by the board, or located in a rural county, that encourage, foster, develop, and improve broadband within the state in order to:

(i) Drive job creation, promote innovation, and expand markets for local businesses; or

(ii) Serve the ongoing and growing needs of local education systems, health care system, public safety system, industries and businesses, governmental operations, and citizens; and

(iii) Improve accessibility for underserved communities and populations.

(c) An application must be approved by the local government and supported by the local associate development organization or local workforce development council or approved by the governing body of the federally recognized Indian tribe.

((~~(f)~~)) (d) The board may allow de minimis general system improvements to be funded if they are critically linked to the viability of the project.

((~~(g) An application must demonstrate convincing evidence that the median hourly wage of the private sector jobs created after the project is completed will exceed the countywide median hourly wage.~~

~~(h) The board must prioritize each proposed project according to:~~

~~(i) The relative benefits provided to the community by the jobs the project would create, not just the total number of jobs it would create after the project is completed, but also giving consideration to the unemployment rate in the area in which the jobs would be located;~~

~~(ii) The rate of return of the state's investment, including, but not limited to, the leveraging of private sector investment, anticipated job creation and retention, and expected increases in state and local tax revenues associated with the project;~~

~~(iii) Whether the proposed project offers a health insurance plan for employees that includes an option for dependents of employees;~~

~~(iv) Whether the public facility investment will increase existing capacity necessary to accommodate projected population and employment growth in a manner that supports infill and redevelopment of existing urban or industrial areas that are served by adequate public facilities. Projects should maximize the use of existing infrastructure and provide for adequate funding of necessary transportation improvements;~~

~~(v) Whether the applicant's permitting process has been certified as streamlined by the office of regulatory assistance; and~~

~~(vi) Whether the applicant has developed and adhered to guidelines regarding its permitting process for those applying for development permits consistent with section 1(2), chapter 231, Laws of 2007.~~

~~(i)~~)) (e) When evaluating and prioritizing projects, the board must give consideration, at a minimum, to the following factors:

(i) The project's value to the community, including evidence of support from affected local businesses and government;

(ii) The project's feasibility, using standard economic principles;

(iii) Commitment of local matching resources and local participation;

(iv) The project's inclusion in a capital facilities plan, comprehensive plan, or local economic development plan consistent with applicable state planning requirements; and

(v) The project's readiness to proceed.

(5) A responsible official of the local government or the federally recognized Indian tribe must be present during board deliberations and provide information that the board requests.

((~~(5)~~)) (6) Before any financial assistance application is approved, the local government or the federally recognized Indian tribe seeking the assistance must demonstrate to the community economic revitalization board that no other timely source of funding is available to it at costs reasonably similar to financing available from the community economic revitalization board.

Appropriation:

State Building Construction Account—

State $5,000,000

Prior Biennia (Expenditures) $0

Future Biennia (Projected Costs) $0

TOTAL $5,000,000

NEW SECTION. **Sec.**  By July 1, 2019, the governor's office on broadband access created in section 5 of this act must study taxes imposed on the capital costs associated with providing retail broadband service, including taxes paid under chapters 82.08 and 82.12 RCW. The study must include an examination of the impact to broadband deployment if a credit is provided against taxes paid under chapters 82.08 and 82.12 RCW on the capital costs associated with providing retail broadband service telecommunications network transmission equipment located in an underserved area in the state.

NEW SECTION. **Sec.**  The governor's office on broadband access created in section 5 of this act must develop a small cell facility deployment permitting model ordinance for cities and towns. The governor's office on broadband access must consult with cities, counties, and service providers when developing the model ordinance. The model ordinance must be available for cities and towns by September 1, 2018.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 43.330.400 (Broadband mapping account—Federal broadband data improvement act funding—Coordination of broadband mapping activities) and 2011 1st sp.s. c 43 s 603 & 2009 c 509 s 2;

(2)RCW 43.330.403 (Reporting availability of high-speed internet—Survey of high-speed internet infrastructure owned or leased by state agencies—Geographic information system map—Rules) and 2011 1st sp.s. c 43 s 604 & 2009 c 509 s 3;

(3)RCW 43.330.406 (Procurement of geographic information system map—Accountability and oversight structure—Application of public records act) and 2011 1st sp.s. c 43 s 605 & 2009 c 509 s 4;

(4)RCW 43.330.409 (Broadband mapping, deployment, and adoption—Reports) and 2011 1st sp.s. c 43 s 606 & 2009 c 509 s 5;

(5)RCW 43.330.412 (Community technology opportunity program—Administration—Grant program) and 2011 1st sp.s. c 43 s 607, 2009 c 509 s 6, & 2008 c 262 s 6;

(6)RCW 43.330.415 (Washington community technology opportunity account) and 2011 1st sp.s. c 43 s 608, 2009 c 509 s 8, & 2008 c 262 s 8;

(7)RCW 43.330.418 (Broadband deployment and adoption—Governor's actions—Oversight and implementation by the department) and 2011 1st sp.s. c 43 s 609 & 2009 c 509 s 9; and

(8)RCW 43.330.421 (Advisory group on digital inclusion and technology planning) and 2011 1st sp.s. c 43 s 610 & 2009 c 509 s 10."

**2SSB 5935** - S AMD **523**

By Senator Sheldon

**ADOPTED AS AMENDED 02/14/2018**

On page 1, line 2 of the title, after "services;" strike the remainder of the title and insert "amending RCW 35.99.010, 80.36.135, 80.36.630, 80.36.650, 80.36.690, and 53.08.370; amending 2013 2nd sp.s. c 8 s 212 (uncodified); amending 2018 c 2 s 1021 (uncodified); adding a new section to chapter 35.99 RCW; adding new sections to chapter 43.330 RCW; adding a new section to chapter 82.32 RCW; adding a new section to chapter 54.16 RCW; adding a new section to chapter 34.12 RCW; creating new sections; repealing RCW 43.330.400, 43.330.403, 43.330.406, 43.330.409, 43.330.412, 43.330.415, 43.330.418, and 43.330.421; and providing an expiration date."

EFFECT: Authorizes CERB to provide financial assistance to local governments and tribes for deployment of broadband in rural communities. Provides that UTC regulated telecommunications providers may use the UTC process for resolving disputes of internet service where authorized for certain PUDs.