
**Technology & Economic Development
Committee**

E2SSB 5935

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

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Sheldon and Carlyle).

Brief Summary of Engrossed Second 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 and wholesale Internet services outside of the district.

Hearing Date: 2/22/18

Staff: Lily Smith (786-7175).

Background:

Small Cell Network Infrastructure Siting.

A "small cell facility" is a personal wireless services facility where:

- each antenna and any exposed elements would fit within no more than three cubic feet; and
- primary equipment enclosures are no larger than 17 cubic feet in volume.

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.

Personal wireless services providers use poles, conduits, or rights-of-way owned by other providers or government entities to attach service equipment. Cities and towns can require providers to pay franchise fees or other fees or charges for the use of the right-of-way, as well as site-specific charges for placement of personal wireless facilities on structures owned by the municipality.

Broadband Office.

Until 2014, a Broadband Office within the Department of Commerce provided oversight and administration of a wide range of programs pertaining to high-speed Internet access, including mapping functions, coordination, and oversight of federally funded broadband programs for the state.

Universal Communications Services Program.

The Universal Communications Services (UCS) program and associated account was established in 2014 for the purpose of supporting the continued provision of basic telecommunications services during a period when incumbent communications providers would be adapting to changes in federal funding. The UCS program expires in 2019.

A communications provider is eligible to receive distributions under the UCS program if: (1) the provider has less than 40,000 lines in the state; (2) the customers of the provider are at risk of rate instability or service interruptions absent distributions to the provider; and (3) the provider meets any other criteria established by the UTC. Distributions under the UCS program are based on a benchmark that the UTC determines is a reasonable amount customers should pay for basic service.

Rural Port Districts and Public Utility Districts.

Rural port districts (rural ports) and public utility districts (PUDs) 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. Public utility districts may also provide wholesale services to other PUDs by contract. Rural ports and PUDs are not authorized to provide telecommunications services to end users.

Rural ports and PUDs are required to ensure that their rates, terms, and conditions on wholesale services are not unduly or unreasonably discriminatory or preferential. The Utilities and Transportation Commission (UTC) is authorized to review petitions brought by consumers concerning a rural port or PUD's wholesale telecommunications rates, terms, and conditions.

Rural ports and PUDs must charge themselves the true and full value of telecommunications services provided by their separate telecommunications functions.

Community Economic Revitalization Board.

The Community Economic Revitalization Board (CERB) funds public infrastructure improvements that encourage new business development and expansion in areas seeking

economic growth. Funding is provided by CERB through low-interest loans and, occasionally, grants, to help finance public facility projects.

The 2017-2019 Capital Budget included a \$5 million appropriation to CERB to make grants and loans to local governments and federally recognized tribes to build broadband infrastructure.

Summary of Bill:

Small Cell Network Infrastructure Siting Ordinance.

Cities and towns with populations over 5,000 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. 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.

The 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 the 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 a number of elements, including coordinated funding opportunities and barriers to adoption.

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 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 as follows:

- 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
- 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 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 Access Account.

The broadband access account is created in the State Treasury, to be funded by: (1) the business and occupation (B&O) taxes paid by telecommunications service providers receiving federal

funds for making broadband-capable infrastructure available to underserved and unserved areas of the state; and (2) federal grants or other funding secured by the OBA.

Beginning December 1, 2018, telecommunications service providers receiving federal funds for making broadband-capable infrastructure available to underserved and unserved areas of the state must notify the Department of Revenue (DOR) of the federal funding received for this purpose. Beginning January 1, 2019, DOR must estimate the amount of B&O taxes paid on these funds, and instruct the state treasurer to deposit the amounts in the broadband access account.

Alternative Form of Regulation.

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

Universal Communications Services Program.

Broadband service is included as a type of communications. Communications providers that demonstrate to the UTC the ability to provide the same or comparable services at the same or similar service quality at a lower price are eligible for funding. Distributions are based on criteria established by the UTC.

Public Utility Districts.

A PUD that provides limited services in a county less than 500 square miles and west of Puget Sound is authorized to provide end user ("retail") Internet telecommunications services on its broadband network within the district's boundaries, if the existing end user providers cease or provide inadequate service.

After a PUD board of commissioners receives a petition requesting provision of retail Internet services, the PUD commissioners may hold three meetings to verify property owners' signatures; determine and submit findings regarding the existence or adequacy of retail Internet services on the PUD's broadband network; and by resolution, authorize the PUD to provide retail Internet service on its broadband network.

Adequate retail Internet service is determined by measuring retail Internet service on the PUD's broadband network and comparing it to service standards in the PUD service level agreement used for other PUD network providers.

A petition may be submitted by a majority of a group, including homeowners associations, within the district, or an individual who has developed a partnership payment structure to finance broadband deployment with the PUD.

The PUD commissioners must request an administrative law judge to hear Internet service adequacy disputes. The commissioners must provide written notice and may require disputing parties to attend the hearing. The administrative law judge must make and file a determination on the adequacy of retail Internet service with the commissioners. A company regulated by the

UTC may request resolution of Internet service disputes through the UTC process for reviewing wholesale telecommunications.

Public utility district retail Internet service rates must be fair and nondiscriminatory, but may set tiers of charges based on end user service demands.

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. These port districts and rural port districts are authorized to provide wholesale telecommunications services beyond their district limits, and to select a telecommunications company as the exclusive provider of services to end users.

Community Economic Revitalization Board.

Community Economic Revitalization Board may make grants and loans for broadband infrastructure projects located in rural communities that meet certain criteria.

When evaluating local government and tribal projects for broadband infrastructure loans and grants, CERB must consider, at a minimum:

- the project's value to the community;
- project feasibility;
- matching resources and local participation;
- the project's inclusion in a capital facilities plan, comprehensive plan, or local economic development plan; and
- readiness to proceed.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 20, 2018.

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