

SENATE BILL REPORT

SB 5110

As of January 21, 2021

Title: An act relating to promoting greater access to the internet by modifying permitting, taxation, and other standards for telecommunications companies and facilities.

Brief Description: Promoting greater access to the internet by modifying permitting, taxation, and other standards for telecommunications companies and facilities.

Sponsors: Senator Ericksen.

Brief History:

Committee Activity: Environment, Energy & Technology: 1/21/21.

Brief Summary of Bill

- Removes the wireless service tower height requirement to qualify for a categorical exemption.
- Mandates local governments to allow applicants to file a single set of documents for multiple microcell sites if certain requirements are met.
- Reduces the review timeframe of certain right-of-way lease applications and applications to occupy a right-of-way for wireline facilities.
- Removes exceptions for placing a moratorium on the processing of applications or use of any facilities for personal wireless services.
- Modifies provisions related to the classification of a telecommunications company.
- Modifies and expands the applicability of the charge for an easement granted for local public utility lines owned by a nongovernmental entity.
- Modifies provisions regulating public utility district authority to combine utility functions and account for wholesale and retail telecommunication services.

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

- Creates a business and occupation tax credit for a person providing broadband services in unserved areas.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Angela Kleis (786-7469)

Background: Wireless Facilities. *State Environmental Policy Act.* The State Environmental Policy Act (SEPA) establishes a review process for state and local agencies to identify possible environmental impacts that may result from government decisions, including the issuance of permits or the adoption of regulations. Provisions in SEPA generally require a project applicant to complete an environmental checklist that includes questions about the potential environmental impacts of the proposal. If a lead agency determines a proposed project will have a significant adverse effect on the environment, it must prepare an Environmental Impact Statement.

Categorical Exemption for Wireless Service Facilities. Categorical exemptions from SEPA review are identified in statute and rules. The Department of Ecology must also adopt rules to create a categorical exemption for wireless service facilities that meet statutory conditions. The siting of wireless service facilities that meet the following requirements are categorically exempt from the SEPA review process:

- the collocation of new equipment or replacement of existing equipment do not substantially change the dimensions of such structures; or
- the siting project involves constructing a wireless service tower less than 60 feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone.

Applications for Siting Several Microcells, Minor Facilities, or a Small Cell Network. If a personal wireless service provider applies to site several microcells, minor facilities, or a small cell network in a single geographical area, local governments, in general, are encouraged to allow applicants to file a single set of required documents or a consolidated application that apply to all facilities.

Washington State Department of Transportation. *Right-of-way Leases.* The Washington State Department of Transportation (WSDOT) is the steward of a multimodal transportation system and responsible for ensuring people and goods move safely and efficiently. WSDOT must establish a process for issuing a lease for the use of right-of-way by a service provider. Lease applications must meet statutory requirements and WSDOT must act upon such applications within 60 days, unless a service provider consents to a different time period.

Personal Wireless Service Facilities. Personal wireless service is identified as a critical part

of the state's infrastructure. The rapid deployment of personal wireless service facilities is critical to ensure public safety, network access, quality of service, and rural economic development.

City and Town Permit Processes. *Right-of-way for Wireline Facilities.* Cities and towns may require a service provider to obtain a master permit to occupy a right-of-way for wireline facilities. A statutory application process specifies procedures including a city or town that requires a master permit must act upon a complete application within 120 days upon filing. A city or town may require that a service provider obtain a use permit.

Facilities for Personal Wireless Services. A city or town shall not place a moratorium on processing applications, permitting, or use of any facilities for personal wireless services, except as consistent with specified federal and industry guidelines. Personal wireless services means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

Regulation of Telecommunication Companies. The Washington State Utilities and Transportation Commission (commission) shall classify a telecommunications company as a competitive telecommunications company if the services it offers are subject to effective competition. Effective competition means that the company's customers have reasonably available alternatives and that the company does not have a significant captive customer base. Competitive telecommunications companies shall be subject to minimal regulation. The commission may revoke any waivers and may reclassify any competitive telecommunications company if the revocation or reclassification would protect the public interest.

Easements on State Land. *Aquatic Lands Management.* The Legislature designated the Department of Natural Resources (DNR) as the manager of state-owned aquatic lands. In managing these lands, DNR must strive to provide a balance of statutory public benefits including encouraging direct public use and access; fostering water-dependent uses; ensuring environmental protection; and using renewable resources.

Public Utility Lines on Aquatic Lands. The statutory charges for the use of aquatic lands for local public utility lines by a nongovernmental entity are as follows:

- \$5,000 for an easement no longer than one mile;
- \$12,000 for an easement between one and five miles; and
- \$20,000 for an easement that is five or more miles.

The charge for these easements must be adjusted annually by the rate of yearly change in the most recently published Seattle-Tacoma-Bremerton consumer price index (CPI) over the CPI as compiled by the U.S. Department of Labor for Washington State, rounded up to the nearest \$50.

DNR must make final decisions on applications within 120 days. Upon request of an

applicant, DNR may make a final decision within 60 days and charge an additional fee for expedited processing.

Beginning December 31, 2021, and every four years thereafter, the Legislature shall review the granting of easements on aquatic lands and determine whether applications were processed according to prescribed timelines and whether granting easements on aquatic lands generates reasonable income.

Public Utility District. A public utility district (PUD) by resolution may combine two or more of its separate utility functions into a single utility and combine its funds into a single fund. The separate utility functions include electrical energy systems, domestic water systems, irrigation systems, sanitary sewer systems, and storm sewer systems.

A PUD providing wholesale or retail telecommunications services may establish a separate utility system or function for such purpose. However, a PUD providing such services must separately account for any revenues and expenditures according to standards established by the state auditor. Any revenues received from the provision of wholesale or retail telecommunications services must be dedicated to costs incurred to maintain any telecommunications infrastructure or acquired to provide such services.

Summary of Bill: Wireless Facilities. *Categorical Exemption for Wireless Service Facilities.* The requirement for a wireless service tower to be less than 60 feet in height to qualify for a categorical exemption from the SEPA review process is removed.

Applications for Siting Several Microcells, Minor Facilities, or a Small Cell Network. Local governments are mandated to allow applicants to file a single set of required documents for the SEPA review process and for land use permits that apply to all microcells and minor facilities to be sited and to render decisions regarding all facilities in a single administrative proceeding. For small cell networks involving multiple individual small cell facilities, local governments must allow applicants to file a consolidated application and receive a single permit for the small cell network in a single jurisdiction.

Washington State Department of Transportation. *Right-of-way Leases.* WSDOT must act on applications for the lease of a right-of-way within 30 days rather than 60 days.

Personal Wireless Service Facilities. The rapid deployment of personal wireless service facilities is specified to also be critical to ensure access to education opportunities.

City and Town Permit Processes. *Right-of-way for Wireline Facilities.* Where a city or town requires a master permit to occupy a right-of-way for wireline facilities, the city or town shall act upon a complete application within 60 days rather than 120 days. The permit process obligations are clarified to also apply to towns.

Facilities for Personal Wireless Services. The exceptions for placing a moratorium on

processing applications, permitting, or use of any facilities for personal wireless services are removed. The definition of personal wireless services is expanded to include commercial mobile data services.

Regulation of Telecommunications Companies. Effective competition is specified to include alternatives that use technologies other than traditional landline telephone service. The commission may revoke waivers and reclassify any competitive telecommunications company if it also finds that the company is no longer subject to effective competition.

In addition to the statutory classifications of a telecommunications company as a competitive telecommunications company, an incumbent local exchange carrier may elect to be classified as a competitive telecommunications company by providing written notice to the commission if the carrier is operating under an alternative form of regulation and the carrier does not receive universal communications services program distributions.

Easements on State Lands. The statutory charges for the use of aquatic lands for local public utility lines by a nongovernmental entity are capped as follows:

- no more than \$5,000 for an easement no longer than one mile;
- no more than \$12,000 for an easement between one and five miles; and
- no more than \$20,000 for an easement that is five or more miles.

The requirement for charges to be adjusted annually is removed. DNR must make final decisions on applicants within 60 days rather than 120 days. DNR may reach a decision on expedited applications within 30 days rather than 60 days.

The statutory fee schedule for the use of aquatic land for local public utility lines by a nongovernmental entity is expanded to also apply to all public lands managed by DNR, the Department of Fish and Wildlife, and the Parks and Recreation Commission.

Public Utility District. Broadband systems are added as a type of utility function a PUD may combine with two or more utility functions into a single utility and combine its related funds or accounts into a single fund.

The requirement for a PUD providing wholesale or retail telecommunications services to separately account for any revenues and expenditures, for those services according to the standards established by the state auditor, is removed. The requirement that any revenues received from the provision of wholesale or retail telecommunications services be dedicated to costs incurred to build and maintain any telecommunications facilities is removed.

Business and Occupation Tax Credit. A Business and Occupation (B&O) tax credit is created for a person that is providing broadband service to unserved areas using broadband infrastructure, including for sales and use taxes paid. The credit is equal to 50 percent of the capital costs, including sales and use paid, to be divided equally over 15 years. The amount of credit a person may claim is limited to \$5 million. The total amount of credits

claimed is limited to \$50 million.

Tax Preference Statement. A tax preference statement is included that states it is the Legislature's specific public policy objective to expand access to the Internet in unserved areas and thereby provide more access to education opportunities. If a review by the Joint Legislative Audit and Review Committee finds that the number of individuals receiving Internet access in unserved areas has increased by 10 percent in ten years compared to numbers of individuals receiving such access at the time of enactment, then the Legislature intends to extend the expiration date of the tax preference.

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: CON: The proposed changes undermine local authority and will increase costs. The shortened application processing time is not reasonable when considering the legislative process. The removal of the SEPA requirement will harm residential areas. Consolidated applications create an illusion of efficiency because all sites are different and each site type must follow different regulations.

OTHER: We support the expansion of broadband, but we believe local control is very important. The bill only allows personal wireless services, not broadband infrastructure. The capping of the charge for easements is below fair market value. We are currently authorized to receive fair market value for certain beneficiaries or a land use market rate determined by an independent appraisal. The changes to PUD bookkeeping would reduce transparency to our customers.

Persons Testifying: CON: Adam Long, City of Kent; Jeff Tate, City of Auburn; David Olson, Councilmember, Cathlamet Town Council; Jeff Lueders, President, Washington Association of Telecommunications Officers and Advisors.

OTHER: Bill Waterfield; Bethanne Cooley, CTIA; Duane Emmons, Department of Natural Resources; Jerry Phillips, City of Long Beach; Peter Herzog, Washington State Parks; Scott Richards, Washington Public Utility Districts Association.

Persons Signed In To Testify But Not Testifying: No one.