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HOUSE BILL 1440

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State of Washington

67th Legislature

2021 Regular Session

By Representative Boehnke

1 AN ACT Relating to bringing innovation and investment to  
2 Washington's economy by streamlining the requirements for deployment  
3 of small wireless facilities; and adding a new chapter to Title 80  
4 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds and declares that:

7 (1) As a result of COVID-19, Washington state schools are largely  
8 operating on a distance learning model and many citizens are working  
9 remotely. Communications networks, including both wired and wireless,  
10 have done much work to meet these growing needs, but additional work  
11 is required to facilitate widespread deployment of next-generation  
12 wireless and broadband network facilities;

13 (2) Wireless and broadband products and services are a  
14 significant and continually growing part of the state's economy.  
15 Accordingly, encouraging the development of strong and robust  
16 wireless and broadband communications networks throughout the state  
17 is integral to the state's economic competitiveness;

18 (3) Rapid deployment of small wireless facilities will serve  
19 numerous important statewide goals and the public policy, including:  
20 Meeting growing consumer demand for wireless data; increasing  
21 competitive options for communications services available to the

1 state's residents; promoting the ability of the state's citizens to  
2 communicate with other citizens and with their schools, state, and  
3 local governments; and promoting public safety;

4 (4) Small wireless facilities, including facilities commonly  
5 referred to as small cells and distributed antenna systems, are  
6 deployed most effectively in the rights-of-way;

7 (5) To meet the key objectives of this chapter and federal law,  
8 wireless providers must have access to the rights-of-way and the  
9 ability to attach to infrastructure in the rights-of-way to densify  
10 their networks and provide next-generation wireless services;

11 (6) Rates and fees for the permitting and deployment of small  
12 wireless facilities in rights-of-way and on authority infrastructure,  
13 including poles, throughout the state, consistent with federal law,  
14 is reasonable and will encourage the development of robust next-  
15 generation wireless and broadband networks for the benefit of  
16 citizens throughout the state; and

17 (7) The procedures, rates, and fees in this chapter are  
18 consistent with federal law and are fair and reasonable when viewed  
19 from the perspective of the state's citizens and the state's interest  
20 in having robust, reliable, and technologically advanced wireless and  
21 broadband networks and reflect a balancing of the interests of the  
22 wireless providers deploying new facilities and the interests of  
23 authorities in recovering their costs of managing access to the  
24 rights-of-way and the attachment space provided on authority  
25 infrastructure in the rights-of-way.

26 NEW SECTION. **Sec. 2.** The definitions in this section apply  
27 throughout this chapter unless the context clearly requires  
28 otherwise.

29 (1) "Antenna" means an apparatus designed for the purpose of  
30 emitting radio frequency signals to be operated or operating from a  
31 fixed location pursuant to the federal communications commission  
32 authorization for the provision of wireless services.

33 (2) "Antenna equipment" means equipment, switches, wiring,  
34 cabling, power sources, shelters, or cabinets associated with an  
35 antenna, located at the same fixed location as the antenna, and when  
36 collocated on a structure. Antenna equipment does not include:

37 (a) The structure or improvements on, under, or within which the  
38 equipment is collocated; or

1 (b) Wireline backhaul facilities, coaxial or fiber optic cable  
2 that is between wireless support structures or utility poles or  
3 coaxial, or fiber optic cable that is otherwise not immediately  
4 adjacent to or directly associated with an antenna.

5 (3) "Antenna facility" means an antenna and associated antenna  
6 equipment.

7 (4) "Applicable codes" means uniform building, fire, electrical,  
8 plumbing, or mechanical codes adopted by a recognized national code  
9 organization, or local amendments to those codes that are of general  
10 application, address public safety, and are consistent with this  
11 chapter.

12 (5) "Applicant" means any person who submits an application as or  
13 on behalf of a wireless provider.

14 (6) "Application" means a request submitted by an applicant to an  
15 authority for a permit to:

16 (a) Collocate small wireless facilities; or

17 (b) Install, modify, or replace a structure on which to collocate  
18 a small wireless facility, where required.

19 (7) "Authority" means the state or any agency, county,  
20 municipality, district, or subdivision thereof or any instrumentality  
21 of the same including, but not limited to, public utility districts,  
22 irrigation districts, and municipal electric utilities. "Authority"  
23 does not include state courts having jurisdiction over an authority.

24 (8) "Authority structure" means a structure, or conduit facility  
25 suitable for placing fiber required to provide backhaul to a small  
26 wireless facility, owned, managed, or operated by or on behalf of an  
27 authority.

28 (9) "Collocate" means either (a) mounting or installing an  
29 antenna facility on a preexisting structure; or (b) modifying a  
30 structure for the purpose of mounting or installing an antenna  
31 facility on that structure, or both.

32 (10) "Communications facility" means the set of equipment and  
33 network components, including wires, cables, and associated  
34 facilities used by a cable operator, as defined in 47 U.S.C. Sec.  
35 522(5); a telecommunications carrier, as defined in 47 U.S.C. Sec.  
36 153(51); a provider of information service, as defined in 47 U.S.C.  
37 Sec. 153(24); or a wireless services provider to provide  
38 communications services, including cable service, as defined in 47  
39 U.S.C. Sec. 522(6), telecommunications service, as defined in 47  
40 U.S.C. Sec. 153(53), or an information service, as defined in 47

1 U.S.C. Sec. 153(24) wireless service; or other one-way or two-way  
2 communications service.

3 (11) "Communications service provider" means a cable operator, as  
4 defined in 47 U.S.C. Sec. 522(5); a provider of information service,  
5 as defined in 47 U.S.C. Sec. 153(24); a telecommunications carrier,  
6 as defined in 47 U.S.C. Sec. 153(51); or a wireless provider.

7 (12) "Decorative pole" means an authority structure that is  
8 specially designed and placed for aesthetic purposes and on which no  
9 appurtenances or attachments, other than a small wireless facility,  
10 lighting, specially designed informational or directional signage, or  
11 temporary holiday or special event attachments have been placed or  
12 are permitted to be placed according to nondiscriminatory authority  
13 rules or codes.

14 (13) "Facility" means an antenna facility or a structure that is  
15 used for the provision of wireless services.

16 (14) "Fee" means a one-time, nonrecurring charge.

17 (15) "Historic district" means a group of buildings, properties,  
18 or sites that are either: (a) Listed in the national register of  
19 historic places or formally determined eligible for listing by the  
20 keeper of the national register, in accordance with Section  
21 VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47  
22 C.F.R. Part 1, Appendix C, as it existed on the effective date of  
23 this section; or (b) a registered historic district by the state  
24 historic preservation officer as of the effective date of this  
25 section.

26 (16) "Law" includes applicable federal, state, or local law,  
27 statute, common law, code, rule, regulation, order, or ordinance.

28 (17) "Micro wireless facility" means a small wireless facility  
29 that meets the following qualifications: (a) Is not larger in  
30 dimension than 24 inches in length, 15 inches in width, and 12 inches  
31 in height; and (b) any exterior antenna is no longer than 11 inches.

32 (18) "Permit" means any and all authorizations, written or  
33 otherwise, required by an authority to perform an action or initiate,  
34 continue, or complete a project for the deployment of wireless  
35 services at a specified location.

36 (19) "Person" means an individual, corporation, limited liability  
37 company, partnership, association, trust, or other entity or  
38 organization, including an authority.

39 (20)(a) "Pole" means a type of similar structure in the rights-  
40 of-way that is or may be used in whole or in part by or for wireline

1 communications, electric distribution, lighting, traffic control,  
2 signage, or a similar function, or for the collocation of small  
3 wireless facilities.

4 (b) "Pole" does not include wireless support structures or  
5 electric transmission structures.

6 (21) "Rate" means a recurring charge.

7 (22) "Rights-of-way" means the area on, below, or above a public  
8 utility easement, roadway, highway, street, sidewalk, alley, or  
9 similar property, but not including a federal interstate highway.

10 (23) "Small wireless facility" means a facility that meets each  
11 of the following conditions:

12 (a) The facilities: (i) Are mounted on structures 50 feet or less  
13 in height including the antennas; (ii) are mounted on structures no  
14 more than 10 percent taller than other adjacent structures; or (iii)  
15 do not extend existing structures on which they are located to a  
16 height of more than 50 feet or by more than 10 percent, whichever is  
17 greater;

18 (b) Each antenna associated with the deployment, excluding  
19 associated antenna equipment, is no more than three cubic feet in  
20 volume;

21 (c) All other wireless equipment associated with the structure,  
22 including wireless equipment associated with the antenna and any  
23 preexisting associated equipment on the structure, is no more than 28  
24 cubic feet in volume; and

25 (d) The facilities do not result in human exposure to radio  
26 frequency in excess of the applicable safety standards specified in  
27 47 C.F.R. Sec. 1.1307(b), as it existed on the effective date of this  
28 section.

29 (24) "Structure" means a wireless support structure or other  
30 building, whether or not it has an existing antenna facility, that is  
31 used or is to be used for the provision of wireless services.

32 (25) "Technically feasible" means that by virtue of engineering  
33 or spectrum usage the proposed placement for a small wireless  
34 facility, or its design, concealment measures, or site location can  
35 be implemented without a reduction in the functionality of the small  
36 wireless facility.

37 (26) "Wireless infrastructure provider" means any person,  
38 including a person authorized to provide telecommunications service  
39 in the state, that builds or installs wireless communication

1 transmission equipment, wireless facilities, or wireless support  
2 structures, but that is not a wireless services provider.

3 (27) "Wireless provider" means a wireless infrastructure provider  
4 or a wireless services provider.

5 (28) "Wireless services" means any services using licensed or  
6 unlicensed spectrum, including the use of wi-fi, whether at a fixed  
7 location or mobile, provided to the public.

8 (29) "Wireless services provider" means a person who provides  
9 wireless services.

10 (30)(a) "Wireless support structure" means a structure, such as  
11 a: Monopole; tower, either guyed or self-supporting; billboard;  
12 building; or other existing or proposed structure designed to support  
13 or capable of supporting wireless facilities, other than a structure  
14 designed solely for the collocation of small wireless facilities.

15 (b) "Wireless support structure" does not include a pole.

16 NEW SECTION. **Sec. 3.** (1) This section applies to activities of  
17 a wireless provider within the rights-of-way to deploy small wireless  
18 facilities and associated poles.

19 (2) An authority may not enter into an exclusive arrangement with  
20 any person for use of the rights-of-way for the collocation of small  
21 wireless facilities or the installation, operation, marketing,  
22 modification, maintenance, or replacement of poles for such  
23 collocation.

24 (3) Subject to this section, a wireless provider has the right,  
25 as a permitted use not subject to zoning review or approval, to  
26 collocate small wireless facilities and install, maintain, modify,  
27 operate, and replace poles along, across, upon, and under the rights-  
28 of-way. Such structures and facilities must be installed and  
29 maintained so as not to obstruct or hinder the usual travel or public  
30 safety on the rights-of-way or obstruct the legal use of the rights-  
31 of-way by utilities.

32 (4) Each new or modified pole installed in the rights-of-way for  
33 the purpose of collocation of small wireless facilities may not  
34 exceed the greater of: (a) 50 feet in height above ground level; or  
35 (b) ten percent taller than the tallest existing structure in place  
36 in the rights-of-way, as of the effective date of this section,  
37 located within 500 feet of the new structure in the same rights-of-  
38 way. A wireless provider has the right to collocate a small wireless  
39 facility and install, maintain, modify, operate, and replace a pole

1 that exceeds these height limits along, across, upon, and under the  
2 rights-of-way, subject to this section and applicable zoning  
3 regulations.

4 (5) An authority may adopt standards in its code governing the  
5 deployment of small wireless facilities and associated poles in the  
6 rights-of-way, subject to the following conditions:

7 (a) The aesthetic requirements must be: (i) Reasonable, in that  
8 they are technically feasible and reasonably directed to avoiding or  
9 remedying the intangible public harm of unsightly or out-of-character  
10 deployments; (ii) no more burdensome than those applied to other  
11 types of infrastructure deployments; and (iii) objective and  
12 published in advance.

13 (b) An authority may deny a permit for not complying with  
14 aesthetic requirements only if the authority has found that a denial  
15 does not create an effective prohibition of wireless services.

16 (c) Aesthetic requirements applicable to deployment on decorative  
17 poles and in historic districts must also comply with the following  
18 requirements:

19 (i) A wireless provider must be permitted to collocate on or  
20 replace decorative poles when necessary to deploy a small wireless  
21 facility. An authority may require the collocation or decorative pole  
22 replacement to reasonably conform to the design aesthetics of the  
23 original decorative pole or poles, provided that these requirements  
24 are technically feasible.

25 (ii) A wireless provider shall be permitted to collocate small  
26 wireless facilities or replace poles in historic districts.  
27 Consistent with this subsection, an authority may require design or  
28 concealment measures for small wireless facilities and associated  
29 poles in historic districts. Any such design or concealment measures  
30 may not be considered a part of the small wireless facility for  
31 purposes of the size parameters in the definition of small wireless  
32 facility. New poles must be permitted if collocation is not an  
33 option.

34 (iii) A wireless provider must be permitted to place a new pole,  
35 subject to the terms of this subsection, where to deny placement of  
36 the new pole would be an effective prohibition of service.

37 (6) A wireless provider must comply with undergrounding  
38 requirements where:

1 (a) The authority has required all electric and communications  
2 lines to be placed underground by three months prior to the  
3 submission of the application;

4 (b) Structures the authority allows to remain must be made  
5 available to wireless providers for the collocation of small wireless  
6 facilities, and may be replaced by a wireless provider to accommodate  
7 the collocation of small wireless facilities, in compliance with this  
8 chapter;

9 (c) A wireless provider may install a new pole in the designated  
10 area that otherwise complies with this section when it is not able to  
11 provide wireless services by collocating on a remaining pole or other  
12 structure; and

13 (d) For small wireless facilities installed before an authority  
14 adopts requirements that communications and electric lines be placed  
15 underground, an authority adopting such requirements must permit: (i)  
16 A wireless provider to maintain the small wireless facilities in  
17 place on any structure not required to be removed, subject to any  
18 applicable pole attachment agreement with the pole owner; or (ii) the  
19 wireless provider to replace an existing pole within 50 feet of the  
20 prior location.

21 (7) The authority may require a wireless provider to repair all  
22 damage to the rights-of-way directly caused by the activities of the  
23 wireless provider in the rights-of-way and to return the rights-of-  
24 way to its functional equivalence before the damage pursuant to the  
25 competitively neutral, reasonable requirements and specifications of  
26 the authority. If the wireless provider fails to make the repairs  
27 required by the authority within a reasonable time after written  
28 notice, the authority may make those repairs and charge the  
29 applicable party the reasonable, documented cost of such repairs.

30 (8) A wireless provider may not be required to replace or upgrade  
31 an existing pole or the electrical components supporting the pole  
32 except for reasons of structural necessity or compliance with  
33 applicable codes. A wireless provider may, with the permission of the  
34 pole owner, replace or modify existing poles, but any such  
35 replacement or modification must be consistent with the design  
36 aesthetics of the pole being modified or replaced.

37 (9) A wireless provider is required to notify the authority at  
38 least 30 days before its abandonment of a small wireless facility.  
39 Following receipt of such a notice, the authority shall direct the  
40 wireless provider to remove all or any portion of the small wireless



1 facility that the authority determines would be in the best interest  
2 of the public safety and public welfare to remove. If the wireless  
3 provider fails to remove the abandoned facility within 90 days after  
4 such a notice, the authority may undertake to do so and recover the  
5 actual and reasonable expenses of doing so from the wireless provider  
6 or its successors or assigns.

7 NEW SECTION. **Sec. 4.** (1) This section applies to all permits  
8 required for the collocation of small wireless facilities and to the  
9 permitting of the installation, modification, and replacement of  
10 associated poles by a wireless provider.

11 (2) Except as provided in this chapter, an authority may not  
12 prohibit, regulate, or charge for the collocation of small wireless  
13 facilities or the installation, modification, or replacement of  
14 associated poles that may be permitted in this section.

15 (3) An authority may require an applicant to obtain one or more  
16 permits to collocate a small wireless facility or install a new,  
17 modified, or replacement pole associated with a small wireless  
18 facility as provided in section 3 of this act, provided that such  
19 permits are of general applicability and do not apply exclusively to  
20 wireless facilities. An authority must receive and process  
21 applications subject to the following requirements:

22 (a) An authority may not directly or indirectly require an  
23 applicant to perform services or provide goods unrelated to the  
24 permit, such as in-kind contributions to the authority including, but  
25 not limited to, reserving fiber, conduit, or pole space for the  
26 authority.

27 (b) An applicant may not be required to provide more information  
28 to obtain a permit than communications service providers that are not  
29 wireless providers are required to provide, provided that an  
30 applicant may be required to include construction and engineering  
31 drawings and information demonstrating compliance with the criteria  
32 in (h) of this subsection.

33 (c) An authority may not require the: (i) Collocation of small  
34 wireless facilities on any specific pole or category of poles; (ii)  
35 use of specific pole types or configurations when installing new or  
36 replacement poles; or (iii) underground placements of small wireless  
37 facilities that are designated in an application to be pole-mounted  
38 or ground-mounted.

1 (d) An authority may not limit the collocation of small wireless  
2 facilities by minimum horizontal separation distance requirements  
3 from existing small wireless facilities, poles, or other structures.

4 (e) The authority may require an applicant to include an  
5 attestation that the small wireless facilities will be operational  
6 for use by a wireless services provider within one year after the  
7 permit issuance date, unless the authority and the applicant agree to  
8 extend this period or delay is caused by lack of commercial power,  
9 communications transport facilities to the site, or any other factors  
10 outside of the applicant's control.

11 (f) Within 10 days of receiving an application, an authority must  
12 determine and notify the applicant in writing whether the application  
13 is complete. If an application is incomplete, an authority must  
14 specifically identify the missing information in writing. The  
15 processing deadline in (g) of this subsection must restart at zero on  
16 the date the applicant provides the missing information to complete  
17 the application.

18 (g) An application must be processed on a nondiscriminatory  
19 basis. The authority shall approve or deny an application within (i)  
20 60 days of receipt of an application for the collocation of a small  
21 wireless facility using an existing structure; and (ii) 90 days for  
22 an application to collocate a small wireless facility on a new  
23 structure. The processing deadline may be tolled by agreement of the  
24 applicant and the authority. An authority's approval of an  
25 application may not be conditioned in a way that limits the  
26 technology utilized for such a facility nor to limit the technology  
27 that may be utilized in the future.

28 (h) If an authority does not approve or deny an application  
29 within the processing time frames provided in (g) of this subsection,  
30 the application is deemed approved and, upon notice to the authority,  
31 the applicant may construct the facility applied for and is not  
32 required to receive any further authorization from the authority.

33 (i) An authority may deny a proposed collocation of a small  
34 wireless facility or installation, modification, or replacement of a  
35 pole that meets the requirements in section 3(6) of this act only if  
36 the proposed application:

37 (i) Materially interferes with the safe operation of traffic  
38 control equipment;

39 (ii) Materially interferes with sight lines or clear zones for  
40 transportation or pedestrians;

1 (iii) Materially interferes with compliance with the Americans  
2 with disabilities act or similar federal or state standards regarding  
3 pedestrian access or movement;

4 (iv) Fails to comply with reasonable and nondiscriminatory  
5 horizontal spacing requirements of general application adopted by  
6 ordinance that concern the location of ground-mounted equipment and  
7 new poles. Such spacing requirements may not prevent a wireless  
8 provider from serving any location;

9 (v) Designates the location of a new pole for the purpose of  
10 collocating a small wireless facility within seven feet in any  
11 direction of an electrical conductor, unless the wireless provider  
12 obtains the written consent of the power supplier that owns or  
13 manages the electrical conductor;

14 (vi) Fails to comply with applicable codes; or

15 (vii) Fails to comply with section 3 (4), (5), or (6) of this  
16 act.

17 (j) The authority must document the basis for a denial, including  
18 the specific code, rule, or statutory provisions on which the denial  
19 was based, and send the documentation to the applicant on or before  
20 the day the authority denies an application. The applicant may cure  
21 the deficiencies identified by the authority and resubmit the  
22 application within 30 days of the denial without paying an additional  
23 application fee. The authority shall approve or deny the revised  
24 application within 30 days of resubmission and limit its review to  
25 the deficiencies cited in the denial.

26 (k) An applicant seeking to collocate small wireless facilities  
27 within the jurisdiction of a single authority may file a consolidated  
28 application for small wireless facilities and associated poles and  
29 receive a single permit for the collocation of multiple small  
30 wireless facilities and the placement of associated poles. However,  
31 the denial of one or more small wireless facilities in a consolidated  
32 application may not delay processing of any other small wireless  
33 facilities or poles in the same consolidated application. Batch  
34 applications must be collectively processed in accordance with the  
35 procedures in this section. A batch application that includes new  
36 pole deployments is subject to a 90-day time frame for approval.

37 (l) Installation or collocation for which a permit is granted  
38 pursuant to this section must be completed within one year after the  
39 permit issuance date unless the authority and the applicant agree to  
40 extend this period, or a delay is caused by the lack of commercial

1 power or communications facilities at the site. Approval of an  
2 application authorizes the applicant to:

3 (i) Undertake the installation or collocation; and

4 (ii) Subject to applicable relocation requirements and the  
5 applicant's right to terminate at any time, operate and maintain the  
6 small wireless facilities and any associated pole covered by the  
7 permit for a period of not less than 10 years, which must be renewed  
8 for equivalent durations so long as the facilities comply with the  
9 criteria set forth in (h) of this subsection.

10 (m) An authority may not institute, either expressly or de facto,  
11 a moratorium on (i) filing, receiving, or processing applications; or  
12 (ii) issuing permits or other required approvals, if any, for the  
13 collocation of small wireless facilities or the installation,  
14 modification, or replacement of associated poles.

15 (4) An authority may not require an application for: (a) Routine  
16 maintenance; (b) the replacement of small wireless facilities with  
17 small wireless facilities that are substantially similar or the same  
18 size or smaller; or (c) the installation, placement, maintenance,  
19 operation, or replacement of micro wireless facilities that are  
20 suspended on cables that are strung between existing utility poles,  
21 in compliance with the applicable codes. However, an authority may  
22 require a permit for work that requires excavation or closure of  
23 sidewalks or vehicular lanes within the rights-of-way for such  
24 activities. Such a permit must be issued to the applicant on a  
25 nondiscriminatory basis upon terms and conditions applied to any  
26 other person's activities in the rights-of-way that require  
27 excavation, closing of sidewalks, or vehicular lanes.

28 NEW SECTION. **Sec. 5.** (1) This section applies to activities of  
29 a wireless provider accessing authority poles to collocate small  
30 wireless facilities.

31 (2) A person owning, managing, or controlling authority  
32 structures in the rights-of-way may not enter into an exclusive  
33 arrangement with any person for the right to attach to such  
34 structures. A person who purchases or otherwise acquires an authority  
35 structure is subject to the requirements of this section.

36 (3) An authority shall allow the collocation of small wireless  
37 facilities on authority structures on nondiscriminatory terms and  
38 conditions using the standards in section 3(5) of this act and the  
39 process in section 4 of this act.

1 (4) The rate to collocate on authority structures is provided in  
2 section 6 of this act.

3 (5) (a) The rates, fees, and terms and conditions for the make-  
4 ready work to collocate on an authority structure must be  
5 nondiscriminatory, competitively neutral, and commercially reasonable  
6 and must comply with this chapter.

7 (b) The authority shall provide a good faith estimate for any  
8 make-ready work necessary to enable the pole to support the requested  
9 collocation by a wireless provider, including pole replacement if  
10 necessary, within 60 days after receipt of a complete application.  
11 Make-ready work, including any pole replacement, must be completed  
12 within 60 days of written acceptance of the good faith estimate by  
13 the applicant. An authority may require replacement of the authority  
14 pole only if it demonstrates that the collocation would make the  
15 authority pole structurally unsound.

16 (c) The person owning, managing, or controlling the authority  
17 structure may not require more make-ready work than required to meet  
18 applicable codes or industry standards. Fees for make-ready work may  
19 not include costs related to preexisting or prior damage or  
20 noncompliance. Fees for make-ready work, including any pole  
21 replacement, may not exceed either actual costs or the amount charged  
22 to other communications service providers for similar work and may  
23 not include any revenue or contingency-based consultant's fees or  
24 expenses of any kind.

25 NEW SECTION. **Sec. 6.** (1) This section governs an authority's  
26 rates and fees for use of an authority's structures and the placement  
27 of a small wireless facility or associated poles.

28 (2) An authority may not require a wireless provider to pay any  
29 rates, fees, or compensation to the authority or other person other  
30 than what is expressly authorized by this chapter for the right to  
31 use or occupy a rights-of-way, for collocation of small wireless  
32 facilities on or in structures in the rights-of-way, or for the  
33 installation, maintenance, modification, operation, and replacement  
34 of poles in the rights-of-way.

35 (3) The application fee for a permit may not collectively exceed  
36 the following:

37 (a) \$500 for up to the first five small wireless facilities in  
38 the same application with an additional \$100 for each small wireless  
39 facility beyond five in the same application.

1 (b) \$1,000 for the installation, modification, or replacement of  
2 a pole together with the collocation of an associated small wireless  
3 facility in the rights-of-way.

4 (4) A wireless provider shall pay an authority compensation for  
5 use of the rights-of-way and collocation on authority structures in  
6 the rights-of-way an annual rate not to exceed \$270 per small  
7 wireless facility. This rate, together with the one-time application  
8 fee, is the total compensation that the wireless provider is required  
9 to pay the authority for the deployment of each small wireless  
10 facility in the rights-of-way and any associated pole. In addition,  
11 an authority may not charge a rate for the wireline backhaul  
12 facilities, coaxial, or fiber optic cable associated with a small  
13 wireless facility.

14 NEW SECTION. **Sec. 7.** This section applies to activities in the  
15 rights-of-way only. Nothing in this chapter may be interpreted to  
16 allow any entity to provide services regulated under 47 U.S.C. Sec.  
17 521 through 573, without compliance with all laws applicable to such  
18 providers. Nor may this chapter be interpreted to impose any new  
19 requirements on cable providers for the provision of such service.

20 NEW SECTION. **Sec. 8.** Subject to this chapter and applicable  
21 law, an authority may continue to exercise zoning, land use,  
22 planning, and permitting authority within its territorial boundaries  
23 with respect to wireless support structures and other structures,  
24 including the enforcement of applicable codes. An authority may not  
25 have or exercise any jurisdiction or authority over the design,  
26 engineering, construction, installation, or operation of a small  
27 wireless facility located in an interior structure or upon the site  
28 of a campus, stadium, or athletic facility not owned or controlled by  
29 the authority, other than to require compliance with applicable  
30 codes. Nothing in this chapter authorizes the state or any political  
31 subdivision, including an authority, to require wireless facility  
32 deployment or to regulate wireless services.

33 NEW SECTION. **Sec. 9.** This chapter does not apply to poles owned  
34 by an investor-owned utility, except as it concerns a wireless  
35 provider's access to the rights-of-way and permits for the  
36 collocation of small wireless facilities on such utility poles

1 pursuant to a pole attachment agreement between the wireless provider  
2 and the investor-owned utility.

3 NEW SECTION. **Sec. 10.** (1) An authority may adopt an ordinance  
4 that makes available to wireless providers rates, fees, and other  
5 terms that comply with this chapter. Subject to the other provisions  
6 of this section, in the absence of an ordinance or agreement that  
7 fully complies with this chapter and until such a compliant ordinance  
8 is adopted, if at all, a wireless provider may install and operate  
9 small wireless facilities and associated poles under the requirements  
10 of this chapter. An authority may not require a wireless provider to  
11 enter into an agreement to implement this chapter, but such an  
12 agreement is permissible if voluntary and nondiscriminatory.

13 (2) Ordinances and agreements implementing this chapter are  
14 public/private arrangements and are matters of legitimate and  
15 significant statewide concern.

16 (3) An agreement or ordinance that does not fully comply with  
17 this chapter applies only to small wireless facilities and associated  
18 poles that were operational before the effective date of this section  
19 and are deemed invalid and unenforceable beginning on the 181st day  
20 after the effective date of this section unless amended to fully  
21 comply with this chapter. If an agreement or ordinance is invalid in  
22 accordance with this subsection, small wireless facilities and  
23 associated poles that became operational before the effective date of  
24 this section, pursuant to such an agreement or ordinance, may remain  
25 installed and be operated under the requirements of this chapter.

26 (4) An agreement or ordinance that applies to small wireless  
27 facilities and associated poles that become operational on or after  
28 the effective date of this section is invalid and unenforceable  
29 unless it fully complies with this chapter. In the absence of an  
30 ordinance or agreement that fully complies with this chapter, a  
31 wireless provider may install and operate small wireless facilities  
32 and associated poles in the rights-of-way under the requirements of  
33 this chapter.

34 NEW SECTION. **Sec. 11.** The utilities and transportation  
35 commission, binding arbitration, or any court or agency of competent  
36 jurisdiction, has jurisdiction to determine disputes arising under  
37 this chapter. Pending resolution of a dispute concerning rates for  
38 collocation of small wireless facilities on authority structures, the

1 person owning or controlling the pole must allow the collocating  
2 person to collocate on its poles at annual rates of no more than \$270  
3 for both collocation on authority structures and use of the rights-  
4 of-way with rates to be trued up upon final resolution of the  
5 dispute. Any disputes, wherever filed, must be pursued in accordance  
6 with accelerated docket or complaint procedures, where available.

7 NEW SECTION. **Sec. 12.** (1) An authority may adopt reasonable  
8 indemnification, insurance, and bonding requirements related to small  
9 wireless facility and associated pole permits subject to the  
10 requirements of this section and section 3(5) of this act.

11 (2) An authority may not require a wireless provider to indemnify  
12 and hold the authority and its officers and employees harmless  
13 against any claims, lawsuits, judgments, costs, liens, losses,  
14 expenses, or fees, except when a court of competent jurisdiction has  
15 found that the negligence of the wireless provider while installing,  
16 repairing, or maintaining caused the harm that created such claims,  
17 lawsuits, judgments, costs, liens, losses, expenses, or fees.

18 (3) An authority may require a wireless provider to have in  
19 effect insurance coverage consistent with subsection (2) of this  
20 section, as long as the authority imposes similar requirements on  
21 other rights-of-way users and these requirements are reasonable and  
22 nondiscriminatory.

23 (a) An authority may not require a wireless provider to obtain  
24 insurance naming the authority or its officers and employees an  
25 additional insured.

26 (b) An authority may require a wireless provider to furnish proof  
27 of insurance, if required, prior to the effective date of any permit  
28 issued for a small wireless facility.

29 (c) An authority may adopt bonding requirements for small  
30 wireless facilities if the authority imposes similar requirements in  
31 connection with permits issued for other rights-of-way users.

32 (d) The purpose of such bonds must be to:

33 (i) Provide for the removal of abandoned or improperly maintained  
34 small wireless facilities, including those that an authority  
35 determines need to be removed to protect public health, safety, or  
36 welfare;

37 (ii) Restore the rights-of-way in connection with removals as  
38 provided for in this chapter; or



1 (iii) Recoup rates or fees that have not been paid by a wireless  
2 provider in over 12 months, as long as the wireless provider has  
3 received reasonable notice from the authority of any of the  
4 noncompliance listed in this subsection and an opportunity to cure.

5 (4) Bonding requirements may not exceed \$200 per small wireless  
6 facility. For wireless providers with multiple small wireless  
7 facilities within the jurisdiction of a single authority, the total  
8 bond amount across all facilities may not exceed \$10,000, which  
9 amount may be combined into one bond instrument.

10 NEW SECTION. **Sec. 13.** This act may be known and cited as the  
11 small wireless facilities deployment act.

12 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act  
13 constitute a new chapter in Title 80 RCW.

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