

2 **ESSB 6515 - H AMD 1172 ADOPTED 3-06-98**

3 By Representatives Hankins and K. Schmidt

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5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** (1) The legislature finds that the federal
8 telecommunications act of 1996 has provided the opportunity to expand
9 the uses of publicly owned rights of way to allow for the provision of
10 enhanced telecommunications services. Presently, providers of these
11 services are confronted with differing development regulations and
12 franchise requirements across this state's two hundred seventy-seven
13 cities and thirty-nine counties. The legislature finds the array of
14 varying regulations and requirements to be a significant barrier to
15 enhancing the telecommunications services to the citizens of the state,
16 and desires more uniformity and reasonableness in the application of
17 these regulations. However, states that have recently enacted laws
18 relating to the use of public rights of way for telecommunications
19 services have been challenged in court. Court decisions and relevant
20 federal communications commission rulings will be issued after the
21 legislature adjourns. Therefore, the most prudent course of action
22 requires further work and cooperation between public policymakers,
23 government administrators, and the telecommunications industry to
24 effectuate the policy of this state.

25 (2) The legislature hereby declares it the policy of the state of
26 Washington to: Promote policies that encourage competition in
27 telecommunications and results in new entrants into the industry;
28 encourage the development of telecommunications infrastructure without
29 violating the letter or spirit of Article VIII, sections 5 and 7 of the
30 state Constitution; reduce regulatory obstacles that inhibit investment
31 in the state's telecommunications system; maintain safe public roads,
32 highways, and streets; and provide responsible stewardship of the
33 public's investment in its rights of ways.

1 NEW SECTION.

2 **Sec. 2.**

3 Unless the context clearly requires
4 otherwise, the definitions in this section apply throughout chapter
5 . . . , Laws of 1998 (this act).

6 (1) "Authorized facilities" means all of the plant, equipment,
7 fixtures, appurtenances, antennas, and other facilities necessary to
8 furnish and deliver telecommunications services and cable television
9 services, including but not limited to poles with crossarms, poles
10 without crossarms, wires, lines, conduits, cables, communication and
11 signal lines and equipment, braces, guys, anchors, vaults, and all
12 attachments, appurtenances, and appliances necessary or incidental to
13 the distribution and use of telecommunications services and cable
14 television services.

15 (2) "Authorized user" means every corporation, company,
16 association, joint stock association, partnership, and person; their
17 lessees, trustees, or receivers appointed by any court whatsoever; and
18 every city or town owning, operating, or managing any facilities used
19 to provide telecommunications for hire, sale, or resale to the general
20 public within this state.

21 (3) "Cable television service" means the one-way transmission to
22 subscribers of video programming or other programming service and
23 subscriber interaction, if any, which is required for the selection or
24 use of such video programming or other programming service.

25 (4) "Limited access highways" means those public rights of way
26 designated as limited access under authority of the laws of the state
27 of Washington.

28 (5) "Public right of way" means public roads, streets, and
29 highways, and does not include:

30 (a) Limited access highways;

31 (b) Land dedicated for roads, streets, and highways not opened or
32 improved for motor vehicle use;

33 (c) Structures located within the right of way;

34 (d) Federally granted trust lands and the forest board trust lands;

35 (e) Private property or easement rights on private property; and

36 (f) Federally granted railroad rights of way acquired under 43
37 U.S.C. Sec. 912 and related provisions of federal law.

38 (6) "Telecommunications service" means the transmission of
39 information by wire, radio, optical cable, electromagnetic, or other
40 similar means for the general public. For the purpose of chapter
41 . . . , Laws of 1998 (this act), telecommunications services excludes

1 the over-the-air transmission of broadcast television or radio signals.
2 For the purpose of this subsection, "information" means knowledge or
3 intelligence represented by any form of writing, signs, signals,
4 pictures, sounds, or any other symbols.

5 NEW SECTION. **Sec. 3.** (1) The state, counties, cities, or towns
6 shall not unreasonably deny the use of public right of way for the
7 purposes of locating authorized facilities for telecommunications
8 services or cable television services, provided:

9 (a) The authorized facilities comply with applicable land use and
10 construction codes, regulations, standards, and lease and franchise
11 requirements adopted by the state, counties, cities, and towns not
12 inconsistent with state law;

13 (b) The authorized facilities are installed and maintained within
14 public rights of way in such manner and at such points so as not to
15 inconvenience the public use of the rights of way;

16 (c) The authorized users obtain all permits required for the
17 installation of authorized facilities as required by the state,
18 counties, cities, and towns;

19 (d) The authorized facilities are installed, constructed,
20 maintained, and operated at the expense and liability of the authorized
21 user;

22 (e) The use of the public right of way by authorized facilities
23 does not create, expand, or extend liability of the state, counties,
24 cities, or towns to a third party user of authorized facilities;

25 (f) The use of a facility or structure in the public right of way,
26 or attachment to it, or the use of public property that is not public
27 right of way has received the explicit approval of, and is under such
28 conditions as may be agreed to by, the owner of the facility,
29 structure, or property.

30 (2) The reasons for a denial of the use of the right of way where
31 the request complies with subsection (1)(a) through (f) of this section
32 shall be clearly stated in writing.

33 (3) Nothing in this section creates, modifies, or diminishes the
34 priority of use for authorized facilities over other users of the right
35 of way for other purposes.

1 NEW SECTION. **Sec. 4.** (1) Counties, cities, and towns may not
2 adopt or enforce land use and construction codes, regulations,
3 standards, or lease and franchise requirements that:

4 (a) Conflict with or duplicate the jurisdiction or requirements of
5 the Washington utilities and transportation commission for approval to
6 offer telecommunications services;

7 (b) Conflict with federal or state laws, rules, and regulations
8 that specifically apply to the design, construction, and operation of
9 authorized facilities or with federal or state worker safety or public
10 safety laws, rules, and regulations;

11 (c) Regulate services of authorized users based upon the content or
12 type of signals that are carried or are capable of being carried over
13 the telecommunications facilities, except where specifically authorized
14 in state or federal law.

15 (2) Nothing in this section limits the authority of the counties,
16 cities, and towns to regulate the placement of authorized facilities
17 through local zoning authority as long as:

18 (a) The regulations do not prohibit the placement of authorized
19 facilities within the county, city, or town nor have the effect of a
20 barrier to entry;

21 (b) The regulations do not unreasonably discriminate or have the
22 effect of unreasonably discriminating between similarly situated
23 authorized users or authorized facilities.

24 NEW SECTION. **Sec. 5.** (1) Except as provided in subsection (2) of
25 this section, a county, city, or town shall not place a moratorium on
26 the acceptance and processing of applications, permitting,
27 construction, maintenance, repair, replacement, extension, operation,
28 or use of any personal wireless communication facility after the
29 effective date of this section. An existing moratorium that expires
30 after the effective date of this section shall not be extended in whole
31 or in part.

32 (2)(a) A city or town incorporated after the effective date of this
33 section shall be permitted to impose one moratorium that shall not
34 exceed one hundred eighty days and shall not be extendable.

35 (b) Upon the expiration of the moratorium authorized by (a) of this
36 subsection, the authorizing city or town is subject to subsection (1)
37 of this section.

1 (3) Counties, cities, and towns are encouraged to work together
2 with industry, using the experience of the industry and those counties,
3 cities, and towns that have adopted wireless regulations, to develop
4 policies and provisions for the siting of wireless telecommunications
5 facilities.

6 (4) Subsections (1) and (2) of this section apply to moratoriums
7 one hundred twenty days after the adoption of a model ordinance or on
8 April 1, 1999, whichever occurs first.

9 (5) This section expires October 1, 2003.

10 NEW SECTION. **Sec. 6.** (1) The state, counties, cities, and towns
11 shall adopt procedures that enable each of these jurisdictions to issue
12 permits for authorized facilities within one hundred twenty days from
13 an applicant's filing of a complete application for a permit until
14 issuance of the permit, except:

15 (a) Where required by specific procedures to assure cooperation of
16 work within the right of way that provides reasonable opportunities for
17 scheduling of work, including advance notice of planned work, and that
18 do not impose unreasonable barriers to entry;

19 (b) With the agreement of the applicant;

20 (c) Where permits require the approval of another unit of
21 government that cannot be obtained within the one hundred twenty-day
22 period;

23 (d) Where franchises are required that require the approval of the
24 legislative body of the jurisdiction, if procedures allow the interim
25 installation of authorized facilities where the timeline to complete
26 such a franchise agreement is expected to exceed one hundred twenty
27 days;

28 (e) That issuance and renewals of franchises and related permits
29 for cable television service are governed by federal law.

30 (2) For purposes of this section, the state, counties, cities, and
31 towns shall adopt by rule or ordinance the specific requirements
32 necessary to deem an application for a permit full and complete, and
33 shall provide a copy of the requirements to all applicants.

34 NEW SECTION. **Sec. 7.** (1) Unless the legislative authority of a
35 county, city, or town has taken legislative action prior to January 1,
36 1998, a county, city, or town shall not begin installation, or cause to
37 be installed, equipment, facilities, or other infrastructure, including

1 but not limited to conduit, for the purpose of allowing a county, city,
2 or town to provide for-profit telecommunications or cable television
3 services to the general public.

4 (2) This section expires October 1, 2003.

5 NEW SECTION. **Sec. 8.** Except as provided in section 7 of this act,
6 chapter . . ., Laws of 1998 (this act) does not amend, limit, repeal,
7 or otherwise modify the authority of cities or counties to regulate
8 cable television services as provided under federal law.

9 **Sec. 9.** RCW 35.21.860 and 1983 2nd ex.s. c 3 s 39 are each amended
10 to read as follows:

11 (1) No city or town may impose a franchise fee or any other fee
12 ~~((or))~~, charge, or compensation of whatever nature or description upon
13 the light and power, or gas distribution businesses, as defined in RCW
14 82.16.010, or ~~((telephone business, as defined in RCW 82.04.065))~~ an
15 authorized user for the use of public right of way, except that (a) a
16 tax authorized by RCW 35.21.865 may be imposed and (b) ~~((a fee))~~ fees
17 and other requirements may be ~~((charged to))~~ imposed on such businesses
18 that, except for authorized users of a public right of way, recovers
19 actual administrative expenses incurred by a city or town that are
20 directly related to receiving and approving a permit, license, and
21 franchise, to inspecting plans and construction, or to the preparation
22 of a detailed statement pursuant to chapter 43.21C RCW. A city or town
23 may impose fees on authorized users for the use of a public right of
24 way to recover costs as set forth under section 11 of this act.

25 (2) Subsection (1) of this section does not prohibit franchise fees
26 imposed on an electrical energy, natural gas, or telephone business, by
27 contract existing on April 20, 1982, with a city or town, for the
28 duration of the contract, but the franchise fees shall be considered
29 taxes for the purposes of the limitations established in RCW 35.21.865
30 and 35.21.870 to the extent the fees exceed the costs allowable under
31 subsection (1) of this section.

32 **Sec. 10.** RCW 36.55.010 and 1963 c 4 s 36.55.010 are each amended
33 to read as follows:

34 Any board of county commissioners may grant franchises to persons
35 or private or municipal corporations to use the right of way of county
36 roads in their respective counties for the construction and maintenance

1 of waterworks, gas pipes, (~~telephone, telegraph~~) authorized
2 facilities as defined in section 1 of this act, and electric light
3 lines, sewers, and any other such facilities, except that no franchise
4 fee or any other fee or charge or compensation of whatever nature or
5 description may be imposed for the use of the public right of way for
6 authorized facilities except as provided in section 11 of this act.

7 NEW SECTION. **Sec. 11.** (1) Counties, cities, and towns may impose
8 fees to recover:

9 (a) The direct administrative expenses actually incurred by the
10 county, city, or town in receiving and approving a construction or
11 development permit, inspecting plans and construction, and development
12 and maintenance of record systems and excavation authorizations
13 systems;

14 (b) Costs of ongoing maintenance, repair, or restoration of the
15 right of way reasonably related to the impact of the installation,
16 maintenance, and use of the authorized facility; and

17 (c) Preparing a detailed statement pursuant to chapter 43.21C RCW.

18 (2) Nothing in this section or in RCW 35.21.860 and 36.55.010
19 limits or otherwise restricts counties, cities, or towns from
20 collecting franchise fees, charges, or other compensation under terms
21 mutually agreeable between a county, city, or town and an authorized
22 user.

23 NEW SECTION. **Sec. 12.** (1) There is hereby created a
24 telecommunications right of way advisory committee. The advisory
25 committee shall develop policies and provisions for the state relating
26 to franchises, fees, and compensation for use of the rights of way by
27 providers of telecommunications services. The committee shall ensure
28 that recommended policies allow all authorized users an opportunity to
29 access the rights of way, and that any compensation for access to the
30 rights of way are limited to amounts that are fair, just, reasonable,
31 and sufficient.

32 (2) The advisory committee shall be comprised of:

33 (a) Two members of the house of representatives transportation
34 policy and budget committee, one from each political party, as
35 appointed by the speaker of the house of representatives. The speaker
36 shall also designate two alternate members to serve if the appointed
37 members are unavailable;

1 (b) Two members of the senate transportation committee, one from
2 each political party, as appointed by the president of the senate. The
3 president shall also designate two alternate members to serve if the
4 appointed members are unavailable;

5 (c) One member of the house of representatives appropriations
6 committee, as appointed by the speaker of the house of representatives.
7 The speaker shall also designate an alternate member to serve if the
8 appointed member is unavailable;

9 (d) One member of the senate ways and means committee, as appointed
10 by the president of the senate. The president shall also designate an
11 alternate member to serve if the appointed member is unavailable;

12 (e) Two representatives of the governor;

13 (f) The secretary of the department of transportation or a
14 designee; and

15 (g) The director of the department of information services or a
16 designee.

17 (3) The advisory committee shall make its recommendations to the
18 legislative transportation committee by December 1, 1998.

19 NEW SECTION. **Sec. 13.** 1997 c 457 s 512 (uncodified) is repealed.

20 NEW SECTION. **Sec. 14.** Sections 9 through 11 of this act expire
21 June 30, 1999.

22 NEW SECTION. **Sec. 15.** Sections 1 through 8 of this act constitute
23 a new chapter in Title 47 RCW.

24 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and takes effect
27 immediately."

28 Correct the title.

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