

# SENATE BILL REPORT

## ESSB 6515

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As Passed Senate, February 16, 1998

**Title:** An act relating to franchises and the use of public rights of way.

**Brief Description:** Regulating franchises and the use of public rights of way.

**Sponsors:** Senate Committee on Energy & Utilities (originally sponsored by Senators Strannigan, Finkbeiner, Morton and Swecker).

**Brief History:**

**Committee Activity:** Energy & Utilities: 1/29/98, 2/5/98 [DPS, DNPS].  
Passed Senate, 2/16/98, 27-22.

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### SENATE COMMITTEE ON ENERGY & UTILITIES

**Majority Report:** That Substitute Senate Bill No. 6515 be substituted therefor, and the substitute bill do pass.

Signed by Senators Finkbeiner, Chair; Hochstatter, Vice Chair; Rossi, T. Sheldon and Strannigan.

**Minority Report:** Do not pass substitute.

Signed by Senators Brown and Jacobsen.

**Staff:** Karen Kirkpatrick (786-7403)

**Background:** The Federal Telecommunications Act of 1996 (the Act) was passed by Congress to encourage competition in telecommunications services. It effectively eliminated monopolistic protections previously afforded to telecommunications providers and has created unprecedented competition to provide rapidly changing telecommunications services. This has increased interest in and demand for space in the public right of way (ROW) for telecommunications services.

The Act encourages states to make ROW under their jurisdiction available for the placement of telecommunications services and permits state and local governments to receive "fair and reasonable compensation" for the use of public ROW.

**Summary of Bill:** Telecommunications companies and cable television companies are authorized to construct and operate facilities in public rights of way. Public right of way is defined as "roads, streets, and highways, including limited access highways," but does not mean trust lands.

The authority of cities and counties with respect to the management of the rights of way under the Revised Code of Washington is not affected except as specifically stated.

The state, counties, cities and towns are prohibited from adopting regulations of authorized facilities that (1) discriminate, (2) conflict with federal or state laws, (3) regulate based on content or type of signal, (4) regulate based on services or business operations not directly related to the rights of way, or (4) exceed 120 days to process permit applications.

Jurisdictions are encouraged to adopt interim procedures where negotiations are expected to take more than 120 days. Jurisdictions are encouraged to adopt a model wireless telecommunications siting ordinance by January 1, 1999.

Jurisdictions are prohibited from adopting or extending wireless moratoria 120 days after the adoption of a model wireless ordinance or April 1, 1999, whichever is sooner. An exemption is made for cities that are newly incorporated which are allowed one six month moratoria.

Compensation is limited to direct administrative costs incurred in receiving and approving a construction or development permit, inspecting plans and construction, development and maintenance of record systems and excavation authorizations systems, costs of repair or restoration of the ROW, or preparing a detailed State Environmental Policy Act statement. Cable franchise fees and city taxing authority are not affected.

Other clarifying and technical changes are made.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This legislation will promote competition, reduce delays and costs of negotiating with differing jurisdictions, and provide uniform rules for access to the public rights of way (ROW). This legislation is in the public interest because it promotes infrastructure investment and economic development. It will facilitate entrance to the telecommunications market and signal that Washington is a pro-competitive environment. This legislation will keep jurisdictions from imposing onerous burdens and costs that keep companies out of the market. This legislation will not deprive the jurisdictions of police powers and will get choice and low rates to customers quickly.

**Testimony Against:** This legislation takes away many management rights and does not acknowledge the role of the local jurisdictions in balancing competing public interests in the use of the right of way. It does not address the revenue taken from the counties by eliminating the franchise right. This legislation limits the safety and operation management of the highways. Industry and jurisdictions need to work together to resolve the issue. This legislation is premature.

**Testified:** PRO: Judith Endejan, Metricom; Ron Main, Cable Association; Bruce Shaull, Sprint; Tom Walker, US West; Terry Vann, WITA; Skip Haynes, Rainier Group; Mike Woodin, AT&T; Rosemary Williamson, GTE; Kathy Pazzini, ELI; Deborah Jacques, Next Link; Paul Sieracki, Sprint; Jim Boldt, US West; Ron Main, Western Wireless; Ross Baker, AT&T Wireless; CON: Al King, WSDOT; Victoria Lincoln, AWC; Dennis Scott, Spokane

County; Judy Wilson, Thurston County; John Bolender, Mason County; Michael Shaw, Association of Counties; Ron Lucas, Will Shenkel, Barbara Skinner, Rainier Communications; Matt Lampe, City of Seattle.

**House Amendment(s):** Language granting authorized users a right to access state, county, city and town-owned rights of way is replaced with language that governing authorities shall not unreasonably deny applications that comply with specified conditions.

Local governments that have not acted prior to January 1, 1998, are prohibited from developing telecommunications infrastructure to provide service to the general public.

Restrictions on the fees the state and local jurisdictions may recover are modified. Provisions for compensation to the state are deleted. The compensation sections shall expire June 30, 1999.

The restriction on the use of wireless siting moratoria expires on October 1, 2003.

A Telecommunications Right of Way Advisory Committee is established by the amended bill to develop policies and provisions for the state relating to franchises, fees, and compensation for use of rights of way by providers of telecommunications services. The advisory committee is comprised of members from the House and Senate Transportation Committees, House and Senate fiscal committees, Governor's Office, Department of Transportation, and Department of Information Services. The advisory committee will make recommendations to the Legislative Transportation Committee by December 1, 1998.

"Limited access highway" is defined. The definition of "authorized user" is expanded. Exclusions are added to the definition of "public right of way" for limited access highways, land not opened or improved for motor vehicle use, structures, private property or easement rights on private property, and federally granted railroad rights of way. The definition of "telecommunications service" excludes the over-the-air transmission of broadcast television or radio signals.

The intent section is amended to reflect that differing development regulations and requirements across the state are a significant barrier to competition, that states have recently enacted laws and have been challenged, that the policy of the state is to encourage competition and infrastructure development without violating Article VIII, sections 5 and 7 of the state Constitution, and to maintain safe public roads.

An emergency clause is added and other changes are made.