SENATE BILL REPORT

SHB 2060

As Reported By Senate Committee On:
Energy, Technology & Telecommunications, February 24, 2000

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

Brief Description: Concerning the use of public rights of way in cities and towns.

Sponsors: House Committee on Technology, Telecommunications & Energy (originally sponsored by Representatives DeBolt, Morris, Crouse, Ruderman and Poulsen).

Brief History:
Committee Activity: Energy, Technology & Telecommunications: 2/22/2000, 2/24/2000 [DPA].

SENATE COMMITTEE ON ENERGY, TECHNOLOGY & TELECOMMUNICATIONS

Majority Report: Do pass as amended.
Signed by Senators Brown, Chair; Goings, Vice Chair; Fairley, Fraser, Hochstatter and Roach.

Staff: William Bridges (786-7424)

Background: The federal Telecommunications Act of 1996 encourages states to make public rights-of-way available for telecommunications services. The act permits state and local governments to receive "fair and reasonable compensation" for their use. But it also forbids any state or local law that prohibits the ability of any entity to provide ... telecommunications service.–

There are no uniform laws governing facilities in local rights-of-way. Since 1998, several major bills have addressed this issue but failed to pass.

Summary of Amended Bill: Definitions. The following terms are defined: (1) cable television service, (2) facilities, (3) master permit, (4) personal wireless services, (5) right of way, (6) service provider, (7) telecommunications service, and (8) use permit.

Municipal permitting authority. Cities and towns may require service providers to obtain master permits and use permits, although companies with existing statewide right-of-way grants are not required to obtain master permits for wireline facilities. In addition, cities and towns may not deny use permits to statewide grant holders because they failed to obtain a master permit.

Procedures for issuing master permits. Cities and towns must have written procedures for issuing master permits. Cities and towns must act upon an application within 120 days of receipt. The 120-day time line does not apply if (1) the applicant agrees or (2) the

application must be approved by the local legislative body and the approval would take longer than 120 days.

Denials of master permits must be supported by substantial evidence contained in a written record. Companies seeking injunctive relief must file within 30 days of the denial.

Procedures for issuing use permits. Cities and towns must act upon an application for a use permit within 30 days of receipt. The 30-day time line does not apply if (1) the applicant agrees or (2) the applicant has not obtained a required master permit. If a use permit is denied, a service provider must seek injunctive relief within 30 days of the denial.

Cities and towns may deny use permits to providers of personal wireless services if the providers do not enter into site-specific charge agreements relating to certain wireless facilities.

Municipal duties and powers regarding rights-of-way. Cities and towns must provide advance notice before opening a right-of-way so current users can schedule and coordinate their work. A city is not liable for damages for failing to provide this notice, but it may not deny a permit because a service provider failed to coordinate with another project due to of the lack of notice.

Cities and towns may ensure that a service provider's facilities do not inconvenience the public use of the right of way. But they may not adopt or enforce laws that: (1) regulate the services or business operations of a service provider; (2) conflict with federal or state law; (3) regulate the content of services; or (4) unreasonably deny the use of a right of way.

Cities and towns may use their zoning authority to regulate the placement of facilities, so long as they do not violate the federal Telecommunications Act or prohibit the placement of all facilities within their jurisdictions.

Service provider duties regarding rights-of-way. Service providers must do the following: (1) obtain necessary permits; (2) follow local, state, and federal laws; (3) cooperate with cities and towns to maintain safe conditions in the right-of-way; (4) provide necessary information to cities and towns; (5) obtain written permission before using an other's structures; and (6) construct and maintain their facilities at their own expense.

Liability. The liabilities of cities and towns are not expanded and no new liabilities are created for third party users of the right-of-way.

Moratoriums. Cities and towns may not place moratoriums on the construction, maintenance, and operation of personal wireless services that are inconsistent with the guidelines developed by the wireless industry and the Federal Communications Commission's local and state advisory committee.

Relocation of facilities. When reasonably necessary for construction or emergencies, cities and towns may require service providers to relocate facilities at their own expense. But a service provider may seek reimbursement from a municipality if: (1) the municipality required the service provider to move the same facilities within the past five years; or (2)

the relocation was required for aesthetic reasons. Private parties must reimburse a service provider if the relocation was required for private purposes.

Service providers shall complete the relocation by the date specified, unless the city, or a reviewing court, establishes a later date for completion, after a showing by the service provider that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

Additional capacity. Cities and towns may require companies to lay additional duct or conduit if: (1) the municipalities enter into a contract with the companies; (2) the municipalities do not use the facilities to sell cable television or telecommunications to the general public; (3) the municipalities do not require connection with a service provider's access structures and vaults; and (4) the value of the additional duct and conduit are not considered public works construction contracts.

Franchise fees. Cities and towns may not impose fees for a service provider's use of a right-of-way. However, there are certain exceptions for cable television service and agreements for site-specific charges concerning personal wireless services. Binding arbitration is allowed if municipalities and personal wireless service companies cannot agree on site specific fees. Arbitrators shall determine fees based on comparable siting agreements involving public land and rights-of-way.–

Public disclosure. Information regarding the location of existing facilities and information in applications for use permits is public. Proprietary information cannot be required for master permits. Proprietary information required for coordinating work in a right-of-way is not public.

Amended Bill Compared to Original Bill: The definition of "Master Permit" is changed by clarifying that existing statewide grants are based on predecessor telephone or telegraph companies existing at the time of the adoption of the state Constitution. Definition of "right-of-way" is changed by excluding poles and conduits, as well as structures, in the right-of-way. The "good cause" exception for denying use permits is removed. Service providers shall complete the relocation of facilities by the date specified, unless the city, or a reviewing court, establishes a later date for completion after a showing of best efforts. Site-specific fees may be charged for the placement of new and replacement wireless structures with exceptions. Site-specific fees may also be charged for the placement of wireless facilities on structures in the right-of-way with exceptions. Binding arbitration for site-specific fees is allowed if municipalities and personal wireless service companies cannot agree on fee amounts. Arbitrators shall determine fees based on "comparable siting agreements involving public land and rights-of-way." Proprietary information is protected from public disclosure.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This is a compromise bill developed over the last three years. It helps industry by bringing consistency to local right-of-way laws, streamlining the permitting

process, limiting wireless moratoria, and prohibiting unauthorized regulations. The bill helps cities by clarifying relocation rights, providing excess capacity at incremental costs, allowing fees for certain wireless facilities, and permitting the request of advance plans to prevent multiple street cuts. The bill will promote the deployment of advance telecommunications services throughout the state. The House bill is better than the Senate bill because "good cause" and "as soon as practicable" is not used. Cities need proprietary information to plan future street construction. The FCC treats wireless and wireline companies differently, so there is nothing improper about the distinctions in this bill. Any changes to wireless fees in this bill will probably unwind the compromise between cities and the industry. The bill properly splits the costs of binding arbitration between the parties. The bill does not limit the zoning authority of cities, nor does it limit their authority to address health concerns.

Testimony Against: The bill discriminates against wireless carriers because they must pay a utility tax in addition to any fees that may be levied for the placement of wireless facilities. Fees may hinder the rapid deployment of wireless. Binding arbitration for fees should be inserted. The bill should incorporate Senate language concerning proprietary information. Public disclosure sections should be removed and replaced with a notice requirement. Cities should not require proprietary information because they are not regulatory agencies and they have few means of protecting the information from industry competitors. Language concerning statewide grants and incremental costs should be clarified. Wireless fee amounts should be based on DOT fee structure. Height requirements for fees are probably too high for new technology. Need firm deadlines for relocation. We need to protect cities from damages for interpreting their powers under this bill. The bill should make it clear that parties cannot use the bill to evade existing ordinances. We need to clarify that right-of-way does not include conduits and poles. Costs of binding arbitration may be too high. Market standard for determining site fees may be too expensive for wireless companies. Cities should be able to charge a fee for all new facilities in the right-of-way. The bill does not address liability that may arise from health-damaging effects of wireless technology. The bill should focus on alternative technology that is safer. New wireless technology is mounted closer to streets and so increases the public's exposure to possible microwave damage.

Testified: PRO: Representative Richard DeBolt, prime sponsor; David Danner, Governor's Office; Bob Mack, Cities of Spokane and Tacoma; Rosemary Williamson, GTE; Rowland Thompson, Allied Daily Newspapers; Laura Altschul, VoiceStream Wireless; Tim Sullivan, City of University Place; Ron Main, Washington State Cable Association; David Fichtenberg, Council for Safe Wireless Technology (concern); Tom Potter, League of Women's Voters of Washington (concern); Doug Levy, Everett and Kent (concern); CON: Kristoff T. Bauer, City of Shoreline; Cliff Webster, AirTouch Communications.