
HOUSE BILL 1643

State of Washington

69th Legislature

2025 Regular Session

By Representative Barkis

Read first time 01/28/25. Referred to Committee on Transportation.

1 AN ACT Relating to supporting transportation system improvements
2 by addressing utility facility removal and relocation
3 responsibilities; amending RCW 47.44.020, 36.55.060, 35A.47.040,
4 35.23.251, 35.27.330, and 35.99.060; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that public roadways
7 are increasingly constructed, altered, repaired, and improved in the
8 public interest as part of development agreements. When this is the
9 case, the legislature believes that a governmental entity requiring a
10 project that is in the public interest to be completed as part of a
11 development agreement should be authorized to require utility
12 relocation at the expense of the franchise holder. The legislature
13 recognizes that, at times, it may be expedient for a governmental
14 entity to require a roadway system improvement to be made instead of
15 assessing an impact fee and undertaking the work itself. The
16 legislature believes that whether a utility franchise holder is
17 required to bear the costs of utility relocation should not be
18 determined on the basis of who is undertaking the project, but
19 rather, on the basis of the extent to which the general public will
20 benefit from the project. Therefore, the legislature intends to
21 authorize the Washington state department of transportation,

1 counties, cities, and towns to require utility franchise holders to
2 pay the expense of utility relocation when a public roadway project
3 that is in the public interest is undertaken by a private entity as
4 part of a development agreement.

5 **Sec. 2.** RCW 47.44.020 and 2001 c 201 s 6 are each amended to
6 read as follows:

7 (1) If the department of transportation deems it to be for the
8 public interest, the franchise may be granted in whole or in part,
9 with or without hearing under such regulations and conditions as the
10 department may prescribe, with or without compensation, but not in
11 excess of the reasonable cost for investigating, handling, and
12 granting the franchise. The department may require that the utility
13 and appurtenances be so placed on the highway that they will, in its
14 opinion, least interfere with other uses of the highway.

15 (2) If a hearing is held, it must be conducted by the department,
16 and may be adjourned from time to time until completed. The applicant
17 may be required to produce all facts pertaining to the franchise, and
18 evidence may be taken for and against granting it.

19 (3) (a) The facility must be made subject to removal when
20 necessary for the construction, alteration, repair, or improvement of
21 the highway and at the expense of the franchise holder, except that
22 the state shall pay the share of the cost of the removal (~~((whenever))~~)
23 in the amount the state is entitled to receive (~~((proportionate))~~) in
24 the form of reimbursement (~~((therefor))~~) from the United States (~~((in~~
25 ~~the cases and in the manner set forth in RCW 47.44.030))~~).

26 (b) Facility removal or relocation at the expense of the
27 franchise holder may be required when necessary for the construction,
28 alteration, repair, or improvement of the highway, subject to the
29 exception in (a) of this subsection, when:

30 (i) The project is carried out by a private entity as a condition
31 of development; and

32 (ii) The department finds that the project is in the public
33 interest and has been included in a published local or state plan or
34 program.

35 (c) Renewal upon expiration of a franchise must be by
36 application.

37 (d) For the purposes of this subsection, "public interest" means
38 of general benefit to the public.

1 (4) A person constructing or operating such a utility on a state
2 highway is liable to any person injured thereby for any damages
3 incident to the work of installation or the continuation of the
4 occupancy of the highway by the utility, and except as provided
5 above, is liable to the state for all necessary expenses incurred in
6 restoring the highway to a permanent suitable condition for travel. A
7 person constructing or operating such a utility on a state highway is
8 also liable to the state for all necessary expenses incurred in
9 inspecting the construction and restoring the pavement or other
10 related transportation equipment or facilities to a permanent
11 condition suitable for travel and operation in accordance with
12 requirements set by the department. Permit and franchise holders are
13 also financially responsible to the department for trenching work not
14 completed within the contractual period and for compensating for the
15 loss of useful pavement life caused by trenching. No franchise may be
16 granted for a longer period than (~~fifty~~) 50 years, and no exclusive
17 franchise or privilege may be granted.

18 (5) The holder of a franchise granted under this section is
19 financially responsible to the department for trenching work not
20 completed within the period of the permit and for compensating for
21 the loss of useful pavement life caused by trenching. In the case of
22 common trenching operations, liability under this subsection will be
23 assessed equally between the franchisees. The assessed parties may
24 thereafter pursue claims of contribution or indemnity in accord with
25 such fault as may be determined by arbitration or other legal action.

26 **Sec. 3.** RCW 36.55.060 and 2007 c 31 s 6 are each amended to read
27 as follows:

28 (1) Any person constructing or operating any utility on or along
29 a county road shall be liable to the county for all necessary expense
30 incurred in restoring the county road to a suitable condition for
31 travel.

32 (2) No franchise shall be granted for a period of longer than
33 (~~fifty~~) 50 years.

34 (3) No exclusive franchise or privilege shall be granted.

35 (4) (a) The facilities of the holder of any such franchise shall
36 be removed at the expense of the holder thereof, to some other
37 location on such county road in the event it is to be constructed,
38 altered, or improved or becomes a primary state highway and such

1 removal is reasonably necessary for the construction, alteration, or
2 improvement thereof.

3 (b) Facility removal or relocation at the expense of the
4 franchise holder may be required when a road is to be constructed,
5 altered, repaired, or improved, and:

6 (i) The project is carried out by a private entity as a condition
7 of development; and

8 (ii) The county finds that the project is in the public interest
9 and has been included in a published local or state plan or program.

10 (c) For the purposes of this subsection, "public interest" means
11 of general benefit to the public.

12 (5) Counties shall, in the predesign phase of construction
13 projects involving relocation of sewer and/or water facilities,
14 consult with public utilities operating water/sewer systems in order
15 to coordinate design.

16 **Sec. 4.** RCW 35A.47.040 and 1967 ex.s. c 119 s 35A.47.040 are
17 each amended to read as follows:

18 (1) Every code city shall have authority to permit and regulate
19 under such restrictions and conditions as it may set by charter or
20 ordinance and to grant nonexclusive franchises for the use of public
21 streets, bridges, or other public ways, structures, or places above
22 or below the surface of the ground for railroads and other routes and
23 facilities for public conveyances, for poles, conduits, tunnels,
24 towers, and structures, pipes and wires and appurtenances thereof for
25 transmission and distribution of electrical energy, signals, and
26 other methods of communication, for gas, steam, and liquid fuels, for
27 water, sewer, and other private and publicly owned and operated
28 facilities for public service. The power hereby granted shall be in
29 addition to the franchise authority granted by general law to cities.

30 (2)(a) Except as provided in RCW 35.99.060(3)(a), facility
31 removal or relocation at the expense of the franchise holder is
32 permitted when right-of-way is to be constructed, altered, or
33 improved, including when a project is carried out by a private entity
34 and:

35 (i) The project is necessary for the construction, alteration,
36 repair, or improvement of public streets, bridges, or other public
37 ways, structures, or places above or below the surface of the ground;
38 and

1 (ii) The city finds that the project is in the public interest,
2 will serve a transportation purpose, and has been included in a
3 published local or state plan or program.

4 (b) For the purposes of this subsection, "public interest" means
5 of general benefit to the public.

6 (3) No ordinance or resolution granting any franchise in a code
7 city for any purpose shall be adopted or passed by the city's
8 legislative body on the day of its introduction nor for five days
9 thereafter, nor at any other than a regular meeting nor without first
10 being submitted to the city attorney, nor without having been granted
11 by the approving vote of at least a majority of the entire
12 legislative body, nor without being published at least once in a
13 newspaper of general circulation in the city before becoming
14 effective.

15 (4) The city council may require a bond in a reasonable amount
16 for any person or corporation obtaining a franchise from the city
17 conditioned upon the faithful performance of the conditions and terms
18 of the franchise and providing a recovery on the bond in case of
19 failure to perform the terms and conditions of the franchise.

20 (5) A code city may exercise the authority hereby granted,
21 notwithstanding a contrary limitation of any preexisting charter
22 provision.

23 **Sec. 5.** RCW 35.23.251 and 1965 c 7 s 35.24.250 are each amended
24 to read as follows:

25 (1) No ordinance or resolution granting any franchise for any
26 purpose shall be passed by the city council on the day of its
27 introduction, nor for five days thereafter, nor at any other than a
28 regular meeting nor without first being submitted to the city
29 attorney.

30 (2) No franchise or valuable privilege shall be granted unless by
31 the vote of at least five members of the city council.

32 (3) The city council may require a bond in a reasonable amount
33 for any person or corporation obtaining a franchise from the city
34 conditioned for the faithful performance of the conditions and terms
35 of the franchise and providing a recovery on the bond in case of
36 failure to perform the terms and conditions of franchise.

37 (4) (a) Except as provided in RCW 35.99.060(3)(a), facility
38 removal or relocation at the expense of the franchise holder is
39 permitted when right-of-way is to be constructed, altered, or

1 improved, including when a project is carried out by a private entity
2 and:

3 (i) The project is necessary for the construction, alteration,
4 repair, or improvement of public streets, bridges, or other public
5 ways, structures, or places above or below the surface of the ground;
6 and

7 (ii) The city finds that the project is in the public interest,
8 will serve a transportation purpose, and has been included in a
9 published local or state plan or program.

10 (b) For the purposes of this subsection, "public interest" means
11 of general benefit to the public.

12 **Sec. 6.** RCW 35.27.330 and 2009 c 549 s 2063 are each amended to
13 read as follows:

14 (1) No ordinance or resolution granting any franchise for any
15 purpose shall be passed by the council on the day of its
16 introduction, nor within five days thereafter, nor at any other than
17 a regular meeting, and no such ordinance or resolution shall have any
18 validity or effect unless passed by the vote of at least three
19 councilmembers. The town council may require a bond in a reasonable
20 amount from any persons and corporations obtaining a franchise from
21 the town conditioned for the faithful performance of the conditions
22 and terms of the franchise and providing a recovery on the bond in
23 case of failure to perform the terms and conditions of the franchise.

24 (2)(a) Except as provided in RCW 35.99.060(3)(a), facility
25 removal or relocation at the expense of the franchise holder is
26 permitted when right-of-way is to be constructed, altered, or
27 improved, including when a project is carried out by a private entity
28 and:

29 (i) The project is necessary for the construction, alteration,
30 repair, or improvement of public streets, bridges, or other public
31 ways, structures, or places above or below the surface of the ground;
32 and

33 (ii) The town finds that the project is in the public interest,
34 will serve a transportation purpose, and has been included in a
35 published local or state plan or program.

36 (b) For the purposes of this subsection, "public interest" means
37 of general benefit to the public.

1 **Sec. 7.** RCW 35.99.060 and 2000 c 83 s 6 are each amended to read
2 as follows:

3 (1) Cities and towns may require service providers to relocate
4 authorized facilities within the right-of-way when reasonably
5 necessary for construction, alteration, repair, or improvement of the
6 right-of-way for purposes of public welfare, health, or safety.

7 (2) Cities shall notify service providers as soon as practicable
8 of the need for relocation and shall specify the date by which
9 relocation shall be completed. In calculating the date that
10 relocation must be completed, cities shall consult with affected
11 service providers and consider the extent of facilities to be
12 relocated, the services requirements, and the construction sequence
13 for the relocation, within the city's overall project construction
14 sequence and constraints, to safely complete the relocation. Service
15 providers shall complete the relocation by the date specified, unless
16 the city, or a reviewing court, establishes a later date for
17 completion, after a showing by the service provider that the
18 relocation cannot be completed by the date specified using best
19 efforts and meeting safety and service requirements.

20 (3) Service providers may not seek reimbursement for their
21 relocation expenses from the city or town requesting relocation under
22 subsection (1) of this section except:

23 (a) Where the service provider had paid for the relocation cost
24 of the same facilities at the request of the city or town within the
25 past five years, the service provider's share of the cost of
26 relocation will be paid by the city or town requesting relocation;

27 (b) Where aerial to underground relocation of authorized
28 facilities is required by the city or town under subsection (1) of
29 this section, for service providers with an ownership share of the
30 aerial supporting structures, the additional incremental cost of
31 underground compared to aerial relocation, or as provided for in the
32 approved tariff if less, will be paid by the city or town requiring
33 relocation; and

34 (c) Where the city or town requests relocation under subsection
35 (1) of this section solely for aesthetic purposes, unless otherwise
36 agreed to by the parties.

37 (4) Where a project in subsection (1) of this section is
38 primarily for private benefit and where the requirements of RCW
39 35A.47.040(2), 35.23.251(4), and 35.27.330(2) are not met, the
40 private party or parties shall reimburse the cost of relocation in

1 the same proportion to their contribution to the costs of the
2 project. Service providers will not be precluded from recovering
3 their costs associated with relocation required under subsection (1)
4 of this section, provided that the recovery is consistent with
5 subsection (3) of this section and other applicable laws.

6 (5) A city or town may require the relocation of facilities at
7 the service provider's expense in the event of an unforeseen
8 emergency that creates an immediate threat to the public safety,
9 health, or welfare.

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