

2 **SHB 2237** - S COMM AMD

3 By Committee on Energy & Utilities

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the federal
8 Telecommunications Act of 1996 is designed to remove regulatory
9 barriers and encourage competition among telecommunications carriers.
10 The federal act has important implications for the Washington state
11 department of transportation.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.44 RCW
13 to read as follows:

14 (1) The following definitions apply to this section:

15 (a) "Limited-access rights-of-way" includes "limited-access
16 facilities" as defined in RCW 47.52.010, and the federal interstate
17 system;

18 (b) "Right of occupancy" means the right to occupy limited-access
19 rights-of-way by installing facilities and equipment necessary for the
20 transmission of telecommunications, and the right to enter
21 limited-access rights-of-way for the purpose of installing and
22 maintaining those facilities and equipment;

23 (c) "Telecommunications" means the transmission, between or among
24 points specified by the user, of information of the user's choosing,
25 without change in the form or content of the information as sent and
26 received.

27 (2) The department may grant franchises to telecommunications
28 providers on limited-access rights-of-way. In granting franchises
29 under this section, the department shall follow the procedures
30 specified in RCW 47.44.020. No franchise granted under this section
31 may be granted for a longer period than twenty-five years, and no
32 exclusive franchise or privilege may be granted.

33 (3) Nothing in this section affects existing or future franchise
34 agreements with nontelecommunications utilities.

1 (4) Nothing in this section authorizes a nontelecommunications
2 utility or other entity to obtain a grant of a right of occupancy for
3 any purpose other than providing telecommunications.

4 (5) Nothing in this section limits or affects the department's
5 ability to lease property under RCW 47.12.120.

6 **Sec. 3.** RCW 47.44.010 and 1980 c 28 s 1 are each amended to read
7 as follows:

8 The department of transportation may grant franchises to persons,
9 associations, private or municipal corporations, the United States
10 government, or any agency thereof, to use any state highway for the
11 construction and maintenance of water pipes, flume, gas, oil or coal
12 pipes, (~~telephone, telegraph~~) facilities as defined in RCW 80.04.010
13 for the provision of telecommunications service, and electric light and
14 power lines and conduits, trams or railways, and any structures or
15 facilities which are part of an urban public transportation system
16 owned or operated by a municipal corporation, agency, or department of
17 the state of Washington other than the department of transportation,
18 and any other such facilities. All applications for such franchise
19 shall be made in writing and subscribed by the applicant, and shall
20 describe the state highway or portion thereof over which franchise is
21 desired and the nature of the franchise. The department of
22 transportation shall adopt rules providing for a hearing or an
23 opportunity for a hearing with reasonable public notice thereof with
24 respect to any franchise application involving the construction and
25 maintenance of utilities or other facilities within the highway right
26 of way which the department determines may (1) during construction,
27 significantly disrupt the flow of traffic or use of driveways or other
28 facilities within the right of way, or (2) during or following
29 construction, cause a significant and adverse effect upon the
30 surrounding environment.

31 **Sec. 4.** RCW 47.44.040 and 1984 c 7 s 236 are each amended to read
32 as follows:

33 Whenever any bridge exists on the route of any state highway and
34 crosses any stream, body of water, gulch, navigable water, swamp, or
35 other topographical formation constituting the boundary of this state
36 or the boundary of a county, city, or town of this state and the bridge
37 is owned or operated by this state jointly with any such county, city,

1 or town, or with any municipal corporation of this state, or with such
2 other state or with any county, city, or town of such other state, the
3 department is empowered to join with the proper officials of the
4 county, city, or town, or the municipal corporation of this state or of
5 such other state or of such county, city, or town of such other state
6 in granting franchises to persons or private or municipal corporations
7 for the construction and maintenance on the bridge of water pipes,
8 flumes, gas pipes, (~~telephone, telegraph~~) facilities as defined in
9 RCW 80.04.010 for the provision of telecommunications service, and
10 electric light and power lines and conduits, trams and railways, and
11 any structures or facilities that are part of an urban public
12 transportation system owned or operated by a municipal corporation,
13 agency, or department of the state of Washington other than the
14 department, or any other such facilities. All such franchises shall be
15 granted in the same manner as provided for the granting of like
16 franchises on state highways. Any revenue accruing to the state of
17 Washington from the franchises shall be paid to the state treasurer and
18 deposited to the credit of the fund from which this state's share of
19 the cost of joint operation of the bridge is paid.

20 **Sec. 5.** RCW 47.44.050 and 1984 c 7 s 237 are each amended to read
21 as follows:

22 The department is empowered to grant a permit to construct or
23 maintain on, over, across, or along any state highway any water, gas,
24 (~~telephone, telegraph~~) facilities as defined in RCW 80.04.010 for the
25 provision of telecommunications service, light, power, or other such
26 facilities when they do not extend along the state highway for a
27 distance greater than three hundred feet. The department may require
28 such information as it deems necessary in the application for any such
29 permit, and may grant or withhold the permit within its discretion.
30 Any permit granted may be canceled at any time, and any facilities
31 remaining upon the right of way of the state highway after thirty days
32 written notice of the cancellation (~~is [are] an~~) are unlawful
33 obstructions and may be removed in the manner provided by law.

34 **Sec. 6.** RCW 47.44.060 and 1989 c 224 s 1 are each amended to read
35 as follows:

36 (1) Any person, firm, or corporation who constructs or maintains
37 on, over, across, or along any state highway any water pipe, flume, gas

1 pipe, (~~telegraph, telephone~~) facilities as defined in RCW 80.04.010
2 for the provision of telecommunications service, electric light, or
3 power lines, or tram or railway, or any other such facilities, without
4 having first obtained and having at all times in full force and effect
5 a franchise or permit to do so in the manner provided by law is guilty
6 of a misdemeanor. Each day of violation is a separate and distinct
7 offense.

8 (2) Any person, firm, (~~or~~) corporation, association, private or
9 municipal corporation, county, agency or department of the state of
10 Washington, other than the department of transportation, the United
11 States government, or any agency thereof, who constructs or maintains
12 on, over, across, or along any state highway any water pipe, flume, gas
13 pipe, (~~telegraph, telephone~~) facilities as defined in RCW 80.04.010
14 for the provision of telecommunications service, electric light or
15 power lines, or tram or railway, or any other such facilities, without
16 having first obtained and having at all times in full force and effect
17 a franchise or permit to do so in the manner provided by law is liable
18 for a civil penalty of one hundred dollars per calendar day beginning
19 forty-five days from the date notice is given and until application is
20 made for a franchise or permit or until the facility is removed as
21 required by notice. The state shall give notice by certified mail that
22 a franchise or permit is required or the facility must be removed and
23 shall include in the notice sufficient information to identify the
24 portion of right of way in question. Notice is effective upon
25 delivery.

26 (3) If a person, firm (~~or~~), corporation, association, private or
27 municipal corporation, county, agency or department of the state of
28 Washington, other than the department of transportation, the United
29 States government, or any agency thereof, does not apply for a permit
30 or franchise within forty-five days of notice given in accordance with
31 subsection (2) of this section or the state determines that the
32 facility constructed or maintained without a permit or franchise would
33 not be granted a permit or franchise, the state may order the facility
34 to be removed within such time period as the state may specify. If the
35 facility is not removed, the state, in addition to any other remedy,
36 may remove the facility at the expense of the owner.

37 NEW SECTION. Sec. 7. This act is necessary for the immediate
38 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and takes effect
2 immediately."

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6 On page 1, line 2 of the title, after "rights-of-way;" strike the
7 remainder of the title and insert "amending RCW 47.44.010, 47.44.040,
8 47.44.050, and 47.44.060; adding a new section to chapter 47.44 RCW;
9 creating a new section; and declaring an emergency."

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