

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1678

Chapter 201, Laws of 2001

(partial veto)

57th Legislature
2001 Regular Legislative Session

ADVANCE RIGHT-OF-WAY ACQUISITION

EFFECTIVE DATE: 7/22/01

Passed by the House April 13, 2001
Yeas 89 Nays 0

FRANK CHOPP
Speaker of the House of Representatives

CLYDE BALLARD
Speaker of the House of Representatives

Passed by the Senate April 4, 2001
Yeas 48 Nays 0

BRAD OWEN
President of the Senate

Approved May 7, 2001, with the
exception of section 9, which is
vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1678** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER
Chief Clerk

TIMOTHY A. MARTIN
Chief Clerk

FILED
May 7, 2001 - 1:43 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1678

AS AMENDED BY THE SENATE

Passed Legislature - 2001 Regular Session

State of Washington 57th Legislature 2001 Regular Session

By House Committee on Transportation (originally sponsored by Representatives Fisher, Mitchell and Poulsen; by request of The Blue Ribbon Commission on Transportation)

Read first time . Referred to Committee on .

1 AN ACT Relating to advance right-of-way acquisition; amending RCW
2 43.79A.040, 47.44.010, 47.44.020, 47.44.050, and 47.24.020; adding new
3 sections to chapter 47.26 RCW; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 47.26 RCW
6 to read as follows:

7 The term "advance right-of-way acquisition" as used in this chapter
8 means the acquisition of property and property rights, together with
9 the engineering costs necessary for the advance right-of-way
10 acquisition. Property or property rights purchased must be for
11 projects approved by the transportation improvement board or the county
12 road administration board as part of a city or county six-year plan or
13 program.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 47.26 RCW
15 to read as follows:

16 The city and county advance right-of-way revolving fund is created
17 in the custody of the treasurer. The transportation improvement board

1 is the administrator of the fund and may deposit directly and spend
2 without appropriation.

3 The transportation improvement board and the county road
4 administration board, in consultation with the association of
5 Washington cities and the Washington association of counties, shall
6 adopt reasonable rules and develop policies to implement this program.

7 NEW SECTION. **Sec. 3.** A new section is added to chapter 47.26 RCW
8 to read as follows:

9 (1) After any properties or property rights are acquired through
10 funds in the city and county advance right-of-way revolving fund, the
11 acquiring city or county is responsible for the management of the
12 properties in accordance with sound business practices and shall
13 provide annual status reports to the board. Funds received by the city
14 or county from the interim management of the properties must be
15 deposited into the city and county advance right-of-way revolving fund.

16 (2) When the city or county proceeds with the construction of an
17 arterial project that will require the use of any of the property so
18 acquired, the city or county shall reimburse the city and county
19 advance right-of-way revolving fund. Reimbursement must reflect the
20 original cost of the acquired property or property rights required for
21 the project plus an interest rate as determined annually by the board.
22 The board shall report on the interest rate set to the transportation
23 committees through its annual report.

24 (3) When the city or county determines that any properties or
25 property rights acquired from funds in the city and county advance
26 right-of-way revolving fund will not be required for an arterial
27 construction project or the property has been held by the city or
28 county for more than six years, the city or county shall either sell
29 the property at fair market value or reimburse the fund at fair market
30 value. All proceeds of the sale must be deposited in the city and
31 county advance right-of-way revolving fund. At the board's discretion,
32 a portion of savings on transportation improvement board projects
33 realized through the use of the city and county advance revolving fund
34 may be deposited back into the city and county advance right-of-way
35 revolving fund.

36 (4) Deposits in the fund may be reexpended without further or
37 additional appropriations.

1 **Sec. 4.** RCW 43.79A.040 and 2000 c 79 s 45 are each amended to read
2 as follows:

3 (1) Money in the treasurer's trust fund may be deposited, invested,
4 and reinvested by the state treasurer in accordance with RCW 43.84.080
5 in the same manner and to the same extent as if the money were in the
6 state treasury.

7 (2) All income received from investment of the treasurer's trust
8 fund shall be set aside in an account in the treasury trust fund to be
9 known as the investment income account.

10 (3) The investment income account may be utilized for the payment
11 of purchased banking services on behalf of treasurer's trust funds
12 including, but not limited to, depository, safekeeping, and
13 disbursement functions for the state treasurer or affected state
14 agencies. The investment income account is subject in all respects to
15 chapter 43.88 RCW, but no appropriation is required for payments to
16 financial institutions. Payments shall occur prior to distribution of
17 earnings set forth in subsection (4) of this section.

18 (4)(a) Monthly, the state treasurer shall distribute the earnings
19 credited to the investment income account to the state general fund
20 except under (b) and (c) of this subsection.

21 (b) The following accounts and funds shall receive their
22 proportionate share of earnings based upon each account's or fund's
23 average daily balance for the period: The Washington advanced college
24 tuition payment program account, the agricultural local fund, the
25 American Indian scholarship endowment fund, the basic health plan self-
26 insurance reserve account, the Washington international exchange
27 scholarship endowment fund, the developmental disabilities endowment
28 trust fund, the energy account, the fair fund, the game farm
29 alternative account, the grain inspection revolving fund, the juvenile
30 accountability incentive account, the rural rehabilitation account, the
31 stadium and exhibition center account, the youth athletic facility
32 ((grant)) account, the self-insurance revolving fund, the sulfur
33 dioxide abatement account, and the children's trust fund. However, the
34 earnings to be distributed shall first be reduced by the allocation to
35 the state treasurer's service fund pursuant to RCW 43.08.190.

36 (c) The following accounts and funds shall receive eighty percent
37 of their proportionate share of earnings based upon each account's or
38 fund's average daily balance for the period: The advanced right of way
39 revolving fund, the advanced environmental mitigation revolving

1 account, the city and county advance right-of-way revolving fund, the
2 federal narcotics asset forfeitures account, the high occupancy vehicle
3 account, the local rail service assistance account, and the
4 miscellaneous transportation programs account.

5 (5) In conformance with Article II, section 37 of the state
6 Constitution, no trust accounts or funds shall be allocated earnings
7 without the specific affirmative directive of this section.

8 **Sec. 5.** RCW 47.44.010 and 1980 c 28 s 1 are each amended to read
9 as follows:

10 (1) The department of transportation may grant franchises to
11 persons, associations, private or municipal corporations, the United
12 States government, or any agency thereof, to use any state highway for
13 the construction and maintenance of water pipes, flume, gas, oil or
14 coal pipes, telephone, telegraph and electric light and power lines and
15 conduits, trams or railways, and any structures or facilities (~~((which))~~)
16 that are part of an urban public transportation system owned or
17 operated by a municipal corporation, agency, or department of the state
18 of Washington other than the department of transportation, and any
19 other such facilities. In order to minimize the disruption to traffic
20 and damage to the roadway, the department is encouraged to develop a
21 joint trenching policy with other affected jurisdictions so that all
22 permittees and franchisees requiring access to ground under the roadway
23 may do so at one time.

24 (2) All applications for (~~((such))~~) the franchise (~~((shall))~~) must be
25 made in writing and subscribed by the applicant, and (~~((shall))~~) describe
26 the state highway or portion thereof over which franchise is desired
27 and the nature of the franchise. The application must also include the
28 identification of all jurisdictions affected by the franchise and the
29 names of other possible franchisees who should receive notice of the
30 application for a franchise.

31 (3) The department of transportation shall adopt rules providing
32 for a hearing or an opportunity for a hearing with reasonable public
33 notice thereof with respect to any franchise application involving the
34 construction and maintenance of utilities or other facilities within
35 the highway right of way which the department determines may (~~((+1))~~)
36 (a) during construction, significantly disrupt the flow of traffic or
37 use of driveways or other facilities within the right of way, or

1 ((+2)) (b) during or following construction, cause a significant and
2 adverse effect upon the surrounding environment.

3 **Sec. 6.** RCW 47.44.020 and 1980 c 28 s 2 are each amended to read
4 as follows:

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

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

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

25 (4) A person constructing or operating such a utility on a state
26 highway is liable to any person injured thereby for any damages
27 incident to the work of installation or the continuation of the
28 occupancy of the highway by the utility, and except as provided above,
29 is liable to the state for all necessary expenses incurred in restoring
30 the highway to a permanent suitable condition for travel. A person
31 constructing or operating such a utility on a state highway is also
32 liable to the state for all necessary expenses incurred in inspecting
33 the construction and restoring the pavement or other related
34 transportation equipment or facilities to a permanent condition
35 suitable for travel and operation in accordance with requirements set
36 by the department. Permit and franchise holders are also financially
37 responsible to the department for trenching work not completed within
38 the contractual period and for compensating for the loss of useful

1 pavement life caused by trenching. No franchise may be granted for a
2 longer period than fifty years, and no exclusive franchise or privilege
3 may be granted.

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

12 **Sec. 7.** RCW 47.44.050 and 1984 c 7 s 237 are each amended to read
13 as follows:

14 (1) The department ((is empowered to)) may grant a permit to
15 construct or maintain on, over, across, or along any state highway any
16 water, gas, telephone, telegraph, light, power, or other such
17 facilities when they do not extend along the state highway for a
18 distance greater than three hundred feet. The department may require
19 such information as it deems necessary in the application for any such
20 permit, and may grant or withhold the permit within its discretion.
21 Any permit granted may be canceled at any time, and any facilities
22 remaining upon the right of way of the state highway after thirty days
23 written notice of the cancellation ((is [are])) are an unlawful
24 obstruction and may be removed in the manner provided by law.

25 (2) The holder of a permit granted under this section is
26 financially responsible to the department for trenching work not
27 completed within the period of the permit and for compensating for the
28 loss of useful pavement life caused by trenching. In the case of
29 common trenching operations, liability under this subsection will be
30 assessed equally between the permit holders. The assessed parties may
31 thereafter pursue claims of contribution or indemnity in accord with
32 such fault as may be determined by arbitration or other legal action.

33 **Sec. 8.** RCW 47.24.020 and 1993 c 126 s 1 are each amended to read
34 as follows:

35 The jurisdiction, control, and duty of the state and city or town
36 with respect to such streets ((shall be)) is as follows:

1 (1) The department has no authority to change or establish any
2 grade of any such street without approval of the governing body of such
3 city or town, except with respect to limited access facilities
4 established by the commission;

5 (2) The city or town shall exercise full responsibility for and
6 control over any such street beyond the curbs and if no curb is
7 installed, beyond that portion of the highway used for highway
8 purposes. However, within incorporated cities and towns the title to
9 a state limited access highway vests in the state, and, notwithstanding
10 any other provision of this section, the department shall exercise full
11 jurisdiction, responsibility, and control to and over such facility as
12 provided in chapter 47.52 RCW;

13 (3) The department has authority to prohibit the suspension of
14 signs, banners, or decorations above the portion of such street between
15 the curbs or portion used for highway purposes up to a vertical height
16 of twenty feet above the surface of the roadway;

17 (4) The city or town shall at its own expense maintain all
18 underground facilities in such streets, and has the right to construct
19 such additional underground facilities as may be necessary in such
20 streets. However, pavement trenching and restoration performed as part
21 of installation of such facilities must meet or exceed requirements
22 established by the department;

23 (5) The city or town has the right to grant the privilege to open
24 the surface of any such street, but all damage occasioned thereby shall
25 promptly be repaired either by the city or town itself or at its
26 direction. Pavement trenching and restoration performed under a
27 privilege granted by the city under this subsection must meet or exceed
28 requirements established by the department;

29 (6) The city or town at its own expense shall provide street
30 illumination and shall clean all such streets, including storm sewer
31 inlets and catch basins, and remove all snow, except that the state
32 shall when necessary plow the snow on the roadway. In cities and towns
33 having a population of twenty-two thousand five hundred or less
34 according to the latest determination of population by the office of
35 financial management, the state, when necessary for public safety,
36 shall assume, at its expense, responsibility for the stability of the
37 slopes of cuts and fills and the embankments within the right of way to
38 protect the roadway itself. When the population of a city or town
39 first exceeds twenty-two thousand five hundred according to the

1 determination of population by the office of financial management, the
2 city or town shall have three years from the date of the determination
3 to plan for additional staffing, budgetary, and equipment requirements
4 before being required to assume the responsibilities under this
5 subsection. The state shall install, maintain, and operate all
6 illuminating facilities on any limited access facility, together with
7 its interchanges, located within the corporate limits of any city or
8 town, and shall assume and pay the costs of all such installation,
9 maintenance, and operation incurred after November 1, 1954;

10 (7) The department has the right to use all storm sewers on such
11 highways without cost; and if new storm sewer facilities are necessary
12 in construction of new streets by the department, the cost of the
13 facilities shall be borne by the state and/or city as may be mutually
14 agreed upon between the department and the governing body of the city
15 or town;

16 (8) Cities and towns have exclusive right to grant franchises not
17 in conflict with state laws and rules, over, beneath, and upon such
18 streets, but the department is authorized to enforce in an action
19 brought in the name of the state any condition of any franchise which
20 a city or town has granted on such street. No franchise for
21 transportation of passengers in motor vehicles may be granted on such
22 streets without the approval of the department, but the department
23 shall not refuse to approve such franchise unless another street
24 conveniently located and of strength of construction to sustain travel
25 of such vehicles is accessible;

26 (9) Every franchise or permit granted any person by a city or town
27 for use of any portion of such street by a public utility (~~shall~~)
28 must require the grantee or permittee to restore, repair, and replace
29 (~~to its original condition~~) any portion of the street damaged or
30 injured by it to conditions that meet or exceed requirements
31 established by the department;

32 (10) The city or town has the right to issue overload or overwidth
33 permits for vehicles to operate on such streets or roads subject to
34 regulations printed and distributed to the cities and towns by the
35 department;

36 (11) Cities and towns shall regulate and enforce all traffic and
37 parking restrictions on such streets, but all regulations adopted by a
38 city or town relating to speed, parking, and traffic control devices on
39 such streets not identical to state law relating thereto are subject to

1 the approval of the department before becoming effective. All
2 regulations pertaining to speed, parking, and traffic control devices
3 relating to such streets heretofore adopted by a city or town not
4 identical with state laws shall become null and void unless approved by
5 the department heretofore or within one year after March 21, 1963;

6 (12) The department shall erect, control, and maintain at state
7 expense all route markers and directional signs, except street signs,
8 on such streets;

9 (13) The department shall install, operate, maintain, and control
10 at state expense all traffic control signals, signs, and traffic
11 control devices for the purpose of regulating both pedestrian and motor
12 vehicular traffic on, entering upon, or leaving state highways in
13 cities and towns having a population of twenty-two thousand five
14 hundred or less according to the latest determination of population by
15 the office of financial management. Such cities and towns may submit
16 to the department a plan for traffic control signals, signs, and
17 traffic control devices desired by them, indicating the location,
18 nature of installation, or type thereof, or a proposed amendment to
19 such an existing plan or installation, and the department shall consult
20 with the cities or towns concerning the plan before installing such
21 signals, signs, or devices. Cities and towns having a population in
22 excess of twenty-two thousand five hundred according to the latest
23 determination of population by the office of financial management shall
24 install, maintain, operate, and control such signals, signs, and
25 devices at their own expense, subject to approval of the department for
26 the installation and type only. When the population of a city or town
27 first exceeds twenty-two thousand five hundred according to the
28 determination of population by the office of financial management, the
29 city or town shall have three years from the date of the determination
30 to plan for additional staffing, budgetary, and equipment requirements
31 before being required to assume the responsibilities under this
32 subsection. For the purpose of this subsection, striping, lane
33 marking, and channelization are considered traffic control devices;

34 (14) All revenue from parking meters placed on such streets belongs
35 to the city or town;

36 (15) Rights of way for such streets shall be acquired by either the
37 city or town or by the state as shall be mutually agreed upon. Costs
38 of acquiring rights of way may be at the sole expense of the state or
39 at the expense of the city or town or at the expense of the state and

1 the city or town as may be mutually agreed upon. Title to all such
2 rights of way so acquired shall vest in the city or town: PROVIDED,
3 That no vacation, sale, rental, or any other nontransportation use of
4 any unused portion of any such street may be made by the city or town
5 without the prior written approval of the department; and all revenue
6 derived from sale, vacation, rental, or any nontransportation use of
7 such rights of way shall be shared by the city or town and the state in
8 the same proportion as the purchase costs were shared;

9 (16) If any city or town fails to perform any of its obligations as
10 set forth in this section or in any cooperative agreement entered into
11 with the department for the maintenance of a city or town street
12 forming part of the route of a state highway, the department may notify
13 the mayor of the city or town to perform the necessary maintenance
14 within thirty days. If the city or town within the thirty days fails
15 to perform the maintenance or fails to authorize the department to
16 perform the maintenance as provided by RCW 47.24.050, the department
17 may perform the maintenance, the cost of which is to be deducted from
18 any sums in the motor vehicle fund credited or to be credited to the
19 city or town.

20 ****NEW SECTION. Sec. 9. If specific funding for the purposes of***
21 ***this act, referencing this act by bill or chapter number, is not***
22 ***provided by June 30, 2001, in the transportation appropriations act,***
23 ***this act is null and void.***

24 ****Sec. 9 was vetoed. See message at end of chapter.***

Passed the House April 13, 2001.

Passed the Senate April 4, 2001.

Approved by the Governor May 7, 2001, with the exception of certain
items that were vetoed.

Filed in Office of Secretary of State May 7, 2001.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 9,
3 Substitute House Bill No. 1678 entitled:

4 "AN ACT Relating to advance right-of-way acquisition;"

5 Substitute House Bill No. 1678 creates the city and county advance
6 right of way revolving fund. This account was recommended by the Blue
7 Ribbon Commission on Transportation, and will allow local governments
8 to acquire land in advance of construction, as funds become available.
9 This has proved to be a very effective tool at the state level,
10 allowing construction to start as soon as construction funding is
11 available.

1 Section 9 of the bill would have rendered the fund null and void if
2 there is no appropriation for the fund in this year's biennial
3 transportation budget. I strongly support the revolving fund, and have
4 recommended an appropriation in my transportation budget proposal. I
5 urge the legislature to do the same. Clearly, the merits of this bill
6 extend beyond June 30th of this year.

7 For these reasons I have vetoed section 9 of Substitute House Bill
8 No. 1678.

9 With the exception of section 9, Substitute House Bill No. 1678 is
10 approved."