

ESSB 5977 - H COMM AMD

By Committee on Technology, Telecommunications & Energy

ADOPTED 04/11/2003

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** Personal wireless service is a critical  
4 part of the state's infrastructure. The rapid deployment of personal  
5 wireless service facilities is critical to ensure public safety,  
6 network access, quality of service, and rural economic development.  
7 The use of all state highway rights of way must be permitted for the  
8 deployment of personal wireless service facilities.

9 **Sec. 2.** RCW 47.04.010 and 1975 c 62 s 50 are each amended to read  
10 as follows:

11 The following words and phrases, wherever used in this title, shall  
12 have the meaning as in this section ascribed to them, unless where used  
13 the context thereof shall clearly indicate to the contrary or unless  
14 otherwise defined in the chapter of which they are a part:

15 (1) "Alley." A highway within the ordinary meaning of alley not  
16 designated for general travel and primarily used as a means of access  
17 to the rear of residences and business establishments;

18 (2) "Arterial highway." Every highway, as herein defined, or  
19 portion thereof designated as such by proper authority;

20 (3) "Business district." The territory contiguous to and including  
21 a highway, as herein defined, when within any six hundred feet along  
22 such highway there are buildings in use for business or industrial  
23 purposes, including but not limited to hotels, banks, or office  
24 buildings, railroad stations, and public buildings which occupy at  
25 least three hundred feet of frontage on one side or three hundred feet  
26 collectively on both sides of the highway;

27 (4) "Center line." The line, marked or unmarked parallel to and  
28 equidistant from the sides of a two-way traffic roadway of a highway  
29 except where otherwise indicated by painted lines or markers;

1 (5) "Center of intersection." The point of intersection of the  
2 center lines of the roadways of intersecting highways;

3 (6) "City street." Every highway as herein defined, or part  
4 thereof located within the limits of incorporated cities and towns,  
5 except alleys;

6 (7) "Combination of vehicles." Every combination of motor vehicle  
7 and motor vehicle, motor vehicle and trailer, or motor vehicle and  
8 semitrailer;

9 (8) "Commercial vehicle." Any vehicle the principal use of which  
10 is the transportation of commodities, merchandise, produce, freight,  
11 animals, or passengers for hire;

12 (9) "County road." Every highway as herein defined, or part  
13 thereof, outside the limits of incorporated cities and towns and which  
14 has not been designated as a state highway, or branch thereof;

15 (10) "Crosswalk." The portion of the roadway between the  
16 intersection area and a prolongation or connection of the farthest  
17 sidewalk line or in the event there are no sidewalks then between the  
18 intersection area and a line ten feet therefrom, except as modified by  
19 a marked crosswalk;

20 (11) "Highway." Every way, lane, road, street, boulevard, and  
21 every way or place in the state of Washington open as a matter of right  
22 to public vehicular travel both inside and outside the limits of  
23 incorporated cities and towns;

24 (12) "Intersection area." (a) The area embraced within the  
25 prolongation or connection of the lateral curb lines, or, if none, then  
26 the lateral boundary lines of the roadways of two or more highways  
27 which join one another at, or approximately at, right angles, or the  
28 area within which vehicles traveling upon different highways joining at  
29 any other angle may come in conflict;

30 (b) Where a highway includes two roadways thirty feet or more  
31 apart, then every crossing of each roadway of such divided highway by  
32 an intersecting highway shall be regarded as a separate intersection.  
33 In the event such intersecting highway also includes two roadways  
34 thirty feet or more apart, then every crossing of two roadways of such  
35 highways shall be regarded as a separate intersection;

36 (c) The junction of an alley with a street or highway shall not  
37 constitute an intersection;

1        ~~((12))~~ (13) "Intersection control area." The intersection area  
2 as herein defined, together with such modification of the adjacent  
3 roadway area as results from the arc or curb corners and together with  
4 any marked or unmarked crosswalks adjacent to the intersection;  
5        ~~((13))~~ (14) "Laned highway." A highway the roadway of which is  
6 divided into clearly marked lanes for vehicular traffic;  
7        ~~((14))~~ (15) "Local authorities." Every county, municipal, or  
8 other local public board or body having authority to adopt local police  
9 regulations under the Constitution and laws of this state;  
10        ~~((15))~~ (16) "Marked crosswalk." Any portion of a roadway  
11 distinctly indicated for pedestrian crossing by lines or other markings  
12 on the surface thereof;  
13        ~~((16))~~ (17) "Metal tire." Every tire, the bearing surface of  
14 which in contact with the highway is wholly or partly of metal or other  
15 hard, nonresilient material;  
16        ~~((17))~~ (18) "Motor truck." Any motor vehicle, as herein defined,  
17 designed or used for the transportation of commodities, merchandise,  
18 produce, freight, or animals;  
19        ~~((18))~~ (19) "Motor vehicle." Every vehicle, as herein defined,  
20 which is in itself a self-propelled unit;  
21        ~~((19))~~ (20) "Multiple lane highway." Any highway the roadway of  
22 which is of sufficient width to reasonably accommodate two or more  
23 separate lanes of vehicular traffic in the same direction, each lane of  
24 which shall be not less than the maximum legal vehicle width, and  
25 whether or not such lanes are marked;  
26        ~~((20))~~ (21) "Operator." Every person who drives or is in actual  
27 physical control of a vehicle as herein defined;  
28        ~~((21))~~ (22) "Peace officer." Any officer authorized by law to  
29 execute criminal process or to make arrests for the violation of the  
30 statutes generally or of any particular statute or statutes relative to  
31 the highways of this state;  
32        ~~((22))~~ (23) "Pedestrian." Any person afoot;  
33        ~~((23))~~ (24) "Person." Every natural person, firm, copartnership,  
34 corporation, association, or organization;  
35        ~~((24))~~ (25) "Personal wireless service." Any federally licensed  
36 personal wireless service;

1        (26) "Personal wireless service facilities." Unstaffed facilities  
2 that are used for the transmission or reception, or both, of personal  
3 wireless services including, but not necessarily limited to, antenna  
4 arrays, transmission cables, equipment shelters, and support  
5 structures;

6        (27) "Pneumatic tires." Every tire of rubber or other resilient  
7 material designed to be inflated with compressed air to support the  
8 load thereon;

9        ~~((25))~~ (28) "Private road or driveway." Every way or place in  
10 private ownership and used for travel of vehicles by the owner or those  
11 having express or implied permission from the owner, but not by other  
12 persons;

13        ~~((26) "Highway." Every way, lane, road, street, boulevard, and~~  
14 ~~every way or place in the state of Washington open as a matter of right~~  
15 ~~to public vehicular travel both inside and outside the limits of~~  
16 ~~incorporated cities and towns;~~

17        ~~(27))~~ (29) "Railroad." A carrier of persons or property upon  
18 vehicles, other than street cars, operated upon stationary rails, the  
19 route of which is principally outside incorporated cities and towns;

20        ~~((28))~~ (30) "Railroad sign or signal." Any sign, signal, or  
21 device erected by authority of a public body or official or by a  
22 railroad and intended to give notice of the presence of railroad tracks  
23 or the approach of a railroad train;

24        ~~((29))~~ (31) "Residence district." The territory contiguous to  
25 and including the highway, as herein defined, not comprising a business  
26 district, as herein defined, when the property on such highway for a  
27 continuous distance of three hundred feet or more on either side  
28 thereof is in the main improved with residences or residences and  
29 buildings in use for business;

30        ~~((30))~~ (32) "Roadway." The paved, improved, or proper driving  
31 portion of a highway designed, or ordinarily used for vehicular travel;

32        ~~((31))~~ (33) "Safety zone." The area or space officially set  
33 apart within a roadway for the exclusive use of pedestrians and which  
34 is protected or is marked or indicated by painted marks, signs,  
35 buttons, standards, or otherwise so as to be plainly discernible;

36        ~~((32))~~ (34) "Sidewalk." That property between the curb lines or  
37 the lateral lines of a roadway, as herein defined, and the adjacent

1 property, set aside and intended for the use of pedestrians or such  
2 portion of private property parallel and in proximity to a highway and  
3 dedicated to use by pedestrians;

4 ~~((+33+))~~ (35) "Solid tire." Every tire of rubber or other  
5 resilient material which does not depend upon inflation with compressed  
6 air for the support of the load thereon;

7 ~~((+34+))~~ (36) "State highway." Every highway as herein defined, or  
8 part thereof, which has been designated as a state highway, or branch  
9 thereof, by legislative enactment;

10 ~~((+35+))~~ (37) "Street car." A vehicle other than a train, as  
11 herein defined, for the transporting of persons or property and  
12 operated upon stationary rails principally within incorporated cities  
13 and towns;

14 ~~((+36+))~~ (38) "Traffic." Pedestrians, ridden or herded animals,  
15 vehicles, street cars, and other conveyances either singly or together  
16 while using any highways for purposes of travel;

17 ~~((+37+))~~ (39) "Traffic control signal." Any traffic device, as  
18 herein defined, whether manually, electrically, or mechanically  
19 operated, by which traffic alternately is directed to stop or proceed  
20 or otherwise controlled;

21 ~~((+38+))~~ (40) "Traffic devices." All signs, signals, markings, and  
22 devices not inconsistent with this title placed or erected by authority  
23 of a public body or official having jurisdiction, for the purpose of  
24 regulating, warning, or guiding traffic;

25 ~~((+39+))~~ (41) "Train." A vehicle propelled by steam, electricity,  
26 or other motive power with or without cars coupled thereto, operated  
27 upon stationary rails, except street cars;

28 ~~((+40+))~~ (42) "Vehicle." Every device capable of being moved upon  
29 a highway and in, upon, or by which any person or property is or may be  
30 transported or drawn upon a highway, excepting devices moved by human  
31 or animal power or used exclusively upon stationary rails or tracks.

32 Words and phrases used herein in the past, present, or future tense  
33 shall include the past, present, and future tenses; words and phrases  
34 used herein in the masculine, feminine, or neuter gender shall include  
35 the masculine, feminine, and neuter genders; and words and phrases used  
36 herein in the singular or plural shall include the singular and plural;  
37 unless the context thereof shall indicate to the contrary.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 47.44 RCW  
2 to read as follows:

3        This chapter does not apply to leases issued for the deployment of  
4 personal wireless service facilities as provided in section 5 of this  
5 act.

6        **Sec. 4.**    RCW 47.52.001 and 1961 c 13 s 47.52.001 are each amended  
7 to read as follows:

8        (1) Unrestricted access to and from public highways has resulted in  
9 congestion and peril for the traveler. It has caused undue slowing of  
10 all traffic in many areas. The investment of the public in highway  
11 facilities has been impaired and highway facilities costing vast sums  
12 of money will have to be relocated and reconstructed.

13        (2) Personal wireless service is a critical part of the state's  
14 infrastructure. The rapid deployment of personal wireless service  
15 facilities is critical to ensure public safety, network access, quality  
16 of service, and rural economic development.

17        (3) It is, therefore, the declared policy of this state to limit  
18 access to the highway facilities of this state in the interest of  
19 highway safety and for the preservation of the investment of the public  
20 in such facilities; except that the use of the rights of way of limited  
21 access facilities must be permitted for the deployment of personal  
22 wireless service facilities.

23        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 47.04 RCW  
24 to read as follows:

25        (1) For the purposes of this section:

26        (a) "Right of way" means all state-owned land within a state  
27 highway corridor.

28        (b) "Service provider" means every corporation, company,  
29 association, joint stock association, firm, partnership, or person  
30 that owns, operates, or manages any personal wireless service facility.  
31 "Service provider" includes a service provider's contractors,  
32 subcontractors, and legal successors.

33        (2) The department shall establish a process for issuing a lease  
34 for the use of the right of way by a service provider and shall require  
35 that telecommunications equipment be co-located on the same structure

1 whenever practicable. Consistent with federal highway administration  
2 approval, the lease must include the right of direct ingress and egress  
3 from the highway for construction and maintenance of the personal  
4 wireless service facility during nonpeak hours if public safety is not  
5 adversely affected. Direct ingress and egress may be allowed at any  
6 time for the construction of the facility if public safety is not  
7 adversely affected and if construction will not substantially interfere  
8 with traffic flow during peak traffic periods. The lease may specify  
9 an indirect ingress and egress to the facility if it is reasonable and  
10 available for the particular location.

11 (3) The cost of the lease must be limited to the fair market value  
12 of the portion of the right of way being used by the service provider  
13 and the direct administrative expenses incurred by the department in  
14 processing the lease application.

15 If the department and the service provider are unable to agree on  
16 the cost of the lease, the service provider may submit the cost of the  
17 lease to binding arbitration by serving written notice on the  
18 department. Within thirty days of receiving the notice, each party  
19 shall furnish a list of acceptable arbitrators. The parties shall  
20 select an arbitrator; failing to agree on an arbitrator, each party  
21 shall select one arbitrator and the two arbitrators shall select a  
22 third arbitrator for an arbitration panel. The arbitrator or panel  
23 shall determine the cost of the lease based on comparable siting  
24 agreements. Costs of the arbitration, including compensation for the  
25 arbitrator's services, must be borne equally by the parties  
26 participating in the arbitration and each party shall bear its own  
27 costs and expenses, including legal fees and witness expenses, in  
28 connection with the arbitration proceeding.

29 (4) The department shall act on an application for a lease within  
30 sixty days of receiving a completed application, unless a service  
31 provider consents to a different time period.

32 (5) The reasons for a denial of a lease application must be  
33 supported by substantial evidence contained in a written record.

34 (6) The department may adopt rules to implement this section.

35 (7) All lease money paid to the department under this section shall  
36 be deposited in the motor vehicle fund created in RCW 46.68.070.

1        NEW SECTION.    **Sec. 6.**    The process for issuing leases required in  
2 section 5(2) of this act must be established by the effective date of  
3 this act.

4        NEW SECTION.    **Sec. 7.**    The department of transportation shall  
5 report to the legislature on the implementation of the lease process.  
6 The department must submit this report to the house technology,  
7 telecommunications and energy committee and the senate technology and  
8 communications committee. An implementation report shall be submitted  
9 by January 15, 2004, and a status report shall be submitted by January  
10 15, 2005.

11       NEW SECTION.    **Sec. 8.**    Applications for wireless site leases  
12 pending on the effective date of this act must be treated as  
13 applications under section 5 of this act with the consent of the  
14 applicant."

EFFECT:        Requires that telecommunications equipment located on  
leased property be co-located on the same structure whenever feasible.

Clarifies the purpose of the lease, and that all ingress and egress  
from a lease site for the purpose of construction may be allowed, so  
long as public safety is not affected and traffic flow is not  
substantially disrupted.

Deletes the requirement that telecommunications equipment within a  
highway right of way not adversely affect public safety.

Establishes a requirement for the Department of Transportation to  
present an implementation and status report to the Legislature on the  
lease process.

--- END ---