

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5977

Chapter 244, Laws of 2003

(partial veto)

58th Legislature
2003 Regular Session

PERSONAL WIRELESS SERVICE FACILITIES--HIGHWAY RIGHTS OF WAY

EFFECTIVE DATE: 7/27/03

Passed by the Senate April 22, 2003
YEAS 42 NAYS 4

BRAD OWEN

President of the Senate

Passed by the House April 11, 2003
YEAS 87 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 12, 2003, with the
exception of sections 1 and 4, which
are vetoed.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
**ENGROSSED SUBSTITUTE SENATE BILL
5977** as passed by the Senate and
the House of Representatives on
the dates hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

May 12, 2003 - 4:25 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5977

AS AMENDED BY THE HOUSE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senate Committee on Technology & Communications (originally sponsored by Senators Esser, Schmidt, Eide, Finkbeiner, Poulsen, Reardon, Stevens, T. Sheldon and Shin)

READ FIRST TIME 03/04/03.

1 AN ACT Relating to the use of state highway rights of way for the
2 deployment of personal wireless service facilities; amending RCW
3 47.04.010 and 47.52.001; adding a new section to chapter 47.44 RCW;
4 adding a new section to chapter 47.04 RCW; and creating new sections.

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

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

**Sec. 1 was vetoed. See message at end of chapter.*

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

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

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

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

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

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

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

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

21 (7) "Combination of vehicles." Every combination of motor vehicle
22 and motor vehicle, motor vehicle and trailer, or motor vehicle and
23 semitrailer;

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

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

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

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

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

7 (b) Where a highway includes two roadways thirty feet or more
8 apart, then every crossing of each roadway of such divided highway by
9 an intersecting highway shall be regarded as a separate intersection.
10 In the event such intersecting highway also includes two roadways
11 thirty feet or more apart, then every crossing of two roadways of such
12 highways shall be regarded as a separate intersection;

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

15 ~~((+12+))~~ (13) "Intersection control area." The intersection area
16 as herein defined, together with such modification of the adjacent
17 roadway area as results from the arc or curb corners and together with
18 any marked or unmarked crosswalks adjacent to the intersection;

19 ~~((+13+))~~ (14) "Laned highway." A highway the roadway of which is
20 divided into clearly marked lanes for vehicular traffic;

21 ~~((+14+))~~ (15) "Local authorities." Every county, municipal, or
22 other local public board or body having authority to adopt local police
23 regulations under the Constitution and laws of this state;

24 ~~((+15+))~~ (16) "Marked crosswalk." Any portion of a roadway
25 distinctly indicated for pedestrian crossing by lines or other markings
26 on the surface thereof;

27 ~~((+16+))~~ (17) "Metal tire." Every tire, the bearing surface of
28 which in contact with the highway is wholly or partly of metal or other
29 hard, nonresilient material;

30 ~~((+17+))~~ (18) "Motor truck." Any motor vehicle, as herein defined,
31 designed or used for the transportation of commodities, merchandise,
32 produce, freight, or animals;

33 ~~((+18+))~~ (19) "Motor vehicle." Every vehicle, as herein defined,
34 which is in itself a self-propelled unit;

35 ~~((+19+))~~ (20) "Multiple lane highway." Any highway the roadway of
36 which is of sufficient width to reasonably accommodate two or more
37 separate lanes of vehicular traffic in the same direction, each lane of

1 which shall be not less than the maximum legal vehicle width, and
2 whether or not such lanes are marked;

3 ~~((+20))~~ (21) "Operator." Every person who drives or is in actual
4 physical control of a vehicle as herein defined;

5 ~~((+21))~~ (22) "Peace officer." Any officer authorized by law to
6 execute criminal process or to make arrests for the violation of the
7 statutes generally or of any particular statute or statutes relative to
8 the highways of this state;

9 ~~((+22))~~ (23) "Pedestrian." Any person afoot;

10 ~~((+23))~~ (24) "Person." Every natural person, firm, copartnership,
11 corporation, association, or organization;

12 ~~((+24))~~ (25) "Personal wireless service." Any federally licensed
13 personal wireless service;

14 (26) "Personal wireless service facilities." Unstaffed facilities
15 that are used for the transmission or reception, or both, of personal
16 wireless services including, but not necessarily limited to, antenna
17 arrays, transmission cables, equipment shelters, and support
18 structures;

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

22 ~~((+25))~~ (28) "Private road or driveway." Every way or place in
23 private ownership and used for travel of vehicles by the owner or those
24 having express or implied permission from the owner, but not by other
25 persons;

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

30 ~~(+27))~~ (29) "Railroad." A carrier of persons or property upon
31 vehicles, other than street cars, operated upon stationary rails, the
32 route of which is principally outside incorporated cities and towns;

33 ~~((+28))~~ (30) "Railroad sign or signal." Any sign, signal, or
34 device erected by authority of a public body or official or by a
35 railroad and intended to give notice of the presence of railroad tracks
36 or the approach of a railroad train;

37 ~~((+29))~~ (31) "Residence district." The territory contiguous to
38 and including the highway, as herein defined, not comprising a business

1 district, as herein defined, when the property on such highway for a
2 continuous distance of three hundred feet or more on either side
3 thereof is in the main improved with residences or residences and
4 buildings in use for business;

5 ~~((+30+))~~ (32) "Roadway." The paved, improved, or proper driving
6 portion of a highway designed, or ordinarily used for vehicular travel;

7 ~~((+31+))~~ (33) "Safety zone." The area or space officially set
8 apart within a roadway for the exclusive use of pedestrians and which
9 is protected or is marked or indicated by painted marks, signs,
10 buttons, standards, or otherwise so as to be plainly discernible;

11 ~~((+32+))~~ (34) "Sidewalk." That property between the curb lines or
12 the lateral lines of a roadway, as herein defined, and the adjacent
13 property, set aside and intended for the use of pedestrians or such
14 portion of private property parallel and in proximity to a highway and
15 dedicated to use by pedestrians;

16 ~~((+33+))~~ (35) "Solid tire." Every tire of rubber or other
17 resilient material which does not depend upon inflation with compressed
18 air for the support of the load thereon;

19 ~~((+34+))~~ (36) "State highway." Every highway as herein defined, or
20 part thereof, which has been designated as a state highway, or branch
21 thereof, by legislative enactment;

22 ~~((+35+))~~ (37) "Street car." A vehicle other than a train, as
23 herein defined, for the transporting of persons or property and
24 operated upon stationary rails principally within incorporated cities
25 and towns;

26 ~~((+36+))~~ (38) "Traffic." Pedestrians, ridden or herded animals,
27 vehicles, street cars, and other conveyances either singly or together
28 while using any highways for purposes of travel;

29 ~~((+37+))~~ (39) "Traffic control signal." Any traffic device, as
30 herein defined, whether manually, electrically, or mechanically
31 operated, by which traffic alternately is directed to stop or proceed
32 or otherwise controlled;

33 ~~((+38+))~~ (40) "Traffic devices." All signs, signals, markings, and
34 devices not inconsistent with this title placed or erected by authority
35 of a public body or official having jurisdiction, for the purpose of
36 regulating, warning, or guiding traffic;

37 ~~((+39+))~~ (41) "Train." A vehicle propelled by steam, electricity,

1 or other motive power with or without cars coupled thereto, operated
2 upon stationary rails, except street cars;

3 ~~((40))~~ (42) "Vehicle." Every device capable of being moved upon
4 a highway and in, upon, or by which any person or property is or may be
5 transported or drawn upon a highway, excepting devices moved by human
6 or animal power or used exclusively upon stationary rails or tracks.

7 Words and phrases used herein in the past, present, or future tense
8 shall include the past, present, and future tenses; words and phrases
9 used herein in the masculine, feminine, or neuter gender shall include
10 the masculine, feminine, and neuter genders; and words and phrases used
11 herein in the singular or plural shall include the singular and plural;
12 unless the context thereof shall indicate to the contrary.

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

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

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

20 ***(1) Unrestricted access to and from public highways has resulted in***
21 ***congestion and peril for the traveler. It has caused undue slowing of***
22 ***all traffic in many areas. The investment of the public in highway***
23 ***facilities has been impaired and highway facilities costing vast sums***
24 ***of money will have to be relocated and reconstructed.***

25 ***(2) Personal wireless service is a critical part of the state's***
26 ***infrastructure. The rapid deployment of personal wireless service***
27 ***facilities is critical to ensure public safety, network access, quality***
28 ***of service, and rural economic development.***

29 ***(3) It is, therefore, the declared policy of this state to limit***
30 ***access to the highway facilities of this state in the interest of***
31 ***highway safety and for the preservation of the investment of the public***
32 ***in such facilities; except that the use of the rights of way of limited***
33 ***access facilities must be permitted for the deployment of personal***
34 ***wireless service facilities.***

*Sec. 4 was vetoed. See message at end of chapter.

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

3 (1) For the purposes of this section:

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

6 (b) "Service provider" means every corporation, company,
7 association, joint stock association, firm, partnership, or person
8 that owns, operates, or manages any personal wireless service facility.
9 "Service provider" includes a service provider's contractors,
10 subcontractors, and legal successors.

11 (2) The department shall establish a process for issuing a lease
12 for the use of the right of way by a service provider and shall require
13 that telecommunications equipment be co-located on the same structure
14 whenever practicable. Consistent with federal highway administration
15 approval, the lease must include the right of direct ingress and egress
16 from the highway for construction and maintenance of the personal
17 wireless service facility during nonpeak hours if public safety is not
18 adversely affected. Direct ingress and egress may be allowed at any
19 time for the construction of the facility if public safety is not
20 adversely affected and if construction will not substantially interfere
21 with traffic flow during peak traffic periods. The lease may specify
22 an indirect ingress and egress to the facility if it is reasonable and
23 available for the particular location.

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

28 If the department and the service provider are unable to agree on
29 the cost of the lease, the service provider may submit the cost of the
30 lease to binding arbitration by serving written notice on the
31 department. Within thirty days of receiving the notice, each party
32 shall furnish a list of acceptable arbitrators. The parties shall
33 select an arbitrator; failing to agree on an arbitrator, each party
34 shall select one arbitrator and the two arbitrators shall select a
35 third arbitrator for an arbitration panel. The arbitrator or panel
36 shall determine the cost of the lease based on comparable siting
37 agreements. Costs of the arbitration, including compensation for the
38 arbitrator's services, must be borne equally by the parties

1 participating in the arbitration and each party shall bear its own
2 costs and expenses, including legal fees and witness expenses, in
3 connection with the arbitration proceeding.

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

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

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

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

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

15 NEW SECTION. **Sec. 7.** The department of transportation shall
16 report to the legislature on the implementation of the lease process.
17 The department must submit this report to the house technology,
18 telecommunications and energy committee and the senate technology and
19 communications committee. An implementation report shall be submitted
20 by January 15, 2004, and a status report shall be submitted by January
21 15, 2005.

22 NEW SECTION. **Sec. 8.** Applications for wireless site leases
23 pending on the effective date of this act must be treated as
24 applications under section 5 of this act with the consent of the
25 applicant.

Passed by the Senate April 22, 2003.

Passed by the House April 11, 2003.

Approved by the Governor May 12, 2003, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 12, 2003.

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

"I am returning herewith, without my approval as to sections 1 and
4, Engrossed Substitute Senate Bill No. 5977 entitled:

"AN ACT Relating to the use of state highway rights of way for
the deployment of personal wireless service facilities;"

This bill establishes procedures for the Department of
Transportation to permit siting of wireless telecommunications
facilities within state highway rights of way. This is important
legislation that will help expand telecommunications services in our
state and promote economic development.

Section 4 of this bill would have amended RCW 47.52.001, which is a declaration of state policy to limit access to the highway facilities of the state in the interest of highway safety and for the preservation of the investment of the public in such facilities. The amendment would have created an exception to this longstanding policy by stating that the use of rights of way of limited access facilities "must be permitted" for the deployment of personal wireless facilities, apparently without qualification. Section 1 contains intent language that is largely the same as that contained in section 4. Because these sections can be read to suggest that deployment of personal wireless facilities is inconsistent with the state's interest in highway safety, and that telecommunications deployment should take precedence over it, I am compelled to veto them.

I agree with the Legislature that personal wireless service is a critical part of the state's infrastructure, and I believe that Department of Transportation policy should acknowledge this. However, state policy should also ensure that telecommunications deployment be achieved along state highways without adversely affecting highway safety. For this reason, I believe the current language in RCW 47.52.001, which "limits" but by no means prohibits access to public highways, is the better statement of policy than those contained in sections 1 and 4 of this bill.

For these reasons, I have vetoed sections 1 and 4 of Engrossed Substitute Senate Bill No. 5977.

With the exception of sections 1 and 4, Engrossed Substitute Senate Bill No. 5977 is approved."