

2 **ESSB 6515 - H COMM AMD NOT ADOPTED 3-06-98**

3 By Committee on Energy & Utilities

4

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

7 "NEW SECTION. **Sec. 1.** The legislature finds that technological  
8 developments have made telecommunications evermore important to the  
9 health, safety, and welfare of the people of this state and to the  
10 efficient and cost-effective conduct of the state's economy. The pace  
11 of technological change is expected to continue and increase in the  
12 future. Massive investment in telecommunications infrastructure will  
13 be required to make the benefits of technological development available  
14 to the people of the state. This is particularly true if the modern  
15 infrastructure is to reach all parts of the state, rural as well as  
16 urban.

17 The legislature also finds it necessary to clarify policies on use  
18 of public rights of way in order to recognize and foster the changes  
19 that are occurring in telecommunications.

20 The legislature declares that government policies for the use of  
21 public rights of way should preserve a safe and efficient  
22 transportation system and encourage investment in and development of  
23 the infrastructure needed for leading-edge applications in  
24 telecommunications. These policies will also serve as an important  
25 means of economic development, allowing the state to remain competitive  
26 in national and international markets and to attract jobs to, and  
27 develop robust economies in, its rural and underdeveloped areas.

28 The legislature further declares that growth in economic activity  
29 resulting from right of way policies that are consistent with the  
30 state's transportation needs and encourage the deployment of  
31 telecommunications infrastructure will create new jobs and business  
32 opportunities as well as bring better service and lower prices to  
33 consumers. State and local government will benefit by the availability  
34 of improved services and the creation of a larger and more stable  
35 revenue base.

1 The legislature declares that rights of way are dedicated to and  
2 purchased or held by the government for the use of the public in  
3 transportation, the delivery of utility services, and commerce; that  
4 government is responsible for protecting these rights of way for these  
5 public purposes; and that the use of these rights of way by  
6 telecommunications facilities is important for the protection and  
7 advancement of the public's welfare.

8 The legislature intends that governments rely on construction and  
9 development regulations that apply generally and uniformly to  
10 construction both inside and outside the public right of way to the  
11 extent possible in connection with use of the public right of way for  
12 telecommunication facilities. It is the intent of the legislature that  
13 if franchises are used, they only be used to coordinate construction  
14 and development regulations, permits, and the requirements of such  
15 other laws as specifically apply to rights of way and that franchises  
16 not be used to impose duplicative requirements on authorized users of  
17 the rights of way.

18 It is the intent of the legislature to promote policies that  
19 recognize the introduction of competition in telecommunications, and  
20 that will result in new entrants into this industry, without needlessly  
21 changing or supplanting existing codes, regulations, and standards. As  
22 additional companies seek to locate their facilities in public rights  
23 of way, it is incumbent on local government to establish uniform,  
24 clear, competitively neutral, and nondiscriminatory rules for use of  
25 the public right of way. However, the legislature does not intend for  
26 any provision of this act to be construed as changing existing  
27 authority of counties, cities, or towns to regulate through local  
28 zoning authority consistent with these principles.

29 It is the policy of the legislature that fees and charges levied by  
30 local governments on the telecommunications industry for use of public  
31 rights of way and for permits and licenses required for construction,  
32 repair, maintenance, use, and operation of facilities for  
33 telecommunications shall not be a means of raising general revenue. It  
34 is the intent of the legislature and the policy of this state that fees  
35 for necessary permits and licenses do not exceed the actual costs  
36 incurred in receiving, considering, and issuing the permits and  
37 licenses, and inspecting work in the right of way. It is the intent of  
38 the legislature and the policy of this state that fees for necessary  
39 permits and licenses do not exceed the actual costs incurred in

1 receiving, considering, and issuing permits and licenses, in inspecting  
2 plans for and construction in the right of way, in maintaining the  
3 records necessary to identify facilities located in the right of way  
4 and to prevent interferences among facilities, and in preparing a  
5 detailed statement under chapter 43.21C RCW. The legislature does not  
6 intend this act to change the law governing repair and restoration of  
7 the right of way made necessary by construction, repair maintenance,  
8 and other work in the right of way by authorized users.

9 It is the intent of the legislature that no provision of this act  
10 be construed as changing existing authority of the state, counties,  
11 cities, and towns to regulate by the exercise of local or state police  
12 power in the furtherance of the public health, safety, and welfare.

13 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
14 otherwise, the definitions in this section apply throughout chapter  
15 . . . , Laws of 1998 (this act).

16 (1) "Authorized facilities" means all of the plant, equipment,  
17 fixtures, appurtenances, antennas, and other facilities necessary to  
18 furnish and deliver telecommunications services, including but not  
19 limited to poles with crossarms, poles without crossarms, wires, lines,  
20 conduits, cables, communication and signal lines and equipment, braces,  
21 guys, anchors, vaults, and all attachments, appurtenances, and  
22 appliances necessary or incidental to the distribution and use of  
23 telecommunications services.

24 (2) "Authorized user" means any person providing telecommunications  
25 or cable television service for hire, sale, or resale to the general  
26 public, consistent with federal, state, and local law.

27 (3) "Cable television service" means the one-way broadcast or cable  
28 transmission of television or radio signals.

29 (4) "Public right of way" means roads, streets, and highways,  
30 including limited access highways but does not include structures  
31 located within the right of way, lands managed by the state parks and  
32 recreation commission, federally granted trust lands, or forest board  
33 trust lands. "Public right of way" does not include private property  
34 except to the extent easement rights have been granted for roads,  
35 streets, and highways.

36 (5) "Telecommunications service" means the transmission of  
37 information by wire, radio, optical cable, electromagnetic, or other  
38 similar means for the public. For the purpose of this subsection,

1 "information" means knowledge or intelligence represented by any form  
2 of writing, signs, signals, pictures, sounds, or any other symbols.

3 NEW SECTION. **Sec. 3.** (1) An authorized user may erect, construct,  
4 support, attach, connect, stretch authorized facilities between,  
5 maintain, repair, replace, and operate and use authorized facilities  
6 in, upon, over, under, along, across, and through public rights of way  
7 at its own expense. These authorized facilities shall be installed and  
8 maintained within public rights of way in such a manner and at such  
9 points as not to incommode the public use of the rights of way, and in  
10 accordance with federal and state laws and appropriate and applicable  
11 codes, regulations, and standards adopted by the state and by counties,  
12 cities, and towns not inconsistent with those laws. In addition, a  
13 personal wireless communication facility may not obstruct or otherwise  
14 interfere with views of significant features observable from a highway,  
15 road, or street. An authorized user shall ensure that its authorized  
16 facilities meet, and are maintained in a manner so that the facilities  
17 continue to meet, applicable federal and state safety laws and  
18 standards including, but not limited to, collision standards.

19 (2) Nothing in this section amends, repeals, or otherwise modifies  
20 any law requiring authorized users to obtain all permits required for  
21 the installation of authorized facilities as required by the state and  
22 by counties, cities, and towns.

23 (3) Nothing in this section creates, modifies, or diminishes the  
24 priority of use for authorized facilities over other users of the right  
25 of way for utility purposes or other purposes subject to local  
26 franchise or permit.

27 (4) Nothing in this section creates a right to attach to or use a  
28 facility or structure, or to use public property that is not a public  
29 right of way, without the explicit approval of, and under such  
30 conditions as may be agreed to by, the owner of such a facility,  
31 structure, or property.

32 (5) Nothing in this section shall be construed as creating or  
33 expanding: (a) Liabilities of the state, counties, cities, or towns  
34 regarding the construction, installation, maintenance, or removal of  
35 authorized facilities; or (b) duties owed by the state, counties,  
36 cities, or towns to authorized users to construct, install, maintain,  
37 or remove authorized facilities. In addition, nothing in this section

1 shall be construed as extending any liability of the state, counties,  
2 cities, or towns to any third party user of authorized facilities.

3 NEW SECTION. **Sec. 4.** (1) Neither the state nor any county, city,  
4 or town may adopt or enforce regulations relating to authorized users  
5 in public rights of way that:

6 (a) Discriminate or have the effect of discriminating among  
7 similarly situated authorized users or authorized facilities;

8 (b) Conflict with: (i) Federal and state public service laws; (ii)  
9 federal or state laws, rules, and regulations that specifically apply  
10 to the design, construction, and operation of authorized facilities; or  
11 (iii) federal or state worker safety and public safety laws, rules, and  
12 regulations;

13 (c) Regulate services of authorized users based upon the content or  
14 type of signals that are carried or are capable of being carried over  
15 the telecommunications facilities, except where specifically authorized  
16 in state or federal law;

17 (d) Impose regulatory requirements that regulate the services and  
18 business operations of the authorized user, except where specifically  
19 authorized in state or federal law; or

20 (e) Provide for a period that exceeds one hundred twenty days  
21 between filing a complete application for a permit and issuance or  
22 denial of the permit, or otherwise unreasonably delay work by  
23 authorized users on authorized facilities in the public right of way  
24 except that this subsection does not preclude (i) specific procedures  
25 to assure cooperation of and among authorized users doing work within  
26 the right of way that provide reasonable opportunities for scheduling  
27 of work, including advance notice of planned work, and do not impose  
28 unreasonable barriers to entry; and (ii) a schedule established with  
29 the agreement of the applicant. Before issuing a permit, the state,  
30 county, city, or town shall make a finding that approval of the permit  
31 is consistent with easement rights, if any, granted for public right of  
32 way.

33 (2) To the maximum extent feasible, if franchises are applicable to  
34 telecommunications companies, they shall be used only to coordinate  
35 construction and development regulations and permits, and requirements  
36 imposed and permits required under other laws relating to streets,  
37 roads, and highways. Franchises shall not be used to require

1 additional permits, conditions, or requirements that duplicate those  
2 required under other laws.

3 (3) Counties, cities, and towns are encouraged to develop  
4 procedures to provide interim authorizations for the installation of  
5 authorized facilities and process a complete permit, where the timeline  
6 to complete such a permit or an agreement is expected to exceed one  
7 hundred twenty days, but the issuance and renewals of franchises and  
8 related permits for cable television service shall be governed by  
9 federal law.

10 (4) Counties, cities, and towns are encouraged to work together  
11 with industry, using the experience of the industry and those counties,  
12 cities, and towns that have adopted wireless regulations, to develop by  
13 January 1, 1999, a model ordinance for the siting of wireless  
14 telecommunications facilities.

15 NEW SECTION. **Sec. 5.** (1) Except as provided in subsection (2) of  
16 this section, neither the state nor any county, city, or town shall  
17 place a moratorium on the acceptance and processing of applications,  
18 permitting, construction, maintenance, repair, replacement, extension,  
19 operation, or use of any personal wireless communication facility that  
20 is authorized under sections 2 through 6 of this act following the  
21 effective date of this section. An existing moratorium that expires  
22 following the effective date of this section shall not be extended in  
23 whole or in part.

24 (2)(a) A city or town incorporated after the effective date of this  
25 section shall be permitted to impose one moratorium that shall not  
26 exceed one hundred eighty days and shall not be extendable.

27 (b) Upon the expiration of a moratorium authorized by (a) of this  
28 subsection, the authorizing city or town is subject to subsection (1)  
29 of this section.

30 (3) Except as otherwise provided in subsection (2) of this section,  
31 this section applies to moratoriums one hundred twenty days after the  
32 adoption of a model ordinance under section 4(3) of this act or on  
33 April 1, 1999, whichever occurs first.

34 (4) This section expires April 1, 2004.

35 NEW SECTION. **Sec. 6.** (1) Neither the state nor any county, city,  
36 or town may impose, demand, or accept any compensation from an  
37 authorized user, whether by fee, charge, license, rent, franchise, or

1 use of authorized facilities at other than established, industry  
2 standard charges, provision of in-kind services by authorized users  
3 without compensation or at below-market rates, or by any other manner  
4 for the use or occupancy of public rights of way for authorized  
5 facilities.

6 (2) Except as otherwise provided in this section, no fee, charge,  
7 or other compensation permitted for any act authorized by sections 2  
8 through 6 of this act may recover more than the direct administrative  
9 expenses actually incurred by the state, county, city, or town in: (a)  
10 Receiving and approving a construction or development permit, including  
11 notifying adjoining property owners as required by section 7 of this  
12 act; (b) inspecting plans and construction; (c) maintaining records of  
13 facilities located in the right of way; or (d) preparing a detailed  
14 statement under chapter 43.21C RCW.

15 (3) This section does not diminish, increase, alter, or otherwise  
16 affect the authority of the state or of counties, cities, or towns with  
17 respect to the repair or restoration of rights of way.

18 (4) This section does not preclude a county, city, or town from  
19 issuing franchises and imposing franchise requirements and fees, and  
20 enforcing mutually agreed-upon franchise terms and conditions, for  
21 cable services as allowed by federal law.

22 (5) This section does not amend, repeal, or modify any law  
23 governing the taxing authority of cities or towns.

24 (6) The limitations in this section do not apply to agreements for  
25 the use of public property that is not a public right of way or for the  
26 use of facilities in the right of way.

27 NEW SECTION. **Sec. 7.** A local government by ordinance or  
28 resolution shall provide for administrative review and approval and  
29 exclude the following project permits from the provisions of RCW  
30 36.70B.060 through 36.70B.090, 36.70B.110, and 36.70B.130: (1) Siting  
31 of a personal wireless communication facility in a public right of way,  
32 if the facility is a whip antenna of no more than six feet and is to be  
33 mounted on an existing utility pole or other existing structure; or (2)  
34 siting of an authorized facility as defined in section 2 of this act in  
35 a public right of way if that facility will be camouflaged or entirely  
36 screened from view.

1        NEW SECTION.    **Sec. 8.**    A county, city, or town shall notify  
2 adjoining property owners when an authorized facility is to be erected  
3 or constructed in, upon, over, under, along, across, or through a  
4 public right of way.

5        NEW SECTION.    **Sec. 9.**    Any person with a concern about an  
6 authorized facility located in a public right of way may file a report  
7 of the concern with the clerk of the board of county commissioners if  
8 the right of way is located in an unincorporated area, with the city  
9 clerk, if the right of way is located in a city, or with the town clerk  
10 if the right of way is located in a town. If the authorized facility  
11 that is the subject of the concern is located in a public right of way  
12 managed by a state agency, the clerk shall forward a copy of the report  
13 to that agency.

14        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 35.21 RCW  
15 to read as follows:

16        Each city or town is subject to the requirements and restrictions  
17 regarding telecommunications services and public rights of way under  
18 sections 2 through 9 of this act. However, sections 2 through 9 of  
19 this act do not limit or modify the applicability of chapters 35.77,  
20 35.78, 36.70A, and 43.21C RCW.

21        NEW SECTION.    **Sec. 11.**    A new section is added to chapter 35A.21  
22 RCW to read as follows:

23        Each code city is subject to the requirements and restrictions  
24 regarding telecommunications services and public rights of way under  
25 sections 2 through 9 of this act. However, sections 2 through 9 of  
26 this act do not limit or modify the applicability of chapter 36.70A  
27 RCW.

28        NEW SECTION.    **Sec. 12.**    A new section is added to chapter 36.01 RCW  
29 to read as follows:

30        Each county is subject to the requirements and restrictions  
31 regarding telecommunications services and public rights of way under  
32 sections 2 through 9 of this act. However, sections 2 through 9 of  
33 this act do not limit or modify the applicability of chapters 36.55,  
34 36.70, 36.70A, 36.75, 36.78, 36.80, 36.81, and 36.86 RCW.



1        NEW SECTION.    **Sec. 13.** Sections 2 through 6 of this act constitute  
2 a new chapter in Title 47 RCW.

3        NEW SECTION.    **Sec. 14.** If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected."

7        Correct the title.

--- END ---