

2 **ESSB 6515 - H AMD 1184 NOT CONSIDERED**
3 By Representatives Hankins and Crouse

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

7 "NEW SECTION. **Sec. 1.** The definitions in this section apply
8 throughout chapter . . ., Laws of 1998 (this act) unless the context
9 clearly requires otherwise.

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

19 (2) "Authorized user" means: Every corporation, company,
20 association, joint stock association, partnership, and person; their
21 lessees, trustees, or receivers appointed by any court whatsoever; and
22 every city or town owning, operating, or managing any facilities used
23 to provide telecommunications or cable television service for hire,
24 sale, or resale to the general public within this state.

25 (3) "Cable television service" means the one-way transmission to
26 subscribers of video programming or other programming service and
27 subscriber interaction, if any, that is required for the selection or
28 use of such video programming or other programming service.

29 (4) "Limited access highways" means those public rights of way
30 designated as limited access under authority of the laws of the state
31 of Washington.

32 (5) "Public right of way" means public roads, streets, and
33 highways, but does not include:

34 (a) Limited access highways;

35 (b) Land dedicated for roads, streets, and highways not opened or
36 improved for motor vehicle use;

1 (c) Structures located within the right of way;
2 (d) Federally granted trust lands and the forest board trust lands;
3 (e) Federally granted railroad rights of way acquired under 43
4 U.S.C. Sec. 912 and related provisions of federal law that are not open
5 for motor vehicle use; or

6 (f) Lands owned or managed by the state parks and recreation
7 commission.

8 (6) "Telecommunications service" means the transmission of
9 information by wire, radio, optical cable, electromagnetic, or other
10 similar means for the general public. For the purpose of chapter
11 . . ., Laws of 1998 (this act), "telecommunications service" excludes
12 the over-the-air transmission of broadcast television or broadcast
13 radio signals. For the purpose of this subsection, "information" means
14 knowledge or intelligence represented by any form of writing, signs,
15 signals, pictures, sounds, or any other symbols.

16 NEW SECTION. **Sec. 2.** (1) The state department of transportation,
17 counties, cities, or towns, consistent with state law, shall not
18 unreasonably deny the use of public right of way for the purposes of
19 locating authorized facilities for telecommunications services or cable
20 television services. An authorized user shall ensure that:

21 (a) The authorized facilities comply with applicable land use and
22 construction codes, regulations, standards, and franchise requirements
23 adopted by the state, counties, cities, and towns not inconsistent with
24 state law or easement agreements for the use of private property;

25 (b) The authorized facilities are installed and maintained within
26 public rights of way in such manner and at such points so as not to
27 incommode the public use of the rights of way;

28 (c) The authorized users obtain all permits required for the
29 installation of authorized facilities as required by the state,
30 counties, cities, and towns;

31 (d) The authorized facilities are installed, constructed,
32 maintained, and operated at the expense and liability of the authorized
33 user;

34 (e) The use of the public right of way by authorized facilities
35 does not create, expand, or extend liability of the state, counties,
36 cities, or towns to a third party user of authorized facilities; and

37 (f) The use of a facility or structure in the public right of way,
38 or attachment to it, or the use of public property that is not public

1 right of way has received the explicit approval of, and is under such
2 conditions as may be agreed to by, the owner of the facility,
3 structure, or property.

4 (2) The reasons for a denial of the use of the right of way shall
5 be clearly stated in writing.

6 (3) Nothing in this section creates, modifies, or diminishes the
7 priority of use for authorized facilities over other users of the right
8 of way for other purposes.

9 NEW SECTION. **Sec. 3.** (1) Counties, cities, and towns may not
10 adopt or enforce regulations specifically relating to authorized users
11 in public rights of way that:

12 (a) Impose requirements that regulate the services and business
13 operations of the authorized user, except where specifically authorized
14 in state or federal law;

15 (b) Conflict with federal or state laws, rules, and regulations
16 that specifically apply to the design, construction, and operation of
17 authorized facilities or with federal or state worker safety or public
18 safety laws, rules, and regulations; or

19 (c) Regulate services of authorized users based upon the content or
20 type of signals that are carried or are capable of being carried over
21 the telecommunications facilities, except where specifically authorized
22 in state or federal law.

23 (2) Nothing in this section limits the authority of the counties,
24 cities, and towns to regulate the placement of authorized facilities
25 through local zoning authority, if:

26 (a) The regulations do not prohibit the placement of authorized
27 facilities within the county, city, or town, or within county, city or
28 town public rights of way, nor have the effect of a barrier to entry as
29 prohibited by the telecommunications act of 1996, P.L. 104-104 (110
30 Stat. 56); and

31 (b) The regulations do not unreasonably discriminate or have the
32 effect of unreasonably discriminating between similarly situated
33 authorized users or authorized facilities.

34 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (2) of
35 this section, a county, city, or town shall not place a moratorium on
36 the acceptance and processing of applications, permitting,
37 construction, maintenance, repair, replacement, extension, operation,

1 or use of any personal wireless communication facility after the
2 effective date of this section. The state department of transportation
3 shall not place a moratorium on public rights of way as defined in
4 section 1 of this act. An existing moratorium that expires after the
5 effective date of this section shall not be extended in whole or in
6 part.

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

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

13 (3) Counties, cities, and towns are encouraged to work together
14 with industry, using the experience of the industry and those counties,
15 cities, and towns that have adopted wireless regulations, to develop
16 policies and provisions for the siting of wireless telecommunications
17 facilities.

18 (4) This section applies beginning April 1, 1999.

19 (5) This section expires October 1, 2003.

20 NEW SECTION. **Sec. 5.** (1) The state department of transportation,
21 counties, cities, and towns shall adopt procedures for the issuance of
22 permits for authorized facilities within one hundred twenty days from
23 an applicant's filing of a complete application for a permit until
24 issuance of the permit, except:

25 (a) Where required by specific procedures to assure cooperation of
26 work within the right of way that provides reasonable opportunities for
27 scheduling of work, including advance notice of planned work, and that
28 do not impose unreasonable barriers to entry as prohibited by the
29 telecommunications act of 1996, P.L. 104-104 (110 Stat. 56);

30 (b) With the agreement of the applicant;

31 (c) Where permits require the approval of another unit of
32 government that cannot be obtained within the one hundred twenty-day
33 period;

34 (d) Where franchises require the approval of the legislative body
35 of the jurisdiction, if procedures allow the interim installation of
36 authorized facilities where the timeline to complete such a franchise
37 agreement is expected to exceed one hundred twenty days; or

1 (e) That issuance and renewals of franchises and related permits
2 for cable television service are governed by federal law.

3 (2) For purposes of this section, the state department of
4 transportation, counties, cities, and towns shall adopt by rule or
5 ordinance the specific requirements necessary to deem an application
6 for a permit complete, and shall provide a copy of the requirements to
7 all applicants.

8 NEW SECTION. **Sec. 6.** (1) Unless the legislative authority of a
9 county, city, or town has adopted an ordinance before January 1, 1998,
10 a county, city, or town shall not begin installation, or cause to be
11 installed, equipment, facilities, or other infrastructure, including
12 but not limited to conduit, for the purpose of allowing a county, city,
13 or town to provide telecommunications or cable television services to
14 the general public. This section shall not affect local government
15 programming for public, educational, and government access and for
16 institutional networks that serve the local government entity for
17 public purposes.

18 (2) This section expires June 30, 1999.

19 NEW SECTION. **Sec. 7.** Except as provided in section 6 of this act,
20 chapter . . . , Laws of 1998 (this act) does not amend, limit, repeal,
21 or otherwise modify the authority of cities or counties to regulate
22 cable television services as provided under federal law.

23 **Sec. 8.** RCW 35.21.860 and 1983 2nd ex.s. c 3 s 39 are each amended
24 to read as follows:

25 (1) No city or town may impose a franchise fee or any other fee or
26 charge of whatever nature or description upon the light and power, or
27 gas distribution businesses, as defined in RCW 82.16.010, (~~or~~
28 ~~telephone business, as defined in RCW 82.04.065,~~) except that (a) a
29 tax authorized by RCW 35.21.865 may be imposed and (b) a fee may be
30 charged to such businesses that recovers actual administrative expenses
31 incurred by a city or town that are directly related to receiving and
32 approving a permit, license, and franchise, to inspecting plans and
33 construction, or to the preparation of a detailed statement pursuant to
34 chapter 43.21C RCW.

35 (2) Subsection (1) of this section does not prohibit franchise fees
36 imposed on an electrical energy, natural gas, or telephone business, by

1 contract existing on April 20, 1982, with a city or town, for the
2 duration of the contract, but the franchise fees shall be considered
3 taxes for the purposes of the limitations established in RCW 35.21.865
4 and 35.21.870 to the extent the fees exceed the costs allowable under
5 subsection (1) of this section.

6 (3) No city or town may impose a franchise fee or any other fee,
7 charge or compensation of whatever nature or description upon an
8 authorized user, as defined in section 1 of this act, for use of public
9 rights of way for authorized facilities, except as provided in section
10 10 of this act.

11 **Sec. 9.** RCW 36.55.010 and 1963 c 4 s 36.55.010 are each amended to
12 read as follows:

13 Any board of county commissioners may grant franchises to persons
14 or private or municipal corporations to use the right of way of county
15 roads in their respective counties for the construction and maintenance
16 of waterworks, gas pipes, ~~((telephone, telegraph,))~~ authorized
17 facilities as defined in section 1 of this act and electric light
18 lines, sewers, and any other such facilities, except that no franchise
19 fee or any other fee or charge or compensation of whatever nature or
20 description may be imposed for the use of the public right of way for
21 authorized facilities except as provided in section 10 of this act.

22 NEW SECTION. **Sec. 10.** (1) After the effective date of this
23 section, neither the state department of transportation, nor any
24 county, city, or town may adopt any ordinance, regulation, or rule that
25 imposes upon an authorized user any franchise fee or any other fee or
26 charge not in effect on the effective date of this section for use of
27 public rights of way, as defined in section 1 of this act, except that:

28 (a) A city or town may impose a tax allowed by RCW 35.21.865 and
29 35.21.870;

30 (b) The state department of transportation or a county, city, or
31 town may charge a fee that: (i) Recovers actual administrative
32 expenses incurred by the agency, county, city, or town that are
33 directly related to receiving and approving a permit, license, or
34 franchise, to inspecting plans and construction, or to the preparation
35 of a detailed statement under chapter 43.21C RCW; and (ii) recovers the
36 costs of maintenance, repair, or restoration of the rights of way that

1 are reasonably related to the impact of the installation, maintenance,
2 and use of the authorized facility;

3 (c) A county, city, or town may issue franchises and impose
4 franchise requirements and fees for cable services as allowed by
5 federal law; or

6 (d) The state, counties, cities, and towns may enter into leases
7 for use of structures located in the rights of way by wireless
8 telecommunication service providers that are mutually acceptable to the
9 parties.

10 (2) This section expires June 30, 1999.

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

13 Each code city is subject to the requirements and restrictions
14 regarding telecommunications services and public rights of way under
15 sections 1 through 7 of this act and RCW 35.21.860.

16 NEW SECTION. **Sec. 12.** Sections 8 through 10 of this act expire
17 June 30, 1999.

18 NEW SECTION. **Sec. 13.** Sections 1 through 7 and 10 of this act
19 constitute a new chapter in Title 47 RCW.

20 NEW SECTION. **Sec. 14.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of the
22 state government and its existing public institutions, and takes effect
23 immediately."

24 Correct the title.

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