

2 **ESSB 6515** - H COMM AMD TO EN COMM AMD (H5318.1) **NOT ADOPTED**
3 By Committee on Transportation Policy & Budget

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5 On page 1, beginning on line 7 of the amendment, strike the entire
6 amendment and insert the following:

7 "NEW SECTION. **Sec. 1.** (1) The legislature finds that the federal
8 telecommunications act of 1996 has provided the opportunity to expand
9 the uses of publicly owned rights of way to allow for the provision of
10 enhanced telecommunications services. Presently, providers of these
11 services are confronted with differing development regulations and
12 franchise requirements across this state's two hundred seventy-seven
13 cities and thirty-nine counties. The legislature finds the array of
14 varying regulations and requirements to be a significant barrier to
15 enhancing the telecommunications services to the citizens of the state,
16 and desires more uniformity and reasonableness in the application of
17 these regulations. However, states that have recently enacted laws
18 relating to the use of public rights of way for telecommunications
19 services have been challenged in court. Court decisions and relevant
20 federal communications commission rulings will be issued after the
21 legislature adjourns. Therefore, the most prudent course of action
22 requires further work and cooperation between public policymakers,
23 government administrators, and the telecommunications industry to
24 effectuate the policy of this state.

25 (2) The legislature hereby declares it the policy of the state of
26 Washington to: Encourage the development of telecommunications
27 infrastructure without violating the letter or spirit of Article VIII,
28 sections 5 and 7 of the state Constitution; reduce regulatory obstacles
29 that inhibit investment in the state's telecommunications system;
30 maintain safe public roads, highways, and streets; and provide
31 responsible stewardship of the public's investment in its rights of
32 way.

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

1 (1) "Authorized facilities" means all of the plant, equipment,
2 fixtures, appurtenances, antennas, and other facilities necessary to
3 furnish and deliver telecommunications services and cable television
4 services, including but not limited to poles with crossarms, poles
5 without crossarms, wires, lines, conduits, cables, communication and
6 signal lines and equipment, braces, guys, anchors, vaults, and all
7 attachments, appurtenances, and appliances necessary or incidental to
8 the distribution and use of telecommunications services and cable
9 television services.

10 (2) "Authorized user" means every corporation, company,
11 association, joint stock association, partnership, and person, their
12 lessees, trustees, or receivers appointed by any court whatsoever, and
13 every city or town owning, operating, or managing any facilities used
14 to provide telecommunications for hire, sale, or resale to the general
15 public within this state.

16 (3) "Cable television service" means the one-way transmission to
17 subscribers of video programming or other programming service and
18 subscriber interaction, if any, which is required for the selection of
19 use of such video programming or other programming service.

20 (4) "Limited access highways" means those public rights of way
21 designated as limited access under authority of the laws of the state
22 of Washington.

23 (5) "Public right of way" means roads, streets, and highways, and
24 does not include:

25 (a) Limited access highways;

26 (b) Unopened, unimproved land dedicated for roads, streets, and
27 highways;

28 (c) Structures located within the right of way;

29 (d) Federally granted trust lands and the forest board trust lands;

30 (e) Federally granted railroad rights of way acquired under 43
31 U.S.C. Sec. 912 and related provisions of federal law; and

32 (f) Lands owned or managed by the state parks and recreation
33 commission.

34 (6) "Telecommunications service" means the transmission of
35 information by wire, radio, optical cable, electromagnetic, or other
36 similar means for the general public. For the purpose of chapter
37 . . ., Laws of 1998 (this act), telecommunications services excludes
38 the over-the-air transmission of broadcast television or radio signals.
39 For the purpose of this subsection, "information" means knowledge or

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

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

5 (1) No city or town may impose a franchise fee or any other fee
6 ~~((or))~~, charge, or compensation of whatever nature or description upon
7 the light and power, or gas distribution businesses, as defined in RCW
8 82.16.010, or ~~((telephone business, as defined in RCW 82.04.065))~~ an
9 authorized user for the use of public right of way, except that (a) a
10 tax authorized by RCW 35.21.865 may be imposed and (b) ~~((a fee))~~ fees
11 and other requirements may be ~~((charged to))~~ imposed on such businesses
12 ~~((that recovers actual administrative expenses incurred by a city or~~
13 ~~town that are directly related to receiving and approving a permit,~~
14 ~~license, and franchise, to inspecting plans and construction, or to the~~
15 ~~preparation of a detailed statement pursuant to chapter 43.21C RCW))~~ as
16 allowed in section 4 of this act.

17 (2) Subsection (1) of this section does not prohibit franchise fees
18 imposed on an electrical energy, natural gas, or telephone business, by
19 contract existing on April 20, 1982, with a city or town, for the
20 duration of the contract, but the franchise fees shall be considered
21 taxes for the purposes of the limitations established in RCW 35.21.865
22 and 35.21.870 to the extent the fees exceed the costs allowable under
23 subsection (1) of this section.

24 NEW SECTION. **Sec. 4.** (1) Cities and towns may impose fees to
25 recover:

26 (a) The direct administrative expenses actually incurred by the
27 state, county, city, or town in receiving and approving a construction
28 or development permit, inspecting plans and construction, and
29 development and maintenance of record systems, and excavation
30 authorizations systems;

31 (b) Costs of ongoing maintenance, repair, or restoration of the
32 right of way reasonably related to the impact of the installation,
33 maintenance, and use of the authorized facility or the facilities of
34 light and power, or gas distribution businesses, as defined in RCW
35 82.16.010;

1 (c) Ongoing monitoring activities and apportioned administrative
2 overhead, quantified and documented using standard accounting
3 practices; and

4 (d) Preparing a detailed statement pursuant to chapter 43.21C RCW.

5 (2) This section expires April 1, 1999.

6 NEW SECTION. **Sec. 5.** (1) Except as provided in subsection (2) of
7 this section, no county, city, or town shall place a moratorium on the
8 acceptance and processing of applications, permitting, construction,
9 maintenance, repair, replacement, extension, operation, or use of any
10 personal wireless communication facility after the effective date of
11 this section. An existing moratorium that expires after the effective
12 date of this section shall not be extended in whole or in part.

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

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

19 (3) Counties, cities, and towns are encouraged to work together
20 with industry, using the experience of the industry and those counties,
21 cities, and towns that have adopted wireless regulations, to develop a
22 model ordinance for the siting of wireless telecommunication facilities
23 as part of the process required under section 7 of this act.

24 (4) Subsections (1) and (2) of this section apply to moratoriums
25 one hundred twenty days after the adoption of a model ordinance under
26 section 7 of this act or on April 1, 1999, whichever occurs first.

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

28 NEW SECTION. **Sec. 6.** (1) No county, city, or town shall install,
29 or cause to be installed, equipment, facilities, or other
30 infrastructure, including but not limited to conduit, for the purpose
31 of allowing a county, city, or town to provide telecommunications or
32 cable television services to the general public.

33 (2) This section expires October 1, 2003.

34 NEW SECTION. **Sec. 7.** (1) There is hereby created a
35 telecommunications right of way advisory committee. The advisory
36 committee shall:

1 (a) Develop a model ordinance for use by counties, cities, and
2 towns that would create uniform policies, land use and construction
3 codes, regulations, standards, and lease and franchise requirements for
4 the use of rights of way by telecommunications providers; and

5 (b) Review current laws and practices in the following areas and
6 make recommendations regarding:

7 (i) Appropriate types of permit costs and fees allowable for
8 processing and granting applications for provision of
9 telecommunications facilities along state, county, city, and town
10 rights of way;

11 (ii) Limits on the amount of consideration due to the state,
12 counties, and cities to rates that are fair, just, reasonable, and
13 sufficient;

14 (iii) Alternative forms of consideration other than the imposition
15 of franchise fees, including but not limited to provision of in-kind
16 services, installation of additional conduit by telecommunications
17 providers for use by the owner of the public right of way, single
18 uniform surcharges or utility tax rates in lieu of individual franchise
19 fees, and open competitive bid processes for granting franchises on
20 limited access rights of way;

21 (iv) Methods to restrict or eliminate moratoriums when used as a
22 means of excluding telecommunications facilities from publicly owned
23 rights of way; and

24 (v) Such other issues as may arise during the committee's
25 deliberations.

26 (2) The advisory committee shall be comprised of:

27 (a) Two members of the house of representatives transportation
28 policy and budget committee, one from each political party, as
29 appointed by the speaker of the house of representatives. The speaker
30 shall also designate two alternate members to serve if the appointed
31 members are unavailable;

32 (b) Two members of the senate transportation committee, one from
33 each political party, as appointed by the president of the senate. The
34 president shall also designate two alternate members to serve if the
35 appointed members are unavailable;

36 (c) One member of the house of representatives appropriations
37 committee, as appointed by the speaker of the house of representatives.
38 The speaker shall also designate an alternate member to serve if the
39 appointed member is unavailable;

1 (d) One member of the senate ways and means committee, as appointed
2 by the president of the senate. The president shall also designate an
3 alternate member to serve if the appointed member is unavailable;

4 (e) Two representatives of the governor;

5 (f) The secretary of the department of transportation or a
6 designee; and

7 (g) The director of the department of information services or a
8 designee.

9 (3) The advisory committee shall make its recommendations to the
10 legislative transportation committee by December 1, 1998.

11 (4) This section expires January 31, 1999.

12 NEW SECTION. **Sec. 8.** 1997 c 457 s 512 (uncodified) is repealed.

13 NEW SECTION. **Sec. 9.** Section 3 of this act expires April 1, 1999.

14 NEW SECTION. **Sec. 10.** Sections 1, 2, 5, and 6 of this act
15 constitute a new chapter in Title 47 RCW.

16 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and takes effect
19 immediately."

20 Correct the title.

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