

2 SSB 6515 - S AMD - 713

3 By Senators Strannigan, Hargrove and Finkbeiner

4 ADOPTED 2/16/98

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 by private industry in telecommunications
13 infrastructure will be required to make the benefits of technological
14 development available to the people of the state. This is particularly
15 true if the modern infrastructure is to reach all parts of the state,
16 rural as well as urban.

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

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

27 The legislature further declares that growth in economic activity
28 resulting from modernized right of way policies will create new jobs
29 and business opportunities as well as bring better service and lower
30 prices to consumers. State and local government will benefit by the
31 availability of improved services and the creation of a larger and more
32 stable revenue base.

33 The legislature declares that rights of way are dedicated,
34 purchased, or held by the government for the use of the public in
35 transportation, the delivery of utility services, and commerce; that
36 government has the steward responsibility to protect these rights of

1 way for these public purposes; and that the use of these rights of way
2 by telecommunications facilities is essential for the protection and
3 advancement of the public's health, safety, and welfare and therefore
4 is in the public's interest.

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

15 It is the intent of the legislature to promote policies that
16 recognize the introduction of competition in telecommunications, and
17 that will result in new entrants into this industry, without needlessly
18 changing or supplanting existing codes, regulations, and standards. As
19 additional companies seek to locate their facilities in public rights
20 of way, it is incumbent on local government to establish uniform,
21 clear, competitively neutral, and nondiscriminatory rules for use of
22 the public right of way.

23 It is the policy of the legislature that fees and charges levied by
24 local governments on the telecommunications industry for use of public
25 rights of way and for franchises, permits, and licenses required for
26 construction, repair, maintenance, use, and operation of facilities for
27 telecommunications shall not be a means of raising general revenue. It
28 is the intent of the legislature and the policy of this state that fees
29 for necessary permits and licenses do not exceed the actual costs
30 incurred in receiving, considering, and issuing the permits and
31 licenses, inspecting work in the right of way, restoring damage to the
32 right of way related to such work, and maintaining the necessary
33 systems and records to effectively manage the use of the right of way.

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

37 (1) "Authorized facilities" means all of the plant, equipment,
38 fixtures, appurtenances, antennas, and other facilities necessary to

1 furnish and deliver telecommunications services, including but not
2 limited to poles with crossarms, poles without crossarms, wires, lines,
3 conduits, cables, communication and signal lines and equipment, braces,
4 guys, anchors, vaults, and all attachments, appurtenances, and
5 appliances necessary or incidental to the distribution and use of
6 telecommunications services.

7 (2) "Authorized user" means any person providing telecommunications
8 or cable television service to the public.

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

11 (4) "Public right of way" means roads, streets, and highways,
12 including limited access highways and does not include federally
13 granted trust lands and the forest board trust lands.

14 (5) "Telecommunications service" means the transmission of
15 information by wire, radio, optical cable, electromagnetic, or other
16 similar means for the public. For the purpose of this subsection,
17 "information" means knowledge or intelligence represented by any form
18 of writing, signs, signals, pictures, sounds, or any other symbols.

19 NEW SECTION. **Sec. 3.** (1) An authorized user may erect, construct,
20 support, attach, connect, stretch authorized facilities between,
21 maintain, repair, replace, and operate and use authorized facilities
22 in, upon, over, under, along, across, and through public rights of way.
23 These authorized facilities shall be maintained within public rights of
24 way so as not to unreasonably interfere with the free passage of
25 traffic and in accordance with the laws of the state and appropriate
26 codes, regulations, and standards adopted by counties, cities, and
27 towns pursuant to those laws.

28 (2) Nothing in this section waives the responsibility of the
29 authorized users to obtain permits for the installation of authorized
30 facilities as required by counties, cities, and towns.

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

35 NEW SECTION. **Sec. 4.** (1) Neither the state nor any county, city,
36 or town may adopt or enforce regulations that:

1 (a) Discriminate or have the effect of discriminating among
2 authorized users or authorized facilities;

3 (b) In any way conflict with: (i) Federal and state public service
4 laws; (ii) federal or state laws, rules, and regulations that
5 specifically apply to the design, construction, and operation of
6 authorized facilities; or (iii) federal or state worker safety and
7 public safety laws, rules, and regulations;

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

12 (d) Impose regulatory requirements that regulate the services and
13 business operations of the authorized user, and that are not directly
14 related to the use of rights of way, except where specifically
15 authorized in state or federal law. To the maximum extent feasible,
16 franchises applicable to telecommunications companies shall be used to
17 coordinate and integrate construction and development regulations and
18 permits and requirements and permits required under other laws relating
19 to streets, roads, and highways. Franchises shall not be used to
20 require additional permits, conditions, or requirements that are
21 duplicated under other laws; or

22 (e) Provide for a period that exceeds one hundred twenty days
23 between filing a complete application for a permit and issuance of the
24 permit, or otherwise unreasonably delay work by authorized users on
25 authorized facilities in the public right of way except where required
26 by specific procedures to assure cooperation of work within the right
27 of way which provide reasonable opportunities for scheduling of work
28 and do not impose unreasonable barriers to entry or with the agreement
29 of the applicant.

30 (2) Counties, cities, and towns are encouraged to develop
31 procedures to provide interim authorizations for the installation of
32 authorized facilities and process a complete permit, where the timeline
33 to complete such an agreement is expected to exceed one hundred twenty
34 days.

35 (3) Counties, cities, and towns are encouraged to work together and
36 with industry, using the experience of the industry and those counties,
37 cities, and towns that have adopted wireless regulations, to develop a
38 model ordinance for the siting of wireless telecommunications
39 facilities by January 1, 1999.

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

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

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

16 (3) This section applies to moratoriums one hundred twenty days
17 after the adoption of a model ordinance under section 4(3) of this act
18 or on April 1, 1999, whichever occurs first.

19 NEW SECTION. **Sec. 6.** (1) Neither the state nor any county, city,
20 or town may impose, demand, or accept any compensation from an
21 authorized user, whether by fee, charge, license, rent, use of
22 authorized facilities at other than normal charges, provision of in-
23 kind services by authorized users without compensation or at below-
24 market rates, or by any other manner for:

25 (a) The use or occupancy of public rights of way for authorized
26 facilities; or

27 (b) Any act authorized by sections 2 through 6 of this act unless
28 the fee, charge, or other compensation is imposed generally and
29 uniformly on projects outside public rights of way.

30 (2) No fee, charge, or other compensation permitted under
31 subsection (1) of this section may recover more than the direct
32 administrative expenses actually incurred by the state, county, city,
33 or town in receiving and approving a construction or development
34 permit, inspecting plans and construction, development and maintenance
35 of record systems and excavation authorizations systems, costs of
36 repair or restoration of the right of way, or preparing a detailed
37 statement pursuant to chapter 43.21C RCW.

1 (3) This section does not preclude a county, city, or town from
2 issuing franchises and imposing franchise fees for cable services as
3 allowed by federal law.

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

6 NEW SECTION. **Sec. 7.** A new section is added to chapter 35.21 RCW
7 to read as follows:

8 Each city or town is subject to the requirements and restrictions
9 regarding telecommunications services and public rights of way under
10 sections 2 through 6 of this act. However, sections 2 through 6 of
11 this act do not limit or modify the applicability of chapters 35.77,
12 35.78, and 36.70A RCW.

13 NEW SECTION. **Sec. 8.** A new section is added to chapter 35A.21 RCW
14 to read as follows:

15 Each code city is subject to the requirements and restrictions
16 regarding telecommunications services and public rights of way under
17 sections 2 through 6 of this act. However, sections 2 through 6 of
18 this act do not limit or modify the applicability of chapter 36.70A
19 RCW.

20 NEW SECTION. **Sec. 9.** A new section is added to chapter 36.01 RCW
21 to read as follows:

22 Each county is subject to the requirements and restrictions
23 regarding telecommunications services and public rights of way under
24 sections 2 through 6 of this act. However, sections 2 through 6 of
25 this act do not limit or modify the applicability of chapters 36.70,
26 36.70A, 36.75, 36.78, 36.80, 36.81, and 36.86 RCW.

27 NEW SECTION. **Sec. 10.** Sections 2 through 6 of this act are each
28 added to chapter 80.36 RCW."

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31 ADOPTED 2/16/98

32 On page 1, line 1 of the title, after "way;" strike the remainder
33 of the title and insert "adding new sections to chapter 80.36 RCW;

1 adding a new section to chapter 35.21 RCW; adding a new section to
2 chapter 35A.21 RCW; adding a new section to chapter 36.01 RCW; and
3 creating a new section."

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