

HOUSE BILL REPORT

HB 2237

As Reported By House Committee On:
Transportation Policy & Budget

Title: An act relating to telecommunications access to limited-access highway rights-of-way.

Brief Description: Regulating telecommunications access to limited-access highway rights-of-way.

Sponsors: Representatives Hankins, Mastin, DeBolt, Radcliff, Murray, O'Brien, Mitchell, Huff, K. Schmidt and Fisher.

Brief History:

Committee Activity:

Transportation Policy & Budget: 3/7/97, 3/10/97 [DPS].

HOUSE COMMITTEE ON TRANSPORTATION POLICY & BUDGET

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives K. Schmidt, Chairman; Hankins, Vice Chairman; Mielke, Vice Chairman; Mitchell, Vice Chairman; Fisher, Ranking Minority Member; Blalock, Assistant Ranking Minority Member; Cooper, Assistant Ranking Minority Member; Backlund; Buck; Cairnes; Chandler; Constantine; DeBolt; Gardner; Hatfield; Johnson; O'Brien; Radcliff; Robertson; Romero; Scott; Skinner; Sterk; Wood and Zellinsky.

Staff: Jennifer Joly (786-7305); Gene Schlatter (786-7316).

Background: The Federal Telecommunications Act of 1996 seeks to remove regulatory barriers and encourage competition among telecommunications carriers. The federal act has important implications for the Department of Transportation (DOT); it impacts both the present and future right of way management policies and procedures of the DOT.

Currently, state law allows the DOT the authority to grant "franchises" for use of utilities on state highway rights of way. The existing state law limits compensation to the DOT's administrative costs of granting the franchises. It also provides that relocation costs caused by highway repairs or improvements be borne by the franchisee. In keeping with Federal Highway Administration (FHWA) policy, the

DOT's current utility accommodation policy keeps the interstate free of encumbrances, unless directly transportation-related, with a few unusual exceptions approved by the FHWA. On non-limited access highways, the policy is significantly more open, allowing the installation of virtually any utility, provided reasonable safety criteria are met.

The Federal Telecommunications Act permits states to receive "fair and reasonable compensation" from telecommunications carriers, on a "competitively neutral and nondiscriminatory basis," for use of public rights of way. However, none of these terms are defined in the act. Additionally, the federal act preserves the authority of the DOT to manage its rights of way and to impose on a "competitively neutral basis" requirements "necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."

The 1996 supplemental transportation budget required the DOT to develop a plan for considering accommodation of telecommunications facilities within limited access rights of way. In response to this budget proviso, the DOT issued a telecommunications report to the Legislative Transportation Committee (LTC) in December 1996. Additionally, the LTC commissioned a consultant to prepare a discussion paper outlining policy issues and potential courses of action for telecommunications access. These efforts identified the following principal policy issues to be addressed by the Legislature: (1) whether the state should allow access to its limited access rights of way; (2) if the Legislature opts to provide access, what should it charge (e.g., if compensation above administrative costs is charged, what is "fair and reasonable" compensation for purposes of the federal act); (3) what type of compensation should be accepted (e.g., cash, in-kind telecommunication services, or a combination thereof); (4) how to establish access on a "competitively neutral" basis; and (5) whether changes should be made regarding utility accommodation on non-limited access rights of way.

In recent weeks a Telecommunications Working Group, comprised of five senators and six representatives, has convened to work on this proposed legislation.

Summary of Substitute Bill: The DOT's grant of a right-of-occupancy to telecommunications carriers on limited access highway rights of way must be competitively neutral, and preserve safety and operational performance.

No grant of a right-of-occupancy to a telecommunications carrier may establish a relationship that would cause the DOT to be deemed a telecommunications carrier.

Contracts for right of way access may be separately negotiated with each telecommunications company.

When necessary to ensure effective management of the limited access right of way, the DOT may limit the number and type of telecommunications facilities in the right of way. Additionally, the DOT may condition access to the right of way on the sharing of telecommunications facilities between, or among, competing telecommunications carriers.

The DOT must exact fair and reasonable compensation for use of its limited access rights of way. The compensation may be both cash and in-kind, but in no event may it consist exclusively of an indirect arrangement for the provision of in-kind telecommunications services. Any arrangement by which the DOT receives in-kind telecommunications services in exchange for access to limited access rights of way is deemed a procurement subject to review by the Information Services Board. Revenues from cash compensation must be deposited in the motor vehicle fund. Any consideration received by the DOT must be publicly disclosed. The DOT shall consult with and provide an opportunity to respond to telecommunications/right of way compensation proposals to the Telecommunications/Right of way Advisory Panel.

The membership of the Telecommunications/Right of Way Advisory Panel is as follows: (1) two members of the House Transportation Policy and Budget Committee, one from each political party, as appointed by the Speaker of the House of Representatives; (2) two members of the Senate Transportation Committee, one from each political party, as appointed by the President of the Senate; (3) one member of the House Appropriations Committee, as appointed by the Speaker of the House of Representatives; (4) one member of the Senate Ways and Means Committee, as appointed by the President of the Senate; (5) two representatives of the Governor; (6) the secretary of the Department of Transportation; and (7) the director of the Department of Information Services. Alternates or designees may substitute for the aforementioned members.

Existing franchise agreements with telecommunications carriers in limited access rights of way are not subject to the provisions of this act until such time as their existing franchise agreements expire.

Existing or future franchise arrangements with non-telecommunications utilities are not affected.

Substitute Bill Compared to Original Bill: The following definitions are added to the bill: "right of occupancy," "telecommunications carrier" and "telecommunications service." The definition of "telecommunications" is altered.

Rather than forbidding ownership of telecommunications equipment installed on DOT rights of way, the bill specifies that no grant of a right-of-occupancy to a telecommunications carrier may establish a relationship that would cause the DOT to be deemed a telecommunications carrier.

The following members of the Telecommunications/Right of Way Advisory Panel are eliminated: a member of the House Energy and Utilities Committee; a member of the Senate Energy and Utilities Committee; the state treasurer; the director of the Office of Financial Management; the chairperson of the Information Services Board; the director of the Department of Revenue; and the Governor-appointed citizen member. The following members are added to the advisory panel: one member of the House Appropriations Committee; one member of the Senate Ways and Means Committee; and two representatives of the Governor.

Rather than final approval authority, the advisory panel is given "rights of consultation and opportunities to respond" to telecommunications/right of way compensation proposals. Final approval authority is vested in the DOT.

Instead of forbidding the DOT to condition access on the obligatory sharing of telecommunication facilities, the DOT may require the sharing of facilities between or among competing telecommunications carriers when necessary to ensure effective management of the right of way.

Existing franchise agreements with telecommunications carriers in limited access rights of way are not subject to the provisions of the act until such time as their existing franchise agreements expire.

Existing RCW sections pertaining to utility franchises are updated such that references to "telephone and telegraph" are changed to "telecommunications."

The DOT's current authority to negotiate air space leasing is not impacted by this bill.

Appropriation: None.

Fiscal Note: Requested on March 3, 1997.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: HB 2237 represents a cautious, flexible approach to the largely uncertain framework established by the Federal Telecommunications Act. The cellular industry is willing to pay fair market value for the siting of cellular towers.

Testimony Against: The provision of telecommunications services to the state in exchange for access to the right of way should not be permitted. Allowing for in-kind barter arrangements may violate the federal act by creating a barrier to entry to those carriers unable to provide the service sought by the state. Excessive fees for access to the right of way will violate the federal act. The bill should more explicitly

describe which routes are limited access and the process by which they are so designated. The Telecommunications/Right of Way Advisory Panel is another unneeded regulatory body with too much of a vested interest in maximizing revenue to the motor vehicle fund.

Testified: Bruce, Shaull, Sprint (con); Terry Vann, Washington Independent Telephone Association (con); Teresa Osinski, Washington Utilities & Transportation Commission (pro); Ross Baker, AT&T Wireless (concerns); Mike Woodin, AT&T Communications (concerns); David Danner, Department of Information Services (pro); and Skip Burch, Department of Transportation (pro).