

# SENATE BILL REPORT

## SHB 2237

---

As Reported By Senate Committee On:  
Energy & Utilities, April 3, 1997

**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:** House Committee on Transportation Policy & Budget (originally sponsored by Representatives Hankins, Mastin, DeBolt, Radcliff, Murray, O'Brien, Mitchell, Huff, K. Schmidt and Fisher).

**Brief History:**

**Committee Activity:** Energy & Utilities: 3/27/97, 4/3/97 [DPA, DNPA].

---

### SENATE COMMITTEE ON ENERGY & UTILITIES

**Majority Report:** Do pass as amended.

Signed by Senators Finkbeiner, Chair; Hochstatter, Vice Chair; Rossi and Strannigan.

**Minority Report:** Do not pass as amended.

Signed by Senators Brown, Jacobsen and Swanson.

**Staff:** Phil Moeller (786-7445)

**Background:** A major theme of the Federal Telecommunications Act of 1996 involves removing regulatory barriers and encouraging competition among telecommunications carriers. This 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 DOT.

Currently, state law allows DOT the authority to grant nonexclusive "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, 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 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 DOT to develop a plan for considering accommodation of telecommunications facilities within limited access rights-of-way. In response to this budget proviso, DOT issued a telecommunications report to the Legislative Transportation Committee (LTC) in December 1996. Additionally, 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 Amended Bill:** The committee adopted a striking amendment. The Department of Transportation is given the authority to grant franchises to telecommunications providers in limited-access rights-of-ways under the same procedure as used when granting franchises in other rights-of-ways.

**Amended Bill Compared to Substitute Bill:** The substitute bill specified conditions and procedures for the Department of Transportation when granting franchises to telecommunications providers in limited-access rights-of-ways, including fair and reasonable compensation of both cash and in-kind services, and the ability to separately negotiate contracts with providers. The bill created a telecommunications/rights-of-way advisory panel to review compensation proposals.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** (Substitute bill) This legislation will allow the Department of Transportation to recover the market value of access to the rights-of-way, which was obtained by the citizens of the state and owned by the citizens of the state. They deserve fair compensation.

**Testimony Against:** (Substitute bill) Allowing the Department of Transportation to recover more than administrative costs in this area is contrary to the intent of the 1996 federal Telecommunications Policy Act. Revenue projections on this proposal are unrealistically high and would create disincentives for new telecommunications infrastructure investment.

**Testified:** Skip Burch, WSDOT (pro); Bruce Shaul, Sprint (con); Ron Main, WA State Cable Association (concerns); Terry Vann, WITA (con); Arne Haynes, Rainier Group (con); Bill Garvin, MCI (con); Ken Snow, GST Telecom (con); Rep. Hankins, sponsor (pro); Mike Woodin, AT&T (con); Teresa Osinski, WUTC; Ross Baker, AT&T Wireless Services (con).