

SENATE BILL REPORT

SB 6515

As Reported By Senate Committee On:
Energy & Utilities, February 5, 1998

Title: An act relating to franchises and the use of public rights of way.

Brief Description: Regulating franchises and the use of public rights of way.

Sponsors: Senators Strannigan, Finkbeiner, Morton and Swecker.

Brief History:

Committee Activity: Energy & Utilities: 1/29/98, 2/5/98 [DPS, DNPS].

SENATE COMMITTEE ON ENERGY & UTILITIES

Majority Report: That Substitute Senate Bill No. 6515 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass substitute.

Signed by Senators Brown and Jacobsen.

Staff: Karen Kirkpatrick (786-7403)

Background: The Federal Telecommunications Act of 1996 (the Act) was passed by Congress to encourage competition in telecommunications services. It effectively eliminated monopolistic protections previously afforded to telecommunications providers and has created unprecedented competition to provide rapidly changing telecommunications services. This has increased interest in and demand for space in the public right of way (ROW) for telecommunications services.

The Act encourages states to make ROW under their jurisdiction available for the placement of telecommunications services and permits state and local governments to receive "fair and reasonable compensation" for the use of public ROW.

Summary of Substitute Bill: Telecommunications companies are authorized to construct and operate facilities on public right of way (ROW) under specified conditions. Maintenance of facilities must not interfere with free passage of traffic and must be in accordance with state law. Authorized users have a responsibility to obtain permits and they do not have priority over other users of the ROW.

The state, county, city or town is prohibited from regulating facilities in ROW except by construction and development rules that are generally applied to similarly situated users within the right of way and that meet other specified requirements. Jurisdictions are encouraged to adopt regulations by July 1, 1999.

Jurisdictions are prohibited from imposing moratoria on construction of authorized facilities within three years of the effective date of the act and an existing moratorium that expires within the three-year period may not be extended.

Jurisdictions are prohibited from requiring authorized users to obtain franchises or other permits or to pay compensation for the right to occupy or use ROW, except under specified conditions, and except that cable services are exempt.

Jurisdictions are prohibited from imposing fees, taxes, charges or other compensation of any kind for the use of the right of way unless such charge is imposed generally on projects outside of the ROW.

Jurisdictions are prohibited from imposing fees, taxes, charges or other compensation of any kind that recover more than direct administrative expenses actually incurred in receiving and approving a construction or development permit, inspecting plans and construction or preparing a detailed statement pursuant to the State Environmental Protection Act (SEPA).

The intent is identified, findings are made, definitions are added and other clarifying and technical changes are made.

Substitute Bill Compared to Original Bill: The substitute bill clarifies the management authority of the state and local jurisdictions over the right of way (ROW), the need for applicants to obtain permits, that telecommunications companies do not have priority over other users of the ROW, and that similarly situated users of the ROW must be treated similarly. The original bill did not address these issues. The substitute bill exempts new cities and annexations from the requirement that a relocation project be part of a capital facilities plan or transportation element adopted under growth management. The original bill did not address the unique situation of newly incorporated or annexed areas. The substitute bill limits permit processing times to 120 days except to assure cooperation of work which provides reasonable opportunity for scheduling of work and does not impose unreasonable barriers to entry. The original bill limited the processing period to 90 days and did not acknowledge the need for cooperative efforts to reduce disruption of the ROW. The substitute bill states that jurisdictions are encouraged to develop interim processes and to adopt regulations by July 1, 1999. The original bill did not contain these suggestions.

Other clarifying and technical changes are made.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This legislation will promote competition, reduce delays and costs of negotiating with differing jurisdictions, and provide uniform rules for access to the public rights of way (ROW). This legislation is in the public interest because it promotes infrastructure investment and economic development. It will facilitate entrance to the telecommunications market and signal that Washington is a pro-competitive environment. This legislation will keep jurisdictions from imposing onerous burdens and costs that keep

companies out of the market. This legislation will not deprive the jurisdictions of police powers and will get choice and low rates to customers quickly.

Testimony Against: This legislation takes away many management rights and does not acknowledge the role of the local jurisdictions in balancing competing public interests in the use of the right of way. It does not address the revenue taken from the counties by eliminating the franchise right. This legislation limits the safety and operation management of the highways. Industry and jurisdictions need to work together to resolve the issue. This legislation is premature.

Testified: PRO: Judith Endejan, Metricom; Ron Main, Cable Association; Bruce Shaull, Sprint; Tom Walker, US West; Terry Vann, WITA; Skip Haynes, Rainier Group; Mike Woodin, AT&T; Rosemary Williamson, GTE; Kathy Pazzini, ELI; Deborah Jacques, Next Link; Paul Sieracki, Sprint; Jim Boldt, US West; Ron Main, Western Wireless; Ross Baker, AT&T Wireless; CON: Al King, WSDOT; Victoria Lincoln, AWC; Dennis Scott, Spokane County; Judy Wilson, Thurston County; John Bolender, Mason County; Michael Shaw, Association of Counties; Ron Lucas, Will Shenkel, Barbara Skinner, Rainier Communications; Matt Lampe, City of Seattle.