
SUBSTITUTE HOUSE BILL 2237

State of Washington

55th Legislature

1997 Regular Session

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

Read first time 03/10/97.

1 AN ACT Relating to telecommunications access to limited-access
2 highway rights-of-way; amending RCW 47.44.010, 47.44.020, 47.44.040,
3 47.44.050, and 47.44.060; adding a new chapter to Title 47 RCW; and
4 declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that the federal
7 Telecommunications Act of 1996 is designed to remove regulatory
8 barriers and encourage competition among telecommunications carriers.
9 The federal act has important implications for the Washington state
10 department of transportation. Namely, the federal act affects both the
11 present and future right-of-way management policies and procedures of
12 the department. The federal act preserves authority of the department
13 to manage its rights-of-way, and obtain fair and reasonable
14 compensation on a competitively neutral and nondiscriminatory basis for
15 its use, while encouraging competition in the telecommunications
16 marketplace, for the purpose of achieving improved services and lower
17 prices to Washington telecommunications consumers.

1 NEW SECTION. **Sec. 2.** The definitions set forth in this section
2 apply throughout this chapter.

3 (1) "Limited-access rights-of-way" includes "limited access
4 facilities" as defined in RCW 47.52.010, and the federal interstate
5 system.

6 (2) "Right of occupancy" means the right to occupy limited-access
7 rights-of-way by installing facilities and equipment necessary for the
8 transmission of telecommunications, and the right to enter limited
9 access rights-of-way for the purpose of installing and maintaining
10 those facilities and equipment.

11 (3) "Telecommunications" means the transmission, between or among
12 points specified by the user, of information of the user's choosing,
13 without change in the form or content of the information as sent and
14 received.

15 (4) "Telecommunications carrier" means a provider of
16 telecommunications services, other than aggregators of
17 telecommunications services.

18 (5) "Telecommunications service" means the offering of
19 telecommunications for a fee directly to the public, or to such classes
20 of users as to be effectively available directly to the public,
21 regardless of the facilities used.

22 NEW SECTION. **Sec. 3.** A grant by the department to a
23 telecommunications carrier of a right of occupancy in limited-access
24 rights-of-way, including an agreement between the department and a
25 telecommunications carrier related to such a grant, must comply with
26 the following:

27 (1) Grants, and the compensation paid for them, must be
28 competitively neutral. The department may make no such grant that by
29 its terms awards a grantee an exclusive right of occupancy.

30 (2) Grants must expressly be subject to all rules, policies, and
31 standards established by the department to preserve the proper
32 functioning of the limited-access facility, protect the public safety
33 and welfare, and manage the limited-access rights-of-way. The
34 department has full authority to establish the rules, policies, and
35 standards.

36 (3) No grant may establish a relationship between the department
37 and any other entity that would cause the department to be deemed a
38 telecommunications carrier.

1 (4) Grants to limited-access rights-of-way may be separately
2 negotiated with each telecommunications carrier, under rules and
3 procedures established by the department in consultation with the
4 telecommunications/right-of-way advisory committee as described in
5 section 4 of this act. Where necessary to ensure effective management
6 of the limited-access right-of-way, the department may limit the number
7 and type of facilities in the right-of-way, and may require sharing
8 facilities between or among competing telecommunications carriers.

9 (5) Each grant must provide for fair and reasonable compensation
10 for the use of limited-access rights-of-way. The compensation may be
11 both cash and in-kind, but in no event may it consist exclusively of an
12 indirect arrangement for the provision of in-kind telecommunications
13 services. An arrangement by which the department receives in-kind
14 telecommunications services in exchange for access to limited-access
15 rights-of-way is deemed a procurement subject to review by the
16 information services board under RCW 43.105.041. Revenues from cash
17 compensation must be deposited in the motor vehicle fund. Any
18 consideration received by the department must be publicly disclosed.
19 The department shall consult with, and provide an opportunity to
20 respond to telecommunications/right-of-way compensation proposals, to
21 the telecommunications/right-of-way advisory panel as described in
22 section 4 of this act.

23 (6) Franchise agreements with telecommunications carriers
24 established before the effective date of this act are not subject to
25 this section until then-existing franchise agreements expire.

26 NEW SECTION. **Sec. 4.** The telecommunications/right-of-way advisory
27 panel is created to evaluate the department's process for developing
28 compensation proposals for use of its limited-access rights-of-ways by
29 telecommunications carriers. Additionally, the advisory panel shall
30 meet as necessary to consult with the department regarding compensation
31 proposals.

32 The membership of the telecommunications/right-of-way advisory
33 panel is as follows:

34 (1) Two members of the house transportation policy and budget
35 committee, one from each political party, as appointed by the speaker
36 of the house of representatives. The speaker shall also designate two
37 alternate members to serve if the appointed member is unavailable;

1 (2) Two members of the senate transportation committee, one from
2 each political party, as appointed by the president of the senate. The
3 president shall also designate two alternate members to serve if the
4 appointed member is unavailable;

5 (3) One member of the house appropriations committee, as appointed
6 by the speaker of the house of representatives. The speaker shall also
7 designate an alternate member to serve if the appointed member is
8 unavailable;

9 (4) One member of the senate ways and means committee, as appointed
10 by the president of the senate. The president shall also designate an
11 alternate member to serve if the appointed member is unavailable;

12 (5) Two representatives of the governor or their designees;

13 (6) The secretary of the department of transportation or a
14 designee; and

15 (7) The director of the department of information services or a
16 designee.

17 NEW SECTION. **Sec. 5.** Nothing in this chapter affects existing or
18 future franchise arrangements with nontelecommunications utilities.
19 Nothing in this chapter authorizes a nontelecommunications utility or
20 any other entity to obtain a grant of a right of occupancy for any
21 purpose other than providing telecommunications.

22 NEW SECTION. **Sec. 6.** Nothing in this chapter limits or affects
23 the department's ability to lease property under RCW 47.12.120.

24 **Sec. 7.** RCW 47.44.010 and 1980 c 28 s 1 are each amended to read
25 as follows:

26 The department of transportation may grant franchises to persons,
27 associations, private or municipal corporations, the United States
28 government, or any agency thereof, to use any state highway for the
29 construction and maintenance of water pipes, flume, gas, oil or coal
30 pipes, (~~telephone, telegraph~~) telecommunications facilities as
31 defined in RCW 80.04.010, and electric light and power lines and
32 conduits, trams or railways, and any structures or facilities which are
33 part of an urban public transportation system owned or operated by a
34 municipal corporation, agency, or department of the state of Washington
35 other than the department of transportation, and any other such
36 facilities. All applications for such franchise shall be made in

1 writing and subscribed by the applicant, and shall describe the state
2 highway or portion thereof over which franchise is desired and the
3 nature of the franchise. The department of transportation shall adopt
4 rules providing for a hearing or an opportunity for a hearing with
5 reasonable public notice thereof with respect to any franchise
6 application involving the construction and maintenance of utilities or
7 other facilities within the highway right of way which the department
8 determines may (1) during construction, significantly disrupt the flow
9 of traffic or use of driveways or other facilities within the right of
10 way, or (2) during or following construction, cause a significant and
11 adverse effect upon the surrounding environment.

12 **Sec. 8.** RCW 47.44.020 and 1980 c 28 s 2 are each amended to read
13 as follows:

14 If the department of transportation deems it to be for the public
15 interest, the franchise may be granted in whole or in part, with or
16 without hearing under such regulations and conditions as the department
17 may prescribe, with or without compensation, but not in excess of the
18 reasonable cost for investigating, handling, and granting the
19 franchise, except as provided in section 3 of this act. The department
20 may require that the utility and appurtenances be so placed on the
21 highway that they will, in its opinion, least interfere with other uses
22 of the highway. As provided in section 3 of this act, the department
23 shall obtain fair and reasonable compensation for rights of occupancy
24 granted to telecommunications carriers on limited-access rights-of-way.

25 If a hearing is held, it shall be conducted by the department, and
26 may be adjourned from time to time until completed. The applicant may
27 be required to produce all facts pertaining to the franchise, and
28 evidence may be taken for and against granting it.

29 The facility shall be made subject to removal when necessary for
30 the construction, alteration, repair, or improvement of the highway and
31 at the expense of the franchise holder, except that the state shall pay
32 the cost of such removal whenever the state shall be entitled to
33 receive proportionate reimbursement therefor from the United States in
34 the cases and in the manner set forth in RCW 47.44.030. Renewal upon
35 expiration of a franchise shall be by application. A person
36 constructing or operating such a utility on a state highway is liable
37 to any person injured thereby for any damages incident to the work of
38 installation or the continuation of the occupancy of the highway by the

1 utility, and except as provided above, is liable to the state for all
2 necessary expenses incurred in restoring the highway to a permanent
3 suitable condition for travel. No franchise may be granted for a
4 longer period than fifty years, and no exclusive franchise or privilege
5 may be granted.

6 **Sec. 9.** RCW 47.44.040 and 1984 c 7 s 236 are each amended to read
7 as follows:

8 Whenever any bridge exists on the route of any state highway and
9 crosses any stream, body of water, gulch, navigable water, swamp, or
10 other topographical formation constituting the boundary of this state
11 or the boundary of a county, city, or town of this state and the bridge
12 is owned or operated by this state jointly with any such county, city,
13 or town, or with any municipal corporation of this state, or with such
14 other state or with any county, city, or town of such other state, the
15 department is empowered to join with the proper officials of the
16 county, city, or town, or the municipal corporation of this state or of
17 such other state or of such county, city, or town of such other state
18 in granting franchises to persons or private or municipal corporations
19 for the construction and maintenance on the bridge of water pipes,
20 flumes, gas pipes, (~~telephone, telegraph~~) telecommunications
21 facilities as defined in RCW 80.04.010, and electric light and power
22 lines and conduits, trams and railways, and any structures or
23 facilities that are part of an urban public transportation system owned
24 or operated by a municipal corporation, agency, or department of the
25 state of Washington other than the department, or any other such
26 facilities. All such franchises shall be granted in the same manner as
27 provided for the granting of like franchises on state highways. Any
28 revenue accruing to the state of Washington from the franchises shall
29 be paid to the state treasurer and deposited to the credit of the fund
30 from which this state's share of the cost of joint operation of the
31 bridge is paid.

32 **Sec. 10.** RCW 47.44.050 and 1984 c 7 s 237 are each amended to read
33 as follows:

34 The department is empowered to grant a permit to construct or
35 maintain on, over, across, or along any state highway any water, gas,
36 (~~telephone, telegraph~~) telecommunications facilities as defined in
37 RCW 80.04.010, light, power, or other such facilities when they do not

1 extend along the state highway for a distance greater than three
2 hundred feet. The department may require such information as it deems
3 necessary in the application for any such permit, and may grant or
4 withhold the permit within its discretion. Any permit granted may be
5 canceled at any time, and any facilities remaining upon the right of
6 way of the state highway after thirty days written notice of the
7 cancellation ((is [are] an)) are unlawful obstructions and may be
8 removed in the manner provided by law.

9 **Sec. 11.** RCW 47.44.060 and 1989 c 224 s 1 are each amended to read
10 as follows:

11 (1) Any person, firm, or corporation who constructs or maintains
12 on, over, across, or along any state highway any water pipe, flume, gas
13 pipe, ((telegraph, telephone)) telecommunications facilities as defined
14 in RCW 80.04.010, electric light, or power lines, or tram or railway,
15 or any other such facilities, without having first obtained and having
16 at all times in full force and effect a franchise or permit to do so in
17 the manner provided by law is guilty of a misdemeanor. Each day of
18 violation is a separate and distinct offense.

19 (2) Any person, firm, ((or)) corporation, association, private or
20 municipal corporation, county, agency or department of the state of
21 Washington, other than the department of transportation, the United
22 States government, or any agency thereof, who constructs or maintains
23 on, over, across, or along any state highway any water pipe, flume, gas
24 pipe, ((telegraph, telephone)) telecommunications facilities as defined
25 in RCW 80.04.010, electric light or power lines, or tram or railway, or
26 any other such facilities, without having first obtained and having at
27 all times in full force and effect a franchise or permit to do so in
28 the manner provided by law is liable for a civil penalty of one hundred
29 dollars per calendar day beginning forty-five days from the date notice
30 is given and until application is made for a franchise or permit or
31 until the facility is removed as required by notice. The state shall
32 give notice by certified mail that a franchise or permit is required or
33 the facility must be removed and shall include in the notice sufficient
34 information to identify the portion of right of way in question.
35 Notice is effective upon delivery.

36 (3) If a person, firm ((or)), corporation, association, private or
37 municipal corporation, county, agency or department of the state of
38 Washington, other than the department of transportation, the United

1 States government, or any agency thereof, does not apply for a permit
2 or franchise within forty-five days of notice given in accordance with
3 subsection (2) of this section or the state determines that the
4 facility constructed or maintained without a permit or franchise would
5 not be granted a permit or franchise, the state may order the facility
6 to be removed within such time period as the state may specify. If the
7 facility is not removed, the state, in addition to any other remedy,
8 may remove the facility at the expense of the owner.

9 NEW SECTION. **Sec. 12.** Sections 1 through 6 of this act constitute
10 a new chapter in Title 47 RCW.

11 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 immediately.

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