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HOUSE BILL 2237

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State of Washington

55th Legislature

1997 Regular Session

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

Read first time 03/04/97. Referred to Committee on Transportation Policy & Budget.

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

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

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

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

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

4 (2) "Telecommunications company" means a telecommunications company  
5 as defined by RCW 80.04.010.

6 NEW SECTION. **Sec. 3.** The department's provision of access to  
7 telecommunications companies on limited-access highway rights-of-way  
8 must be in keeping with the following guidelines:

9 (1) Telecommunications access to the department's limited access  
10 rights-of-way must be provided on a competitively neutral basis.

11 (2) Access is conditioned upon preserving the safety and  
12 operational performance of the limited-access facility, as determined  
13 by the department.

14 (3) Access may not be construed in such a manner as to deem the  
15 department a telecommunications company. To that end, ownership of  
16 telecommunications equipment installed on department rights-of-way for  
17 nontransportation purposes remains with the provider.

18 (4) Contracts for right-of-way access must be separately negotiated  
19 with each company. The negotiation format will give telecommunications  
20 companies the ability to identify uses for the right-of-way. The  
21 department may not condition access to the right-of-way on the  
22 obligatory sharing of telecommunications facilities between, or among,  
23 competing telecommunications providers.

24 (5) The department shall exact fair and reasonable compensation for  
25 use of its limited access rights-of-way. The compensation may be both  
26 cash and in-kind, but in no event may it consist exclusively of an  
27 indirect arrangement for the provision of in-kind telecommunications  
28 services. Any arrangement by which the department receives in-kind  
29 telecommunications services in exchange for access to limited-access  
30 rights-of-way is deemed a procurement subject to review by the  
31 information services board pursuant to RCW 43.105.041. Revenues from  
32 cash compensation must be deposited in the motor vehicle fund. Any  
33 consideration received by the department must be publicly disclosed.  
34 Telecommunications/right-of-way compensation proposals are subject to  
35 approval by the telecommunications/right-of-way advisory panel as  
36 described in section 4 of this act.

1        NEW SECTION.    **Sec. 4.** The telecommunications/right-of-way advisory  
2 panel is created to evaluate the department's process for developing  
3 compensation proposals for use of its limited-access rights-of-ways by  
4 telecommunications providers. Additionally, the advisory panel shall  
5 meet as necessary to review compensation proposals. All  
6 telecommunications access to limited-access rights-of-way are  
7 conditioned on approval of the compensation proposal by a majority of  
8 the panel members.

9        The membership of the telecommunications/right-of-way advisory  
10 panel is as follows:

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

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

19        (3) One member of the house energy and utilities committee, as  
20 appointed by the speaker of the house of representatives. The speaker  
21 shall also designate an alternate member to serve if the appointed  
22 member is unavailable;

23        (4) One member of the senate energy and utilities committee, as  
24 appointed by the president of the senate. The president shall also  
25 designate an alternate member to serve if the appointed member is  
26 unavailable;

27        (5) The secretary of the department of transportation or a  
28 designee;

29        (6) The state treasurer or a designee;

30        (7) The director of the office of financial management or a  
31 designee;

32        (8) The chairperson of the information services board or a  
33 designee, who is also a member of the board;

34        (9) The director of the department of information services or a  
35 designee;

36        (10) The director of the department of revenue or a designee; and

37        (11) A citizen member, appointed by the governor, with interest and  
38 experience in telecommunications.

1 All the members present during the advisory panel deliberations are  
2 full voting members. In the event that an alternate or designee is  
3 called to deliberate on the panel, he or she shall assume the voting  
4 status of the member for whom he or she is substituting. The decisions  
5 of the panel must be by majority vote. The membership shall elect a  
6 chair.

7 NEW SECTION. **Sec. 5.** Nothing in this chapter affects existing or  
8 future franchise arrangements with nontelecommunications utilities.

9 **Sec. 6.** RCW 47.44.020 and 1980 c 28 s 2 are each amended to read  
10 as follows:

11 If the department of transportation deems it to be for the public  
12 interest, the franchise may be granted in whole or in part, with or  
13 without hearing under such regulations and conditions as the department  
14 may prescribe, with or without compensation, but not in excess of the  
15 reasonable cost for investigating, handling, and granting the  
16 franchise, except as provided in section 3 of this act. The department  
17 may require that the utility and appurtenances be so placed on the  
18 highway that they will, in its opinion, least interfere with other uses  
19 of the highway.

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

24 The facility shall be made subject to removal when necessary for  
25 the construction, alteration, repair, or improvement of the highway and  
26 at the expense of the franchise holder, except that the state shall pay  
27 the cost of such removal whenever the state shall be entitled to  
28 receive proportionate reimbursement therefor from the United States in  
29 the cases and in the manner set forth in RCW 47.44.030. Renewal upon  
30 expiration of a franchise shall be by application. A person  
31 constructing or operating such a utility on a state highway is liable  
32 to any person injured thereby for any damages incident to the work of  
33 installation or the continuation of the occupancy of the highway by the  
34 utility, and except as provided above, is liable to the state for all  
35 necessary expenses incurred in restoring the highway to a permanent  
36 suitable condition for travel. No franchise may be granted for a

1 longer period than fifty years, and no exclusive franchise or privilege  
2 may be granted.

3 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act constitute  
4 a new chapter in Title 47 RCW.

5 NEW SECTION. **Sec. 8.** This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of the  
7 state government and its existing public institutions, and takes effect  
8 immediately.

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