
ENGROSSED SUBSTITUTE SENATE BILL 6515

State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Energy & Utilities (originally sponsored by Senators Strannigan, Finkbeiner, Morton and Swecker)

Read first time 02/06/98.

1 AN ACT Relating to franchises and the use of public rights of way;
2 adding new sections to chapter 80.36 RCW; adding a new section to
3 chapter 35.21 RCW; adding a new section to chapter 35A.21 RCW; adding
4 a new section to chapter 36.01 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that technological
7 developments have made telecommunications evermore important to the
8 health, safety, and welfare of the people of this state and to the
9 efficient and cost-effective conduct of the state's economy. The pace
10 of technological change is expected to continue and increase in the
11 future. Massive investment by private industry in telecommunications
12 infrastructure will be required to make the benefits of technological
13 development available to the people of the state. This is particularly
14 true if the modern infrastructure is to reach all parts of the state,
15 rural as well as urban.

16 The legislature also finds it necessary to clarify and integrate
17 policies on use of public rights of way in order to recognize and
18 foster the changes that are occurring in telecommunications.

1 The legislature declares that government policies for the use of
2 public rights of way should encourage investment in and development of
3 the infrastructure needed for leading-edge applications in
4 telecommunications. These policies will also serve as an important
5 means of economic development, allowing the state to remain competitive
6 in national and international markets and to attract jobs to and
7 develop robust economies in its rural and underdeveloped areas.

8 The legislature further declares that growth in economic activity
9 resulting from modernized right of way policies will create new jobs
10 and business opportunities as well as bring better service and lower
11 prices to consumers. State and local government will benefit by the
12 availability of improved services and the creation of a larger and more
13 stable revenue base.

14 The legislature declares that rights of way are dedicated,
15 purchased, or held by the government for the use of the public in
16 transportation, the delivery of utility services, and commerce; that
17 government has the steward responsibility to protect these rights of
18 way for these public purposes; and that the use of these rights of way
19 by telecommunications facilities is essential for the protection and
20 advancement of the public's health, safety, and welfare and therefore
21 is in the public's interest.

22 The legislature intends that governments rely on construction and
23 development regulations that apply generally and uniformly to
24 construction both inside and outside the public right of way to the
25 extent possible in connection with use of the public right of way for
26 telecommunication facilities. It is the intent of the legislature that
27 franchises be used only to coordinate and integrate construction and
28 development regulations, permits, and the requirements of such other
29 laws as specifically apply to the management of the physical assets
30 located in the rights of way and that franchises not be used to impose
31 duplicative requirements on authorized users of the rights of way.

32 It is the intent of the legislature to promote policies that
33 recognize the introduction of competition in telecommunications, and
34 that will result in new entrants into this industry, without needlessly
35 changing or supplanting existing codes, regulations, and standards. As
36 additional companies seek to locate their facilities in public rights
37 of way, it is incumbent on local government to establish uniform,
38 clear, competitively neutral, and nondiscriminatory rules for use of
39 the public right of way.

1 It is the policy of the legislature that fees and charges levied by
2 local governments on the telecommunications industry for use of public
3 rights of way and for franchises, permits, and licenses required for
4 construction, repair, maintenance, use, and operation of facilities for
5 telecommunications shall not be a means of raising general revenue. It
6 is the intent of the legislature and the policy of this state that fees
7 for necessary permits and licenses do not exceed the actual costs
8 incurred in receiving, considering, and issuing the permits and
9 licenses, inspecting work in the right of way, restoring damage to the
10 right of way related to such work, and maintaining the necessary
11 systems and records to effectively manage the use of the right of way.

12 NEW SECTION. **Sec. 2.** Unless the context clearly requires
13 otherwise, the definitions in this section apply throughout chapter
14 . . . , Laws of 1998 (this act).

15 (1) "Authorized facilities" means all of the plant, equipment,
16 fixtures, appurtenances, antennas, and other facilities necessary to
17 furnish and deliver telecommunications services, including but not
18 limited to poles with crossarms, poles without crossarms, wires, lines,
19 conduits, cables, communication and signal lines and equipment, braces,
20 guys, anchors, vaults, and all attachments, appurtenances, and
21 appliances necessary or incidental to the distribution and use of
22 telecommunications services.

23 (2) "Authorized user" means any person providing telecommunications
24 or cable television service to the public.

25 (3) "Cable television service" means the one-way broadcast or cable
26 transmission of television or radio signals.

27 (4) "Public right of way" means roads, streets, and highways,
28 including limited access highways and does not include federally
29 granted trust lands and the forest board trust lands.

30 (5) "Telecommunications service" means the transmission of
31 information by wire, radio, optical cable, electromagnetic, or other
32 similar means for the public. For the purpose of this subsection,
33 "information" means knowledge or intelligence represented by any form
34 of writing, signs, signals, pictures, sounds, or any other symbols.

35 NEW SECTION. **Sec. 3.** (1) An authorized user may erect, construct,
36 support, attach, connect, stretch authorized facilities between,
37 maintain, repair, replace, and operate and use authorized facilities

1 in, upon, over, under, along, across, and through public rights of way.
2 These authorized facilities shall be maintained within public rights of
3 way so as not to unreasonably interfere with the free passage of
4 traffic and in accordance with the laws of the state and appropriate
5 codes, regulations, and standards adopted by counties, cities, and
6 towns pursuant to those laws.

7 (2) Nothing in this section waives the responsibility of the
8 authorized users to obtain permits for the installation of authorized
9 facilities as required by counties, cities, and towns.

10 (3) Nothing in this section creates, modifies, or diminishes the
11 priority of use for authorized facilities over other users of the right
12 of way for utility purposes or other purposes subject to local
13 franchise or permit.

14 NEW SECTION. **Sec. 4.** (1) Neither the state nor any county, city,
15 or town may adopt or enforce regulations that:

16 (a) Discriminate or have the effect of discriminating among
17 authorized users or authorized facilities;

18 (b) In any way conflict with: (i) Federal and state public service
19 laws; (ii) federal or state laws, rules, and regulations that
20 specifically apply to the design, construction, and operation of
21 authorized facilities; or (iii) federal or state worker safety and
22 public safety laws, rules, and regulations;

23 (c) Regulate services of authorized users based upon the content or
24 type of signals that are carried or are capable of being carried over
25 the telecommunications facilities, except where specifically authorized
26 in state or federal law;

27 (d) Impose regulatory requirements that regulate the services and
28 business operations of the authorized user, and that are not directly
29 related to the use of rights of way, except where specifically
30 authorized in state or federal law. To the maximum extent feasible,
31 franchises applicable to telecommunications companies shall be used to
32 coordinate and integrate construction and development regulations and
33 permits and requirements and permits required under other laws relating
34 to streets, roads, and highways. Franchises shall not be used to
35 require additional permits, conditions, or requirements that are
36 duplicated under other laws; or

37 (e) Provide for a period that exceeds one hundred twenty days
38 between filing a complete application for a permit and issuance of the

1 permit, or otherwise unreasonably delay work by authorized users on
2 authorized facilities in the public right of way except where required
3 by specific procedures to assure cooperation of work within the right
4 of way which provide reasonable opportunities for scheduling of work
5 and do not impose unreasonable barriers to entry or with the agreement
6 of the applicant.

7 (2) Counties, cities, and towns are encouraged to develop
8 procedures to provide interim authorizations for the installation of
9 authorized facilities and process a complete permit, where the timeline
10 to complete such an agreement is expected to exceed one hundred twenty
11 days.

12 (3) Counties, cities, and towns are encouraged to work together and
13 with industry, using the experience of the industry and those counties,
14 cities, and towns that have adopted wireless regulations, to develop a
15 model ordinance for the siting of wireless telecommunications
16 facilities by January 1, 1999.

17 NEW SECTION. **Sec. 5.** (1) Except as provided in subsection (2) of
18 this section, neither the state nor any county, city, or town shall
19 place a moratorium on the acceptance and processing of applications,
20 permitting, construction, maintenance, repair, replacement, extension,
21 operation, or use of any wireless communication facility that is
22 authorized under sections 2 through 6 of this act following the
23 effective date of this section. An existing moratorium that expires
24 following the effective date of this section shall not be extended in
25 whole or in part.

26 (2)(a) A city or town incorporated after the effective date of this
27 section shall be permitted to impose one moratorium that shall not
28 exceed one hundred eighty days and shall not be extendable.

29 (b) Upon the expiration of a moratorium authorized by (a) of this
30 subsection, the authorizing city or town is subject to subsection (1)
31 of this section.

32 (3) This section applies to moratoriums one hundred twenty days
33 after the adoption of a model ordinance under section 4(3) of this act
34 or on April 1, 1999, whichever occurs first.

35 NEW SECTION. **Sec. 6.** (1) Neither the state nor any county, city,
36 or town may impose, demand, or accept any compensation from an
37 authorized user, whether by fee, charge, license, rent, use of

1 authorized facilities at other than normal charges, provision of in-
2 kind services by authorized users without compensation or at below-
3 market rates, or by any other manner for:

4 (a) The use or occupancy of public rights of way for authorized
5 facilities; or

6 (b) Any act authorized by sections 2 through 6 of this act unless
7 the fee, charge, or other compensation is imposed generally and
8 uniformly on projects outside public rights of way.

9 (2) No fee, charge, or other compensation permitted under
10 subsection (1) of this section may recover more than the direct
11 administrative expenses actually incurred by the state, county, city,
12 or town in receiving and approving a construction or development
13 permit, inspecting plans and construction, development and maintenance
14 of record systems and excavation authorizations systems, costs of
15 repair or restoration of the right of way, or preparing a detailed
16 statement pursuant to chapter 43.21C RCW.

17 (3) This section does not preclude a county, city, or town from
18 issuing franchises and imposing franchise fees for cable services as
19 allowed by federal law.

20 (4) This section does not amend, repeal, or modify any law
21 governing the taxing authority of cities or towns.

22 NEW SECTION. **Sec. 7.** A new section is added to chapter 35.21 RCW
23 to read as follows:

24 Each city or town is subject to the requirements and restrictions
25 regarding telecommunications services and public rights of way under
26 sections 2 through 6 of this act. However, sections 2 through 6 of
27 this act do not limit or modify the applicability of chapters 35.77,
28 35.78, and 36.70A RCW.

29 NEW SECTION. **Sec. 8.** A new section is added to chapter 35A.21 RCW
30 to read as follows:

31 Each code city is subject to the requirements and restrictions
32 regarding telecommunications services and public rights of way under
33 sections 2 through 6 of this act. However, sections 2 through 6 of
34 this act do not limit or modify the applicability of chapter 36.70A
35 RCW.

1 NEW SECTION. **Sec. 9.** A new section is added to chapter 36.01 RCW
2 to read as follows:

3 Each county is subject to the requirements and restrictions
4 regarding telecommunications services and public rights of way under
5 sections 2 through 6 of this act. However, sections 2 through 6 of
6 this act do not limit or modify the applicability of chapters 36.70,
7 36.70A, 36.75, 36.78, 36.80, 36.81, and 36.86 RCW.

8 NEW SECTION. **Sec. 10.** Sections 2 through 6 of this act are each
9 added to chapter 80.36 RCW.

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