
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 granted to the
15 government for the use of the public in transportation and commerce;
16 and that the use of these rights of way by telecommunications
17 facilities is essential for the protection and advancement of the
18 public's health, safety, and welfare and therefore is in the public's
19 interest.

20 The legislature recognizes that franchises are one means by which
21 state and local governments determine the uses to be made of rights of
22 way and by which these uses are regulated. However, the legislature
23 declares that existing law on the regulation of construction and
24 development provides state and local governments with the authority
25 necessary to regulate the use of the public rights of way for
26 telecommunications facilities. Therefore, it is not useful or
27 appropriate for governments to use franchises in connection with
28 telecommunications facilities.

29 The legislature intends that governments rely on construction and
30 development regulations, and not on franchises, permits, or licences
31 that relate solely to the public right of way, that apply generally and
32 uniformly to construction both inside and outside the public right of
33 way in connection with use of the public right of way for
34 telecommunications facilities.

35 The legislature recognizes that it is presently the case and the
36 policy of this state that government and industry codes, regulations,
37 and standards for telecommunications exist to protect the safety of the
38 public and of the workers in the telecommunications industries. It is
39 the intent of the legislature to promote policies that recognize the

1 introduction of competition in telecommunications, and that will result
2 in new entrants into this industry, without needlessly changing or
3 supplanting existing codes, regulations, and standards. As additional
4 companies seek to locate their facilities in public rights of way, it
5 is the intent of the legislature to establish uniform, competitively
6 neutral, and nondiscriminatory rules for use of the public right of way
7 so that all competitors will face the same requirements and obligations
8 and none will have a privileged position in relation to others.

9 Therefore, it is the policy of the state of Washington to terminate
10 the use of franchises in connection with the use of the public rights
11 of way by certain telecommunications facilities and to rely on general
12 authority over construction and development to foster investment in
13 updated infrastructure for these industries.

14 Although fees and charges presently levied by local governments on
15 the telecommunications industry for use of public rights of way, such
16 as franchise fees, permit fees, land use development fees, and other
17 fees, often recover more than the administrative costs actually
18 incurred by government in processing such matters and are being treated
19 as sources of general revenue, it is the policy of the state that
20 governments will not use franchises, permits, and licenses required for
21 construction, repair, maintenance, use, and operation of facilities for
22 telecommunications as a means of raising general revenue. It is the
23 intent of the legislature and the policy of this state that fees for
24 necessary permits and licenses do not exceed the actual costs incurred
25 in receiving, considering, and issuing the permits and licenses.

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

29 (1) "Authorized facilities" means all of the plant, equipment,
30 fixtures, appurtenances, and other facilities necessary to furnish and
31 deliver telecommunications services, including but not limited to poles
32 with crossarms, poles without crossarms, wires, lines, conduits,
33 cables, communication and signal lines and equipment, braces, guys,
34 anchors, vaults, and all attachments, appurtenances, and appliances
35 necessary or incidental to the distribution and use of
36 telecommunications services.

37 (2) "Authorized user" means any person providing telecommunications
38 service to the public.

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

3 (4) "Public right of way" means any, every, and all of the roads,
4 streets, avenues, alleys, highways, and other public ways within the
5 state. "Public right of way" includes but is not limited to those
6 public ways within any city, town, or county, as such public rights of
7 way may now or hereafter be laid out, platted, dedicated, or improved;
8 including those used for limited-access highways that are part of the
9 state and interstate highway system; and including those public rights
10 of way used, occupied, or crossed by railroad lines.

11 (5) "Telecommunications service" means the transmission of
12 information by wire, radio, optical cable, electromagnetic, or other
13 similar means for the public and includes cable television service.
14 For the purpose of this subsection, "information" means knowledge or
15 intelligence represented by any form of writing, signs, signals,
16 pictures, sounds, or any other symbols.

17 NEW SECTION. **Sec. 3.** (1) An authorized user may erect, construct,
18 support, attach, connect, stretch authorized facilities between,
19 maintain, repair, replace, and operate and use authorized facilities
20 in, upon, over, under, along, across, and through public rights of way.
21 These authorized facilities shall be maintained within public rights of
22 way so as not to unreasonably interfere with the free passage of
23 traffic and in accordance with the laws of the state and appropriate
24 codes, regulations, and standards adopted by cities, towns, and
25 counties.

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

29 (3) Nothing in this section creates a priority use for authorized
30 facilities over other users of the right of way for utility purposes or
31 other purposes subject to local franchise or permit.

32 NEW SECTION. **Sec. 4.** (1) The state or any county, city, or town
33 may regulate the construction, maintenance, repair, replacement,
34 extension, operation, or use of authorized facilities within the public
35 right of way by means of construction and development of rules and
36 regulations that are uniformly and generally applied to similarly

1 situated uses within public rights of way. Cities, towns, and counties
2 are encouraged to specifically adopt such regulations by July 1, 1999.

3 (2) The state or any county, city, or town may adopt or enforce
4 construction or development rules or regulations of general
5 applicability that do not:

6 (a) Discriminate or have the effect of discriminating among
7 authorized users or authorized facilities;

8 (b) In any way conflict with: (i) Federal and state public service
9 laws; (ii) federal or state laws, rules, and regulations that
10 specifically apply the design, construction, and operation of
11 authorized facilities; or (iii) federal or state worker safety and
12 public safety laws, rules, and regulations;

13 (c) Regulate telecommunications services based upon the content or
14 type of signals that are carried or are capable of being carried over
15 the telecommunications facilities, except where specifically authorized
16 in state or federal law;

17 (d) Require an authorized user to relocate authorized facilities at
18 its own expense except that such a relocation shall be at the expense
19 of the authorized user if: (i) The relocation is caused by an
20 improvement project involving the grading or widening of a highway,
21 street, or road; (ii) the improvement project is on behalf of and for
22 the benefit of the state, county, city, or town and not for the benefit
23 of a private person or the result of a private project; (iii) notice of
24 the project is given to the authorized user a reasonable time prior to
25 commencement of the project so that the user with the collaboration and
26 cooperation of government planners and other regulators may mitigate
27 the impact on its facilities; and (iv) other than in areas annexed or
28 incorporated within four years prior to the notice in (d)(iii) of this
29 subsection, the project is part of a capital facilities plan or
30 transportation element adopted pursuant to chapter 36.70A RCW;

31 (e) Require overhead authorized facilities to be converted to
32 underground facilities or to require new authorized facilities to be
33 installed underground except in accordance with applicable schedules
34 and tariffs on file with the Washington utilities and transportation
35 commission or, in the case of users not subject to the jurisdiction of
36 the commission, as are applied generally and uniformly throughout its
37 service area; or

38 (f) Provide for an unreasonably long period, not to exceed one
39 hundred twenty days except with the agreement of the applicant, between

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

7 (3) Cities, towns, and counties 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 NEW SECTION. **Sec. 5.** Neither the state nor any county, city, or
13 town may place a moratorium on the construction, maintenance, repair,
14 replacement, extension, operation, or use of any cell tower, wireless
15 antennae, or wireless communication facility that is regulated under
16 this chapter within three years following the effective date of this
17 act. An existing moratorium that expires during this three-year period
18 may not be extended, in whole or in part, until three years following
19 the effective date of this act.

20 NEW SECTION. **Sec. 6.** (1) Except as provided in section 4 of this
21 act, neither the state nor any county, city, or town may require an
22 authorized user to obtain a franchise or any other form of permit,
23 license, or permission to occupy or use public rights of way if
24 authorized under section 3 of this act. Neither the state nor any
25 county, city, or town may impose, demand, or accept any compensation
26 from an authorized user for the use or occupancy of public rights of
27 way for authorized facilities, whether by fee, charge, license, rent,
28 use of authorized facilities at other than normal charges, provision of
29 in-kind services by authorized users without compensation or at
30 below-market rates, or any other manner whatsoever.

31 (2) Nothing in this section precludes a county, city, or town from
32 issuing franchises and imposing franchise fees for cable services as
33 allowed by 47 U.S.C. Secs. 541 and 542.

34 NEW SECTION. **Sec. 7.** Neither the state nor any county, city, or
35 town may impose, require, demand, or accept any fee, tax, charge, or
36 other compensation of any nature or kind whatsoever, including but not

1 limited to the provision of in-kind services by authorized users
2 without compensation or at below-market rates, use of authorized
3 facilities at other than normal charges, or any other manner
4 whatsoever, for any act authorized by section 3 of this act unless the
5 same fee, tax, charge, or other compensation is imposed generally and
6 uniformly on projects outside public rights of way.

7 NEW SECTION. **Sec. 8.** Neither the state nor any county, city, or
8 town may impose any fee, tax, charge, or other compensation that
9 recovers more than the direct administrative expenses actually incurred
10 by the state, county, city, or town in receiving and approving a
11 construction or development permit, inspecting plans and construction,
12 or preparing a detailed statement pursuant to chapter 43.21C RCW.

13 NEW SECTION. **Sec. 9.** A new section is added to chapter 35.21 RCW
14 to read as follows:

15 Each city or town is subject to the requirements and restrictions
16 regarding telecommunications services and public rights of way under
17 sections 2 through 8 of this act.

18 NEW SECTION. **Sec. 10.** A new section is added to chapter 35A.21
19 RCW to read as follows:

20 Each code city is subject to the requirements and restrictions
21 regarding telecommunications services and public rights of way under
22 sections 2 through 8 of this act.

23 NEW SECTION. **Sec. 11.** A new section is added to chapter 36.01 RCW
24 to read as follows:

25 Each county is subject to the requirements and restrictions
26 regarding telecommunications services and public rights of way under
27 sections 2 through 8 of this act.

28 NEW SECTION. **Sec. 12.** Sections 2 through 8 of this act are each
29 added to chapter 80.36 RCW.

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