SENATE BILL REPORT

SB 6676

As Reported By Senate Committee On:
Energy, Technology & Telecommunications, February 3, 2000

Title: An act relating to the use of city or town rights of way by telecommunications and cable television providers.

Brief Description: Concerning the use of public rights of way in cities and towns.

Sponsors: Senators Finkbeiner and Brown; by request of Governor Locke.

Brief History:
Committee Activity: Energy, Technology & Telecommunications: 1/20/2000, 2/3/2000 [DPS].

SENATE COMMITTEE ON ENERGY, TECHNOLOGY & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 6676 be substituted therefor, and the substitute bill do pass.
Signed by Senators Brown, Chair; Goings, Vice Chair; Fraser, Hochstatter and Rossi.

Staff: William Bridges (786-7424)

Background: The federal Telecommunications Act of 1996 encourages states to make public rights-of-way available for telecommunications services. The act permits state and local governments to receive fair and reasonable compensation– for their use. But it also forbids any state or local law that prohibits the ability of any entity to provide ... telecommunications service.–

Guidelines were developed on August 5, 1998, by the FCC, state and local governments, and the wireless industry concerning wireless moratoriums. According to the guidelines, the length of a moratorium should be reasonably necessary– to adequately address issues relating to the siting of wireless telecommunications facilities in a manner that addresses local concerns.– While the guidelines suggest that a moratorium last no longer than 180 days, the ceiling is not mandatory. The guidelines specifically recognize that a municipality may require a longer moratorium so long as the municipality does not use the moratorium to effectively ban the deployment wireless facilities.

The municipal control and regulation of state highways that are also city streets are governed by Chapter 47.24 RCW. But there are no uniform laws governing facilities in local rights-of-way. Some incumbent telecommunications carriers have asserted a statewide grant of authority to enter local rights-of-way. However, the existence of such grants is disputed. Since 1998, several major bills have addressed the local regulation of rights-of-way but failed to pass because of unresolved issues.

One contentious issue concerns the efforts a telecommunications service provider must make when ordered by a municipality to relocate facilities. Some have suggested a best efforts– standard. The term best efforts– is not well defined in the case law; the term varies with the facts of specific cases and the field of law. But one nationally recognized treatise has defined best efforts– to require a party to make such efforts as are reasonable in light of that party's ability and the means at its disposal and of the other party's justifiable expectations.–

Summary of Substitute Bill: Definitions. The following terms are defined: (1) cable television service, (2) facilities, (3) right-of-way, (4) service provider, (5) telecommunications service, (6) personal wireless services, (7) master permit, and (8) use permit.

Municipal permitting authority. Cities and towns may require service providers to obtain master permits and use permits, although companies with existing statewide right-of-way grants are not required to obtain master permits for wireline facilities. In addition, cities and towns may not deny use permits to statewide grant holders because they failed to obtain a master permit.

Procedures for issuing master permits. Cities and towns must have written procedures for issuing master permits. Cities and towns must act upon an application within 120 days of receipt. The 120-day time line does not apply if (1) the applicant agrees or (2) the application must be approved by the local legislative body and the approval would take longer than 120 days.

Denials of master permits must be supported by substantial evidence contained in a written record. Companies seeking injunctive relief must file within 30 days of the denial.

Procedures for issuing use permits. Cities and towns must act upon an application for a use permit within 30 days of receipt. The 30-day time line does not apply if (1) the applicant agrees or (2) the applicant has not obtained a required master permit. If a use permit is denied, a service provider must seek injunctive relief within 30 days of the denial.

Cities and towns may deny use permits to providers of personal wireless services if the providers do not enter into site-specific charge agreements relating to (1) wireless facilities of a certain height or (2) wireless facilities that will be located on existing municipal structures.

Municipal duties and powers regarding rights-of-way. Cities and towns must provide advance notice before opening a right-of-way so current users can schedule and coordinate their work. A city is not liable for damages for failing to provide this notice, but it may not deny a permit because a service provider failed to coordinate with another project due to of the lack of notice.

Cities and towns may ensure that a service provider's facilities do not inconvenience the public use of the right of way. But they may not adopt or enforce laws that: (1) regulate the services or business operations of a service provider; (2) conflict with federal or state law; (3) regulate the content of services; or (4) unreasonably deny the use of a right of way.

Cities and towns may use their zoning authority to regulate the placement of facilities, so long as they do not violate the federal Telecommunications Act or prohibit the placement of all facilities within their jurisdictions.

Service provider duties regarding rights-of-way. Service providers must do the following: (1) obtain necessary permits; (2) follow local, state, and federal laws; (3) cooperate with cities and towns to maintain safe conditions in the right-of-way; (4) provide necessary information to cities and towns; (5) obtain written permission before using an other's structures; and (6) construct and maintain their facilities at their own expense.

Moratoriums. Cities and towns may not place moratoriums on the construction, maintenance, and operation of personal wireless services that are inconsistent with the guidelines developed by the wireless industry and the Federal Communications Commission's local and state advisory committee.

Relocation of facilities. When reasonably necessary for construction or emergencies, cities and towns may require service providers to relocate facilities at their own expense. But a service provider may seek reimbursement from a municipality if: (1) the municipality required the service provider to move the same facilities within the past five years; or (2) the relocation was required for aesthetic reasons. Private parties must reimburse a service provider if the relocation was required for private purposes.

Additional capacity. Cities and towns may require companies to lay additional duct or conduit if: (1) the municipalities enter into a contract with the companies; (2) the municipalities do not use the facilities to resell cable television or telecommunications; (3) the municipalities do not require connection with a service provider's access structures and vaults; and (4) the value of the additional duct and conduit are not considered public works construction contracts.

Franchise fees. Cities and towns may not impose fees for a service provider's use of a right-of-way. However, there are certain exceptions for cable television service and agreements for site-specific charges concerning personal wireless services. Binding arbitration is allowed if municipalities and personal wireless service companies cannot agree on site-specific charges.

Public disclosure. Information provided in applications for use permits is public. Information regarding the location of existing facilities is public. Proprietary information cannot be required for master permits. Proprietary information can be required to facilitate the scheduling and coordination of work in a right of way, but it is not to be considered public information.

Substitute Bill Compared to Original Bill: Information provided in applications for use permits is public. Information regarding the location of existing facilities is public. Proprietary information cannot be required for master permits. Proprietary information can be required to facilitate the scheduling and coordination of work in a right of way, but it is not to be considered public information. Binding arbitration is allowed if municipalities and personal wireless service companies cannot agree on site-specific charges.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This is not a perfect bill but it provides a framework for resolving a number of contentious issues: historic franchises, wireless fees, timely action on permits, laying of additional conduit, relocation of facilities, and limitations on municipal liability.

Testimony Against: The bill sets deadlines for cities but not for companies. The bill contains a conflict between injunction statute and land use petition act. The bill does not define proprietary.–

Testified: Matthew Lamp, City of Seattle (pro); Bob Mack, Cities of Tacoma and Spokane (con).