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SENATE BILL 5763

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State of Washington

57th Legislature

2001 Regular Session

By Senators Horn, Oke, Winsley, Haugen and McDonald; by request of The Blue Ribbon Commission on Transportation

Read first time 02/01/2001. Referred to Committee on Transportation.

1 AN ACT Relating to franchises on state highways; and amending RCW  
2 47.44.010, 47.44.020, and 47.44.050.

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

4 **Sec. 1.** RCW 47.44.010 and 1980 c 28 s 1 are each amended to read  
5 as follows:

6 (1) The department of transportation may grant franchises to  
7 persons, associations, private or municipal corporations, the United  
8 States government, or any agency thereof, to use any state highway for  
9 the construction and maintenance of water pipes, flume, gas, oil or  
10 coal pipes, telephone, telegraph and electric light and power lines and  
11 conduits, trams or railways, and any structures or facilities (~~which~~)  
12 that are part of an urban public transportation system owned or  
13 operated by a municipal corporation, agency, or department of the state  
14 of Washington other than the department of transportation, and any  
15 other such facilities. In order to minimize the disruption to traffic  
16 and damage to the roadway, the department is encouraged to develop a  
17 joint trenching policy with other affected jurisdictions so that all  
18 companies wishing to lay cable or who otherwise require access to  
19 ground under the roadway may do so at one time.

1       (2) All applications for (~~such~~) the franchise (~~shall~~) must be  
2 made in writing and subscribed by the applicant, and (~~shall~~) describe  
3 the state highway or portion thereof over which franchise is desired  
4 and the nature of the franchise. The application must also include the  
5 identification of all jurisdictions affected by the franchise and the  
6 names of other possible franchisees who should receive notice of the  
7 application for a franchise.

8       (3) The department of transportation shall adopt rules providing  
9 for a hearing or an opportunity for a hearing with reasonable public  
10 notice thereof with respect to any franchise application involving the  
11 construction and maintenance of utilities or other facilities within  
12 the highway right of way which the department determines may (~~(+1)~~)  
13 (a) during construction, significantly disrupt the flow of traffic or  
14 use of driveways or other facilities within the right of way, or  
15 (~~(+2)~~) (b) during or following construction, cause a significant and  
16 adverse effect upon the surrounding environment.

17       **Sec. 2.** RCW 47.44.020 and 1980 c 28 s 2 are each amended to read  
18 as follows:

19       (1) If the department of transportation deems it to be for the  
20 public interest, the franchise may be granted in whole or in part, with  
21 or without hearing under such regulations and conditions as the  
22 department may prescribe, with or without compensation, but not in  
23 excess of the reasonable cost for investigating, handling, and granting  
24 the franchise. The department may require that the utility and  
25 appurtenances be so placed on the highway that they will, in its  
26 opinion, least interfere with other uses of the highway.

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

31       (3) The facility (~~shall~~) must be made subject to removal when  
32 necessary for the construction, alteration, repair, or improvement of  
33 the highway and at the expense of the franchise holder, except that the  
34 state shall pay the cost of (~~such~~) the removal whenever the state  
35 (~~shall be~~) is entitled to receive proportionate reimbursement  
36 therefor from the United States in the cases and in the manner set  
37 forth in RCW 47.44.030. Renewal upon expiration of a franchise  
38 (~~shall~~) must be by application.

1       (4) A person constructing or operating such a utility on a state  
2 highway is liable to any person injured thereby for any damages  
3 incident to the work of installation or the continuation of the  
4 occupancy of the highway by the utility, and except as provided above,  
5 is liable to the state for all necessary expenses incurred in restoring  
6 the highway to a permanent suitable condition for travel. A person  
7 constructing or operating such a utility on a state highway is also  
8 liable to the state for all necessary expenses incurred in inspecting  
9 the construction and the pavement restoration process used in restoring  
10 the highway to a permanent suitable condition for travel. Franchise  
11 holders are also financially responsible to the department for  
12 trenching work not completed within the contractual period and for  
13 compensating for the loss of useful pavement life caused by trenching.  
14 No franchise may be granted for a longer period than fifty years, and  
15 no exclusive franchise or privilege may be granted.

16       **Sec. 3.** RCW 47.44.050 and 1984 c 7 s 237 are each amended to read  
17 as follows:

18       The department (~~(is empowered to)~~) may grant a permit to construct  
19 or maintain on, over, across, or along any state highway any water,  
20 gas, telephone, telegraph, light, power, or other such facilities when  
21 they do not extend along the state highway for a distance greater than  
22 three hundred feet. The department may require such information as it  
23 deems necessary in the application for any such permit, and may grant  
24 or withhold the permit within its discretion. The permit holder is  
25 financially responsible to the department for trenching work not  
26 completed within the period of the permit and for compensating for the  
27 loss of useful pavement life caused by trenching. Any permit granted  
28 may be canceled at any time, and any facilities remaining upon the  
29 right of way of the state highway after thirty days written notice of  
30 the cancellation (~~(is [are])~~) are an unlawful obstruction and may be  
31 removed in the manner provided by law.

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