

# HOUSE BILL REPORT

## ESSB 5977

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**As Reported by House Committee On:**  
Technology, Telecommunications & Energy

**Title:** An act relating to the use of state highway rights of way for the deployment of personal wireless service facilities.

**Brief Description:** Requiring the department of transportation to allow the deployment of personal wireless service facilities in state highway rights of way.

**Sponsors:** Senate Committee on Technology & Communications (originally sponsored by Senators Esser, Schmidt, Eide, Finkbeiner, Poulsen, Reardon, Stevens, T. Sheldon and Shin).

**Brief History:**

**Committee Activity:**

Technology, Telecommunications & Energy: 3/26/03, 4/4/03 [DPA].

### Brief Summary of Engrossed Substitute Bill (As Amended by House Committee)

- Requires the Department of Transportation to establish a process to lease locations within highway rights of way for wireless telecommunications equipment.
- Requires that leases for telecommunications sites in a right of way include direct access from the right of way.

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## HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

**Majority Report:** Do pass as amended. Signed by 17 members: Representatives Morris, Chair; Ruderman, Vice Chair; Sullivan, Vice Chair; Crouse, Ranking Minority Member; Nixon, Assistant Ranking Minority Member; Anderson, Blake, Bush, DeBolt, Delvin, Hudgins, Kirby, McMahan, Romero, Tom, Wallace and Wood.

**Staff:** Matt Cooper (786-7106).

**Background:**

The Department of Transportation (Department) controls the use of rights of way for

highways in Washington.

Wireless communications companies lease locations on public and private property for the placement of wireless telecommunications equipment. This equipment is strategically placed in areas of heavy traffic and where topography allows maximum coverage.

Wireless companies lease locations for telecommunications equipment from the Department, some of which are within highway rights of way. These locations are desirable because of their proximity to traffic. Companies leasing these locations must be able to access their equipment from a means other than the highway right of way itself.

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**Summary of Amended Bill:**

The intent section declares that the rapid deployment of wireless telecommunications is critical to public safety, network access, quality of service, and rural economic development; and that the use of highway rights of way must be permitted for the deployment of wireless telecommunications facilities.

The Department must establish a process to issue leases for telecommunications facilities within state highway rights of way.

Leases for telecommunications sites must include the right to directly access the leased location from the highway during non-peak hours if public safety is not adversely affected. However, direct access must be allowed at any time for the construction of the facility if public safety is not adversely affected. An indirect means of reaching the location may be specified if it is reasonable and available. Telecommunications facilities installed and maintained in a right of way must not adversely affect public safety.

The Department must process a complete lease application within 60 days, unless the applicant waives the requirement. If the Department denies a lease application, it must provide a reason that is supported by substantial evidence contained in a written record. Applications that have been submitted before the effective date of this act may be handled under the new process described in this act, with the consent of the applicant.

The cost of a lease is limited to the fair market value of the location and the direct administrative expense in processing the application. An arbitration process is established for resolving disagreements over the cost of the lease. All lease money paid to the Department must be deposited in the Motor Vehicle Fund.

Terms are defined and a provision is added to clarify that leases for wireless telecommunications facilities are not utility franchises.

The Department must report to the Legislature on the implementation of the new lease

process by January 15, 2004.

**Amended Bill Compared to Engrossed Substitute Bill:**

The amendments to the bill provide that direct access to leases may be allowed as long as it does not affect public safety or significantly disrupt traffic flow and that telecommunications equipment must be co-located on the same structure whenever feasible.

The requirement for a report to the Legislature is amended to require a report on implementation of the lease program by January 15, 2004, and a status report by January 15, 2005.

The provision requiring that telecommunications equipment located within highway rights of way not adversely affect public safety is stricken.

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**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** Without this bill, the State of Washington may be missing out on the opportunity for increased revenue to the state through lease fees and a better wireless communications system. This bill will create a streamlined process for the Department of Transportation (Department) to process applications for leases in state-owned rights of way.

This bill will open up many more sites for the installation of wireless telecommunications equipment which will make this state's communications system better and more complete. This bill will not prevent local governments from imposing zoning requirements or building permit requirements for equipment installed in rights of way.

The Department will be able to ensure the safety of the highways by applying current safety standards to any proposed projects within the right of way. Several other states allow the placement of wireless communications equipment within the highway right of way and this has not caused additional safety concerns.

**Testimony Against:** None.

**Testified:** (In support) Senator Esser, prime sponsor; Steve Gano, Cingular Wireless; and Laura Altschul, T-Mobile USA.

(Comments) Don Nelson, Washington State Department of Transportation.