

# SENATE BILL REPORT

## ESSB 5977

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As Passed Senate, March 18, 2003

**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 & Communications: 3/3/03 [DPS].

Passed Senate: 3/18/03, 44-5.

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### SENATE COMMITTEE ON TECHNOLOGY & COMMUNICATIONS

**Majority Report:** That Substitute Senate Bill No. 5977 be substituted therefor, and the substitute bill do pass.

Signed by Senators Esser, Chair; Finkbeiner, Vice Chair; Eide, Poulsen, Reardon, Schmidt and Stevens.

**Staff:** William Bridges (786-7424)

**Background:** The Department of Transportation manages the rights of way of more than 7,000 miles of highways. The department has developed a model lease agreement for the deployment of wireless telecommunications facilities on department-controlled property, including highway rights of way.

The department currently processes a wireless lease application in 130 days, on average. The maximum term for a lease is five years, with an option to renew for three additional five-year increments. Leasing rates range from \$300 to \$1,700, with most leases within \$1,000 to \$1,400.

According to the department, there are 15 active wireless leases on highway rights of way.

**Summary of Bill:** The Department of Transportation must establish a process for issuing leases for the use of highway rights of way by wireless telecommunications companies. A lease must include the right to directly access the leased location from the highway during nonpeak 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 agrees to a different time period. 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.

An effective date is provided, terms are defined, and a provision is added to clarify that leases for wireless telecommunications facilities are not utility franchises. Intent sections declare that: (1) the rapid deployment of wireless telecommunications is critical to public safety, network access, quality of service, and rural economic development; and (2) the use of highway rights of way must be permitted for the deployment of wireless telecommunications facilities.

The department must report to the Legislature on the implementation of the new lease process by January 15, 2004.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** One wireless company believes the bill will allow it to deploy 45 to 50 new sites a year. The bill is based on extensive testimony provided in a one-hour work session on February 20, 2003. During that work session, the wireless industry stated it was very difficult to obtain a wireless lease from DOT. One company asserted that the department was losing an estimated \$4 million of revenue annually per company. The department is concerned the bill is not flexible on the issue of direct access to wireless sites. The department also stated that federal authorities have the final say on the use of interstate highway rights of way. The department is currently conducting a survey on how other western states are allowing wireless companies to use highway rights of way.

**Testimony Against:** None.

**Testified:** Steve Gano, Cingular Wireless (pro); Jean Leonard, T-Mobile Wireless (pro); Don Nelson, WSDOT (impacts).

**House Amendment(s):** Telecommunications equipment must be co-located on the same structure in the right of way whenever practicable. Consistent with federal highway administration approval, direct access to a wireless site from the highway must be allowed for the construction and maintenance of a wireless facility during nonpeak hours if public safety is not adversely affected. Direct access to a wireless site from the highway may be allowed at any time for the construction of a wireless facility if there is no substantial interference with the flow

of traffic during peak periods. The Department of Transportation is required to file an additional report describing the status of the lease process by January 15, 2005.