
SENATE BILL 5372

State of Washington

59th Legislature

2005 Regular Session

By Senators Berkey, Fairley, Pridemore, Roach and Johnson

Read first time 01/21/2005. Referred to Committee on Water, Energy & Environment.

1 AN ACT Relating to the coordination of water and sewer system
2 utilities; amending RCW 36.55.060 and 47.44.020; and adding a new
3 section to chapter 35.21 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 35.21 RCW
6 to read as follows:

7 Notwithstanding any contrary provision of law or of any existing or
8 future franchise and except in the event of emergencies, cities and
9 towns shall give public utilities operating water and sewer systems not
10 less than one hundred eighty days' notice of changes to rights of way
11 that will require relocations of water or sewer system facilities. The
12 notice shall be accompanied by proposed construction plans. The public
13 utilities may respond within thirty days with suggested changes to the
14 construction plans to reduce the extent and cost of the relocations.
15 Cities and towns shall consider such suggestions in good faith, require
16 only such relocations as are reasonably necessary based on sound
17 engineering practices, and adjust the construction plans accordingly.

1 **Sec. 2.** RCW 36.55.060 and 1963 c 4 s 36.55.060 are each amended to
2 read as follows:

3 (1) Any person constructing or operating any utility on or along a
4 county road shall be liable to the county for all necessary expense
5 incurred in restoring the county road to a suitable condition for
6 travel.

7 (2) No franchise shall be granted for a period of longer than fifty
8 years.

9 (3) No exclusive franchise or privilege shall be granted.

10 (4) The facilities of the holder of any such franchise shall be
11 removed at the expense of the holder thereof, to some other location on
12 such county road in the event it is to be constructed, altered, or
13 improved or becomes a primary state highway and such removal is
14 reasonably necessary for the construction, alteration, or improvement
15 thereof. Notwithstanding any contrary provision of law or of any
16 existing or future franchise and except in the event of emergencies,
17 counties shall give public utilities operating water and sewer systems
18 not less than one hundred eighty days' notice of changes to rights of
19 way that will require relocations of water or sewer system facilities.
20 The notice shall be accompanied by proposed construction plans. The
21 public utilities may respond within thirty days with suggested changes
22 to the construction plans to reduce the extent and cost of the
23 relocations. Counties shall consider such suggestions in good faith,
24 require only such relocations as are reasonably necessary based on
25 sound engineering practices, and adjust the construction plans
26 accordingly.

27 **Sec. 3.** RCW 47.44.020 and 2001 c 201 s 6 are each amended to read
28 as follows:

29 (1) If the department of transportation deems it to be for the
30 public interest, the franchise may be granted in whole or in part, with
31 or without hearing under such regulations and conditions as the
32 department may prescribe, with or without compensation, but not in
33 excess of the reasonable cost for investigating, handling, and granting
34 the franchise. The department may require that the utility and
35 appurtenances be so placed on the highway that they will, in its
36 opinion, least interfere with other uses of the highway.

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

5 (3) The facility must be made subject to removal when necessary for
6 the construction, alteration, repair, or improvement of the highway and
7 at the expense of the franchise holder, except that the state shall pay
8 the cost of the removal whenever the state is entitled to receive
9 proportionate reimbursement therefor from the United States in the
10 cases and in the manner set forth in RCW 47.44.030. Renewal upon
11 expiration of a franchise must be by application. Notwithstanding any
12 contrary provision of law or of any existing or future franchise and
13 except in the event of emergencies, the department shall give public
14 utilities operating water and sewer systems not less than one hundred
15 eighty days' notice of changes to rights of way that will require
16 relocations of water or sewer system facilities. The notice shall be
17 accompanied by proposed construction plans. The public utilities may
18 respond within thirty days with suggested changes to the construction
19 plans to reduce the extent and cost of the relocations. The department
20 shall consider such suggestions in good faith, require only such
21 relocations as are reasonably necessary based on sound engineering
22 practices, and adjust the construction plans accordingly.

23 (4) A person constructing or operating such a utility on a state
24 highway is liable to any person injured thereby for any damages
25 incident to the work of installation or the continuation of the
26 occupancy of the highway by the utility, and except as provided above,
27 is liable to the state for all necessary expenses incurred in restoring
28 the highway to a permanent suitable condition for travel. A person
29 constructing or operating such a utility on a state highway is also
30 liable to the state for all necessary expenses incurred in inspecting
31 the construction and restoring the pavement or other related
32 transportation equipment or facilities to a permanent condition
33 suitable for travel and operation in accordance with requirements set
34 by the department. Permit and franchise holders are also financially
35 responsible to the department for trenching work not completed within
36 the contractual period and for compensating for the loss of useful
37 pavement life caused by trenching. No franchise may be granted for a

1 longer period than fifty years, and no exclusive franchise or privilege
2 may be granted.

3 (5) The holder of a franchise granted under this section is
4 financially responsible to the department for trenching work not
5 completed within the period of the permit and for compensating for the
6 loss of useful pavement life caused by trenching. In the case of
7 common trenching operations, liability under this subsection will be
8 assessed equally between the franchisees. The assessed parties may
9 thereafter pursue claims of contribution or indemnity in accord with
10 such fault as may be determined by arbitration or other legal action.

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