

# HOUSE BILL REPORT

## HB 2923

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

**Title:** An act relating to public utility rights of way on aquatic lands.

**Brief Description:** Allowing certain entities to use state-owned aquatic lands for public utility lines.

**Sponsors:** Representatives Crouse, Ruderman and Morris.

**Brief History:**

**Committee Activity:**

Technology, Telecommunications & Energy: 2/4/00 [DP].

**Brief Summary of Bill**

- Access to state-owned aquatic lands without charge for public utility lines is granted to all other electricity providers.

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### HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

**Majority Report:** Do pass. Signed by 10 members: Representatives Crouse, Republican Co-Chair; DeBolt, Republican Vice Chair; Ruderman, Democratic Vice Chair; Bush; Delvin; Kastama; McDonald; Morris; Reardon and Thomas.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Poulsen, Democratic Co-Chair; Cooper and Wolfe.

**Staff:** Scott MacColl (786-7106)

**Background:**

Public utility lines owned by a governmental entity are permitted to use state owned aquatic lands without charge by agreement, permit, or other instrument if the use is consistent with criteria set in statute and does not obstruct navigation or other public uses.

State owned aquatic lands are those aquatic lands and waterways administered by the Department of Natural Resources or managed by a port district. This does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the Department of Natural Resources.

Use for public parks or public recreation purposes are authorized without charge if the aquatic lands and improvements are available to the general public on a first-come, first-served basis and are not managed for profit.

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**Summary of Bill:**

Access to state-owned aquatic lands without charge is expanded to include public utility lines owned by cooperative associations on the cooperative plan, mutual corporation or associations, or a public service company subject to regulation by the Washington Utilities and Transportation Commission.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** Utilities are willing to pay reasonable costs to the Department of Natural Resources for aquatic lands access, and would also like other energy providers to have the same access as public companies. The department's fees have historically been reasonable, and the department has generally processed applications in a timely fashion. However, recently it was learned that the department is contemplating fees based on the revenue of the utility. One-half of the customers of the state is served by nongovernmental providers, and these customers will have to pay the costs.

At the end of 1998, all permits were frozen while the department looks at their fee structures, and everyone is still waiting. Many of the projects have been canceled due to the freeze in permits, and the delays have cost money for contractors and customers. It is thought that the department is attempting to turn a profit off of the permits, and it may require a vote of the people to implement a new fee. The department should be able to charge administrative costs, but not to turn a profit.

Rural electric cooperatives serve less than 5 percent of the population, but 20 percent of land area. The department's fees would add to the cost of providing services to rural areas. Electricity is a public service, and it is not in the public interest to

charge extra. The department making a profit will stymie rural economic development.

There is a river crossing in the Spokane Valley that is involved in a jurisdiction issue - as to whether or not the department has jurisdiction over that portion of the river. Also, it would be different if the department charged a fee structure at what the market would bear, yet they came up with a fee entirely on their own. They also set terms and conditions that are unreasonable, and said, basically, take it or leave it.

**Testimony Against:** At face value, it seems very simple, but it has very broad policy implications. The aquatic lands are the most valued lands in the public's trust. The public should get a fair rate of return when cables, pipes, etc., go under water. The department must be mindful of damage to ecosystems. The department was asked by the Legislature to behave like a business, and they are trying to capture a fair rate of return. The department is trying to work out the kinks - is it the best way to use the adjacent land values to determine the price, or another way? It becomes almost a site-by-site decision-making process, and it is a proprietary decision and a leasing decision.

(Concerns) There is concern about liability for the state, as in the Olympic pipeline issue, and the state shouldn't be liable for the company's mistakes. People are charged to use state parks, so why are companies allowed to use public lands for free? In statute, state parks must be consulted if the department issues permits on state parks lands, but this bill effectively takes state parks out of consultation.

**Testified:** (Support) Terry Oxley, Puget Sound Energy; Howard Strong, Puget Sound Energy; Aaron Jones, Washington Rural Electric Cooperative Association; Dave Clinton, Washington Rural Electric Cooperative Association; and Rosemary Williamson, General Telephone.

(Opposed) Scott Merriman, Department of Natural Resources.

(Concerns) Jim King, Coalition for Parks and Recreation.