

HOUSE BILL ANALYSIS

HB 1254

Title: An Act relating to the right of utility facilities to be located on railroad rights-of-way.

Brief Description: Relating to the right or utility facilities to be located on railroad rights-of-way.

Sponsors: Representatives DeBolt, Hatfield, Crouse, McMorris, Sump, Scott, Cooper, Hankins, Wood, Morris, Buck and Schoesler.

HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

Meeting Date: February 12, 1999.

Bill Analysis Prepared by: Julia Harmatz, (786-7135)

Background:

A right of way is a term used to describe a right belonging to a party to pass over land of another, but it is also used to describe that strip of land upon which railroad companies construct their road bed, and, when so used, the term refers to the land itself, not the right of passage over it. (Black's Law Dictionary, Sixth Edition).

Railroads charge fees for permits or rights to cross or locate on railroad rights of way. Railroads cross the entire state and a utility company cannot avoid crossing them in providing service to its customers. In the past, railroads have charged nominal fees for these rights. The railroads have begun to charge utilities significantly higher fees.

RCW 80.36.050 currently applies to the use of rights-of-way by telecommunication companies and provides for damages if the railroad refuses or neglects to allow telecommunication companies to construct and maintain lines on and along the rights-of-way.

Summary:

This bill expands current law. Railroads currently allow telecommunications to construct and maintain lines on and along railroad rights-of-way. This bill would include utilities and telecommunication companies and permits the utilities to operate and maintain utility

facilities on, over and under the railroad rights of way. Utility facilities include all property used by an electric utility, gas company, water utility or sewer utility.

If the railroad refuses to allow a telecommunication company to maintain lines, the railroad is liable for \$1,000-\$5,000 for each offense and \$100 per day for each continuance of offense.

A task force is created to study the following issues:

- . Creation of a permanent easement when a right-of-way is abandoned;
- . Reimbursement for construction on a right-of-way;
- . Compensation to railroads for locating utilities on a right-of-way;
- . Other costs associated for locating facilities on a right-of-way;
- . Scope of indemnification insurance;
- . Notification of construction requirements;
- . Conditions necessary to relocate utility facilities; and
- . Dispute resolution mechanisms.

The task force will make recommendations and report to the Legislature by December 1, 1999.

The eleven (11) member task force is comprised as follows:

Seven (7) members and the chair are selected by the Governor.

1. One (1) from an electrical or gas company
2. One (1) municipality or public utility district
3. One (1) cooperative
4. Two (2) railroads within and without WA
5. One (1) railroad solely within WA
6. One (1) representing the public who may be from the office of public counsel (Attorney General).

One Republican and one Democratic member each from each House.

The UTC will staff the task force.

Appropriation: None.

Fiscal Note: Requested.

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