

HOUSE BILL ANALYSIS

HB 2591

Title: An act relating to compensation and conditions for utility facilities within a railroad right-of-way.

Brief Description: Compensating railroads for utility use of rights-of-way.

Sponsors: Representatives Morris, Crouse, DeBolt, Cooper, Pennington, Scott, Mielke, Ericksen, Doumit, Reardon, Schoesler and Haigh.

HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS AND ENERGY

Meeting: January 26, 2000

Staff: Scott MacColl (786-7106)

Background:

There are currently nearly 3,300 route miles of railroads in Washington, owned by 2 Class I Railroads, and 11 short line railroads. Utility companies compensate the railroads for facilities located within the railroad right of way based on permit fee requirements, negotiated fees, master agreements, or condemnation proceedings.

ESSB 5180, 1999 legislative session, required the Utilities and Transportation Commission to prepare a report concerning information regarding specific costs associated with the location of utility facilities within railroad rights of way in Washington.

The study indicated that both utilities and railroads assert they incur various extraordinary— expenses as a result of utilities being located within the railroad rights of way.

Summary of Bill:

A new process for resolution is codified within the the Attorney General's statutes regarding disputes between railroads and utilities over compensation to be paid for the construction or maintenance of facilities in the railroad right of way. The rules dictating this process apply to all future facilities and where agreements concerning

existing facilities do not exist, expire, or are terminated, and on public or private property.

These resolutions provisions only apply if the utility and the railroad cannot reach an agreement regarding compensation. The bill also includes a null and void clause.

Railroad Right of Ways: Compensation for Use

No railroad shall be able to charge a fee for facilities which cross a railroad right of way at a public right of way. There are two expenses that utilities using the railroad right of way are required to pay:

- 1) a utility must compensate for reasonable direct expenses incurred by the railroad for a facility that is located within a railroad right of way; and
- 2) utilities must also pay a one time easement fee, in lieu of any license fee, sufficient to compensate the railroad for the loss in property value due to a utility locating the facility there. The property value must be based on fair market value as a railroad right of way. This particular one time fee applies to all utility facilities located prior to this bill that are covered under an expired contract, and all future facilities.

If the railroad and utility cannot agree on the compensation amounts listed previously, the railroad may petition the superior court in the county where the facility is located for greater compensation. Greater compensation is stated to be extraordinary direct expenses for the railroad as a result of the construction of the facilities or if the railroad believes that special circumstances exist. If a petition is filed, the superior court shall determine whether greater compensation is warranted, and how much compensation is to be paid to the railroad.

Direct expense is defined for the purposes of this act to mean a) the cost of inspecting the crossing site before, during or after construction, b) administrative costs, c) the cost of flagging during construction, and d) other costs incurred due to actual construction. Contributions to profit are specifically not included in the definition of direct expense.

Railroad Rights of Way: Insurance Coverage

Railroads and utilities shall determine individually the amount and scope of insurance to carry to cover associated risks. The railroad and utility shall indemnify each other for damages resulting from its own negligence.

Railroad Rights of Way: Notification between Utilities and Railroads

The railroad and utility must notify each other at its own expense for emergencies, planned repairs or any operation in the right of way that affects the other entity. Notification of intent to construct must be made 21 days prior to construction, and notification of actual construction three days prior.

The two parties must establish a mechanism for receiving notification of emergencies 24 hours a day, including an emergency contact and telephone number, and specific emergency procedures.

Railroad Rights of Way: Reimbursement of Expenses

Railroads and utilities must reimburse each other for:

- expenses reasonably incurred resulting from emergencies caused by the property or facilities; and
- reasonable miscellaneous expenses incurred at the other entity's request.

Railroads and utilities must repair and maintain their own facilities, and may not perform duties on the other's property or facilities. Utilities must relocate their facilities if the relocation is reasonably necessary for railroad operations. Grade crossings markings or signs damaged by either entity must be paid for by the damaging entity.

Railroad Rights of Way: Placement of New Facilities

Utilities are required to provide a physical description of new facilities at their own expense. Utilities or railroads are required to provide each other physical descriptions of any alterations or additions to property or facilities. Utility facilities located within railroad facilities must be constructed and maintained under applicable federal and state laws and standards.

Railroad Rights of Way: Dispute Resolution

A railroad is prohibited from refusing to permit a utility to construct, replace, maintain, or repair facilities within the right of way solely due to a dispute concerning compensation or conditions to the right of placing the facilities in the right of way. A utility may proceed with construction while the dispute is resolved using the process described in this bill.

If construction is occurring the dispute, the railroad may petition the superior court for expedited review. For facilities constructed during a dispute, the court may order the utility to remove or modify the facility if the court finds the facilities are located in an unreasonable location or constructed in an unsafe manner.

Appropriation: None.

Fiscal Note: Not requested.

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