

# SENATE BILL REPORT

## SB 5680

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As Reported By Senate Committee On:  
Transportation, March 8, 1999

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

**Brief Description:** Creating a moratorium on fee increases for utility use of railroad rights-of-way.

**Sponsors:** Senators Haugen, Swecker, T. Sheldon, Morton, Benton and Patterson.

**Brief History:**

**Committee Activity:** Transportation: 2/24/99, 3/8/99 [DPS, DNPS].

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### SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** That Substitute Senate Bill No. 5680 be substituted therefor, and the substitute bill do pass.

Signed by Senators Haugen, Chair; Gardner, Vice Chair; Goings, Vice Chair; Benton, Costa, Johnson, Morton, Patterson, Sheahan, T. Sheldon and Swecker.

**Minority Report:** Do not pass substitute.

Signed by Senators Sellar and Shin.

**Staff:** Jennifer Ziegler (786-7316)

**Background:** Current law requires railroads to allow telecommunications companies to construct and maintain lines on and along railroad rights-of-way. Railroads also permit other utilities to cross or locate on railroad rights-of-way.

Historically, railroads have charged nominal fees to those utilities located on the rights-of-way. In recent years some railroads have increased their fees.

**Summary of Substitute Bill:** A moratorium is established on new fees and fee increases by a railroad company for the construction and placement of utility facilities on railroad rights-of-way. The moratorium is not in effect if the parties agree to raise the fees. Railroads may renew a previously imposed fee. During the moratorium, railroads may only require utilities to relocate their facilities if the facilities interfere with railroad operations or create a safety hazard. The moratorium is in effect until December 31, 2000.

Railroad companies may not deny utilities the ability to construct facilities on rights-of-way because of disputes regarding compensation or conditions on the placement of facilities.

Utility facilities may not interfere with railroad operations. Utilities are responsible for notifying the railroad companies regarding any repairs or emergencies that may effect railroad operations.

A task force is created to study the following issues:

- creation of a permanent easement when a right-of-way is abandoned;
- reimbursement of costs for construction on a right-of-way;
- compensation to railroads for locating facilities on rights-of-way;
- other costs associated with locating facilities on rights-of-way;
- scope of indemnification insurance;
- notification of construction requirements;
- conditions necessary to relocate utility facilities; and
- dispute resolution mechanisms.

The 13-member task force is comprised of one member of the House Transportation Committee, one member from the Senate Transportation Committee, one member of the House Technology, Telecommunications and Energy Committee, and one member of the Senate Energy, Technology and Telecommunications Committee. Nine members and the chair are selected by the Governor:

one member from an electrical or natural gas company;  
one member from a municipality;  
one member from a telecommunications company;  
one member from a cooperative association;  
two representatives from railroads within and without Washington;  
two representatives from railroads operating solely within Washington; and  
one member representing the public, which could be a representative from the Attorney General's office.

This act does not apply to municipal railroads.

The Utilities and Transportation Commission staffs the task force. The task force must make recommendations to the Legislature by December 1, 1999.

**Substitute Bill Compared to Original Bill:** The moratorium does not apply if the parties make a different agreement. The legislative members of the task force must come from specific legislative committees. A telecommunications company representative is added to the task force. Municipal railroads are exempt from the legislation.

**Appropriation:** \$45,000.

**Fiscal Note:** Requested on February 19, 1999.

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

**Testimony For:** It is impossible for a utility to cross the state without crossing railroads. Railroad permits do not create a permanent right-to-cross. Utility facilities have a minimal impact to the railroad right-of-way. Utilities have tried to negotiate with railroads and have not been successful. The fees have substantially increased.

**Testimony Against:** Railroads have worked with utility companies to accommodate utility needs. Utilities also have right of condemnation. No major policy decisions should be made

until after the study is performed. Reversionary property interests should be represented on the task force. Reversionary property owners should not have their real estate encumbered by another easement.

**Testified:** Collins Sprague, AVISTA Corp. (pro); Don Malisani, AVISTA Corp. (pro with concerns); Aaron Jones, WA Rural Electric Co-Ops (pro); Kristen Harte Sawin, WA PUD Assn. (pro); Pati Otley, Burlington Northern Santa Fe (con); Mike Devine, BNSF (con); Tom Parker, Union Pacific Railroad (con); Vicki Beres, Reversionary Property Owners (pro with amendment); Kathy Schroeder, Richard Luce, property owners (pro with amendment).