
SUBSTITUTE HOUSE BILL 2591

State of Washington

56th Legislature

2000 Regular Session

By House Committee on Technology, Telecommunications & Energy (originally sponsored by Representatives Morris, Crouse, DeBolt, Cooper, Pennington, Scott, Mielke, Ericksen, Doumit, Reardon, Schoesler and Haigh)

Read first time 02/04/2000. Referred to Committee on .

1 AN ACT Relating to compensation and conditions for utility
2 facilities within a railroad right-of-way; and adding new sections to
3 chapter 43.10 RCW.

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

5 NEW SECTION. **Sec. 1.** (1) The purpose of sections 1 through 9 of
6 this act is to set forth the compensation to be paid, and conditions to
7 be met, by a utility for the construction of new facilities or the
8 maintenance of existing facilities within a railroad right-of-way in
9 cases where the utility and railroad cannot agree.

10 (2) These rules shall be applicable to all future and existing
11 facilities and, except as provided in section 3 (1) through (5) of this
12 act, shall be applicable to all existing facilities if agreements
13 concerning existing facilities do not exist, expire, or are terminated.

14 (3) These rules shall be applicable to utility facilities
15 constructed within a railroad right-of-way, whether on public or
16 private property.

17 (4) Nothing in this act shall impair property interests of persons
18 who are not railroads, and persons owning reversionary rights to
19 rights-of-way.

1 NEW SECTION. **Sec. 2.** The definitions in this section apply
2 throughout sections 1 through 9 of this act unless the context clearly
3 requires otherwise.

4 (1) "Consumer-owned utility" means a municipal utility formed under
5 Title 35 RCW, a public utility district formed under Title 54 RCW, an
6 irrigation district formed under chapter 87.03 RCW, a cooperative
7 formed under chapter 23.86 RCW, or a mutual corporation or association
8 formed under chapter 24.06 RCW, that is engaged in the business of
9 distributing electricity or providing water or sewer services to more
10 than one retail customer in the state.

11 (2)(a) "Direct expenses" means:

12 (i) The cost of inspecting the crossing site before, during, or
13 after construction;

14 (ii) Administrative costs, such as the costs of entering the new
15 crossing on the railroad's books, maps, and property records;

16 (iii) The cost of flagging during construction; and

17 (iv) Any other costs incurred due to actual construction.

18 (b) "Direct expenses" does not include a contribution to profit.

19 (3) "Facilities" means cables, conduits, wires, pipes, and
20 structures used by a utility to transmit utility service.

21 (4) "Investor-owned utility" means a public service company that
22 meets the definition of RCW 80.04.010, and is engaged in distributing
23 electricity, telecommunications service, gas, or water to more than one
24 retail customer in the state.

25 (5) "Railroad" means a carrier of persons or property upon
26 vehicles, other than street cars, operated upon stationary rails.

27 (6) "Railroad right-of-way" means any ownership interest that a
28 railroad has in property on which stationary rails are located.

29 (7) "Special circumstances" means unique characteristics of a
30 parcel of property which enhance its value above that of a typical
31 parcel of railroad right-of-way. "Special circumstances" may include
32 the parcel's relationship to other property, the existence of unique
33 topography or natural resources, or other unusual characteristics.

34 (8) "Utility" means a consumer-owned utility or an investor-owned
35 utility.

36 (9) "Within" means across, intersecting, on, over, perpendicular
37 to, under, along, or parallel to, a railroad right-of-way.

1 NEW SECTION. **Sec. 3.** (1) Unless otherwise agreed to by the
2 parties, a utility which locates its facilities within a railroad
3 right-of-way shall compensate the railroad for all reasonable direct
4 expenses that are incurred by the railroad.

5 (2) Unless otherwise agreed to by the parties, a utility shall also
6 make a one-time payment, in lieu of any license fee, for an easement to
7 site facilities within a railroad right-of-way to which the railroad
8 holds title. Otherwise, the one-time payment shall be for a license to
9 maintain utility franchises within the railroad right-of-way for as
10 long as a railroad has use of or control over the right-of-way. The
11 amount of the one-time payment under this subsection shall be
12 sufficient to compensate the railroad for the diminution of property
13 value caused by the locating of utility facilities within the railroad
14 right-of-way, based upon the currently appraised fair market value of
15 the railroad right-of-way as a railroad right-of-way.

16 (3) Unless otherwise agreed to by the parties, the one-time payment
17 requirement under subsection (2) of this section applies to all utility
18 facilities that were located within the railroad right-of-way before
19 the effective date of this act and that are covered under an expired
20 contract by that date.

21 (4) Unless otherwise agreed to by the parties, the one-time payment
22 requirement under subsection (2) of this section applies to all utility
23 facilities that are constructed within the railroad right-of-way after
24 the effective date of this act.

25 (5) A railroad cannot require a utility to pay any compensation,
26 including any license fee, for facilities which cross a railroad right-
27 of-way upon a public right-of-way.

28 (6) In the event of a dispute between a railroad and a utility, the
29 parties shall attempt to reach a compromise through mediation.

30 (7) Unless otherwise agreed to by the parties, a property owner
31 shall make a payment of three hundred dollars every ten years to a
32 railroad for the purpose of gaining access to lands or structures
33 owned, leased, or otherwise controlled by the property owner. No
34 license fee shall be owed to a railroad for cattle or farm implement
35 crossings.

36 NEW SECTION. **Sec. 4.** Unless otherwise agreed to by the parties:

37 (1) A railroad and a utility shall each determine for itself the
38 amount and scope of insurance it shall carry to cover risks associated

1 with the property of the railroad or the facilities of the utility
2 within a railroad right-of-way.

3 (2) A railroad and a utility shall indemnify the other for damages
4 resulting from its own negligence related to the presence of utility
5 facilities within the railroad right-of-way.

6 NEW SECTION. **Sec. 5.** Unless otherwise agreed to by the parties,
7 a railroad or utility shall, at its own expense:

8 (1) Notify the other of emergencies, planned repair and
9 construction, or similar operations within a railroad right-of-way if
10 the operation may affect the other. Except for emergencies, initial
11 notification of intent to construct shall be made by twenty-one days
12 before construction, and notification of actual construction shall be
13 made by three working days before construction begins;

14 (2) Establish a mechanism for receiving notification of emergencies
15 twenty-four hours per day, seven days per week. For every utility
16 having facilities located within a railroad right-of-way, each utility
17 and railroad shall inform the other of an emergency telephone number,
18 the name of a person responsible for processing the notification, and
19 any other information necessary for dealing with an emergency
20 situation.

21 NEW SECTION. **Sec. 6.** (1) Unless otherwise agreed to by the
22 parties, a railroad or utility shall reimburse the other for:

23 (a) Expenses reasonably incurred that result from emergencies
24 caused by the property or facilities of each that is located within the
25 railroad right-of-way; and

26 (b) Reasonable miscellaneous expenses incurred by one party at the
27 other's request.

28 (2) Unless otherwise agreed to by the parties, a railroad or
29 utility shall each repair and maintain its own property or facilities
30 located within a railroad right-of-way, and may not perform regular or
31 emergency maintenance or repair of the other's property or facilities.

32 (3) Unless otherwise agreed to by the parties, a utility shall
33 relocate its facilities within a railroad right-of-way if the
34 relocation is reasonably necessary for railroad operations.

35 (4) If grade crossing markings or signs are damaged during
36 construction, the party responsible for the damage shall pay the
37 replacement costs, unless otherwise agreed to by the parties.

1 NEW SECTION. **Sec. 7.** (1) Upon placement of new facilities, a
2 utility shall, at its own expense, provide a railroad with a physical
3 description of those new facilities and their location within the
4 railroad's right-of-way. The description shall include the installed
5 location and depth of any underground facilities.

6 (2) A utility or railroad shall provide the other with a physical
7 description of any alterations or additions to its property or
8 facilities located within the railroad right-of-way in the area of the
9 utility's facilities.

10 (3) Utility facilities located within the railroad right-of-way
11 shall be constructed and maintained under applicable state and federal
12 laws and regulations.

13 NEW SECTION. **Sec. 8.** (1) Unless otherwise agreed to by the
14 parties:

15 (a) A railroad may not refuse to permit a utility to construct,
16 replace, maintain, or repair facilities within a right-of-way solely
17 because of a dispute between the parties concerning compensation.

18 (b) Subject to subsection (2) of this section, a utility may
19 proceed with construction while the dispute is resolved under state law
20 or another method mutually selected by the parties.

21 (2) If a utility constructs facilities within a railroad right-of-
22 way while a dispute is pending and, upon a petition by a railroad to
23 the superior court for expedited review, the superior court finds that
24 the facilities are located in an unreasonable location or constructed
25 in an unsafe manner, the court may order the utility to remove or
26 modify the facilities at the utility's expense.

27 NEW SECTION. **Sec. 9.** This act does not apply to a railroad
28 operated by a municipal corporation.

29 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act are each
30 added to chapter 43.10 RCW.

31 NEW SECTION. **Sec. 11.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

--- END ---