

HOUSE BILL REPORT

ESHB 1005

As Passed Legislature

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

Brief Description: Allowing the granting of easements on state-owned aquatic lands for local public utility lines.

Sponsors: By House Committee on Technology, Telecommunications & Energy (originally sponsored by Representatives Morris and Lantz).

Brief History:

Committee Activity:

Technology, Telecommunications & Energy: 1/23/02, 2/5/02 [DPS].

Floor Activity:

Passed House: 2/15/02, 98-0.

Passed Senate: 3/8/02, 41-8.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Allows access by easement to state-owned aquatic lands for public utility lines owned by nongovernmental entities for a charge.
- Requires governmental entities to pay direct administrative costs for the use of state-owned aquatic lands for public utility lines.
- Establishes a three-tiered system of charges based on the length of the easement.

HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Morris, Chair; Ruderman, Vice Chair; Crouse, Ranking Minority Member; Anderson, Berkey, Bush, Casada, DeBolt, Delvin, Esser, Linville, Lysen, Nixon, Pflug, Reardon and Sullivan.

Minority Report: Without recommendation. Signed by 3 members: Representatives Hunt, Romero and Wood.

Staff: Pam Madson (786-7166).

Background:

State-owned aquatic lands are state-owned tidelands, shorelands, harbor areas, beds of navigable waters, and waterways administered by the Department of Natural Resources (DNR) 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 This does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the DNR.

Governmental entities may use state-owned aquatic lands for public utility lines at no charge as long as the use is consistent with statutory purposes for these lands and does not obstruct navigation or other uses. The term "public utility lines" includes pipes or similar structures for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers.

As the manager of state-owned aquatic lands, the DNR must strive to balance the public benefits for all citizens. Public benefits of aquatic lands include encouraging direct public use and access, fostering water-dependent uses, ensuring environmental protection, and utilizing renewable resources.

The DNR is vested with the authority to grant the use of state-owned aquatic lands upon terms and conditions and length of time that are consistent with the state constitution and state laws.

Summary of Engrossed Substitute Bill:

Non-governmental entities may obtain easements with the DNR over state-owned aquatic lands for local public utility lines as long as the use is consistent with statutory purposes for these lands and does not obstruct navigation and other uses. In granting these easements, the DNR is to charge the applicant on a three-tiered schedule depending upon the length of the easement. Until July 1, 2008, specific charges are as follows: (1) \$5,000 for easements that are no longer than one mile in length, (2) \$12,500 for easements that are greater than one mile but less than five miles, and (3) \$20,000 for easements that are 5 miles or more in length. These charges are to be adjusted annually by the rate of yearly increase in the consumer price index (all urban consumers / Seattle-Everett SMSA). The term of an easement is 30 years.

For existing easement applications and new applications, the DNR must make a final decision within 120 days of its receipt of a completed application and after all applicable regulatory permits for the aquatic easement are obtained. An applicant may request a decision in 60 days and the DNR may charge an additional fee for such expedited processing. The fee for expedited processing is the greater of 10 percent of the charge and direct administrative costs for the easement or the cost of staff overtime associated

with the permit processing.

Easement applicants providing a residence with an individual service connection for electrical, natural gas, cable television, or telecommunications service are not required to pay the charge for the easement but must pay DNR's direct administrative costs.

The DNR may recover reasonable direct administrative costs associated with processing and approving requests for use of state-owned aquatic lands from governmental entities and for easement applications from non-governmental entities. Direct administrative costs are defined as the cost of hours worked directly on processing the application (based on salaries and benefits), travel reimbursement, and other actual out-of-pocket costs.

Direct administrative costs recovered by the DNR are to be deposited in the Resource Management Cost Account.

Provisions of this bill do not limit the ability of the DNR to recover lost revenue resulting from the granted use of state-owned aquatic lands for public utility lines.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: (Testimony for original bill) This bill would be a positive step for Washington. The time-lines incorporated into the bill are a positive element. Clarifications in the law that provide certainty and fee structure would be very helpful. It is also important to see a policy process that includes input from all stake holders. This bill should have competitive neutrality, government entities should not receive easements free of charge over private industry. Currently, telecommunications facilities are classified as non-water dependant, they should be classified as water dependant. This bill should include aquatic lands and uplands. The fee should be a flat fee with administrative costs added on to the flat fee. The fee should be capped at \$5,000 plus administrative costs to process the applications. Projects have failed in the past because of excessive fees imposed by the DNR. If no agreement is reached, it will have a huge effect on the economic development of rural Washington. The appraisal evaluation is complex to the point of unworkability. The application process will hopefully be remedied by this bill. Currently when an application is made for an aquatic land easement, the DNR sets the application aside until every permit has been issued for a project. This results in the applicant going through the environmental review on the local, state, and federal level before the DNR is in a position to act on the application. At that point the applicant has expended a great deal of money with the risk of being denied because of unaffordable aquatic easement fees.

Testimony Against: (Testimony against original bill) This bill results in the public not being compensated for use of state aquatic lands and results in an estimated revenue loss between \$1.5 and \$2 million per year. During a time when the state has a deficit of more than a billion dollars, this is a bad idea. The account that this money goes into is now being used to provide a variety of public benefits, such as: The management of state aquatic land, restoration of shorelines, providing local grants to local governments in order to increase public access to aquatic land, providing for boating safety, providing fish and wildlife enforcement, and other benefits. Rate payer relief for economically depressed areas would be a reasonable idea, but not an across the board flat fee. Private land owners are allowed to charge the market rate for use of land, public lands should be treated no differently. The issue of evaluation of easements across aquatic lands and uplands is very complicated. The DNR plans to meet with interested parties to try to address the concerns identified so far and come up with a process that meets those concerns and still protects the public interest.

Testified: (In support) Don Dennis, CenturyTel; Ik Icard, Pirelli Jacobson; Cathy Brightwell, AT&T; Aaron Jones, WRECA; and Ron Main, Broadband Communications Association of Washington.

(Opposed) Loren Stern, Department of Natural Resources; Elaine Davis, Fair Competition Alliance; and Bruce Wisuart, People for Puget Sound.