

HOUSE BILL REPORT

SB 5632

As Passed House:

April 10, 2003

Title: An act relating to utility relocation costs.

Brief Description: Regarding utility relocation costs.

Sponsors: By Senators Esser, Fairley, Schmidt, Prentice, Horn and Rossi.

Brief History:

Committee Activity:

Technology, Telecommunications & Energy: 3/26/03 [DP].

Floor Activity:

Passed House: 4/10/03, 76-18.

Brief Summary of Bill

- Requires that costs to relocate a utility's facilities incurred as a result of construction of a transit authority rail system be paid by the transit authority.

HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

Majority Report: Do pass. Signed by 16 members: Representatives Morris, Chair; Ruderman, Vice Chair; Sullivan, Vice Chair; Crouse, Ranking Minority Member; Nixon, Assistant Ranking Minority Member; Anderson, Blake, Bush, DeBolt, Delvin, Hudgins, McMahan, Romero, Tom, Wallace and Wood.

Staff: Pam Madson (786-7166).

Background:

In 1992 the Legislature authorized the creation of a regional transit authority for contiguous counties with a population of over 400,000. In 1993 the county councils of King, Pierce, and Snohomish counties voted to form a regional transit authority. The authority is charged with implementing a high capacity transportation system and developing revenues to support the system. This central Puget Sound regional transit authority is known as Sound Transit.

In 1996 voters within the boundaries of Sound Transit approved a plan and local option taxes to support the plan. Implementation of the plan includes construction of a light rail system. This construction will require the removal and relocation of various utility facilities located along the rail line. Sound Transit is currently in negotiations with various utilities on the issue of relocation of facilities.

Historically, when improvements to a public right of way required the displacement of telecommunications equipment, telecommunications companies paid the expense of relocation. A county, in granting a franchise for use by a utility of a county road right of way, may require that any relocation reasonably necessary for construction, alteration, or improvement must be paid by the utility. In 2000 the Legislature allowed utilities under certain circumstances to seek reimbursement from a city when the utility's facilities are required to be relocated. Utilities may seek reimbursement when aerial facilities are being relocated underground, when the utility has paid for relocation of the same facilities within the last five years, or when the city was seeking relocation for aesthetic reasons. The Department of Transportation may also reimburse a utility for relocation costs under certain circumstances.

Summary of Bill:

In the case of a regional transit authority, the costs of removing or relocating utility facilities that result from construction, alteration, repair, or improvement of the transit authority's rail system must be included in the cost of the system and must be paid by the authority. However, the cost of any upgrades to a utility's existing facilities undertaken by the utility are paid by the utility.

In order to minimize costs and disruption to service, the transit authority and the utility must negotiate over design, engineering, and route selection of the system. "Utility facilities" subject to these relocation provisions include cable television, gas, electric, and telecommunications facilities.

Disputes over costs may be submitted to an independent auditor agreed to by the parties. The auditor will determine if costs are accurate. The party requesting the audit is responsible for paying the cost of the audit. The auditor's decision is final.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill addresses a few short comings in the fairness involving the cost of utility relocation associated with the Sound Transit project. The current common law rule regarding public rights of way is fair in the more traditional cases. With Sound Transit there are some truly extraordinary costs because of tunneling and some other aspects of the project. Without this change ratepayers who live outside the Sound Transit area will have costs shifted to them rather than taxpayers within the Sound Transit area. This is not a right of way bill. Sound transit does not own or manage any rights of way. Cities have the right to require utilities to relocate. This bill does not modify any right of way statute for any government. Sound Transit is a voter approved special project. This applies only to Sound Transit. The question is what should the policy be for a voter approved project with a special tax that voters approved to impose on themselves and who should pay for the extraordinary costs incurred by a utility to relocate facilities solely to accommodate the construction of the project. Conversations at the beginning of the Sound Transit project over relocation costs suggested that these costs were part of the project. Sound Transit has negotiated some cost reimbursement for some utilities and not others. Money spent by the utility on relocation means money that won't be spent on new utility infrastructure. Voters in a three county area voted for the project and shifting cost to customers of utilities is not what these customers had a chance to vote on. If relocation increases cost of the utility, workers of that utility may lose jobs. It assures equal treatment of utilities and their customers.

Testimony Against: This legislation may set a precedent for other rights of way situations involving costs for relocating utilities where the law is settled. Fairness is also a consideration in transferring millions of dollars from the Sound Transit project to a private corporation. This bill puts the utility in the driver's seat for the project in requiring negotiation with the utility on engineering, design, and route selection. Language of the bill makes it a transit route bill, a right of way bill. The cost of relocation could be used to improve and increase many of the transportation components of the project. Utilities use rights of way belonging to the public at no cost. The assumption is that the planning of this project took into account the laws regarding utility relocation. This bill changes the rules after the fact. The transfer of cost to consumers by a utility would be part of a request for a change in rates by the utility to the Washington Utilities and Transportation Commission before that would happen. Utility relocations happen all the time. The precedent being set here is one of dealing with extraordinary circumstances. This could potentially set a precedent for other projects that would result in different treatment for different agencies.

Testified: (In support) Senator Esser, prime sponsor; Tom Walker, Qwest; Jerri Wood, Communications Workers of America, Washington State Council; and Elaine Davis, Fair Competition Alliance.

(Opposed) Bill Stauffucher, Burlington Northern Santa Fe; and Ric Ilgenfritz, Sound Transit.