

SENATE BILL REPORT

SB 5632

As Passed Senate, March 18, 2003

Title: An act relating to utility relocation costs.

Brief Description: Regarding utility relocation costs.

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

Brief History:

Committee Activity: Technology & Communications: 2/27/03, 3/3/03 [DP, DNP].

Passed Senate: 3/18/03, 32-17.

SENATE COMMITTEE ON TECHNOLOGY & COMMUNICATIONS

Majority Report: Do pass.

Signed by Senators Esser, Chair; Finkbeiner, Vice Chair; Poulsen, Reardon, Schmidt and Stevens.

Minority Report: Do not pass.

Signed by Senator Eide.

Staff: William Bridges (786-7424)

Background: In 1993, the King, Pierce, and Snohomish county councils formed a regional transit authority, now known as Sound Transit. The authority is charged with implementing a high capacity transportation system and developing revenues to support the system.

In 1996, voters within the boundaries of Sound Transit approved a regional transit plan that includes construction of a light rail system. This construction will require the relocation of various utility facilities along the rail line.

Under the common law, when improvements to a public right-of-way require the displacement of a utility's facilities, the utility must pay for the relocation. This general rule, however, may be modified by state or local governments. For example, under a statute enacted in 2000, a telecommunications company may seek reimbursement from a city or town when aerial facilities are being relocated underground, when the company has paid for relocation of the same facilities within the last five years, or when the city is seeking relocation for aesthetic reasons.

Summary of Bill: In the case of a regional transit authority, the costs of removing or relocating utility facilities that result from the construction, alteration, repair, or improvement of a rail fixed guideway system must be included in the cost of the system and must be paid by the authority. However, if a utility takes advantage of a relocation to upgrade its own facilities, it must pay the additional costs of the upgrade.

The transit authority and an affected utility must negotiate the engineering, design, and route selection of the system to minimize the cost and disruption of services related to the relocation.

Disputes over the cost of the relocation must be submitted to an independent auditor chosen by the disputing parties. The auditor's fee must be paid by the party requesting the audit. The auditor's decision is final.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill only applies to Sound Transit. It addresses the policy question of who should pay the extraordinary costs of relocating facilities for Sound Transit's rail system. These relocations are unusual because of the depth of the excavations and the need to shield facilities from direct current interference. Qwest paid \$1.3 million to move its facilities for the 1.6 mile Tacoma light rail project.

Testimony Against: Requiring Sound Transit to pay for relocations will increase Sound Transit's costs for light and commuter rail by \$56 million and will likely prevent the deployment of Sound Transit's rail projects. Relocations that are required by Sound Transit are actually ordered by city governments, and Sound Transit's policy is to negotiate with displaced utilities. Sound Transit tried to negotiate with Qwest over the Tacoma light rail project, but Qwest chose to sue and it lost in federal court. The cost of relocation is the price utilities pay for using the public right of way for free. This bill will set a precedent for other rights of way, including freight rail systems. The bill requires the negotiation of engineering design, but some things like safety should not be negotiable.

Testified: Jim Fitzgerald, Amalgamated Transit Union Leg. Council (con); Tim Kelley, Sound Transit (con); Bill Stauffacher, Burlington Northern Santa Fe Rail (con); Tom Walker, Qwest (pro).