

HOUSE BILL REPORT

HB 2533

As Reported by House Committee On:
Technology, Energy & Communications

Title: An act relating to attachments to utility poles of locally regulated utilities.

Brief Description: Concerning attachments to utility poles of locally regulated utilities.

Sponsors: Representatives McCoy, Chase and Quall.

Brief History:

Committee Activity:

Technology, Energy & Communications: 1/18/08, 1/25/08 [DPS].

Brief Summary of Substitute Bill

- Requires that the rates charged by public utility districts (PUDs) for a pole attachment must be just, fair, reasonable, nondiscriminatory, and sufficient.
- Defines how a "just and reasonable rate" for a pole attachment must be calculated by PUDs.
- Allows an aggrieved party to appeal to the Utilities and Transportation Commission (UTC) if the dispute is not first resolved by the applicable governing board.
- Authorizes the UTC to hear pole attachment disputes upon complaint by a licensee or a PUD, and to determine the rates, terms, and conditions for the pole attachment that are just, reasonable, or sufficient.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives McCoy, Chair; Eddy, Vice Chair; Crouse, Ranking Minority Member; Hankins, Hudgins, Hurst, Kelley and Morris.

Minority Report: Without recommendation. Signed by 4 members: Representatives McCune, Assistant Ranking Minority Member; Herrera, Takko and Van De Wege.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Kara Durbin (786-7133).

Background:

Pole Attachments Generally: Gaining access to potential customers often requires telecommunications service providers to use poles, ducts, conduits, or rights-of-way that a competitor, another type of utility service provider, or a governmental entity may possess.

In Washington, attachment to poles owned by telecommunications or investor-owned utilities (IOUs) are regulated by the Washington Utilities and Transportation Commission (UTC). Attachments to poles owned by consumer-owned utilities are regulated by the Utility's Governing Board.

Federal Law: Federal law requires the Federal Communications Commission (FCC) to regulate the rates, terms, and conditions for pole attachments by cable systems, unless a state has adopted its own program for regulating such pole attachments. Federal law defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility."

The FCC's jurisdiction does not apply, however, to attachment to facilities owned by consumer-owned utilities, such as municipal utilities or public utility districts (PUDs), as the federal pole attachment statutes define "utility" to exclude consumer-owned utilities.

State Law: In 1979, the Legislature enacted legislation authorizing the UTC to regulate, in the public interest, the rates, terms, and conditions for pole attachments by licensees or utilities. All rates, terms, and conditions must be just, fair, reasonable, and sufficient. While the UTC may regulate pole attachment rates, terms, and conditions for IOUs, it has no regulatory authority over consumer-owned utilities such as PUDs, municipal utilities, or rural electric cooperatives.

In 1996 the Legislature enacted legislation pertaining to pole attachments made by consumer-owned utilities. It required that all pole attachment rates, terms, and conditions made, demanded, or received by a consumer-owned utility be "just, reasonable, nondiscriminatory, and sufficient." Rates must be uniform for the class of service throughout the utility's service area. The UTC is specifically prohibited from regulating the activities of consumer-owned utilities.

When a dispute arises regarding the rates, terms, or conditions of attachment to poles owned by a telecommunications company or an IOU, the aggrieved party can appeal to the UTC for resolution of the dispute. If dissatisfied, a party to the dispute can appeal a decision of the UTC to the courts.

When a dispute arises regarding the attachment to poles owned by a consumer-owned utility, the aggrieved party has no recourse through the UTC, but can appeal to the utility's jurisdictional authority (such as the city council or PUD's board of commissioners) or file a lawsuit.

Summary of Substitute Bill:

Rates Charged by a Public Utility District: All rates, terms, and conditions made, demanded, or received by a PUD for allocated space on its poles for the licensee's attachments must be fair, reasonable, nondiscriminatory, and sufficient. The requirement that attachment rental rates be uniform for the same class of service within the PUD's service area is removed.

A "just and reasonable rate" is defined as a rate that assures the PUD that it will recover not less than all the additional costs of procuring and maintaining pole attachments, but not more than its actual capital and operating expenses, including just compensation, of the PUD attributable to that portion of the pole, duct, or conduit used for the pole attachment. The rate must also include a share of the required support and clearance space, in proportion to the space used for the pole attachment.

Request to Make an Attachment: If a licensee makes a request to attach to a PUD's pole, the PUD must respond, except in extraordinary circumstances, within 45 days. The PUD may only deny a request to attach on a nondiscriminatory basis where: (1) there is insufficient capacity; and (2) there are reasons of safety, reliability, and generally applicable engineering purposes.

Appeal Process: If there is a dispute between a PUD and a licensee over a specific request to make an attachment, the dispute must first be presented to the governing board of the PUD. If the dispute is not resolved by the governing board of the PUD within 45 days from the date the dispute is presented to the governing board, either the licensee or the PUD may initiate a complaint before the UTC.

If the UTC finds, after hearing the complaint, that the rates, terms or conditions demanded, exacted, charged, or collected by a PUD in connection with an attachment is unjust, unreasonable, or the rates or charges are insufficient to yield a reasonable compensation for the attachment, the UTC will: (1) determine the just, reasonable, or sufficient rates, terms and conditions thereafter to be observed and in force; and (2) fix the rates, terms and conditions by order.

In determining and fixing the rates, terms and conditions, the UTC must consider the interest of the customers of the attaching PUD or licensee, as well as the interest of the customers of the PUD upon which the attachment is made.

Definitions: "Attachment" is defined as the affixation or installation of any wire, cable, or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications, information services as defined in federal law, or television, including, but not limited to, any or all related devices, apparatuses, or auxiliary equipment, whether within or without the licensee's allocated space, upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

"Licensee" is defined as any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, which is authorized to construct attachment upon, along, under or across public ways.

"Locally regulated utility" is defined as a PUD that is not subject to rate or service regulation by the UTC.

"Nondiscriminatory" means that pole owners may not differentiate without good cause among or between similar classes of licensees approved for attachments.

Substitute Bill Compared to Original Bill:

The substitute bill removes the pole attachment provisions pertaining to municipal utilities, mutual corporations, and electric cooperatives.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) We need to find a reasonable solution to this issue. Pole owners should be able to recover their costs, but we have a responsibility to ratepayers to keep rates as low as possible. Problems over pole attachment rates first emerged in Oregon. The American Public Power Association (APPA) formula for pole attachment rates concerns us. We feel the inputs in the APPA formula result in a profit center for the pole owner. We have had a long, protracted dispute with one PUD in particular where we really wanted to work out a rate, but they filed a lawsuit against us in superior court for trespass.

Extending the pole attachment formula in Chapter 80.54 of the RCW that already applies to the investor-owned utilities makes public policy sense. We rely on pole owners to share their facilities. We need reasonable terms and reasonable rates. We think future disputes could be avoided by having a consistent pole attachment formula for parties to follow. Since 1979 only one pole attachment dispute has been brought before the UTC. Providing the UTC as a possible avenue for resolving disputes will help us minimize disputes in the first place.

We have, at times, been denied a reasonable rate or outcome with the locally regulated utilities. It is difficult to negotiate with the locally regulated utilities because there is not a level playing field; the pole owner has all the bargaining power.

(Opposed) There is a need for this revenue stream in order to reduce the safety hazard to line workers. Pole attachment disputes are not happening in our area. We are concerned about costs when disputes go to the UTC. Overall, we don't feel pole attachment disputes are an issue for cities. Putting cities under the UTC does not seem necessary and is unprecedented.

This bill goes against the spirit of Initiative #1, which created PUDs: local control. Current law already requires that pole attachment rates be "just, reasonable, nondiscriminatory, and sufficient."

An independent consultant was hired in our county to calculate the rate under the various pole attachment formulas. We are not using our poles as a profit center. We held rate hearings, but the licensees did not attend. We tried to work out a final agreement with the attaching entities, but they would not sign the rate agreement, so we filed a lawsuit against them. Prior to this, we had not adjusted rates since 1986.

This is an issue of contract negotiation. We are concerned about the change from a per attachment to a per space basis. The UTC could be overwhelmed with the volume of disputes over pole attachments. This bill raises safety concerns and concerns over the definition of attachment.

Persons Testifying: (In support) Representative McCoy, prime sponsor; Jim Jesernig and Mary Taylor, CenturyTel; Terrence Stapleton, Washington Independent Telephone Association; Johan Hellman, Verizon; Ron Main, Cable Association; and Al Hernandez, Comcast.

(Opposed) Lou Walter, International Brotherhood of Electrical Workers LU 77; Jeff Hall, Benton Public Utility District; Victoria Lincoln, Association of Washington Cities; Robert Mack, City of Tacoma; Vicki Austin and Dave Warren, Washington Public Utility Districts Association; and Doug Miller, Pacific County Public Utility District.

Persons Signed In To Testify But Not Testifying: None.