

HOUSE BILL REPORT

E2SHB 2533

As Passed Legislature

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: By House Committee on Appropriations (originally sponsored by Representatives McCoy, Chase and Quall).

Brief History:

Committee Activity:

Technology, Energy & Communications: 1/18/08, 1/25/08 [DPS];
Appropriations: 2/11/08 [DP2S(w/o sub TEC)].

Floor Activity:

Passed House: 2/18/08, 94-1.
Senate Amended.
Passed Senate: 3/6/08, 46-3.
House Concurred.
Passed House: 3/8/08, 92-1.
Passed Legislature.

Brief Summary of Engrossed Second Substitute Bill

- Specifies how pole attachment rates must be calculated for utility poles owned or controlled by a public utility district (PUD).
- Provides time frames under which a PUD must respond to a licensee's request to enter into a pole attachment contract.

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).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Technology, Energy & Communications. Signed by 23 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Anderson, Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hunt, Kagi, Kenney, Kessler, Linville, McIntire, Morrell, Pettigrew, Priest, Schual-Berke, Seaquist and Sullivan.

Minority Report: Do not pass. Signed by 9 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Chandler, Hinkle, Kretz, Ross, Schmick and Walsh.

Staff: Wendy Polzin (786-7137).

Background:

Telecommunications services providers must often use poles, ducts, conduits, or rights-of-way of competitors, other utility service providers, or governmental entities to serve new or expanded customer bases. The Federal Communications Commission (FCC) regulates the rates, terms and conditions for pole attachments by cable television and telecommunications services providers or investor-owned utilities (IOUs), unless a state has adopted its own regulatory program. In Washington, the Utilities and Transportation Commission (UTC) has been granted authority to regulate attachment to poles owned by IOUs.

The UTC is prohibited from regulated the activities of consumer-owned utilities, which include public utility districts (PUDs), municipal utilities, and rural electric cooperatives. Attachments to poles owned by consumer-owned utilities are regulated by the utility's governing board. The rates, terms, and conditions made, demanded, or received by a consumer-owned utility must be just, reasonable, nondiscriminatory, and sufficient.

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

If a dispute arises regarding an attachment to a pole owned by a consumer-owned utility, the aggrieved party cannot appeal to the UTC, but may appeal to the utility's governing board or the courts.

Summary of Engrossed Second Substitute Bill:

Pole Attachment Rates

A PUD must establish pole attachment rates that are just and reasonable. A just and reasonable rate for an attachment to a pole owned by a PUD must be calculated using a two-part formula:

Part 1:

The first part of the formula consists of the additional costs of procuring and maintaining pole attachments, but may not exceed the actual capital and operating expenses of the PUD attributable to the portion of the pole, duct, or conduit used for the pole attachment. This part of the formula must also include a share of the required support and clearance space, in proportion to the space used for the pole, as compared to all other uses available.

Part 2:

The second part of the formula consists of the additional costs of procuring and maintaining pole attachments, but may not exceed the actual capital and operating expenses of the PUD attributable to the share of the required support and clearance space, which is divided equally among the PUD and all attaching licensees, in addition to the space used for the attachment. The sum of these elements is divided by the height of the pole.

A just and reasonable rate for an attachment to a pole owned by a PUD is computed by adding one-half of the rate component under Part 1 of the formula and one-half of the rate component under Part 2 of the formula.

In lieu of the calculation outlined in Part 1 of the two-step formula, a PUD may elect to establish a rate according to the FCC Cable Formula as it exists on the effective date of this act or as it may be amended by the FCC by rule in the future, provided such amendment by rule is consistent with the purposes of this act.

Request for an Attachment

If a licensee applies for an attachment to a PUD's pole, the PUD must respond within 45 days of receipt of the request. A PUD must notify a licensee as to whether the application has been accepted or rejected within 60 days of the application being deemed complete, unless a longer time frame has been established and agreed upon by the parties. A PUD may only deny a request to attach to a pole if there is insufficient capacity, or reasons of safety, reliability, or engineering concerns.

Legislative Findings

It is the policy of the state to encourage the joint use of utility poles; to promote competition of telecommunications and information services; and to recognize the value of infrastructure owned by PUDs. To achieve these objectives, the Legislature intends to establish a consistent, cost-based formula for calculating pole attachment rates to ensure greater predictability and consistency in pole attachments rates statewide, as well as ensure that PUD customers do not subsidize licensees.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony: (Technology, Energy & Communications)

(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.

Staff Summary of Public Testimony: (Appropriations)

(In support) While supporting this bill, it is still a work in progress. There is support for the proposed amendment because it would eliminate expenditures for the Utilities and

Transportation Commission (UTC) and the Public Utility Districts (PUD), by allowing disputes to be settled in court. Under current law investor owned utilities are subject to review by the UTC for pole attachment rates, since 1979 only one dispute has gone before the UTC under this statute.

(Opposed) While supportive of the amendment, there is still opposition to the bill itself. The bill proposes a formula be put into statute that PUDs follow when setting rates for their pole attachments. The PUDs in the state were designed to be independent, and adopting a formula in statute is a precedent that should not be taken lightly. Currently, the Federal Communication Commission (FCC) is reviewing their pole attachment formula. It could be premature to set a state formula in statute when they are reviewing the issue. It would be better to wait and see what the FCC recommendations are. Costs and rates charged by PUDs vary by location. Imposing an arbitrary consideration onto what local areas do to determine actual costs of service will set a bad precedent.

Persons Testifying: (Technology, Energy & Communications) (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 Testifying: (In support) Ron Main, Broadband Cable Association.

(Opposed) Vicki Austin, Washington Public Utilities Districts Association; and Tom Casey, Grays Harbor Utility.

Persons Signed In To Testify But Not Testifying: (Technology, Energy & Communications) None.

Persons Signed In To Testify But Not Testifying: (Appropriations) None.