

# HOUSE BILL REPORT

## HB 1857

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

**Title:** An act relating to regulating utility pole attachments.

**Brief Description:** Regulating utility pole attachments.

**Sponsors:** Representatives McCoy, Kessler, Haler, Rodne, Crouse, Wallace, Grant, Morris, Hudgins and Seaquist.

**Brief History:**

**Committee Activity:**

Technology, Energy & Communications: 2/13/07, 2/23/07 [DPS].

**Brief Summary of Substitute Bill**

- Authorizes the American Arbitration Association to resolve disputes between a licensee and a locally regulated utility concerning the rates, terms, and conditions of a pole attachment.
- Specifies that rates must be based on the utility's cost of providing the allocated space used by the licensee.

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### HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Morris, Chair; McCoy, Vice Chair; Crouse, Ranking Minority Member; Eddy, Ericksen, Hudgins and Hurst.

**Minority Report:** Without recommendation. Signed by 4 members: Representatives McCune, Assistant Ranking Minority Member; Hankins, Takko and VanDeWege.

**Staff:** Kara Durbin (786-7133).

**Background:**

Pole Attachments Generally

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*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.*

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, attachments to poles owned by telecommunications or investor-owned utilities (IOUs) are regulated by the Washington Utilities and Transportation Commission (WUTC). 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 WUTC 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 WUTC may regulate pole attachment rates, terms, and conditions for investor-owned utilities, it has no regulatory authority over publicly-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 WUTC is specifically prohibited from regulating the activities of these 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 WUTC for resolution of the dispute. If dissatisfied, a party to the dispute can appeal a decision of the WUTC 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 WUTC, 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:**

The American Arbitration Association is authorized to hear disputes between a locally regulated utility and a licensee concerning pole attachments.

All rates, terms, and conditions made, demanded, or received by a locally regulated utility must be based on the utility's cost of providing the allocated space used by the licensee. Rates must be just, fair, reasonable, nondiscriminatory, and sufficient to cover the utility's actual capital and operating expenses attributable to the portion of the pole used by the licensee.

The requirement under current law that rates for attachment space be uniform for the class of service throughout the utility's service area is removed.

"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 or television, including but not limited to cable, and any related device, apparatus, or auxiliary equipment 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 attachments upon, along, under, or across the public ways.

"Locally regulated utility" is defined as a public utility district not subject to rate or service regulation by the Washington Utilities and Transportation Commission.

### **Substitute Bill Compared to Original Bill:**

The substitute bill removes the intent section from the bill. The substitute bill removes reference in the underlying bill to "ducts, conduits, manholes, or handholes" that were contained in the definition of "attachment." The definition of "attachment" is changed to reflect any device, apparatus, or auxiliary equipment within a licensee's allocated space on the pole. The substitute bill moves responsibility for hearing disputes over pole attachments from the Washington Utilities and Transportation Commission to the American Arbitration Association. The substitute bill removes from the bill the requirement that the rate be determined on a per pole basis rather than per attachment basis. It specifies that rates, terms, and conditions charged by a locally regulated utility must be: (1) based on the utility's actual cost of providing the allocated space on the pole that is being used by the licensee; and (2) sufficient to cover the utility's actual capital and operating expenses attributable to the portion of the pole used by the licensee.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available. New fiscal note requested on February 23, 2007.

**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) There has been some disagreement on how pole attachment rates are being calculated. In the last year or so, public utility districts (PUDs) have been changing how they calculate their rates, and the rates vary from PUD to PUD. We're concerned about the additional cost being charged, particularly in rural parts of the state. I've invested at least two years negotiating with the PUDs to work out these rates. We have had some serious problems in the past in negotiating these rates, which has pushed us to seek a legislative solution. The PUDs have moved towards using an American Public Power Association template for negotiating pole attachment rates. The biggest problem we see is that there is no place to go to resolve a dispute over rates. We requested to go to a per pole rate for attachments when negotiating with the PUDs. This is historically the way we have structured these agreements. The PUDs are using a fully allocated cost methodology. It is a unique formula and it is different from the FCC's formula, which is a cost recovery based on the cost of the space used on the pole. We support this bill. We have a long history with respect to negotiating pole attachment agreements. This bill is not an attempt to impose chapter 80.54 RCW on the PUDs. This bill allows PUDs to charge a reasonable rate, but asks that they not be allowed to double or triple the rate they charge. This bill, like the wholesale telecommunications provisions for PUDs, allows the Washington Utilities and Transportation Commission to be the venue for resolving disputes. We would like to be able to resolve disputes without litigation.

(Opposed) Our pole attachment charges are between \$8 and \$15.78 per attachment. Our average is \$12.64. We pay the private utilities between \$7.35 to \$51.66 per attachment, with an average rate of \$20.63. We question why public utility districts are the only target of this bill. We pride ourselves on the local governing board being able to set the rates for the utility. This bill requires the co-mingling of handholes and conduits. We feel this is a safety concern. Multiple attachments on a pole typically take up more than one foot of space. If there are three or four contacts on the pole, then it will take up 18 inches or more of space. This is why we base the rate on a per attachment basis. The rate proposed in the bill is similar to a cable television rate, not the FCC rate. The rate schedule we have developed actually represents the cost of having an attachment on our pole. We updated our rates in Pacific County because they had not been updated in 20 years. We started a dialogue with five licensees over a year ago involving the rate for attachments. The rates we developed are fair and reasonable for the use of the space on the pole. This bill is not needed. This bill won't save legal fees, an adjudicated hearing on rates will still generate attorneys' fees.

**Persons Testifying:** (In support) Representative McCoy, prime sponsor; Elaine Davis, Fair Competition Alliance; Mary Taylor and Max Cox, CenturyTel; Ron Main, Broadband Communications Association; and Steve Appolo, Wahkiakum West Telephone.

(Opposed) Dave Warren, Washington Public Utility Districts Association; Roy Miller, Douglas County Public Utility District #1; and Mark Hatfield and Doug Miller, Pacific County Public Utility District #2.

**Persons Signed In To Testify But Not Testifying:** None.