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**Technology, Energy &  
Communications Committee**

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**HB 2533**

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

**Sponsors:** Representative McCoy.

**Brief Summary of Bill**

- Requires that the rates charged by municipal utilities, electric cooperatives, and public utility districts 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 municipal utilities, electric cooperatives, and public utility districts.
- 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 municipal utility, electric cooperative, or public utility district, and to determine the rates, terms, and conditions for the pole attachment that are just, reasonable or sufficient.

**Hearing Date:** 1/18/08

**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).

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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.*

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 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 UTC 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 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 Bill:**

Rates charged by a locally regulated utility: All rates, terms, and conditions made, demanded, or received by a locally regulated utility 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 locally regulated utility service area is removed.

A "just and reasonable rate" is defined as a rate that assures the locally regulated utility 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 locally regulated utility 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 locally regulated utility's pole, the locally regulated utility must respond, except in extraordinary circumstances, within 45 days. The locally regulated utility 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 locally regulated utility and a licensee over a specific request to make an attachment, the dispute must first be presented to the governing board of the locally regulated utility. If the dispute is not resolved by the governing board of the locally regulated utility within 45 days from the date the dispute is presented to the governing board, either the licensee or the locally regulated utility may initiate a complaint before the Utilities and Transportation Commission (UTC).

If the UTC finds, after hearing the complaint, that the rates, terms or conditions demanded, exacted, charged, or collected by a locally regulated utility 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 locally regulated utility or licensee, as well as the interest of the customers of the locally regulated utility upon which the attachment is made.

Definitions: The term "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.

The term "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.

The term "locally regulated utility" is defined as a mutual corporation organized for the purpose of providing utility service, a city owning and operating an electric utility, or a public utility district, which is not subject to rate or service regulation by the UTC.

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

**Appropriation:** None.

**Fiscal Note:** Requested on January 10, 2008.

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