

SENATE BILL REPORT

SB 6585

As of February 15, 2008

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: Senators Murray, Delvin and Kilmer.

Brief History:

Committee Activity: Water, Energy & Telecommunications: 1/30/08.

SENATE COMMITTEE ON WATER, ENERGY & TELECOMMUNICATIONS

Staff: Scott Boettcher (786-7416)

Background: Telecommunications service 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. 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 (e.g., municipal utilities or public utility districts) are regulated by the utility's governing board.

Federal law requires the Federal Communications Commission (FCC) to regulate the rates, terms, and conditions for pole attachments by cable television and telecommunications service providers, unless a state has adopted its own regulatory program. The FCC's jurisdiction applies to attachments to IOUs and not consumer owned utilities.

State law provides that the UTC may regulate pole attachment rates, terms, and conditions for investor-owned utilities, but not consumer-owned utilities such as PUDs, municipal utilities, or rural electric cooperatives. State law provides that rates, terms, and conditions for pole attachments made by consumer owned utilities be "just, reasonable, nondiscriminatory, and sufficient." 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.

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.

When a dispute arises regarding the attachment to poles owned by a consumer-owned utility, the aggrieved party 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: Requires that rates charged by municipal utilities, mutual corporations, electric cooperatives, and public utility districts for pole attachments be just, fair, reasonable, nondiscriminatory, and sufficient. Defines how "just and reasonable" pole attachment rates are to be calculated, as well provides operative definitions for "licensee" and "locally regulated utility." Specifies a 45-day time frame for a locally regulated utility to respond to a licensee's request to attach to a locally regulated utility's pole. Allows aggrieved parties (licensees or locally regulated utilities) to appeal to the UTC if a dispute is not first resolved by an applicable governing board. Authorizes UTC to determine specific rates, terms, and conditions for the pole attachment that are just, reasonable, or sufficient upon a hearing and finding to the contrary.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The bill is necessary to provide fairness and predictability in setting pole attachment rates, terms, and conditions. Having a consistent rate setting system will contribute toward goals of joint use and sharing of poles. Don't want to have a proliferation of single use/single owner poles. Having a consistent regulatory scheme is necessary for competition and best for consumers. Different rate setting approaches, terms, and conditions drive costs up for consumers. Fair and cost-based rates are essential as laid out in the bill. Having an appeals process as laid out in the bill is critical to expediting agreements (or forestalling delay). Need cost-effective access to poles, especially in rural areas.

CON: Bill is not necessary as many pole owners already share their poles and have long-term, stable, standard agreements with pole attachers. It is not necessary (or desirable) to have the UTC in a position that oversees local city council decisions concerning attachment rates, terms, and conditions. Present local rate setting approach works and reflects the urban/rural diversity of the state. The approach of this bill takes away local control from local elected officials, and gives it to UTC. A 45 day time frame is not adequate and does not sync with usual timing needed by governance organizations to hear and then take executive action. A problem does exist with attachments occurring without the knowledge of pole owners. The present system is already a cost-recovery system.

Persons Testifying: PRO: Terry Stapleton, Washington Independent Telephone Association; Ron Main, Broadband Communication Association of Washington; Al Hernandez, Comcast; Jim Jesernig, CenturyTel.

CON: Bob Mack, City of Tacoma; Kent Lopez, Washington Rural Electric Co-Op Association; Vicki Austin, Washington Public Utilities District; Don Cohen, Pacific Public Utility District; Larry Bekkedahl, Clark Public Utilities; Don Guillof, IBEW #77.