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**Technology & Economic Development  
Committee**

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**HB 2672**

**Brief Description:** Relating to utility relocation costs.

**Sponsors:** Representatives Zeiger, Smith, Harmsworth, DeBolt, Morris, Stokesbary, Hurst and Hargrove.

**Brief Summary of Bill**

- Requires a Regional Transit Authority (RTA) to pay costs of removal or relocation of utility facilities in the public right-of-way, when caused by construction, alteration, repair, or improvement of a rail fixed guideway system (system).
- Requires the RTA and the utility to negotiate on the engineering, design, and route selection of the system in order to minimize costs of disruption of services related to the utility facility relocation.
- Requires the RTA and the utility to submit cost disputes to an independent auditor, whose decision is final.

**Hearing Date:** 1/26/16

**Staff:** Jasmine Vasavada (786-7301).

**Background:**

Regional Transit Authorities.

In 1992 the Legislature authorized creation of regional transit authorities (RTAs) for the purpose of developing and operating high capacity transportation systems. A high capacity transportation system is an urban public transportation system that operates principally on exclusive rights-of-way and provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating mainly on general purpose roadways. With voter approval, an RTA may levy taxes and pledge the revenues for the repayment of bonds issued for high-capacity transit purposes.

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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.*

### Sound Transit.

Established in 1993, Sound Transit is the only RTA formed in the state, with boundaries that include parts of King, Pierce, and Snohomish counties. It is governed by an 18-member board consisting of the state Secretary of Transportation and 17 city and county officials appointed by the legislative authority of each member county. In 1996 voters within the boundaries of Sound Transit approved a regional transit plan that included construction of a light rail system. In 2008 voters approved transportation projects to be implemented from 2009 to 2023, adding 34 miles of light rail north from Seattle, east to Redmond, and south of SeaTac Airport. In 2015 the Legislature granted Sound Transit the authority to seek approval from voters to fund additional high capacity transportation projects through tax levies.

### Utility's Use of Right-of-Way.

The light rail system uses public rights-of-way and its expansion may require the relocation of various utility facilities. Under the common law, when improvements to a public right-of-way for public necessity require the displacement of a utility's facilities, the utility must pay for the relocation. This stems from the conditional nature of a utility's right to have facilities in the public right-of-way. When the government allows a telecommunications company to place facilities in that right-of-way, the facilities' presence is contingent on the company's cooperation with maintenance and improvement of the street. This general rule, however, may be modified by contract or by state or local law.

### Utility Relocation Act.

In 2003 the Legislature enacted a session law requiring an RTA to pay for the costs of relocating utility facilities caused by the construction of a rail fixed guideway system. The session law also required the RTA and each affected utility to negotiate the engineering, design, and route selection of the system in order to minimize the cost and disruption of services related to the relocation. Disputes over the cost of the relocation were required to be submitted to an independent auditor chosen by the disputing parties, with the auditor's fee to be paid by the party requesting the audit. Governor Locke vetoed Senate Bill 5632 in its entirety.

### Alternative Dispute Resolution.

Many alternative dispute resolution mechanisms exist by which parties may resolve a legal dispute without going to court. Often, parties to a commercial agreement will specify in the agreement a particular form of dispute resolution, such as arbitration. Under the state Uniform Arbitration Act, parties may privately agree to bring their case before a neutral and independent arbitrator in a process less formal than an action in civil court. The commercial agreement can specify many aspects of how a case will be arbitrated, but certain provisions are mandatory and not waivable by the parties to the agreement. These include the right to be represented by a lawyer, the right to seek enforcement of an arbitration agreement in court, and the right to appeal a final arbitration judgment to court, in the same manner in which a party appeals an order or judgment in a civil action. A separate state law provides the statutory authorization for superior courts to require arbitration for small claims. A party who disagrees with an arbitrator's decision may retry all issues of law and fact in a new action in the Superior Court. The new action is conducted as though no arbitration proceeding has occurred.

### **Summary of Bill:**

### Utility Facility Relocation Costs.

If construction, alteration, repair, or improvement of a rail fixed guideway system (system) necessitates removal or relocation of utility facilities, the costs of the removal or relocation must be paid by the RTA, as part of the system costs. Any additional costs associated with the upgrade of any existing utility facility that the utility elects to undertake must be paid by the utility. Covered utility facilities include cable television, gas, electric, and telecommunications facilities.

### Rail Fixed Guideway System.

"Rail fixed guideway system" means a light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or other fixed rail guideway component of a high capacity transportation system that is not regulated by the Federal Railroad Administration, or its successor.

### Cost Disputes.

The RTA and each affected utility shall negotiate on the engineering, design, and route selection of the system in order to minimize costs of disruption of services related to the utility facility relocation. In the event of a dispute over costs, the costs must be submitted to an independent auditor agreed to by the parties. That auditor must determine if the costs were accurate. The auditor's decision is final. The cost of the auditor must be paid by the party requesting the audit.

**Appropriation:** None.

**Fiscal Note:** Requested on January 22, 2016.

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