
HOUSE BILL 2593

State of Washington

65th Legislature

2018 Regular Session

By Representatives Morris and Hudgins

Read first time 01/10/18. Referred to Committee on Technology & Economic Development.

1 AN ACT Relating to the dispute resolution process for utility
2 pole attachments; and amending RCW 54.04.045.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 54.04.045 and 2008 c 197 s 2 are each amended to
5 read as follows:

6 (1) As used in this section:

7 (a) "Attachment" means the affixation or installation of any
8 wire, cable, or other physical material capable of carrying
9 electronic impulses or light waves for the carrying of intelligence
10 for telecommunications or television, including, but not limited to
11 cable, and any related device, apparatus, or auxiliary equipment upon
12 any pole owned or controlled in whole or in part by one or more
13 locally regulated utilities where the installation has been made with
14 the necessary consent.

15 (b) "Licensee" means any person, firm, corporation, partnership,
16 company, association, joint stock association, or cooperatively
17 organized association, which is authorized to construct attachments
18 upon, along, under, or across public ways.

19 (c) "Locally regulated utility" means a public utility district
20 not subject to rate or service regulation by the utilities and
21 transportation commission.

1 (d) "Nondiscriminatory" means that pole owners may not
2 arbitrarily differentiate among or between similar classes of
3 licensees approved for attachments.

4 (2) All rates, terms, and conditions made, demanded, or received
5 by a locally regulated utility for attachments to its poles must be
6 just, reasonable, nondiscriminatory, and sufficient. A locally
7 regulated utility shall levy attachment space rental rates that are
8 uniform for the same class of service within the locally regulated
9 utility service area.

10 (3) A just and reasonable rate must be calculated as follows:

11 (a) One component of the rate shall consist of the additional
12 costs of procuring and maintaining pole attachments, but may not
13 exceed the actual capital and operating expenses of the locally
14 regulated utility attributable to that portion of the pole, duct, or
15 conduit used for the pole attachment, including a share of the
16 required support and clearance space, in proportion to the space used
17 for the pole attachment, as compared to all other uses made of the
18 subject facilities and uses that remain available to the owner or
19 owners of the subject facilities;

20 (b) The other component of the rate shall consist of the
21 additional costs of procuring and maintaining pole attachments, but
22 may not exceed the actual capital and operating expenses of the
23 locally regulated utility attributable to the share, expressed in
24 feet, of the required support and clearance space, divided equally
25 among the locally regulated utility and all attaching licensees, in
26 addition to the space used for the pole attachment, which sum is
27 divided by the height of the pole; and

28 (c) The just and reasonable rate shall be computed by adding
29 one-half of the rate component resulting from (a) of this subsection
30 to one-half of the rate component resulting from (b) of this
31 subsection.

32 (4) For the purpose of establishing a rate under subsection
33 (3)(a) of this section, the locally regulated utility may establish a
34 rate according to the calculation set forth in subsection (3)(a) of
35 this section or it may establish a rate according to the cable
36 formula set forth by the federal communications commission by rule as
37 it existed on June 12, 2008, or such subsequent date as may be
38 provided by the federal communications commission by rule, consistent
39 with the purposes of this section.

1 (5) Except in extraordinary circumstances, a locally regulated
2 utility must respond to a licensee's application to enter into a new
3 pole attachment contract or renew an existing pole attachment
4 contract within forty-five days of receipt, stating either:

5 (a) The application is complete; or

6 (b) The application is incomplete, including a statement of what
7 information is needed to make the application complete.

8 (6) Within sixty days of an application being deemed complete,
9 the locally regulated utility shall notify the applicant as to
10 whether the application has been accepted for licensing or rejected.
11 In extraordinary circumstances, and with the approval of the
12 applicant, the locally regulated utility may extend the sixty-day
13 timeline under this subsection. If the application is rejected, the
14 locally regulated utility must provide reasons for the rejection. A
15 request to attach may only be denied on a nondiscriminatory basis (a)
16 where there is insufficient capacity; or (b) for reasons of safety,
17 reliability, or the inability to meet generally applicable
18 engineering standards and practices.

19 (7) Disputes arising under a pole attachment agreement may be
20 submitted to arbitration by either party by serving notice on the
21 other party. Within thirty days of receipt of the initial notice,
22 each party shall furnish a list of acceptable arbitrators. The
23 parties shall select an arbitrator; failing to agree on arbitrator,
24 each party shall select one arbitrator and the two arbitrators shall
25 select a third arbitrator for an arbitration panel. The decision of
26 the arbitrator or arbitrators is final and binding on the parties.
27 Neither party may appeal a decision to any court. A party may
28 petition the superior court of the county in which the main office of
29 the public utility district is located to enforce a decision of the
30 arbitrator or arbitrators. Costs of the arbitration, including
31 compensation for the arbitrator's services, must be borne equally
32 between the parties participating in the arbitration and each party
33 shall bear its own costs and expenses, including legal fees and
34 witness expenses, in connection with the arbitration proceeding.

35 (8) Nothing in this section shall be construed or is intended to
36 confer upon the utilities and transportation commission any authority
37 to exercise jurisdiction over locally regulated utilities.

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