

# SENATE BILL REPORT

## SB 5690

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As Reported by Senate Committee On:  
Transportation, February 27, 2025

**Title:** An act relating to actions of the department of transportation to notify utility providers of fish barrier removal projects and seek federal funding for utility relocation costs.

**Brief Description:** Concerning utility relocation. [**Revised for 1st Substitute:** Concerning actions of the department of transportation to notify utility owners of projects and seek federal funding for utility relocation costs.]

**Sponsors:** Senators MacEwen, Chapman, Lovelett and Muzzall.

**Brief History:**

**Committee Activity:** Transportation: 2/20/25, 2/27/25 [DPS].

**Brief Summary of First Substitute Bill**

- Directs the Washington State Department of Transportation (WSDOT) to adopt procedures to notify utility owners about planned projects.
- Encourages WSDOT to request available federal funding for fish barrier removal projects and to include utility relocation costs within the request for federal funds.
- Requires WSDOT to report on federal grant applications, awards, and recommendations to allow receipt of grant funds for utility relocation.

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### SENATE COMMITTEE ON TRANSPORTATION

**Majority Report:** That Substitute Senate Bill No. 5690 be substituted therefor, and the substitute bill do pass.

Signed by Senators Lias, Chair; Lovick, Vice Chair; Ramos, Vice Chair; King, Ranking Member; Goehner, Assistant Ranking Member; Alvarado, Chapman, Christian, Cortes, Fortunato, Harris, Krishnadasan, Lovelett, MacEwen, Nobles, Shewmake, Valdez

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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 part of the legislation nor does it constitute a statement of legislative intent.*

and Wilson, J..

**Staff:** Daniel Masterson (786-7454)

**Background:** Highways and Utilities. The Washington State Department of Transportation (WSDOT) issues utility permits and franchises on highway rights-of-way for water, gas, electricity, telephone, and telecommunications.

If a service provider is granted a permit, franchise, or lease by WSDOT and installs infrastructure in the rights-of-way, whether it be underground, at-grade, above grade, or some combination thereof, it is required to follow WSDOT standards for any trenching, pavement restoration, or traffic control. Service providers are also required to construct and maintain their facilities at their own expense, including relocation if a future WSDOT project requires it. The Washington State Supreme Court held, under the Eighteenth Amendment, that the costs of utility facility relocation may not be paid with fuel tax dollars because these expenditures are not exclusively for highway purposes.

Fish Barrier Removal Projects. In 2013 a U.S. District Court issued an injunction ordering the state to increase its efforts in removing culverts blocking or impeding fish passage in the Puget Sound and Chehalis River basins in Washington. The court ordered the state to replace the culverts with the worst impacts on fish habitat by 2030. This injunction was upheld by the Ninth Circuit in 2016 and by an equally divided U.S. Supreme Court in 2018. WSDOT had resolved 146 fish barriers as of June 2024 with approximately 200 more fish barrier removal projects in progress.

Federal Grant Program. The federal Bipartisan Infrastructure Law enacted in 2021, also known as the Infrastructure Investment and Jobs Act, appropriated \$1 billion over five years for the National Culvert Removal, Replacement, and Restoration Grant Program. The program is a competitive grant program for the replacement, removal, and repair of culverts or weirs that meaningfully improve or restore fish passage for fish born in freshwater who spend most of their lives in saltwater and return, or migrate to freshwater to spawn.

**Summary of Bill (First Substitute):** WSDOT is directed to adopt and maintain an agency policy that requires WSDOT to proactively provide utility owners with information about planned state highway projects to enable collaboration between utility owners and WSDOT to identify opportunities for the installation of utilities during the appropriate phase of these projects when such opportunities exist. In the case of state fish barrier removal projects, WSDOT is directed provide information with at least one year of advance notice whenever feasible.

WSDOT is encouraged to request available federal funding for fish barrier removal projects and include utility relocation costs within the request for federal funds if such costs are an eligible use under federal rules and regulations.

WSDOT must report to the transportation committees of the Legislature and the Office of Financial Management by December 15, 2026, reporting on:

- information about any requests made for federal funding under this section and any awards received; and
- recommendations for changes to state law, rules, or policies that would allow WSDOT to receive competitive federal grant funding or reimbursements for utility relocation to the extent permitted by the terms of federal programs and applicable federal regulations.

**EFFECT OF CHANGES MADE BY TRANSPORTATION COMMITTEE (First Substitute):**

- Changes the title to reference “utility owners” instead of “utility providers” and expands the title to relate to all WSDOT projects, not just fish barrier removal projects.
- Adds utility owners to a requirement in current law that WSDOT adopt and maintain an agency policy to proactively provide broadband facility owners with information about planned state highway projects, not just fish passage projects.
- Changes “utility providers” to “owners of a utility” in the direction to WSDOT to proactively notify about planned state fish barrier removal projects.
- Encourages, rather than directs, WSDOT to request available federal funding for fish barrier removal projects and include utility relocation costs within the request for federal funds if they could be an eligible use under federal rules and regulations.
- Requires a report due December 15, 2026, on federal funding requests made, funding awards received, and recommendations for state law, rules, or policy changes to allow funds to be used for utility relocation.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: This supports government efficiency. Let's tell each other when we're doing stuff and work together to coordinate and save money. We are aware of the massive challenge the state's facing to pay for the *U.S. versus Washington* culverts case. One of the impacts has been on utilities, who have to pay for the cost of utility relocation. For some of these projects, that can be multimillion dollar projects. We're looking for more coordination with WSDOT for when these projects need to be done, and for the state to maximize the amount of federal funding that can be provided to utilities for these costs.

My PUD is currently impacted by three WSDOT fish passage projects and that is totaling about \$4.3 million for my utility currently. With only 5600 electric meters you can imagine that's a big impact. It's about \$760 per customer just for these three WSDOT projects that have absolutely nothing to do with delivering safe, reliable utility services. This would amount to a \$64 per month surcharge for an entire year for every single one of my customers.

Skagit PUD has been involved with five different utility relocation projects in the last year because of WSDOT culvert replacements. Each of the five projects require us to spend money to relocate service lines with a year of life remaining. We estimate these have cost about \$3.2 million. In each of our projects, WSDOT has asked us to be responsible for our own permitting, bidding and design work meaning that we are duplicating much of the work already being done by WSDOT. Another issue is that the schedules have changed multiple times without proper coordination.

We request that you expand the scope of this bill to include sewer and water relocation also. Sewer and water lines are also required to relocate at the utilities' cost. We also recommend that the notification period be extended to 36 months. Relocating utilities often requires detailed engineering, community outreach, and financing that can take multiple years. We'd ask for the bill so WSDOT and utilities can build cost estimates together.

**Persons Testifying:** PRO: Senator Drew MacEwen, Prime Sponsor; Bill Clarke, WA PUD Association; Kristin Masteller, Mason PUD No. 1; George Sidhu, Skagit PUD; Clark Halvorson, Washington Association of Sewer and Water Districts.

**Persons Signed In To Testify But Not Testifying:** No one.