

FINAL BILL REPORT

E2SHB 2533

C 197 L 08

Synopsis as Enacted

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

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives McCoy, Chase and Quall).

House Committee on Technology, Energy & Communications

House Committee on Appropriations

Senate Committee on Water, Energy & Telecommunications

Background:

Telecommunications services providers often must use poles, ducts, conduits, or rights-of-way of competitors, other utility service providers, or governmental entities to serve new or expanded customer bases. The Federal Communications Commission (FCC) regulates the rates, terms, and conditions for pole attachments by cable television and telecommunications services providers or investor-owned utilities (IOUs), unless a state has adopted its own regulatory program. In Washington, the Utilities and Transportation Commission (UTC) has been granted authority to regulate attachment to poles owned by IOUs.

The UTC is prohibited from regulating the activities of consumer-owned utilities, which include public utility districts (PUDs), municipal utilities, and rural electric cooperatives. Attachments to poles owned by consumer-owned utilities are regulated by the utility's governing board. The rates, terms, and conditions made, demanded, or received by a consumer-owned utility must be just, reasonable, nondiscriminatory, and sufficient.

If a dispute arises regarding the rates, terms, or conditions of an attachment to a pole owned by a telecommunications company or an IOU, the aggrieved party may appeal to the UTC for resolution of the dispute. If dissatisfied, either party can appeal the UTC's decision to the courts.

If a dispute arises regarding an attachment to a pole owned by a consumer-owned utility, the aggrieved party may not appeal to the UTC, but may appeal to the utility's governing board or the courts.

Summary:

Pole Attachment Rates.

A PUD must establish pole attachment rates that are just and reasonable. A just and reasonable rate for an attachment to a pole owned by a PUD must be calculated using a two-part formula:

Part 1:

The first part of the formula consists of the additional costs of procuring and maintaining pole attachments, but may not exceed the actual capital and operating expenses of the PUD attributable to the portion of the pole, duct, or conduit used for the pole attachment. This part of the formula must also include a share of the required support and clearance space, in proportion to the space used for the pole, as compared to all other uses available.

Part 2:

The second part of the formula consists of the additional costs of procuring and maintaining pole attachments, but may not exceed the actual capital and operating expenses of the PUD attributable to the share of the required support and clearance space, which is divided equally among the PUD and all attaching licensees, in addition to the space used for the attachment. The sum of these elements is divided by the height of the pole.

A just and reasonable rate for an attachment to a pole owned by a PUD is computed by adding one-half of the rate component under Part 1 of the formula and one-half of the rate component under Part 2 of the formula.

In lieu of the calculation outlined in Part 1 of the two-part formula, a PUD may elect to establish a rate according to the FCC Cable Formula as it exists on the effective date of this act or as it may be amended by the FCC by rule in the future, provided such amendment by rule is consistent with the purposes of this act.

Request for an Attachment.

If a licensee applies for an attachment to a PUD's pole, the PUD must respond within 45 days of receipt of the request. A PUD must notify a licensee as to whether the application has been accepted or rejected within 60 days of the application being deemed complete, unless a longer time frame has been established and agreed upon by the parties. A PUD may only deny a request to attach to a pole if there is insufficient capacity or for reasons related to safety, reliability, or engineering concerns.

Legislative Findings.

It is the policy of the state to encourage the joint use of utility poles, to promote competition of telecommunications and information services, and to recognize the value of infrastructure owned by PUDs. To achieve these objectives, the Legislature intends to establish a consistent, cost-based formula for calculating pole attachment rates to ensure greater predictability and consistency in pole attachments rates statewide, as well as to ensure that PUD customers do not subsidize licensees.

Votes on Final Passage:

House	94	1	
Senate	46	3	(Senate amended)
House	92	1	(House concurred)

Effective: June 12, 2008