

SENATE BILL REPORT

ESHB 1623

As Reported By Senate Committee On:
Natural Resources, Ocean & Recreation, February 20, 2008

Title: An act relating to setting fees for utility easements on state- owned aquatic lands.

Brief Description: Concerning fees for easements on state-owned aquatic lands.

Sponsors: House Committee on Technology, Energy & Communications (originally sponsored by Representative Morris).

Brief History: Passed House: 1/25/08, 94-0.

Committee Activity: Natural Resources, Ocean & Recreation: 2/20/08 [DP].

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Majority Report: Do pass.

Signed by Senators Jacobsen, Chair; Hatfield, Vice Chair; Morton, Ranking Minority Member; Rockefeller, Spanel and Stevens.

Staff: Curt Gavigan (786-7437)

Background: The Legislature has assigned the Department of Natural Resources (DNR) the responsibility for managing the state's aquatic lands for the benefit of the public. DNR manages over two million acres of tidelands, shorelands, and bedlands. This includes the beds of navigable rivers and lakes, along with the beds below the Puget Sound.

The management of aquatic lands must support a balance of goals, including the encouragement of public access, the fostering of water-dependent uses, the utilization of renewable resources, environmental protection, and the generation of revenue. Revenues generated from the state's aquatic lands are generally directed to be used for public benefits, such as shoreline access, environmental protection, and recreational opportunities.

Specifically, DNR may enter into agreements with government entities allowing the use of state-owned aquatic lands for the purpose of a public utility line. DNR may recover its reasonable administrative costs incurred in processing and reviewing such requests, and in reviewing construction plans. By statute, direct administrative costs consist of salaries and benefits, travel reimbursement, and other actual out-of-pocket costs.

For public utility lines owned by a non-governmental entity, total statutory easement charges are:

- \$5,000 for easement crossings up to one mile;

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- \$12,500 for crossings between one and five miles; or
- \$20,000 for easement crossings more than five miles.

The rate structure for non-governmental entities expires July 1, 2008.

The statutory easement term is 30 years, with easement charges adjusted annually based on the increase in the consumer price index. As with agreements with government entities, DNR may recover its reasonable direct administrative costs incurred in processing and reviewing the easement and reviewing construction plans.

DNR must make a final decision on easement applications within 120 days after receiving the application and after the applicant has acquired all applicable permits. At the request of an applicant, DNR may process the application within 60 days and charge an expedited processing fee. The processing fee is the greater of: 10 percent of the combined total of the easement charge and direct administrative costs; or the cost of staff overtime, calculated at a rate of time and a half, associated with expedited processing.

By statute, public utility lines include pipes, conduits, and other similar facilities for distribution of water, sewers, electricity, natural gas, telephone, and other electronic communication.

Summary of Engrossed Substitute Bill: For purposes of administrative cost recovery, DNR's administrative costs equal 20 percent of the easement charge for non-government entities. For government entities, administrative costs are based on what the charge would have been if the entity was subject to an easement charge. Where a single easement authorizes multiple utility lines, the administrative fee is based on the easement charge for the single longest line.

Several other modifications to the utility easement are modified:

- the expiration date of the rate structure for non-governmental entities is delayed from July 1, 2008, to July 1, 2017;
- expedited permitting fees are limited to 10 percent of the combined total of the easement charge and direct administrative costs; and
- the statutory easement term remains 30 years, but may be less than 30 years if requested by the applicants.

By December 31, 2016, the Legislature must review whether DNR is processing easement applications within the statutory time limits, and whether such easements generate reasonable income.

Appropriation: None.

Fiscal Note: Requested on February 11, 2008.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Engrossed Substitute Bill: PRO: The Legislature authorized the current utility easement system for state owned aquatic lands in 2002. The current system is working, providing certainty for utilities, and helping to keep easement costs

down. This bill adjusts the current system to allow DNR to avoid the cumbersome task of tracking time spent processing applications. The agency has worked with stakeholders on these issues.

Persons Testifying: PRO: Fran McNair, Department of Natural Resources; Terrence Stapleton, Washington Independent Telephone Association.