

HOUSE BILL REPORT

EHB 1499

As Passed House:

March 5, 2009

Title: An act relating to notice of relocation of utility facilities.

Brief Description: Concerning notice of utility facilities relocations.

Sponsors: Representatives Eddy, Hudgins, Springer, Anderson, Herrera, Haler, Hasegawa, McCune and Crouse.

Brief History:

Committee Activity:

Technology, Energy & Communications: 2/11/09, 2/19/09 [DPA].

Floor Activity

Passed House: 3/5/09, 96-0.

Brief Summary of Engrossed Bill (As Amended by House)

- Provides that public agencies must involve affected utilities in the preliminary design phase of a proposed right-of-way project.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

Majority Report: Do pass as amended. Signed by 15 members: Representatives McCoy, Chair; Eddy, Vice Chair; Crouse, Ranking Minority Member; Haler, Assistant Ranking Minority Member; Carlyle, Condotta, Finn, Hasegawa, Herrera, Hudgins, Jacks, McCune, Morris, Takko and Van De Wege.

Staff: Kara Durbin (786-7133)

Background:

Cities or towns may require service providers with facilities located in the right-of-way to relocate their facilities, if relocation is necessary in order for the city or town to make alterations, repairs, or improvements to the right-of-way for health or safety purposes. Generally, service providers are required to pay for any costs associated with relocation,

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unless: (1) the service provider has already paid for relocation of the same facilities at the request of a city or town within the past five years; or (2) the city or town is requiring that aerial facilities be relocated underground for aesthetic purposes only, and the cost of relocating those facilities underground is more than the cost of relocating those facilities in another aerial location. Cities or towns also may require relocation of facilities at the service provider's expense if an unforeseen emergency occurs that creates an immediate threat to public safety, health, or welfare.

Cities must notify service providers as soon as practicable of the need to relocate and the date by which relocation must be completed. In calculating the date for completion, cities must consult with affected service providers. Service providers must relocate their facilities by the specified completion date, unless the city establishes a later date for completion based upon a showing that relocation cannot be completed safely and effectively by the date specified.

If the right-of-way project is primarily for private benefit, the private party receiving the benefit must reimburse the service provider for the cost of relocation in the same proportion as their contribution to the costs of the project.

Summary of Engrossed Bill:

If a public agency is planning a project in a right-of-way that may require relocation of utility facilities, the public agency must notify the affected utility as soon as practicable. The public agency must include the utility in a preliminary design meeting and review with the affected utility the impact of any proposed utility facility relocation.

Public agencies and affected utilities must make reasonable efforts to avoid or minimize: (1) factors that could delay the project; (2) relocation of existing utility facilities and associated costs; and (3) costs to public agencies.

"Public agency" means the state, county, city, or any political subdivision of the state that maintains ownership or control of the right-of-way.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Public agencies routinely have road improvement projects and it often requires alterations of the right-of-way that they manage. Utilities with facilities located in the right-of-way offer vital services to the public. Relocation is a costly process for utilities. In some cases the affected utilities aren't included in the design process. By the time utilities are notified with the timeline for relocation, they often find that if the design had been altered slightly, it would have been less costly and disruptive for the utility. Utilities want meaningful input at the design phase, with the goal of minimizing disruption and costs.

Notice is a good thing. If done properly, it saves time, money, and effort. Codifying the bill in chapter 80.04 RCW does not necessarily subject cities or counties to regulation by the Utilities and Transportation Commission (UTC). The best efforts language is aimed at getting things done in a coordinated fashion.

(In support with concerns) We support this bill, but hope further refinements will be allowed. When a right-of-way is expanded or altered and relocation is required, the utility must require a new easement or right-of-way upon which to locate. This can be a costly and time intensive process.

(Opposed) Notification is a process we go through as counties. This bill requires counties to use best efforts to minimize impact to utilities, which may result in the project costing more for the public agency. Counties require franchises for location of facilities on the right-of-way. We have agreements describing this relationship and how relocation is dealt with. We need to make sure this bill doesn't create a conflict for existing franchises.

In 2000 the Legislature passed a comprehensive right-of-way bill. It took three years for an agreement to be reached on what that bill would entail. It covered a number of issues, including franchise authority and relocation authority. This bill repeals parts of that right-of-way agreement and replaces it with other provisions. Counties and electric companies opted out of the right-of-way bill, but cities stayed in. We are concerned about being regulated by the UTC because of where this bill is being codified.

The preliminary design language in the bill is ambiguous. The planning phase and the design phase are separate phases.

The definition of "utility facility" may cause confusion down the line.

Persons Testifying: (In support) Representative Eddy, prime sponsor; Tom Walker, Qwest; and Kim Hoff, Puget Sound Energy

(In support with concerns) Collins Sprague, Avista Corporation; Mike Schwisow, Washington State Water Resources Association; and Kathleen Collins, PacifiCorp.

(Opposed) Gary Rowe, Association of Counties; Victoria Lincoln, Association of Washington Cities; and Kyle McKeon, Washington State Department of Transportation.

Persons Signed In To Testify But Not Testifying: None.