

# HOUSE BILL REPORT

## HB 1254

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**As Reported By House Committee On:**  
Technology, Telecommunications & Energy

**Title:** An act relating to the right of utility facilities to be located on railroad rights-of-way.

**Brief Description:** Revising the rights of utilities with regard to location of facilities on railroad rights-of-way.

**Sponsors:** Representatives DeBolt, Hatfield, Crouse, McMorris, Sump, Scott, Cooper, Hankins, Wood, Morris, Buck and Schoesler.

**Brief History:**

**Committee Activity:**

Technology, Telecommunications & Energy: 2/12/99, 2/26/99 [DPS].

**Brief Summary of Substitute Bill**

- A moratorium on new fees and fees increases by a railroad on utilities is imposed.
- A task force is created to study issues related to the siting of facilities on railroad rights-of-way.

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### HOUSE COMMITTEE ON TECHNOLOGY, TELECOMMUNICATIONS & ENERGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Crouse, Republican Co-Chair; DeBolt, Republican Vice Chair; Ruderman, Democratic Vice Chair; Bush; Cooper; McDonald; Mielke; Morris and Wolfe.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Poulsen, Democratic Co-Chair; Delvin; Reardon and Thomas.

**Staff:** Julia Harmatz (786-7135).

**Background:**

A right of way is a term used to describe a right belonging to a party to pass over land of another, but it is also used to describe that strip of land upon which railroad companies construct their roadbed, and, when so used, the term refers to the land itself, not the right of passage over it. (Black's Law Dictionary, Sixth Edition).

Railroads charge fees for permits or rights to cross or locate on railroad rights-of-way. Railroads cross the entire state and a utility company cannot avoid crossing them in providing service to its customers. In the past, railroads have charged nominal fees for these rights. The railroads have begun to charge utilities significantly higher fees.

RCW 80.36.050 currently applies to the use of rights-of-way by telecommunication companies and provides for damages if the railroad refuses or neglects to allow telecommunication companies to construct and maintain lines on and along the rights-of-way.

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**Summary of Substitute Bill:**

The substitute bill places a moratorium on new fees or fee increases railroad companies charge utilities for the use of a right of way. The only municipal railroad, owned by the city of Tacoma, is exempted from the provisions of the bill. The moratorium is in effect throughout the duration of 1999 only, as opposed to through 2000 as in the original amendment.

A task force is created to study the following issues:

1. Creation of a permanent easement when a right of way is abandoned;
2. Reimbursement for construction on a right of way;
3. Compensation to railroads for locating utilities on a right of way;
4. Other costs associated for locating facilities on a right of way;
5. Scope of indemnification insurance;
6. Notification of construction requirements;
7. Conditions necessary to relocate utility facilities; and
8. Dispute resolution mechanisms.

The task force will make recommendations and report to the Legislature by December 1, 1999.

The 11-member task force is comprised as follows: One Republican and one Democratic member each from each House and seven members and the chair are selected by the Governor: (1) One from an electrical or gas company; (2) one Municipality or public utility district; (3) one cooperative; (4) two railroads within and without Washington; and

(5) one representing the public who may be from the office of public counsel of the Attorney General's Office. The Utilities and Transportation Commission (UTC) will staff the task force.

### **Substitute Bill Compared to Original Bill:**

The substitute bill added a moratorium on the imposition of new fees and fee increases by a railroad on a utility. The moratorium is in effect until December 31, 1999. The substitute bill exempts municipal railroads from this act.

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**Appropriation:** The sum of \$45,000.

**Fiscal Note:** Available.

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

**Testimony For:** In the past fees were minimal or nominal and now it costs as much as \$1,200 for just one crossing. The new fees including protective insurance costs are imposed on utilities and then our ratepayers. The permits have escalated in the past 10 to 15 years. Utilities are willing to pay for right of way access, but not excessive fees. Willing to limit to linear crossings, not looking for corridors. Utilities are willing to complete a study first. Railroads have found they can leverage the need for the crossings.

This bill would help solve problems. In the past 20 years the costs have increased 47 times. This bill will help control the costs of the public utility districts. Water line has to cross in three places. Costs went up to \$2,500 per crossing. That's \$100 added to each ratepayers utility bill annually. The utilities and the railroads have been in negotiations since 1996. No access problems, costs are the problem. Would love a flat deal per crossing. The rural coops have 100 to 200 crossings. The Lakewood fees went from \$1,000 to \$3,000.

(With concerns) Fifty percent of all permits are with utilities. In 1997 began meeting with the utilities to try to address these issues and continue these discussions. The door is always open to negotiation. Fees are driven by the railroad's costs. The response time has been reduced to 21 days. It is a new era for railroad rights of way. Amtrak is running on the lines, and the Regional Transit Authority will be using the lines as well. The railroads must be certain not to create a safety situation due to the placement of facilities. This is a private matter and railroads are not post roads. Do not advance a government task force because this is a private matter.

**Testimony Against:** It is premature to modify the relationships between utilities and railroads. A study is in order to determine policy changes. Growth of railroad traffic is significant. The railroads and the utilities are in negotiations. This is a private matter and the government should not intervene.

**Testified:** Representative DeBolt, prime sponsor; Doug Kirkpatrick, Washington Utilities and Transportation Commission; Collins Sprague and Don Malisani, Avista Corporation; Jim O’Neill, BNSF; Tom Parker, Union Pacific; Lew McMurrin and Kristen Harte Sawin, Washington Public Utility Districts Association; Melvin Nelson, Cowlitz PUD; and Charlie Brown, representing Aaron Jones, Rural Electric Corporation.