

SENATE BILL REPORT

ESHB 1005

As Reported By Senate Committee On:
Economic Development & Telecommunications, February 26, 2002
Ways & Means, March 4, 2002

Title: An act relating to public utility rights of way on aquatic lands.

Brief Description: Allowing the granting of easements on state-owned aquatic lands for local public utility lines.

Sponsors: House Committee on Technology, Telecommunications & Energy (originally sponsored by Representatives Morris and Lantz).

Brief History:

Committee Activity: Economic Development & Telecommunications: 2/22/02, 2/26/02 [DP].

Ways & Means: 2/28/02, 3/4/02 [DPA, DNP].

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT & TELECOMMUNICATIONS

Majority Report: Do pass.

Signed by Senators T. Sheldon, Chair; B. Sheldon, Vice Chair; Finkbeiner, McCaslin, Rossi and Stevens.

Staff: William Bridges (786-7424)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Hewitt, Honeyford, Kohl-Welles, Long, Rasmussen, Rossi, Sheahan, B. Sheldon, Snyder, Spanel and Zarelli.

Minority Report: Do not pass.

Signed by Senator Kline.

Staff: Richard Ramsey (786-7412)

Background: The Department of Natural Resources (DNR) manages about 2.4 million acres of state-owned aquatic lands: tidelands, shorelands, harbor areas, beds of navigable waters, and waterways. As a manager of these lands, DNR has a statutory duty to "strive to provide a balance of public benefits for all citizens of the state." The public benefits of aquatic lands include encouraging direct public use and access, fostering water-dependent uses, ensuring environmental protection, and utilizing renewable resources.

DNR may set the terms and conditions for utility easements that cross state-owned aquatic lands, although utilities owned by governmental entities may cross these lands at no charge if the use is consistent with statutory purposes and does not obstruct navigation or other public uses.

Summary of Amended Bill: Nongovernmental entities may obtain 30-year easements across state-owned aquatic lands for local public utility lines if the use is consistent with statutory purposes and does not obstruct navigation and other public uses. The charge for a utility easement is \$125 per mile per year, except that no easement will be less than \$5,000 or more than \$75,000. Up to 5 crossings of a single river or stream, where each crossing is no longer than a half mile, shall be considered a single crossing of one half mile. The easement charges for electric cooperatives, and associations, organized under chapters 23.86 or 24.06 RCW are 75 percent of the charges of other nongovernmental entities. The charges remain in effect until July 1, 2006.

In addition to the easement charges, DNR may recover reasonable direct administrative costs of processing and approving easement applications from governmental and nongovernmental entities. Direct administrative costs are defined as the cost of hours worked directly on processing the application (based on salaries and benefits), travel reimbursement, and other actual out-of-pocket costs. Direct administrative costs recovered by DNR are deposited in the resource management cost account.

For existing and new easement applications, DNR must make a final decision within 120 days of receipt of a completed application and after all applicable regulatory permits for the aquatic easement are obtained. An applicant may request a decision in 60 days and DNR may charge an additional fee for the expedited processing. The fee for expedited processing is the greater of 10 percent of the charge and direct administrative costs for the easement or the cost of staff overtime associated with the permit processing.

Easement applicants providing a residence with an individual service connection for electrical, natural gas, cable television, or telecommunications service are not required to pay the charge for the easement but must pay DNR administrative costs.

Provisions of this bill do not limit the ability of DNR to recover lost revenue resulting from the granted use of state-owned aquatic lands for public utility lines.

Amended Bill Compared to Substitute Bill: The sunset is changed from July 1, 2008 to July 1, 2006. The charge for an individual easement is changed from \$5,000 for less than 1 mile; \$12,500 for easements between 1 and 5 miles; and \$20,000 greater than 5 miles to \$125 per quarter mile, except that an easement will be at least \$5,000 and will not exceed \$75,000 for the term of the easement. The amended bill includes two provisions not in the original bill. The first directs that where a facility crosses a stream or river multiple times and each crossing is no longer than one-half mile, up to 5 crossings count as one-half mile. The second sets the charges for electric cooperatives and associations at 75 percent of the total charges.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For (Economic Development & Telecommunications): The prime sponsor, industry representatives, and DNR have been working on this issue for five years. The bill is the result of a mutual effort to encourage the build out of utilities to rural areas and islands while allowing fair and transparent easement charges. The bill follows the Competitiveness Council's recommendations concerning the placement of telecommunications facilities. While the bill goes far to help rural deployment, many rural electric cooperatives will still have trouble paying the easement charges. The bill exempts easements to individual homes, which is good. The bill is also good because it has timelines, clearly-stated criteria, and fair compensation.

Testimony Against (Economic Development & Telecommunications): None.

Testified (Economic Development & Telecommunications): Representative Jeff Morris, prime sponsor; Terry Byington, AeA; Dave Danner, Governor's Office; Don Dennis, CenturyTel; Denny Eliason, Intel; Ik Icard, Pirelli Jacobson, Inc.; Aaron Jones, WRECA; Ron Main, Broadband Communications Ass'n; Loren Stern, DNR; Rosemary Williamson, Verizon; Mike Woodin, AT&T.

Testimony For (Ways & Means): This bill splits the policy baby of a contentious issue that has spanned several years. It provides revenue for the ALEA and the opportunity for utilities to deploy services. The bill will resolve challenges of inconsistent evaluation and large backlog of easement applications. Prior to 1997 there were never issues related to valuing easements. The costs in the bill are more than cooperatives want to pay, but the rates are fair. With the bill, broadband service can be provided to Vashon Island.

Testimony Against (Ways & Means): None.

Testified (Ways & Means): PRO: Representative Jeff Morris, prime sponsor; Don Dennis, CenturyTel; Jay Udelhoven, Department of Natural Resources; Aaron Jones, WA Rural Electric Cooperative Assn.; Mike Woodin, AT&T; Ik Icard, Pirelli Jacobson.