
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2533

State of Washington

60th Legislature

2008 Regular Session

By House Appropriations (originally sponsored by Representatives McCoy, Chase, and Quall)

READ FIRST TIME 02/12/08.

1 AN ACT Relating to attachments to utility poles of locally
2 regulated utilities; amending RCW 54.04.045; and creating a new
3 section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** It is the policy of the state to encourage
6 the joint use of utility poles and to promote competition for the
7 provision of telecommunications and information services. In order to
8 achieve these two objectives, the legislature intends to establish a
9 consistent formula for calculating pole attachment rates, which will
10 ensure greater predictability and consistency in pole attachment rates
11 statewide. The legislature further intends to continue working through
12 issues related to pole attachments with interested parties in an open
13 and collaborative process in order to minimize the potential for
14 disputes going forward.

15 **Sec. 2.** RCW 54.04.045 and 1996 c 32 s 5 are each amended to read
16 as follows:

17 (1) As used in this section:

1 (a) "Attachment" means the affixation or installation of any wire,
2 cable, or other physical material capable of carrying electronic
3 impulses or light waves for the carrying of intelligence for
4 telecommunications or television, including, but not limited to cable,
5 and any related device, apparatus, or auxiliary equipment upon any pole
6 owned or controlled in whole or in part by one or more locally
7 regulated utilities where the installation has been made with the
8 necessary consent.

9 (b) "Licensee" means any person, firm, corporation, partnership,
10 company, association, joint stock association, or cooperatively
11 organized association, which is authorized to construct attachments
12 upon, along, under, or across public ways.

13 (c) "Locally regulated utility" means a public utility district not
14 subject to rate or service regulation by the utilities and
15 transportation commission.

16 ((+e)) (d) "Nondiscriminatory" means that pole owners may not
17 arbitrarily differentiate among or between similar classes of
18 ((persons)) licensees approved for attachments.

19 (2) All rates, terms, and conditions made, demanded, or received by
20 a locally regulated utility for attachments to its poles must be just,
21 reasonable, nondiscriminatory, and sufficient. A locally regulated
22 utility shall levy attachment space rental rates that are uniform for
23 the same class of service within the locally regulated utility service
24 area.

25 (3) A just and reasonable rate must be calculated as follows:

26 (a) One-half of the rate consists of the additional costs of
27 procuring and maintaining pole attachments, but may not exceed the
28 actual capital and operating expenses of the locally regulated utility
29 attributable to that portion of the pole, duct, or conduit used for the
30 pole attachment, including a share of the required support and
31 clearance space, in proportion to the space used for the pole
32 attachment, as compared to all other uses made of the subject
33 facilities and uses that remain available to the owner or owners of the
34 subject facilities; and

35 (b) One-half of the rate consists of the additional costs of
36 procuring and maintaining pole attachments, but may not exceed the
37 actual capital and operating expenses of the locally regulated utility

1 attributable to the share of the required support and clearance space,
2 divided equally among all attachers, which sum is divided by the height
3 of the pole.

4 (4) The locally regulated utility may establish a rate according to
5 the calculation outlined in subsection (3) of this section or it may
6 establish a rate according to the cable formula set forth by the
7 federal communications commission by rule as it existed on the
8 effective date of this section, or such subsequent date as may be
9 provided by the federal communications commission by rule, consistent
10 with the purposes of this section.

11 (5) Except in extraordinary circumstances, a locally regulated
12 utility must respond to a licensee's application to enter into a new
13 pole attachment contract or renew an existing pole attachment contract
14 within forty-five days of receipt, stating either:

- 15 (a) The application is complete; or
- 16 (b) The application is incomplete, including a statement of what
17 information is needed to make the application complete.

18 (6) Within sixty days of an application being deemed complete, the
19 locally regulated utility shall notify the applicant as to whether the
20 application has been accepted for licensing or rejected. If the
21 application is rejected, the locally regulated utility must provide
22 reasons for the rejection. A request to attach may only be denied on
23 a nondiscriminatory basis (a) where there is insufficient capacity; or
24 (b) for reasons of safety, reliability, and generally applicable
25 engineering purposes.

26 (7) Nothing in this section shall be construed or is intended to
27 confer upon the utilities and transportation commission any authority
28 to exercise jurisdiction over locally regulated utilities.

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