

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2533

Chapter 197, Laws of 2008

60th Legislature
2008 Regular Session

UTILITY POLES--ATTACHMENTS

EFFECTIVE DATE: 06/12/08

Passed by the House March 8, 2008
Yeas 92 Nays 1

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 6, 2008
Yeas 46 Nays 3

BRAD OWEN

President of the Senate

Approved March 27, 2008, 4:05 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2533** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 28, 2008

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2533

AS AMENDED BY THE SENATE

Passed Legislature - 2008 Regular Session

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, to promote competition for the
7 provision of telecommunications and information services, and to
8 recognize the value of the infrastructure of locally regulated
9 utilities. To achieve these objectives, the legislature intends to
10 establish a consistent cost-based formula for calculating pole
11 attachment rates, which will ensure greater predictability and
12 consistency in pole attachment rates statewide, as well as ensure that
13 locally regulated utility customers do not subsidize licensees. The
14 legislature further intends to continue working through issues related
15 to pole attachments with interested parties in an open and
16 collaborative process in order to minimize the potential for disputes
17 going forward.

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

3 (1) As used in this section:

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

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

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

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

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

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

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

1 (b) The other component of the rate shall consist of the additional
2 costs of procuring and maintaining pole attachments, but may not exceed
3 the actual capital and operating expenses of the locally regulated
4 utility attributable to the share, expressed in feet, of the required
5 support and clearance space, divided equally among the locally
6 regulated utility and all attaching licensees, in addition to the space
7 used for the pole attachment, which sum is divided by the height of the
8 pole; and

9 (c) The just and reasonable rate shall be computed by adding
10 one-half of the rate component resulting from (a) of this subsection to
11 one-half of the rate component resulting from (b) of this subsection.

12 (4) For the purpose of establishing a rate under subsection (3)(a)
13 of this section, the locally regulated utility may establish a rate
14 according to the calculation set forth in subsection (3)(a) of this
15 section or it may establish a rate according to the cable formula set
16 forth by the federal communications commission by rule as it existed on
17 the effective date of this section, or such subsequent date as may be
18 provided by the federal communications commission by rule, consistent
19 with the purposes of this section.

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

24 (a) The application is complete; or

25 (b) The application is incomplete, including a statement of what
26 information is needed to make the application complete.

27 (6) Within sixty days of an application being deemed complete, the
28 locally regulated utility shall notify the applicant as to whether the
29 application has been accepted for licensing or rejected. In
30 extraordinary circumstances, and with the approval of the applicant,
31 the locally regulated utility may extend the sixty-day timeline under
32 this subsection. If the application is rejected, the locally regulated
33 utility must provide reasons for the rejection. A request to attach
34 may only be denied on a nondiscriminatory basis (a) where there is
35 insufficient capacity; or (b) for reasons of safety, reliability, or
36 the inability to meet generally applicable engineering standards and
37 practices.

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

Passed by the House March 8, 2008.

Passed by the Senate March 6, 2008.

Approved by the Governor March 27, 2008.

Filed in Office of Secretary of State March 28, 2008.