

SENATE BILL REPORT

EHB 1499

As of March 17, 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, Halder, Hasegawa, McCune and Crouse.

Brief History: Passed House: 3/05/09, 96-0.

Committee Activity: Environment, Water & Energy: 3/17/09.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: William Bridges (786-7416)

Background: Unless modified by law, franchise agreement, or contract, a utility company may maintain its facilities in a public right-of-way subject to the permission of the proper government and to the government's paramount right to use the right-of-way for a public purpose. Likewise, when improvements to a public right-of-way require the displacement of a utility's facilities, the utility must pay for the relocation, unless modified by law, franchise agreement, or contract.

In 2000 the Legislature enacted a statute allowing telecommunications and cable television companies, called "service providers," to seek reimbursement from a city or town for the relocation of a company's utility facilities when (1) the service provider has paid for relocation of the same facilities within the last five years; (2) the local government is seeking relocation of the facilities for aesthetic reasons; or (3) a local government orders aerial to underground relocation and a specified reimbursement formula is followed.

Under the 2000 statute, cities and towns 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, the local governments must consult with the affected service providers, who must generally relocate their facilities by the specified completion date.

Summary of Bill: Requiring Notification and Design Meetings for Right-of Way Projects. 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

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agency must include the utility in a preliminary design meeting, during which the public agency must review with the affected utility the impact of any proposed utility facility relocation.

Requiring Efforts to Minimize Costs. 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.

Specifying that Existing Franchises, Permits, or Contracts are Not Preempted. This act does not preempt specific provisions in existing franchises, permits, or contracts between public agencies and utility facility operators, nor does it apply to unforeseen emergencies.

Including Definitions. "Public agency" means the state, county, city, or any political subdivision of the state that maintains ownership or control of the right-of-way. "Utility facility" means any privately, publicly, or cooperatively-owned equipment, facilities, or system for producing, transmitting, or distributing communications, cable television, power, electricity, gas, hazardous liquids, water, steam, or waste.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: By requiring better planning in the pre-design phase of any construction in right-of-ways, the bill eliminates unnecessary costs to relocate utility facilities during road projects. Qwest spends about \$5 million a year to relocate facilities in right-of-ways, which is money that could have been spent on improving services to customers. The law passed in 2000 is not working well. This bill allows local governments to avoid project delays and it reduces utility removal costs for utilities.

CON: The bill is not needed because local governments already have incentives to coordinate utility relocations. They want to avoid project delays and cost increases. The bill also introduces new legal standards that are ambiguous.

Persons Testifying: PRO: Ron Main, Broadband Communications Association; Sumeer Singla, Verizon NW; Collins Sprague, Avista; Tom Walker, Qwest.

CON: Chris Bacha, Kenyon Disend, PLLC (municipal law firm).