

2SHB 2533 - H AMD 1217

By Representative McCoy

ADOPTED 02/18/2008

1 Strike everything after the enacting clause and insert the  
2 following:

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

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

15 (1) As used in this section:

16 (a) "Attachment" means the affixation or installation of any wire,  
17 cable, or other physical material capable of carrying electronic  
18 impulses or light waves for the carrying of intelligence for  
19 telecommunications or television, including, but not limited to cable,  
20 and any related device, apparatus, or auxiliary equipment upon any pole  
21 owned or controlled in whole or in part by one or more locally  
22 regulated utilities where the installation has been made with the  
23 necessary consent.

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

28 (c) "Locally regulated utility" means a public utility district not

1 subject to rate or service regulation by the utilities and  
2 transportation commission.

3 ~~((e))~~ (d) "Nondiscriminatory" means that pole owners may not  
4 arbitrarily differentiate among or between similar classes of  
5 ~~((persons))~~ licensees approved for attachments.

6 (2) All rates, terms, and conditions made, demanded, or received by  
7 a locally regulated utility for attachments to its poles must be just,  
8 reasonable, nondiscriminatory, and sufficient. A locally regulated  
9 utility shall levy attachment space rental rates that are uniform for  
10 the same class of service within the locally regulated utility service  
11 area.

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

13 (a) One-half of the rate consists of the additional costs of  
14 procuring and maintaining pole attachments, but may not exceed the  
15 actual capital and operating expenses of the locally regulated utility  
16 attributable to that portion of the pole, duct, or conduit used for the  
17 pole attachment, including a share of the required support and  
18 clearance space, in proportion to the space used for the pole  
19 attachment, as compared to all other uses made of the subject  
20 facilities and uses that remain available to the owner or owners of the  
21 subject facilities; and

22 (b) One-half of the rate consists of the additional costs of  
23 procuring and maintaining pole attachments, but may not exceed the  
24 actual capital and operating expenses of the locally regulated utility  
25 attributable to the share of the required support and clearance space,  
26 divided equally among all attachers, which sum is divided by the height  
27 of the pole.

28 (4) The locally regulated utility may establish a rate according to  
29 the calculation outlined in subsection (3) of this section or it may  
30 establish a rate according to the cable formula set forth by the  
31 federal communications commission by rule as it existed on the  
32 effective date of this section, or such subsequent date as may be  
33 provided by the federal communications commission by rule, consistent  
34 with the purposes of this section.

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

1       (a) The application is complete; or  
2       (b) The application is incomplete, including a statement of what  
3 information is needed to make the application complete.  
4       (6) Within sixty days of an application being deemed complete, the  
5 locally regulated utility shall notify the applicant as to whether the  
6 application has been accepted for licensing or rejected. If the  
7 application is rejected, the locally regulated utility must provide  
8 reasons for the rejection. A request to attach may only be denied on  
9 a nondiscriminatory basis (a) where there is insufficient capacity; or  
10 (b) for reasons of safety, reliability, and generally applicable  
11 engineering purposes.  
12       (7) Nothing in this section shall be construed or is intended to  
13 confer upon the utilities and transportation commission any authority  
14 to exercise jurisdiction over locally regulated utilities."

15       Correct the title.

EFFECT:       Strikes the provisions of the underlying bill. Specifies how a just and reasonable rate for a pole attachment to a pole owned by a public utility district (PUD) must be calculated: (1) Half of the rate shall allocate costs based on the proportion of the space used by the pole attachment; and (2) half of the rate shall allocate costs among all attachers equally. Specifies that a PUD also may establish a rate according to the Federal Communications Commission's cable formula, as it exists currently or as it may be modified in the future by rule. Provides time frames under which a PUD must respond to a licensee's request to enter into a pole attachment contract.

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