

HOUSE BILL REPORT

ESHB 1623

As Passed Legislature

Title: An act relating to setting fees for utility easements on state-owned aquatic lands.

Brief Description: Concerning fees for easements on state-owned aquatic lands.

Sponsors: By House Committee on Technology, Energy & Communications (originally sponsored by Representative Morris).

Brief History:

Committee Activity:

Technology, Energy & Communications: 1/26/07, 2/16/07 [DPS].

Floor Activity:

Passed House: 1/25/08, 94-0.

Passed Senate: 3/6/08, 48-1.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Revises the methods used by the Department of Natural Resources (Department) in calculating administrative costs associated with granting public utility line easements on state-owned aquatic lands.
- Provides a termination date of July 1, 2017, for which the Department may collect administrative costs for the granting of a public utility line easement on state-owned aquatic lands.
- Allows governmental and non-governmental entities to bundle multiple public utility lines under the same application and be charged the administration rate of the single longest easement.
- Specifies the Legislature will review the granting of easements on state-owned aquatic lands in 2016.

HOUSE COMMITTEE ON TECHNOLOGY, ENERGY & COMMUNICATIONS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Morris, Chair; McCoy, Vice Chair; Crouse, Ranking Minority Member; McCune, Assistant Ranking Minority Member; Eddy, Ericksen, Hankins, Hudgins, Hurst, Takko and VanDeWege.

Staff: Scott Richards (786-7156).

Background:

The Department of Natural Resources (Department) is responsible for managing, for the benefit of the public, state-owned aquatic lands. Aquatic lands means all tidelands, shorelands, harbor areas, and the beds of navigable waters.

As the manager of state-owned aquatic lands, the Department must strive to balance the public benefits for all citizens. Public benefits of aquatic lands include encouraging direct public use and access, fostering water-dependent uses, ensuring environmental protection, and utilizing renewable resources.

The Department is vested with the authority to grant the use of state-owned aquatic lands upon terms and conditions and length of time that are consistent with the state Constitution and state laws. The Department may withhold from leasing lands which it finds to have significant natural values, or may provide within any lease for the protection of such values.

Governmental entities may use state-owned aquatic lands for public utility lines as long as the use is consistent with statutory purposes for these lands and does not obstruct navigation or other uses. Public utility lines are utility lines owned by a public entity and may or may not serve citizens of the state.

Non-governmental entities may use state-owned aquatic lands for local public utility lines as long as the use is consistent with statutory purposes for these lands and does not obstruct navigation or other uses. Local public utility lines are utility lines owned by a non-governmental entity and provide service to citizens of the state.

For both governmental and non-governmental entities, utility lines include:

- pipes or similar structures for distribution of water;
- electricity;
- natural gas;
- telephone;
- other electronic communication; and
- sewers.

Administrative Costs and Easement Fees

In granting use of state aquatic lands to governmental entities, the Department may recover only its reasonable direct administrative costs incurred in processing and approving the request or application, and reviewing plans for construction of public utility lines. Direct administrative costs means the cost of hours worked directly on an application or request, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket

costs. Direct administrative costs recovered by the Department must be deposited into the Resource Management Cost Account.

In granting use of state aquatic lands to non-governmental entities, the Department charges an easement fee according to the length of the easement:

- \$5,000 for easements that are no longer than one mile in length;
- \$12,500 for easements that are greater than one mile but less than five miles; and
- \$20,000 for easements that are five miles or more in length.

Easement fees are adjusted annually by the rate of yearly increase in the Consumer Price Index (all urban consumers Seattle-Everett Standard Metropolitan Statistical Area). The term of an easement is 30 years.

Currently, the adjusted easement fees are as follows:

- \$5,400 for easements that are no longer than one mile in length;
- \$13,500 for easements that are greater than one mile but less than five miles; and
- \$21,600 for easements that are five miles or more in length.

In addition to the easement fee, the Department may recover from a non-governmental entity its direct administrative costs associated with receiving, approving the application and reviewing plans for, and construction of local public utility lines. Direct administrative costs means the cost of hours worked directly on an application, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the Department must be deposited into the Resource Management Cost Account.

These fee structures for governmental and non-governmental entities will expire on July 1, 2008.

Expedited Processing of Application

Upon request of the applicant, the Department may offer expedited processing of applications, reaching a decision within 60 days. The Department may charge an additional fee for expedited processing. The fee for expedited processing is the greater of: (a) 10 percent of the combined total of the easement fee and direct administrative costs; or (b) the cost of staff overtime, calculated at time and one-half.

Summary of Engrossed Substitute Bill:

Calculating Administrative Costs

Administrative costs incurred processing public utility line easement applications are calculated as a percentage of the easement fee based on the length of the crossing.

In granting use of state-owned aquatic lands to public utility lines owned by non-governmental entities, the administrative costs are equivalent to 20 percent of the easement fee with adjustments based on the most recently published Consumer Price Index.

In granting use of state-owned aquatic lands to public utility lines owned by governmental entities, the Department recovers only its administrative costs incurred in processing and approving the request or application. The administrative costs are calculated based on the easement fee associated with the length of that easement, if governmental entities were subject to the easement fee.

Termination Date of Easement Fee and Administrative Costs

A termination date of July 1, 2017, is provided for the easement fee structure and the calculation of administrative costs.

Term of an Easement

The term of an easement is 30 years unless a person or entity requests a shorter term than 30 years.

Expedited Applications

The application charge for expedited processing is 10 percent of the combined total of the easement fee and administrative costs.

Bundling of Applications

When multiple public utility lines are owned by the same entity and are authorized under the same easement, the administrative fee for the easement shall be equal to 20 percent of the easement fee for the single longest public utility line.

Legislative Review

The Legislature will review by December 31, 2016, the granting of easements on state-owned aquatic lands and determine whether all applications for easements are processed in the appropriate amount of time and whether the granting of easements on state-owned aquatic lands generates reasonable income for the Aquatic Lands Enhancement Account.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) When the Legislature started to look at this issue there was a very long wait to get an easement through the Department. Now there is virtually no wait to have an application processed. The law has worked well. It must be noted that a termination date about 10 years out will likely be included in this bill before it leaves the committee.

(Opposed) Based on a quick, preliminary estimate, there may be concerns about how the fees are calculated and how much utilities will be charged for these fees. Our assumptions around these estimates may need to be corrected once we have more information on how the Department intends to calculate the fees.

Persons Testifying: (In support) Representative Morris, prime sponsor; and Fran McNair, Aquatic Lands Steward, Department of Natural Resources.

(Opposed) Marge Bailey, Qwest; Dave Warren, Washington Public Utility District Association; and Wes Gray, Grays Harbor Public Utility District.

Persons Signed In To Testify But Not Testifying: None.