

REVENUE: No revenue impact

FISCAL: No fiscal impact

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| Action: | Do Pass |
| Vote: | 4 - 0 - 1 |
| Yeas: | George L., Monnes Anderson, Starr, Metsger |
| Nays: | 0 |
| Exc.: | Deckert |
| Prepared By: | Janet Adkins, Administrator |
| Meeting Dates: | 5/17, 5/17 |

WHAT THE MEASURE DOES: Establishes that a person may not acquire property by adverse possession if it is owned by a railroad or used for a railroad operation.

ISSUES DISCUSSED:

- Case law protection of government granted right of way, but not private right of way
- Recognition of railroad right of way in other states
- Importance to safety of unobstructed right of way

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: ORS 105.620 provides that a person may acquire property by “adverse possession” if the person or the person’s predecessors in interest: (a) has maintained actual, open, notorious, exclusive, hostile and continuous possession of the property for at least 10 years, and (b) had an honest and objectively reasonable belief that he or she was the actual owner of the property during the 10-year period. Thus, a person can take ownership of another person’s land if he or she openly occupies the property for 10 years (for example, they live in a house on the property where others can see them, or they farm the land), when they reasonably believe that they own the property. There are several theories behind the doctrine, including that it rewards the productive use of land, while penalizing the unproductive owner who “sleeps” on his rights. Others have argued that the doctrine protects the “reliance” interest of the adverse possessor, because open trespassing puts the true owner on notice that they should assert their right to the property, before the trespasser invests in the land.

In Oregon, common law protects portions of railroad property. Cases decided by the U.S. Supreme Court in the 1800s and 1900s bar adverse possession claims against railroad property that was acquired through federal grant. Oregon has not specifically barred such claims, so railroad property acquired by other means is not protected. At least 16 states protect railroad property from claims of adverse possession. House Bill 2853 establishes that a person may not acquire property by adverse possession if it is owned by a railroad or used for a railroad operation.