

Enrolled
House Bill 2613

Sponsored by Representative BUCKLEY; Representatives HOLVEY, RILEY, SHIELDS, Senator ROSENBAUM

CHAPTER

AN ACT

Relating to the provision of utility services to tenants; creating new provisions; amending ORS 90.532, 90.534 and 90.536; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 90.532 is amended to read:

90.532. (1) Subject to the policies of the utility or service provider, a landlord may provide for utilities or services to tenants by one or more of the following billing methods:

(a) A relationship between the tenant and the utility or service provider in which:

(A) The provider provides the utility or service directly to the tenant's space, including any utility or service line, and bills the tenant directly; and

(B) The landlord does not act as a provider.

(b) A relationship between the landlord, tenant and utility or service provider in which:

(A) The provider provides the utility or service to the landlord;

(B) The landlord provides the utility or service directly to the tenant's space or to a common area available to the tenant as part of the tenancy; and

(C) The landlord includes the cost of the utility or service in the tenant's rent or bills the tenant for a utility or service charge separately from the rent in an amount determined by apportioning the provider's charge to the landlord as measured by a master meter.

(c) A relationship between the landlord, tenant and utility or service provider in which:

(A) The provider provides the utility or service to the landlord;

(B) The landlord provides the utility or service directly to the tenant's space; and

(C) The landlord uses a submeter to measure the utility or service actually provided to the space and bills the tenant for a utility or service charge for the amount provided.

(2) To assess a tenant for a utility or service charge for any billing period, the landlord shall give the tenant a written notice stating the amount of the utility or service charge that the tenant is to pay the landlord and the due date for making the payment. The due date may not be less than 14 days from the date of service of the notice.

(3) A utility or service charge is not rent or a fee. Nonpayment of a utility or service charge is not grounds for termination of a rental agreement for nonpayment of rent under ORS 90.394, but is grounds for termination of a rental agreement for cause under ORS 90.630.

(4) The landlord is responsible for maintaining the utility or service system, including any sub-meter, consistent with ORS 90.730. After any installation or maintenance of the system on a tenant's space, the landlord shall restore the space to a condition that is the same as or better than the condition of the space before the installation or maintenance.

(5) A landlord may not assess a utility or service charge for water unless the water is provided to the landlord by a:

- (a) Public utility as defined in ORS 757.005;
- (b) Municipal utility operating under ORS chapter 225;
- (c) People's utility district organized under ORS chapter 261;
- (d) Cooperative organized under ORS chapter 62;
- (e) Domestic water supply district organized under ORS chapter 264; or
- (f) Water improvement district organized under ORS chapter 552.

(6) A landlord *[who]* **that** provides utilities or services only to tenants of the landlord in compliance with this section and ORS 90.534 and 90.536 is not a public utility for purposes of ORS chapter 757.

(7) The authority granted in this section for a utility or service provider to apply policy regarding the billing methods described in subsection (1) of this section does not authorize the utility or service provider to dictate either the amount billed to tenants or the rate at which tenants are billed under ORS 90.534 or 90.536.

SECTION 2. ORS 90.534 is amended to read:

90.534. (1) If a written rental agreement so provides, a landlord using the billing method described in ORS 90.532 (1)(b) may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for a utility or service provided directly to the tenant's space or to a common area available to the tenant as part of the tenancy.

(2) A utility or service charge that is assessed to tenants for the tenants' spaces under this section must be allocated among the tenants by a method that reasonably apportions the cost among the affected tenants and that is described in the rental agreement. Methods that reasonably apportion the cost among the tenants include, but are not limited to, methods that divide the cost based on the number of occupied spaces in the facility or on the square footage in each dwelling, home or space.

(3) A utility or service charge to be assessed to a tenant for a common area must be described in the written rental agreement separately and distinctly from the utility or service charge for the tenant's space.

(4) A landlord may not:

(a) Bill or collect more money from tenants for utilities or services than the utility or service provider charges the landlord.

(b) Increase the utility or service charge to the tenant by adding any costs of the landlord, such as a handling or administrative charge[, *other than those costs billed to the landlord by the provider for utilities or services*].

SECTION 3. ORS 90.536 is amended to read:

90.536. (1) If a written rental agreement so provides, a landlord using the billing method described in ORS 90.532 (1)(c) may require a tenant to pay to the landlord a utility or service charge that has been billed by a utility or service provider to the landlord for utility or service provided directly to the tenant's space as measured by a submeter.

(2) A utility or service charge to be assessed to a tenant under this section may consist of:

(a) The cost of the utility or service provided to the tenant's space and under the tenant's control, as measured by the submeter, at a rate no greater than the average rate billed to the landlord by the utility or service provider, not including any base or service charge;

(b) The cost of any sewer service for stormwater or wastewater as a percentage of the tenant's water charge as measured by a submeter, if the utility or service provider charges the landlord for sewer service as a percentage of water provided; and

(c) A pro rata portion of any base or service charge billed to the landlord by the utility or service provider, including but not limited to any tax passed through by the provider.

(3) The landlord may not bill or collect more money from tenants for utilities or services than the utility or service provider charges the landlord. A utility or service charge to be assessed to a tenant under this section may not include:

- (a) Any additional charge, including any costs of the landlord, for the installation, maintenance or operation of the utility or service system or any profit for the landlord; or
- (b) Any costs to provide a utility or service to common areas of the facility.

SECTION 4. The amendments to ORS 90.532, 90.534 and 90.536 by sections 1, 2 and 3 of this 2009 Act apply to utility or service rates or charges that are charged either:

(1) On or after the effective date of this 2009 Act; or

(2) If the rates or charges are controlled by a contract between a landlord and a utility or service provider, after the date the contract ends or is amended, renewed or terminated.

SECTION 5. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House April 9, 2009

Received by Governor:

Repassed by House May 22, 2009

.....M.,....., 2009

Approved:

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Chief Clerk of House

.....M.,....., 2009

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Speaker of House

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Governor

Passed by Senate May 20, 2009

Filed in Office of Secretary of State:

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President of Senate

.....M.,....., 2009

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Secretary of State