

Corrected

A-Engrossed

Senate Bill 269

Ordered by the Senate April 29
Including Senate Amendments dated April 29

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Prescribes manner in which public body may require utility to relocate facilities [*legally*] located on property constituting [*public*] highway **right of way**. [*Provides that public body may require relocation to extent necessary to accommodate public purpose construction projects. Provides that public body may require relocation for benefit of private party, or to allow private party to comply with conditions of approval for private development, only if private party pays costs incurred by utility.*] Allows utility to recover from retail customers total unreimbursed costs of relocation activities required by public body. **Allows telecommunications utility not subject to rate-of-return regulation to request authorization from Public Utility Commission to recover from customers certain costs incurred during relocation.**

A BILL FOR AN ACT

1
2 Relating to relocation of utility facilities; creating new provisions; and amending ORS 221.420 and
3 758.010.

4 Whereas it is the policy of the Legislative Assembly that a proactive cooperative coordination
5 process between public bodies and utilities is the most effective way to minimize costs, limit dis-
6 ruption of utility services related to highway projects and reduce the potential need for relocation
7 of utility facilities; and

8 Whereas the primary objective of the coordination process is to deliver a cost-effective product
9 to the public that meets the intent, scope and budget of a highway project; now, therefore,

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

11 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 758.**

12 **SECTION 2. (1) As used in this section:**

13 (a) **"Highway" has the meaning given that term in ORS 801.305 (1) but does not include**
14 **highways located on property owned by the Port of Portland that is subject to federal relo-**
15 **cation regulations authorized under 49 U.S.C. 47107, as in effect on the effective date of this**
16 **2009 Act.**

17 (b) **"Public body" has the meaning given that term in ORS 174.109.**

18 (c) **"Utility" means a public utility, as defined in ORS 757.005, or a telecommunications**
19 **utility or competitive telecommunications provider, as those terms are defined in ORS**
20 **759.005.**

21 (2) **If a public body plans a project that would require utilities to relocate their utility**
22 **facilities that are located in the highway right of way, the public body shall notify affected**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 utilities of the project in writing as soon as is practicable.

2 (3) During the planning and design phase of a project, the public body shall coordinate
3 with the affected utilities to discuss the project's scope and schedule. At a minimum, the
4 discussion must include a description of the plans, goals and objectives of the proposed
5 project and options to minimize or eliminate costs to the public body and the utilities. The
6 public body is not required to avoid or minimize costs to the utilities in a way that materially
7 affects the project's scope, costs or schedule. Failure of the affected utilities to respond or
8 participate in the coordination or discussion does not affect the ability of the public body to
9 proceed with design and construction of the project.

10 (4) A public body having jurisdiction over a highway may not prohibit a utility from
11 seeking reimbursement from private parties or customers for costs under this section in any
12 permit application, license application or other written agreement authorizing the utility to
13 relocate the facilities.

14 (5)(a) Notwithstanding any other provision of ORS chapter 759, a telecommunications
15 utility that is not subject to rate-of-return regulation, including a utility regulated under
16 ORS 759.255 may, after participating in the process described in subsection (3) of this section,
17 request authorization from the Public Utility Commission to recover from customers prudent
18 costs incurred for the relocation of facilities required by a public body that are not otherwise
19 paid or reimbursed from another source. Recoverable relocation costs are the nonfacility
20 costs incurred in the relocation plus the undepreciated value of the facilities replaced, in-
21 cluding the cost of placing such facilities underground if underground placement is required
22 by the public body or other provision of law. The commission may authorize the recovery of
23 relocation costs that the commission determines to be substantial and beyond the normal
24 course of business.

25 (b) The commission shall:

26 (A) Verify the relocation costs for which the utility requests recovery;

27 (B) Determine the allocation of costs between interstate and intrastate services, ge-
28 ographic areas, customers and services; and

29 (C) Prescribe the method of cost recovery.

30 (c) In determining the level of cost recovery and the allocation of costs, the commission
31 shall consider:

32 (A) The overall impact on the utility; and

33 (B) Other relevant factors identified by the commission.

34 (d) Relocation costs may be recovered for a reasonable period of time subject to approval
35 by the commission and not to exceed the depreciable life of the facilities.

36 **SECTION 3.** ORS 221.420 is amended to read:

37 221.420. (1) As used in this section:

38 (a) "Public utility" has the meaning for that term provided in ORS 757.005.

39 (b) "Commission" means the Public Utility Commission of Oregon.

40 (c) "Council" means the common council, city council, commission or any other governing body
41 of any municipality wherein the property of the public utility is located.

42 (d) "Municipality" means any town, city or other municipal government wherein property of the
43 public utility is located.

44 (e) "Service" is used in its broadest and most inclusive sense and includes equipment and facil-
45 ities.

1 (f) "Heating company" means any person furnishing heat but not electricity or natural gas to
2 its customers.

3 (2) [Every] **Subject to section 2 of this 2009 Act, a city may:**

4 (a) Determine by contract or prescribe by ordinance or otherwise, the terms and conditions, in-
5 cluding payment of charges and fees, upon which any public utility, electric cooperative, people's
6 utility district or heating company, or Oregon Community Power, may be permitted to occupy the
7 streets, highways or other public property within such city and exclude or eject any public utility
8 or heating company therefrom.

9 (b) Require any public utility, by ordinance or otherwise, to make such modifications, additions
10 and extensions to its physical equipment, facilities or plant or service within such city as shall be
11 reasonable or necessary in the interest of the public, and designate the location and nature of all
12 additions and extensions, the time within which they must be completed, and all conditions under
13 which they must be constructed.

14 (c) Fix by contract, prescribe by ordinance, or in any other lawful manner, the rates, charges
15 or tolls to be paid to, or that may be collected by, any public utility or the quality and character
16 of each kind of product or service to be furnished or rendered by any public utility furnishing any
17 product or service within such city. No schedule of rates, charges or tolls, fixed in the manner
18 provided in this paragraph, shall be so fixed for a longer period than five years. Whenever it is
19 proposed by any city to enter into any contract, or to enact any ordinance, or other municipal law
20 or regulation concerning the matters specified in this paragraph, a copy of such proposed contract,
21 ordinance or other municipal law or resolution shall be filed with the Public Utility Commission of
22 Oregon before the same may be lawfully signed or enacted, as the case may be, and the commission
23 shall thereafter have 90 days within which to examine into the terms thereof. If the commission is
24 of the opinion that in any respect the provisions of the proposed contract, ordinance or other mu-
25 nicipal law or resolution are not in the public interest, the commission shall file, in writing, with
26 the clerk or other officer who has the custody of the files and records of the city, the commission's
27 reasons therefor. If the objections are filed within said period of 90 days, no proposed contract, or-
28 dinance or other municipal law or regulation shall be valid or go into effect until it has been sub-
29 mitted to or ratified by the vote of the electors of the city. Unless and until a city exercises its
30 powers as provided in this paragraph, the commission is vested with all powers with respect to the
31 matters specified in this paragraph. If the schedule of rates, charges and tolls or the quality and
32 character of each kind of product or service is fixed by contract, ordinance or other municipal law
33 or regulation and in the manner provided in this paragraph, the commission has no power or juris-
34 diction to interfere with, modify or change it during the period fixed thereby. Upon the expiration
35 of said period such powers shall again be vested in the commission, to be exercised by the commis-
36 sion unless and until a new schedule of rates or the quality and character for such service or
37 product is fixed or prescribed by contract, ordinance or other municipal law or regulation in the
38 manner provided in this paragraph.

39 (d) Provide for a penalty for noncompliance with the provisions of any charter provision, ordi-
40 nance or resolution adopted by the city in furtherance of the powers specified in this subsection.

41 **SECTION 4.** ORS 758.010 is amended to read:

42 758.010. (1) Except within cities, any person or corporation has a right and privilege to con-
43 struct, maintain and operate its water, gas, electric or communication service lines, fixtures and
44 other facilities along the public roads in this state, as defined in ORS 368.001 or across rivers or
45 over any lands belonging to the state, free of charge, and over lands of private individuals, as pro-

1 vided in ORS 772.210. Such lines, fixtures and facilities shall not be constructed so as to obstruct
2 any public road or navigable stream.

3 (2) A county governing body and the Department of Transportation have authority to designate
4 the location upon roads under their respective jurisdiction, outside of cities, where lines, fixtures
5 and facilities described in this section may be located, and **subject to section 2 of this 2009 Act**
6 may order the location of any such line, fixture or facility to be changed when such governing body
7 or department deems it expedient. Any line, fixture or facility erected or remaining in a different
8 location upon such road than that designated in any order of the governing body or department is
9 a public nuisance and may be abated accordingly.

10 (3) The state officer, agency, board or commission having jurisdiction over any land belonging
11 to the state with respect to which the right and privilege granted under subsection (1) of this section
12 is exercised may impose reasonable requirements for the location, construction, operation and
13 maintenance of the lines, fixtures and facilities on such land. The person or corporation exercising
14 such right and privilege over any land belonging to the state shall pay the current market value for
15 the existing forest products that are damaged or destroyed in exercising such right and privilege.
16 Such right and privilege of any person or corporation is conditioned upon compliance with the re-
17 quirements imposed by this subsection.

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