

Enrolled
Senate Bill 269

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CHAPTER

AN ACT

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

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

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

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

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

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

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

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

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

(2) If a public body plans a project that would require utilities to relocate their utility facilities that are located in the highway right of way, the public body shall notify affected utilities of the project in writing as soon as is practicable.

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

(4) A public body having jurisdiction over a highway may not prohibit a utility from seeking reimbursement from private parties or customers for costs under this section in any

permit application, license application or other written agreement authorizing the utility to relocate the facilities.

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

(b) The commission shall:

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

(B) Determine the allocation of costs between interstate and intrastate services, geographic areas, customers and services; and

(C) Prescribe the method of cost recovery.

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

(A) The overall impact on the utility; and

(B) Other relevant factors identified by the commission.

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

SECTION 3. ORS 221.420 is amended to read:

221.420. (1) As used in this section:

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

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

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

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

(e) "Service" is used in its broadest and most inclusive sense and includes equipment and facilities.

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

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

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

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

(c) Fix by contract, prescribe by ordinance, or in any other lawful manner, the rates, charges or tolls to be paid to, or that may be collected by, any public utility or the quality and character of each kind of product or service to be furnished or rendered by any public utility furnishing any product or service within such city. No schedule of rates, charges or tolls, fixed in the manner provided in this paragraph, shall be so fixed for a longer period than five years. Whenever it is

proposed by any city to enter into any contract, or to enact any ordinance, or other municipal law or regulation concerning the matters specified in this paragraph, a copy of such proposed contract, ordinance or other municipal law or resolution shall be filed with the Public Utility Commission of Oregon before the same may be lawfully signed or enacted, as the case may be, and the commission shall thereafter have 90 days within which to examine into the terms thereof. If the commission is of the opinion that in any respect the provisions of the proposed contract, ordinance or other municipal law or resolution are not in the public interest, the commission shall file, in writing, with the clerk or other officer who has the custody of the files and records of the city, the commission's reasons therefor. If the objections are filed within said period of 90 days, no proposed contract, ordinance or other municipal law or regulation shall be valid or go into effect until it has been submitted to or ratified by the vote of the electors of the city. Unless and until a city exercises its powers as provided in this paragraph, the commission is vested with all powers with respect to the matters specified in this paragraph. If the schedule of rates, charges and tolls or the quality and character of each kind of product or service is fixed by contract, ordinance or other municipal law or regulation and in the manner provided in this paragraph, the commission has no power or jurisdiction to interfere with, modify or change it during the period fixed thereby. Upon the expiration of said period such powers shall again be vested in the commission, to be exercised by the commission unless and until a new schedule of rates or the quality and character for such service or product is fixed or prescribed by contract, ordinance or other municipal law or regulation in the manner provided in this paragraph.

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

SECTION 4. ORS 758.010 is amended to read:

758.010. (1) Except within cities, any person or corporation has a right and privilege to construct, maintain and operate its water, gas, electric or communication service lines, fixtures and other facilities along the public roads in this state, as defined in ORS 368.001 or across rivers or over any lands belonging to the state, free of charge, and over lands of private individuals, as provided in ORS 772.210. Such lines, fixtures and facilities shall not be constructed so as to obstruct any public road or navigable stream.

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

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

Passed by Senate May 4, 2009

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Secretary of Senate

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President of Senate

Passed by House June 2, 2009

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Speaker of House

Received by Governor:

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

Approved:

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

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Governor

Filed in Office of Secretary of State:

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

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Secretary of State