

Senate Bill 269

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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 **as introduced**.

Prescribes manner in which public body may require utility to relocate facilities legally located on property constituting public highway. 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.

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

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

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

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

8 (b) **"Public highway" has the meaning given that term in ORS 825.005.**

9 (c) **"Utility" means a public utility, as defined in ORS 757.005, or a telecommunications
10 utility, as defined in ORS 759.005.**

11 (2) **A public body may require a utility to relocate facilities legally located on property
12 constituting a public highway only as provided in this section.**

13 (3) **A public body may require a utility to relocate facilities located on property consti-
14 tuting a public highway to the extent necessary to accommodate public purpose construction
15 projects. The public body must allow a utility a reasonable time to relocate facilities.**

16 (4) **During the planning and design phase of a public purpose construction project, a
17 public body shall conduct a preliminary design meeting to determine the extent to which the
18 project will require relocation of utility facilities. The public body must give written notice
19 to any utility that has facilities that might be affected by the project at least 30 days before
20 the preliminary design meeting. The notice must include:**

21 (a) **The project design.**

22 (b) **Proposed dates for any utility facility relocation.**

23 (c) **A statement as to whether the project involves any highway or urban extension of a
24 highway that is a part of the National System of Interstate and Defense Highways, as defined
25 in the Federal-Aid Highway Act of 1956, and that qualifies for federal aid under the Federal-
26 Aid Highway Act of 1956. If the project involves a highway or urban extension of highway
27 described in this paragraph, the notice must include the federal project identifying number.**

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 (d) A statement as to whether the project involves any highway that at any time was
2 part of the National System of Interstate and Defense Highways.

3 (5) A public body shall use best efforts to eliminate the need for, or the cost of, utility
4 relocation. A public body may require that a utility relocate facilities only if the public body
5 determines that the relocation and the costs of relocation cannot be eliminated. If the public
6 body determines that the relocation and the costs of relocation cannot be eliminated, the
7 public body shall coordinate the relocation with the affected utility and discuss options that
8 would limit the impact of the construction on utility facilities and minimize the costs asso-
9 ciated with the relocation.

10 (6) If a public body requests that a utility relocate facilities, and the public body has
11 failed to conduct a preliminary design meeting as required by subsection (4) of this section,
12 or has failed to provide the notice required by subsection (4) of this section, the public body
13 must reimburse the utility for any costs incurred by the utility in relocating the facilities.
14 A public body may not prohibit a utility from seeking reimbursement for costs under this
15 subsection in any permit application, license application or other written agreement author-
16 izing the utility to relocate the facilities.

17 (7) A public body may require a utility to relocate facilities for the benefit of a private
18 party, or in order to allow a private party to comply with the conditions for approval of a
19 private development, only if the private party agrees to reimburse the utility for all costs
20 incurred by the utility by reason of the relocation.

21 (8) If a public body requires relocation of utility facilities for a project that is funded by
22 both a public body and a private party, the private party shall pay a portion of the utility's
23 actual costs of relocating the utility's facilities in the same proportion that the party's costs
24 bear to the costs of the entire project.

25 (9) Notwithstanding any other provision of ORS chapter 757 or 759, a utility may recover
26 from the utility's retail customers the total amount of the utility's costs, as defined by 23
27 C.F.R. part 645.117, as in effect on the effective date of this 2009 Act, for relocation activities
28 required by a public body that are not otherwise paid by a private party. A utility may not
29 amortize the recovery of relocation costs for a period of more than three years. Costs re-
30 coverable by the utility under this section may be identified by the utility as a separate line
31 item in customer bills.

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

33 221.420. (1) As used in this section:

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

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

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

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

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

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

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

45 (a) Determine by contract or prescribe by ordinance or otherwise, the terms and conditions, in-

1 cluding payment of charges and fees, upon which any public utility, electric cooperative, people's
2 utility district or heating company, or Oregon Community Power, may be permitted to occupy the
3 streets, highways or other public property within such city and exclude or eject any public utility
4 or heating company therefrom.

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

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

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

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

38 758.010. (1) Except within cities, any person or corporation has a right and privilege to con-
39 struct, maintain and operate its water, gas, electric or communication service lines, fixtures and
40 other facilities along the public roads in this state, as defined in ORS 368.001 or across rivers or
41 over any lands belonging to the state, free of charge, and over lands of private individuals, as pro-
42 vided in ORS 772.210. Such lines, fixtures and facilities shall not be constructed so as to obstruct
43 any public road or navigable stream.

44 (2) A county governing body and the Department of Transportation have authority to designate
45 the location upon roads under their respective jurisdiction, outside of cities, where lines, fixtures

1 and facilities described in this section may be located, and **subject to section 2 of this 2009 Act**
2 may order the location of any such line, fixture or facility to be changed when such governing body
3 or department deems it expedient. Any line, fixture or facility erected or remaining in a different
4 location upon such road than that designated in any order of the governing body or department is
5 a public nuisance and may be abated accordingly.

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

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