

Enrolled
Senate Bill 447

Sponsored by Senator PROZANSKI; Representative NATHANSON (at the request of John Brown, Lane County Legal Aid and Advocacy Center, Oregon Law Center) (Presession filed.)

CHAPTER

AN ACT

Relating to the removal of personal property under a state highway within an urban growth boundary on property along a river; creating new provisions; amending ORS 377.650 and 377.655; and declaring an emergency.

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

SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 377.605 to 377.655.

SECTION 2. (1) If personal property is deposited, left or displayed under a state highway bridge, on property along a river and within an urban growth boundary, and the personal property is a public nuisance under ORS 377.650, the Department of Transportation may remove, store and dispose of the personal property as provided in this section.

(2) Prior to the removal of the personal property, the department shall post written notice in the manner provided in this subsection. The written notice must:

- (a) Be laminated or weather resistant.
- (b) Be posted in a conspicuous location within 30 feet of the property to be removed.
- (c) Include the following dates:
 - (A) The date the notice is posted;
 - (B) The date by which the property owner must remove the property; and
 - (C) The dates within which the department may remove the property pursuant to subsection (3) of this section.

(d) Be posted no less than five days and no more than 19 days prior to removal. If the notice is removed during the posting period, the department may proceed with the removal of the personal property but shall replace the notice at the site for the purpose of informing property owners about how to claim the property.

(e) Provide information about the storage of the property, including but not limited to how long the department will store the property and a telephone number at which the property owner can contact the department to make arrangements to claim the property.

(f) Be written in English and Spanish.

(3) No less than five days and no more than 19 days after posting written notice, the department may remove the personal property.

(4) The department shall store the personal property removed under subsection (3) of this section:

- (a) In a manner that is reasonably likely to protect the property from harm;
- (b) In a location that is reasonably secure; and

(c) In a location that is reasonably accessible to the location where the property was found.

(5) After storing the property for 30 days, unless the property is claimed by the property owner, the department may sell or otherwise dispose of the personal property.

(6) The department is not liable for any conversion of personal property removed or stored under this section.

(7) The department may collect the costs of removing, storing, selling or disposing of the personal property from the property owner pursuant to this section.

(8) If the department determines that the personal property creates an exceptional emergency, such as possible site contamination by hazardous materials, or that the personal property presents an immediate danger to human life or safety, the department may immediately remove and dispose of the property without notice as described in subsection (2) of this section. Personal property that may enter a river as a result of seasonal increases in river levels, absent other evidence, does not constitute an exceptional emergency. Personal property that may enter a river as a result of unanticipated flooding, absent other evidence, does constitute an exceptional emergency.

(9) A permanent sign posted by the department that announces that personal property will be removed does not satisfy the notice requirements established under this section.

(10) The department may adopt rules for the implementation of this section.

SECTION 3. ORS 377.650 is amended to read:

377.650. Any personal property not coming within the definition of junk, except a vehicle as defined in ORS 801.590 or a manufactured structure as defined in ORS 446.561, that is deposited, left or displayed on a state highway is hereby found and declared to be a public nuisance. **Except as provided in section 2 of this 2011 Act**, the Director of Transportation may do any of the following with respect to personal property declared to be a nuisance by this section:

(1) Ten days after written notice is mailed to the person owning the personal property, the director may institute on behalf of the Department of Transportation any legal proceedings the director considers necessary to prevent the violation of this section.

(2) Ten days after written notice, the director may remove the personal property and store it. After 30 days of storage, unless claimed sooner by the owner, the director may sell or otherwise dispose of the personal property. Where removal is performed by the director, the director shall not be liable for any conversion of personal property and may collect the cost for removal, storage and sale or disposal of the personal property from the person owning it.

(3) If the property is a sign, as defined under ORS 377.710, that is portable or if the property has been repeatedly deposited, left or displayed in violation of this section, the director may follow the procedures under ORS 377.655. This subsection applies notwithstanding any other provision of this section.

SECTION 4. ORS 377.655 is amended to read:

377.655. (1) The Department **of Transportation** shall adopt rules consistent with this section to provide procedures for the removal and disposition of portable signs or personal property that has been repeatedly left, deposited or displayed in violation of ORS 377.650.

(2) Rules adopted by the department under this section may provide for any of the following:

(a) A reduction in the times required for notice of violation, opportunity for hearing, opportunity to remove the violation and removal of the violation.

(b) Removal of the violation without prior notice if the person committing the violation has been given prior notice of the violation. If removal is provided under this paragraph, opportunity for hearing must be provided by the rules within five days after the removal.

(c) Any other rules concerning removal and disposition of such violations that the department determines will reduce the repeating of such violations.

(3) Rules adopted by the department under this section may not alter the provisions established under section 2 of this 2011 Act.

SECTION 5. Section 2 of this 2011 Act applies to removal of personal property on or after the operative date set forth in section 6 of this 2011 Act.

SECTION 6. (1) Sections 1, 2 and 5 of this 2011 Act and the amendments to ORS 377.650 and 377.655 by sections 3 and 4 of this 2011 Act become operative 60 days after the effective date of this 2011 Act.

(2) The Department of Transportation may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department by sections 1, 2 and 5 of this 2011 Act and the amendments to ORS 377.650 and 377.655 by sections 3 and 4 of this 2011 Act.

SECTION 7. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate April 7, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 11, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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Kate Brown, Secretary of State