

# D R A F T

## SUMMARY

Prohibits cities from imposing franchise fees, privilege taxes or other fees on certain districts for occupancy of streets, alleys, highways or other public property.

### A BILL FOR AN ACT

Relating to the occupancy of public property by districts; creating new provisions; and amending ORS 221.420, 221.450 and 221.655.

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

**SECTION 1.** (1) As used in this section, “district” means any type of district listed in ORS 198.010.

(2) Notwithstanding ORS 221.420, 221.450 or 221.655, a city may not impose a franchise fee, privilege tax or other fee for the occupancy of streets, alleys, highways or other public property on any district that provides services or has facilities within the boundaries of the city.

**SECTION 2.** 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.]*

1 [(e)] (b) "Service" is used in its broadest and most inclusive sense and  
2 includes equipment and facilities.

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

5 (2) Subject to ORS 758.025, a city may:

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

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

18 (c) Fix by contract, prescribe by ordinance, or in any other lawful man-  
19 ner, the rates, charges or tolls to be paid to, or that may be collected by, any  
20 public utility or the quality and character of each kind of product or service  
21 to be furnished or rendered by any public utility furnishing any product or  
22 service within such city. No schedule of rates, charges or tolls, fixed in the  
23 manner provided in this paragraph, shall be so fixed for a longer period than  
24 five years. Whenever it is proposed by any city to enter into any contract,  
25 or to enact any ordinance, or other municipal law or regulation concerning  
26 the matters specified in this paragraph, a copy of such proposed contract,  
27 ordinance or other municipal law or resolution shall be filed with the Public  
28 Utility Commission of Oregon before the same may be lawfully signed or  
29 enacted, as the case may be, and the commission shall thereafter have 90  
30 days within which to examine into the terms thereof. If the commission is  
31 of the opinion that in any respect the provisions of the proposed contract,

1 ordinance or other municipal law or resolution are not in the public interest,  
2 the commission shall file, in writing, with the clerk or other officer who has  
3 the custody of the files and records of the city, the commission's reasons  
4 therefor. If the objections are filed within said period of 90 days, no proposed  
5 contract, ordinance or other municipal law or regulation shall be valid or  
6 go into effect until it has been submitted to or ratified by the vote of the  
7 electors of the city. Unless and until a city exercises its powers as provided  
8 in this paragraph, the commission is vested with all powers with respect to  
9 the matters specified in this paragraph. If the schedule of rates, charges and  
10 tolls or the quality and character of each kind of product or service is fixed  
11 by contract, ordinance or other municipal law or regulation and in the  
12 manner provided in this paragraph, the commission has no power or juris-  
13 diction to interfere with, modify or change it during the period fixed thereby.  
14 Upon the expiration of said period such powers shall again be vested in the  
15 commission, to be exercised by the commission unless and until a new  
16 schedule of rates or the quality and character for such service or product is  
17 fixed or prescribed by contract, ordinance or other municipal law or regu-  
18 lation in the manner provided in this paragraph.

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

22 **SECTION 3.** ORS 221.450 is amended to read:

23 221.450. Except as provided in ORS 221.655, the city council or other  
24 governing body of every incorporated city may levy and collect a privilege  
25 tax from Oregon Community Power and from every electric cooperative,  
26 [*people's utility district,*] privately owned public utility, telecommunications  
27 carrier as defined in ORS 133.721 or heating company. The privilege tax may  
28 be collected only if the entity is operating for a period of 30 days within the  
29 city without a franchise from the city and actually using the streets, alleys  
30 or highways, or all of them, in such city for other than travel on such streets  
31 or highways. The privilege tax shall be for the use of those public streets,

1 alleys or highways, or all of them, in such city in an amount not exceeding  
2 five percent of the gross revenues of the cooperative, utility[, *district*] or  
3 company currently earned within the boundary of the city. However, the  
4 gross revenues earned in interstate commerce or on the business of the  
5 United States Government shall be exempt from the provisions of this sec-  
6 tion. The privilege tax authorized in this section shall be for each year, or  
7 part of each year, such utility, cooperative[, *district*] or company, or Oregon  
8 Community Power, operates without a franchise.

9 **SECTION 4.** ORS 221.655 is amended to read:

10 221.655. (1) The city council or governing body of an incorporated city  
11 may levy and collect from a distribution utility providing direct access to  
12 electricity services under ORS 757.601 (1) or 757.676, except a municipal  
13 electric utility **or a people's utility district**, operating for a period of 30  
14 days within the city without a franchise from the city and actually using the  
15 streets, alleys or highways in such city for other than travel, a privilege tax  
16 for the use of those public streets, alleys or highways. The privilege tax shall  
17 be based on a volumetric rate times the volume of electric energy in kilowatt  
18 hours delivered, transmitted or distributed to retail electricity consumers  
19 within the city by the distribution utility, provided that the privilege tax  
20 shall not be applied to electric energy generated by a retail electricity  
21 consumer's own generating facilities or to electric energy delivered by the  
22 federal government. The volumetric rate of the privilege tax for the distrib-  
23 ution utility may vary by customer class.

24 (2) The privilege tax described in subsection (1) of this section shall be  
25 subject to the following:

26 (a) The volumetric rate, in cents per kilowatt hour, for any customer class  
27 shall not exceed five percent of the 1999 gross revenue of an electric utility  
28 within the city for the customer class divided by the amount of electric en-  
29 ergy in kilowatt hours delivered to the customer class in 1999.

30 (b) A city with a franchise fee or privilege tax in effect on July 1, 1999,  
31 that was less than five percent shall not establish a volumetric rate for any

1 customer class of the distribution utility in an amount in excess of the city's  
 2 1999 franchise fee or privilege tax rate times the 1999 gross revenue of any  
 3 electric utility within the city from the customer class divided by the amount  
 4 of electric energy in kilowatt hours delivered to the customer class in 1999,  
 5 except following a hearing with notice and opportunity for public comment.

6 (3) Subject to the limitations established in subsection (2) of this section,  
 7 once a city has established volumetric rates for the purpose of calculating  
 8 the privilege tax under this section, any subsequent change in the volumetric  
 9 rates shall be applied on an equal percentage basis to all customer classes.

10 (4)(a) The Public Utility Commission shall determine the manner in which  
 11 a privilege tax under this section is collected from the customers of an  
 12 electric company. The privilege tax shall be allocated across an electric  
 13 company's customer classes in the same proportional amounts as levied by  
 14 the city against the electric company.

15 (b) The governing body of an electric cooperative [*or people's utility dis-*  
 16 *trict*] shall determine the manner in which a privilege tax under this section  
 17 is collected from the customers of the electric cooperative [*or people's utility*  
 18 *district*]. The governing body shall allocate the privilege tax across customer  
 19 classes in the same proportional amounts as levied by the city against the  
 20 electric cooperative [*or people's utility district*].

21 **SECTION 5. Section 1 of this 2013 Act and the amendments to ORS**  
 22 **221.420, 221.450 and 221.655 by sections 2 to 4 of this 2013 Act do not**  
 23 **apply to any contract entered into by a city and a district, as defined**  
 24 **in section 1 of this 2013 Act, on or before the effective date of this 2013**  
 25 **Act.**

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