

House Bill 2455

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Interim Committee on Revenue)

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**.

Broadens types of communications services on which municipalities may impose privilege tax. Modifies privilege tax rate imposed on gross revenues of communications service providers. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to privilege taxation of communications services; amending ORS 221.505, 221.510 and
3 221.515; and prescribing an effective date.

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

5 **SECTION 1.** ORS 221.505 is amended to read:

6 221.505. The Legislative Assembly recognizes that significant changes have occurred in the
7 regulation, technology and marketing of [*telecommunications carriers as defined in ORS 133.721 over*
8 *the past decade*] **communications services**. It is the intent of the Legislative Assembly in adopting
9 the privilege tax authorized by ORS 221.505 to 221.515 and 759.219 to respond to these changes by
10 establishing a uniform base for municipal charges for street use by [*telecommunications carriers*]
11 **communications service providers as defined in ORS 221.510.**

12 **SECTION 2.** ORS 221.510 is amended to read:

13 221.510. (1) As used in this section:

14 [*(a) "Telecommunications carrier" has the meaning given that term in ORS 133.721.*]

15 [*(b)*] (a) "Commission" means the Public Utility Commission of Oregon.

16 (b) "Communications service provider" means:

17 (A) A competitive telecommunications provider as defined in ORS 759.005;

18 (B) A telecommunications utility as defined in ORS 759.005; or

19 (C) A provider of interconnected voice over Internet protocol service.

20 (c) "Council" means the common council, city council, commission or any other governing body
21 of [*any*] a municipality. [*wherein the property of the telecommunications carrier is located.*]

22 (d) "Interconnected voice over Internet protocol service" means a service that:

23 (A) Enables real-time, two-way voice communications;

24 (B) Requires a broadband connection from the user's location;

25 (C) Requires Internet protocol-compatible customer premises equipment; and

26 (D) Permits users generally to receive calls that originate on the public switched tele-
27 phone network and to terminate calls to the public switched telephone network.

28 [*(d)*] (e) "Municipality" means [*any town, municipality*] a town or other municipal government
29 [*wherein*] in which the property of [*the telecommunications carrier*] a communications service
30 provider is located.

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 [(e)] (f) "Service" [is used] **means service** in its broadest and most inclusive sense and includes
 2 equipment and facilities.

3 (2) Every municipality may:

4 (a) Determine by contract, or prescribe by ordinance or otherwise, the terms and conditions,
 5 including payment of a privilege tax to the extent authorized by ORS 221.515 and other charges and
 6 fees, upon which [any telecommunications carrier] **a communications service provider** may be
 7 permitted to occupy, **and to exclude or eject another communications service provider from,**
 8 the **public** streets, **alleys**, highways or other public property within [such] **the** municipality [and
 9 *exclude or eject any telecommunications carrier therefrom*].

10 (b) Require [any telecommunications carrier] **a communications service provider**, by ordinance
 11 or otherwise, to make such modifications, additions and extensions to [its] **the** physical equipment,
 12 facilities or plant or service **of the communications service provider** within [such] **the** munici-
 13 pality as shall be reasonable or necessary in the interest of the public, and designate the location
 14 and nature of all **modifications**, additions and extensions, the time within which they must be
 15 completed and all conditions under which they must be constructed.

16 (c) Provide for a penalty for noncompliance with the provisions of any charter provision, ordi-
 17 nance or resolution adopted by the municipality in furtherance of the powers specified in this sub-
 18 section.

19 **SECTION 3.** ORS 221.515 is amended to read:

20 221.515. (1) **As used in this section:**

21 (a) **"Communications service provider" has the meaning given that term in ORS 221.510.**

22 (b) **"Gross revenues" means the revenues derived from telecommunications service or**
 23 **from interconnected voice over Internet protocol service, less net uncollectibles from the**
 24 **revenues.**

25 (c) **"Interconnected voice over Internet protocol service" has the meaning given that**
 26 **term in ORS 221.510.**

27 (d) **"Telecommunications service" has the meaning given that term in ORS 759.005.**

28 [(1)] (2) The council of every municipality in this state may levy and collect from every [tele-
 29 *communications carrier*] **communications service provider** operating within the municipality and
 30 actually using the **public** streets, alleys or highways[, *or all of them, in such*] **in the** municipality for
 31 **purposes** other than travel, a privilege tax for the use of [those] **the public** streets, alleys or
 32 highways[, *or all of them, in such*] **in the** municipality in an amount [which] **that** may not exceed
 33 [seven] _____ percent of the gross revenues of the [telecommunications carrier] **communications**
 34 **service provider** currently earned within the boundaries of the municipality. The privilege tax au-
 35 thorized [in] **under** this section shall be for each year, or part of each year, that [such telecommu-
 36 *nications carrier*] **a communications service provider** operates within the municipality.

37 [(2) As used in this section, "gross revenues" means those revenues derived from exchange access
 38 services, as defined in ORS 403.105, less net uncollectibles from such revenues.]

39 (3)(a) A [telecommunications carrier] **communications service provider** paying the privilege tax
 40 authorized [by] **under** this section [shall] **may** not be required to pay any additional fee, compen-
 41 sation or consideration, including the free use or construction of telecommunications **service or**
 42 **interconnected voice over Internet protocol service** facilities and equipment, to the municipality
 43 for [its] **the provider's** use of **the** public streets, alleys[,] or highways[, *or all of them,*] and [shall]
 44 **may** not be required to pay any additional tax or fee on the gross revenues that are the measure
 45 of the privilege tax.

1 **(b)** As used in **paragraph (a)** of this subsection, “use” includes, but is not limited to, street
 2 openings, construction and maintenance of fixtures or facilities by [*telecommunications carriers*]
 3 **communications service providers**.

4 **(c)** [*As used in this subsection, “additional fee, compensation or consideration” does not include*]
 5 **The prohibition against additional fees, compensation or consideration under paragraph (a)**
 6 **of this subsection does not apply to** commissions paid for siting public telephones on municipal
 7 property.

8 **(d)(A)** To the extent that separate fees are imposed by the municipality on [*telecommunications*
 9 *carriers*] **communications service providers** for street openings, construction, inspection or main-
 10 tenance of fixtures or facilities, [*such*] **the** fees may be deducted from the privilege tax authorized
 11 [*by*] **under** this section.

12 **(B)** [*However, telecommunications carriers shall*] **Notwithstanding subparagraph (A) of this**
 13 **paragraph, communications service providers may** not deduct charges and penalties imposed by
 14 the municipality for noncompliance with charter provisions, ordinances, resolutions or permit con-
 15 ditions from the privilege tax authorized [*by*] **under** this section.

16 **(4) A cable operator, as defined in ORS 30.192, paying a franchise fee, as defined in 47**
 17 **U.S.C. 542, as in effect on January 1, 2013, to a municipality under a franchise, as defined in**
 18 **47 U.S.C. 522(9), as in effect on January 1, 2013, may not be required to pay additional taxes**
 19 **or fees on the gross revenues that are the measure of the franchise fee paid under the cable**
 20 **franchise.**

21 [*(4) For purposes of this section, “telecommunications carrier” has the meaning given that term in*
 22 *ORS 133.721.*]

23 **SECTION 4. This 2013 Act takes effect on the 91st day after the date on which the 2013**
 24 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**