

DRAFT

SUMMARY

Provides that right and privilege to construct, maintain or operate water, gas, electric or communication service line, fixture or other facility along public roads, free of charge, does not extend to county roads. Prohibits governing bodies of counties from charging other public bodies fees for construction, maintenance or operation of such lines, fixtures and facilities.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to construction of facilities along public roads; creating new pro-
3 visions; amending ORS 98.654, 374.325, 758.010 and 758.020; and declaring
4 an emergency.

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

6 **SECTION 1. On the effective date of this 2015 Act, the right and**
7 **privilege to construct, maintain and operate a water, gas, electric or**
8 **communication service line, fixture or other facility along county**
9 **roads, free of charge, ceases.**

10 **SECTION 2. ORS 758.010 is amended to read:**

11 **758.010. (1) As used in this section:**

12 **(a) “County road” has the meaning given that term in ORS 368.001;**

13 **and**

14 **(b) “Public road” has the meaning given that term in ORS 368.001.**

15 **[(1)] (2) Except within cities and along county roads, any person [or**
16 **corporation] has a right and privilege to construct, maintain and operate**
17 **[its] the person’s water, gas, electric or communication service [lines, fix-**
18 **tures and other facilities] line, fixture or other facility along the public**

1 roads in this state, [*as defined in ORS 368.001 or*] across rivers or [*over any*
2 *lands*] **on land** belonging to the state, free of charge, and [*over lands of*] **on**
3 **land belonging to** private individuals[,] as provided in ORS 772.210. Such
4 lines, fixtures and **other** facilities [*shall*] **may** not be constructed [*so as to*
5 *obstruct any*] **in a manner that obstructs a** public road or navigable
6 stream.

7 [(2) *A county governing body and the Department of Transportation have*
8 *authority to designate the location upon roads under their respective jurisdic-*
9 *tion, outside of cities, where lines, fixtures and facilities described in this*
10 *section may be located, and subject to ORS 758.025 may order the location of*
11 *any such line, fixture or facility to be changed when such governing body or*
12 *department deems it expedient. Any line, fixture or facility erected or remain-*
13 *ing in a different location upon such road than that designated in any order*
14 *of the governing body or department is a public nuisance and may be abated*
15 *accordingly.*]

16 **(3) Except within cities, the Department of Transportation may**
17 **designate where a line, fixture or other facility described in subsection**
18 **(2) of this section may be located along a public road under the jurisdic-**
19 **tion of the department. Subject to ORS 758.025, if the department**
20 **finds that changing the location of a line, fixture or other facility is**
21 **expedient, the department may order a change in the location. If a**
22 **designation is made or an order is issued under this subsection, a line,**
23 **fixture or other facility erected or remaining in a location different**
24 **from that designated or ordered is a public nuisance and may be**
25 **abated accordingly.**

26 [(3)] (4) [*The state officer, agency, board or commission having jurisdiction*
27 *over any land belonging to the state with respect to which the right and priv-*
28 *ilege granted under subsection (1) of this section is exercised may impose rea-*
29 *sonable requirements for the location, construction, operation and maintenance*
30 *of the lines, fixtures and facilities on such land.*] **A state officer, agency,**
31 **board or commission may impose reasonable requirements on a person**

1 **that constructs, maintains or operates a line, fixture or other facility**
2 **pursuant to the right and privilege described in subsection (2) of this**
3 **section.** The person [*or corporation*] exercising [*such*] **the** right and privilege
4 over [*any*] land belonging to the state shall pay the current market value for
5 the existing forest products that are damaged or destroyed in exercising
6 [*such*] **the** right and privilege. [*Such*] **The** right and privilege [*of any person*
7 *or corporation*] **granted under subsection (2) of this section** is conditioned
8 upon compliance with the requirements imposed by this subsection.

9 **SECTION 3. Section 4 of this 2015 Act is added to and made a part**
10 **of ORS chapter 758.**

11 **SECTION 4. (1) As used in this section, “county road” has the**
12 **meaning given that term in ORS 368.001.**

13 **(2) Except as provided in subsection (4) of this section, the govern-**
14 **ing body of a county may impose, pursuant to a contract or ordinance,**
15 **a charge or fee on a person that constructs, maintains or operates a**
16 **water, gas, electric or communication service line, fixture or other**
17 **facility located along a county road.**

18 **(3) The governing body of a county may designate where a line,**
19 **fixture or other facility described in subsection (2) of this section may**
20 **be located along a county road under the jurisdiction of the governing**
21 **body. Subject to ORS 758.025, if the governing body finds that changing**
22 **the location of a line, fixture or other facility is expedient, the gov-**
23 **erning body may order a change in the location. If a designation is**
24 **made or an order is issued under this subsection, a line, fixture or**
25 **other facility erected or remaining in a location different from that**
26 **designated or ordered is a public nuisance and may be abated accord-**
27 **ingly.**

28 **(4) The governing body of a county may not impose a charge or fee**
29 **on another public body, as defined in ORS 174.109, for the construction,**
30 **maintenance or operation of the public body’s water, gas, electric or**
31 **communication service line, fixture or other facility located along a**

1 **county road.**

2 **SECTION 5.** ORS 98.654 is amended to read:

3 98.654. The provisions of ORS 98.650 and 98.652 [*shall*] **do** not apply to
4 trees, timber, logs, poles or [*piling which*] **pilings that** have been placed or
5 deposited or allowed to remain upon the right of way of a county road under
6 the provisions of a permit granted by the county court or board of county
7 commissioners [*having jurisdiction over said*] **that has jurisdiction over the**
8 county road, [*nor*] **or** to poles placed upon the right of way of a county road
9 [*under authority of*] **pursuant to** ORS 758.010 or 758.020 **or section 4 of this**
10 **2015 Act**, [*nor*] **or** to any county road [*which*] **that** is not maintained for
11 public travel by the county court or board of county commissioners of the
12 county in which the road is located.

13 **SECTION 6.** ORS 374.325 is amended to read:

14 374.325. [*Nothing in*] ORS 374.305 to 374.325 [*shall*] **do not:**

15 (1) Limit or affect any of the powers granted to, or duties imposed upon,
16 the county courts, [*or*] boards of county commissioners, [*the*] Department of
17 Transportation or [*the*] Public Utility Commission by ORS 758.010 and
18 758.020 **and section 4 of this 2015 Act**, or any [*rights granted or authorized*
19 *under those statutes*] **right or privilege granted by ORS 758.010 and 758.020**
20 **and section 4 of this 2015 Act.**

21 (2) Grant any right for the construction or placing of an approach road,
22 structure, pipeline, ditch, cable, [*or*] wire[,] or other facility[, *thing*] or
23 appurtenance on the right of way of [*any*] **a** highway.

24 **SECTION 7.** ORS 758.020 is amended to read:

25 758.020. (1) The county court, board of county commissioners or [*the*] De-
26 partment of Transportation, when designating the location where **lines**, poles
27 or other aboveground facilities described in ORS 758.010 **and section 4 of**
28 **this 2015 Act** may be placed [*on*] **along** a road or highway [*which*] **that**
29 fronts on the ocean, [*or on*] a river or other body of water, and **when** the
30 water frontage of the highway is being developed or maintained for its scenic
31 or recreational value, may require [*all lines*] **the lines, poles or other**

1 **aboveground facilities** to occupy the opposite side of the right of way, if
2 [*such joint*] **the** occupancy can be maintained without undue impairment of
3 service or damage to public life and property.

4 (2) If [*the*] **multiple** owners of [*such lines*] **lines, poles or other**
5 **aboveground facilities** are unable to agree on the terms and conditions of
6 [*joint occupancy, such department, court or board*] **jointly occupying the**
7 **opposite side of the right of way, the county court, board of county**
8 **commissioners or department** shall request the Public Utility Commission
9 to determine the practicability of [*such*] joint occupancy and the effect
10 [*thereof*] **of joint occupancy** upon adequate and safe service by the pro-
11 spective joint occupants[, *the location of the lines, and, if found to be practi-*
12 *cable,*] **and, if practicable,** to fix and prescribe the terms and conditions
13 pursuant to which joint occupancy shall be accomplished. Before making or
14 entering an order, [*such*] **the Public Utility** Commission shall hold a hearing
15 and make findings in accordance with ORS 756.500 to 756.610. The order of
16 the commission is subject to judicial review as an order in a contested case
17 in the manner provided by ORS 756.610. In fixing terms and conditions pur-
18 suant to which joint occupancy shall be accomplished, the [*Public Utility*]
19 commission shall require the installation by each [*occupant*] **of the joint**
20 **occupants** of standards, devices and equipment reasonably necessary to
21 protect the equipment of the other occupants from damage and the public
22 from injury [*arising from such joint occupancy*].

23 (3) The right of any public utility, telecommunications utility or trans-
24 mission company to construct, maintain and operate [*on*] **along** a public
25 highway **lines, poles or** [*fixtures*] **other aboveground facilities** is contin-
26 gent on compliance with reasonable requirements established by the [*De-*
27 *partment of Transportation,*] county courts, boards of county commissioners,
28 **Department of Transportation** or [*the*] Public Utility Commission under
29 [*authority of*] this section and ORS 758.010 **and section 4 of this 2015 Act.**
30 Such rights are [*likewise*] **also** contingent [*and conditioned*] on all facilities,
31 equipment and installations being constructed and maintained in strict con-

1 formance with modern and approved standards.

2 **SECTION 8. Section 4 of this 2015 Act and the amendments to ORS**
3 **758.010 by section 2 of this 2015 Act apply to the construction, main-**
4 **tenance or operation of a line, fixture or other facility that occurs on**
5 **or after the effective date of this 2015 Act.**

6 **SECTION 9. This 2015 Act being necessary for the immediate pres-**
7 **ervation of the public peace, health and safety, an emergency is de-**
8 **clared to exist, and this 2015 Act takes effect on its passage.**

9
