

# House Bill 2172

Introduced and printed pursuant to House Rule 12.00. Pre-session 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**.

Repeals statutes authorizing local privilege taxation of gross revenues derived from exchange access services of telecommunications utilities. Provides that repeal of statutes may not be construed to limit local authority to manage public rights of way or tax telecommunications carriers or to give Public Utility Commission jurisdiction over such local authority.

Takes effect on July 1, 2016.

## A BILL FOR AN ACT

1  
2 Relating to privilege taxation of telecommunications services; creating new provisions; amending  
3 ORS 759.219, 759.405 and 759.410; repealing ORS 221.505, 221.510 and 221.515; and prescribing  
4 an effective date.

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

6 **SECTION 1. ORS 221.505, 221.510 and 221.515 are repealed.**

7 **SECTION 2.** ORS 759.219 is amended to read:

8 759.219. *[The]* **Any** privilege tax *[authorized by ORS 221.515,]* or other similar exactions imposed  
9 by any municipality in this state upon telecommunications utilities for use and occupancy of streets,  
10 alleys or highways, or all of them, shall be allowed as an operating expense of the affected tele-  
11 communications utilities operating in the municipality for rate-making purposes by the Public Utility  
12 Commission. The cost of such privilege tax or other similar exactions shall be charged pro rata to  
13 the users of such telecommunications utility within the municipality unless the Public Utility Com-  
14 mission determines on a statewide basis that such pro rata charges would be inequitable, in whole  
15 or in part, to city ratepayers or should otherwise be borne as a statewide operating expense by the  
16 telecommunications utility.

17 **SECTION 3.** ORS 759.405 is amended to read:

18 759.405. (1) A telecommunications carrier may elect to be subject to this section and ORS  
19 759.410. The telecommunications carrier shall notify, in writing, the Public Utility Commission of its  
20 election. Such election shall be effective 30 days after the written notification is received by the  
21 Public Utility Commission. A telecommunications carrier that elects to be subject to this section  
22 and ORS 759.410 shall be subject to the infrastructure investment and price regulation requirements  
23 of this section and ORS 759.410 and shall not be subject to any other regulation based on earnings,  
24 rates or rate of return.

25 (2) A telecommunications carrier that elects to be subject to this section and ORS 759.410 shall  
26 establish in its accounts a Telecommunications Infrastructure Account. The telecommunications  
27 carrier shall commit to its Telecommunications Infrastructure Account over a four-year period  
28 amounts totaling 20 percent of the telecommunications carrier's gross regulated intrastate revenue  
29 for the calendar year immediately prior to the year the telecommunications carrier elects to be

**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 subject to this section and ORS 759.410. Of the total committed amount, 30 percent shall be credited  
 2 to and made available for the purposes of the electing carrier's account on the date the telecom-  
 3 munications carrier's election becomes effective. An electing telecommunications carrier shall credit  
 4 an equal amount on the same date in the next following year. The electing carrier shall credit to  
 5 its Telecommunications Infrastructure Account an amount equal to 20 percent of the total commit-  
 6 ted amount on the same date in each of the next following two years.

7 (3)(a) A telecommunications carrier that elects to be subject to this section and ORS 759.410  
 8 shall expend the moneys in the telecommunications carrier's Telecommunications Infrastructure  
 9 Account on a plan or plans approved by the Oregon Business Development Commission under ORS  
 10 759.430. Subject to paragraphs (c) and (d) of this subsection, the total amount of capital and other  
 11 expenses associated with completing the projects shall equal the total amount of moneys available  
 12 in the account.

13 (b) Moneys in the account shall be used primarily to ensure that rural and urban Oregonians  
 14 have improved access to telecommunications technology and services. Expenditures from the ac-  
 15 count shall be used for investment in telecommunications infrastructure and deployment of new and  
 16 advanced telecommunications services.

17 (c)(A) Within 120 days following the effective date of a telecommunications carrier's election to  
 18 be regulated under this section and ORS 759.410, but not later than January 1 of the year following  
 19 the effective date of a telecommunications carrier's election, and on the same date in each of the  
 20 next following three years, a telecommunications carrier serving less than one million access lines  
 21 in Oregon shall transfer 40 percent of the moneys most recently credited to its Telecommunications  
 22 Infrastructure Account to the Connecting Oregon Communities Fund established under ORS 759.445.

23 (B) Within 120 days following the effective date of a telecommunications carrier's election to  
 24 be regulated under this section and ORS 759.410, but not later than January 1 of the year following  
 25 the effective date of a telecommunications carrier's election, and on the same date in the next fol-  
 26 lowing year, a telecommunications carrier serving one million or more access lines in Oregon shall  
 27 transfer 70 percent of the moneys most recently credited to its Telecommunications Infrastructure  
 28 Account to the Connecting Oregon Communities Fund established under ORS 759.445.

29 (d) Notwithstanding ORS 285A.075 (2), if the Oregon Business Development Commission deter-  
 30 mines, following notice and a public hearing, that the telecommunications carrier is not complying  
 31 with plans or plan modifications approved under ORS 759.430, following notice to the telecommuni-  
 32 cations carrier and reasonable opportunity to cure any noncompliance, the Oregon Business Devel-  
 33 opment Commission may require the telecommunications carrier to transfer any or all moneys  
 34 remaining in the carrier's Telecommunications Infrastructure Account, and any future amounts  
 35 credited to the account, to the Connecting Oregon Communities Fund established under ORS  
 36 759.445.

37 (4) Nothing in this section affects the authority of a city or municipality to manage the public  
 38 rights of way or to require fair and reasonable compensation from a telecommunications carrier, on  
 39 a competitively neutral and nondiscriminatory basis[, *under ORS 221.420, 221.450, 221.510 and*  
 40 *221.515*].

41 **SECTION 4.** ORS 759.410 is amended to read:

42 759.410. (1) It is the intent of the Legislative Assembly that:

43 (a) The State of Oregon cease regulation of telecommunications carriers on a rate of return  
 44 basis;

45 (b) Telecommunications carriers subject to rate of return regulation have the ability to opt out

1 of rate of return regulation;

2 (c) A telecommunications carrier that opts out of rate of return regulation under this section  
 3 and ORS 759.405 shall be subject to price cap regulation and the carrier under price cap regulation  
 4 shall continue to meet service quality requirements; and

5 (d) Telecommunications carriers that opt out of rate of return regulation under this section and  
 6 ORS 759.405 shall make payments to the state to support the use of advanced telecommunications  
 7 services and to support deployment of advanced telecommunications services.

8 (2) A telecommunications carrier that elects to be subject to this section and ORS 759.405 shall  
 9 be subject to price regulation as provided in this section and shall not be subject to any other retail  
 10 rate regulation, including but not limited to any form of earnings-based, rate-based or rate of return  
 11 regulation.

12 (3) The price a telecommunications utility that elects to be subject to this section and ORS  
 13 759.405 may charge for basic telephone service shall be established by the Public Utility Commission  
 14 under ORS 759.425. Subject to ORS 759.415, the regular tariff rate of intrastate switched access and  
 15 retail telecommunications services regulated by the commission, other than basic telephone service,  
 16 in effect on the date the carrier elects to be subject to this section and ORS 759.405 shall be the  
 17 maximum price the telecommunications carrier may charge for that service.

18 (4) A telecommunications carrier that elects to be subject to this section and ORS 759.405 may  
 19 adjust the price for intrastate switched access or a regulated retail telecommunications service be-  
 20 tween the maximum price established under this section and a price floor equal to the sum of the  
 21 total service long run incremental cost of providing the service for the nonessential functions of the  
 22 service and the price that is charged to other telecommunications carriers for the essential func-  
 23 tions. Basic telephone service shall not be subject to a price floor.

24 (5) The price for a new regulated retail telecommunications service introduced by a telecom-  
 25 munications carrier within four years after the date the carrier elects to be subject to this section  
 26 and ORS 759.405 shall be subject to a price floor test by the commission to ensure that the service  
 27 is not priced below the sum of the total service long run incremental cost of providing the service  
 28 for the nonessential functions of the service and the price that is charged to other telecommuni-  
 29 cations carriers for the essential functions. Beginning on the date four years after September 1,  
 30 1999, the price of a new telecommunications service shall be subject to a price floor test by the  
 31 commission to ensure that the service is not priced below the total service long run incremental cost  
 32 of providing the service, without regard to whether the service is considered essential or nones-  
 33 sential.

34 (6) A telecommunications carrier that elects to be subject to this section and ORS 759.405 may  
 35 package and offer any of its retail telecommunications services with any other service at any price,  
 36 provided the following conditions apply:

37 (a) Any regulated telecommunications service may be purchased separately at or below the  
 38 maximum price.

39 (b) The price of the package is not less than the sum of the price floors of each regulated retail  
 40 telecommunications service included in the package.

41 (c) The price of a package that is comprised entirely of regulated retail telecommunications  
 42 services does not exceed the sum of the maximum prices for each of the services.

43 (d) The price of a package comprised of regulated and unregulated retail telecommunications  
 44 services does not exceed the sum of the maximum prices established under this section for regulated  
 45 services and the retail price charged by the carrier for the individual unregulated services in the

1 package. A telecommunications carrier subject to regulation under this section shall provide notice  
 2 to the commission within 30 days of a change in the price of an unregulated telecommunications  
 3 service contained in the package.

4 (7) Nothing in this section or ORS 759.405 is intended to limit the ability of a telecommuni-  
 5 cations carrier to seek deregulation of telecommunications services under ORS 759.052.

6 (8)(a) Notice of a price change authorized under subsection (4) of this section, of the introduc-  
 7 tion of a new regulated telecommunications service or of the packaging of services, must be given  
 8 to the commission within 30 days following the effective date of the price change, new service or  
 9 packaged service. Notice of a new regulated telecommunications service shall indicate the retail  
 10 price charged by the carrier for the service.

11 (b) The commission may investigate any price change authorized under subsection (4) of this  
 12 section, the price of a new regulated telecommunications service or the price of a package of ser-  
 13 vices to determine that the price complies with the provisions of this section and any other appli-  
 14 cable law. If the commission determines that the price of the service or package of services does  
 15 not comply with the provisions of this section or other applicable law, the commission may order  
 16 the telecommunications carrier to take such action as the commission determines necessary to bring  
 17 the price into compliance with this section or other applicable law.

18 (9) Nothing in this section affects the authority of a city or municipality to manage the public  
 19 rights of way or to require fair and reasonable compensation from a telecommunications carrier, on  
 20 a competitively neutral and nondiscriminatory basis[, *under ORS 221.420, 221.450, 221.510 and*  
 21 *221.515*].

22 (10) Notwithstanding any other provision of this section, the commission shall establish prices  
 23 for extended area service in a manner that allows a telecommunications carrier that elects to be  
 24 subject to this section and ORS 759.405 to recover all costs and lost net revenues attributable to  
 25 implementing new extended area service routes. The provisions of this subsection apply to telecom-  
 26 munications service provided on a flat or measured basis between exchanges defined by exchange  
 27 maps filed with and approved by the commission.

28 **SECTION 5. The repeal of ORS 221.505, 221.510 and 221.515 by section 1 of this 2015 Act**  
 29 **and the amendments to ORS 759.219, 759.405 and 759.410 by sections 2 to 4 of this 2015 Act**  
 30 **may not be construed to:**

31 **(1) Limit or affect the authority of a city or municipality to:**

32 **(a) Manage the public rights of way;**

33 **(b) Obtain compensation for the use of the public rights of way from a telecommuni-**  
 34 **cations carrier, including, but not limited to, levying and collecting a privilege tax; or**

35 **(c) Impose taxes on a telecommunications carrier.**

36 **(2) Give the Public Utility Commission jurisdiction over any authority of a city or**  
 37 **municipality described in subsection (1) of this section.**

38 **SECTION 6. This 2015 Act takes effect on July 1, 2016.**

39