

Senate Bill 668

Sponsored by COMMITTEE ON FINANCE AND 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**.

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 provisions; amending ORS
3 98.654, 374.325, 758.010 and 758.020; and declaring an emergency.

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

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

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

9 758.010. (1) **As used in this section:**

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

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

12 [(1)] (2) **Except within cities and along county roads,** any person [*or corporation*] has a right
13 and privilege to construct, maintain and operate [*its*] **the person's** water, gas, electric or commu-
14 nication service [*lines, fixtures and other facilities*] **line, fixture or other facility** along the public
15 roads in this state, [*as defined in ORS 368.001 or*] across rivers or [*over any lands*] **on land** belong-
16 ing to the state, free of charge, and [*over lands of*] **on land belonging to** private individuals[,] as
17 provided in ORS 772.210. Such lines, fixtures and **other** facilities [*shall*] **may** not be constructed [*so*
18 *as to obstruct any*] **in a manner that obstructs a** public road or navigable stream.

19 [(2)] (2) *A county governing body and the Department of Transportation have authority to designate the*
20 *location upon roads under their respective jurisdiction, outside of cities, where lines, fixtures and fa-*
21 *ilities described in this section may be located, and subject to ORS 758.025 may order the location of*
22 *any such line, fixture or facility to be changed when such governing body or department deems it ex-*
23 *pedient. Any line, fixture or facility erected or remaining in a different location upon such road than*
24 *that designated in any order of the governing body or department is a public nuisance and may be*
25 *abated accordingly.*]

26 (3) **Except within cities, the Department of Transportation may designate where a line,**
27 **fixture or other facility described in subsection (2) of this section may be located along a**
28 **public road under the jurisdiction of the department. Subject to ORS 758.025, if the depart-**
29 **ment finds that changing the location of a line, fixture or other facility is expedient, the**
30 **department may order a change in the location. If a designation is made or an order is issued**

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 **under this subsection, a line, fixture or other facility erected or remaining in a location dif-**
 2 **ferent from that designated or ordered is a public nuisance and may be abated accordingly.**

3 [(3)] (4) *[The state officer, agency, board or commission having jurisdiction over any land belong-*
 4 *ing to the state with respect to which the right and privilege granted under subsection (1) of this section*
 5 *is exercised may impose reasonable requirements for the location, construction, operation and mainte-*
 6 *nance of the lines, fixtures and facilities on such land.]* **A state officer, agency, board or commis-**
 7 **sion may impose reasonable requirements on a person that constructs, maintains or operates**
 8 **a line, fixture or other facility pursuant to the right and privilege described in subsection (2)**
 9 **of this section.** The person *[or corporation]* exercising *[such]* **the** right and privilege over *[any]* land
 10 belonging to the state shall pay the current market value for the existing forest products that are
 11 damaged or destroyed in exercising *[such]* **the** right and privilege. *[Such]* **The** right and privilege
 12 *[of any person or corporation]* **granted under subsection (2) of this section** is conditioned upon
 13 compliance with the requirements imposed by this subsection.

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

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

17 **(2) Except as provided in subsection (4) of this section, the governing body of a county**
 18 **may impose, pursuant to a contract or ordinance, a charge or fee on a person that con-**
 19 **structs, maintains or operates a water, gas, electric or communication service line, fixture**
 20 **or other facility located along a county road.**

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

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

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

33 98.654. The provisions of ORS 98.650 and 98.652 *[shall]* **do** not apply to trees, timber, logs, poles
 34 or *[piling which]* **pilings that** have been placed or deposited or allowed to remain upon the right
 35 of way of a county road under the provisions of a permit granted by the county court or board of
 36 county commissioners *[having jurisdiction over said]* **that has jurisdiction over the** county road,
 37 *[nor]* **or** to poles placed upon the right of way of a county road *[under authority of]* **pursuant to**
 38 **ORS 758.010 or 758.020 or section 4 of this 2015 Act,** *[nor]* **or** to any county road *[which]* **that** is
 39 not maintained for public travel by the county court or board of county commissioners of the county
 40 in which the road is located.

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

42 374.325. *[Nothing in]* ORS 374.305 to 374.325 *[shall]* **do not:**

43 (1) Limit or affect any of the powers granted to, or duties imposed upon, the county courts,
 44 *[or]* boards of county commissioners, *[the]* Department of Transportation or *[the]* Public Utility
 45 Commission by ORS 758.010 and 758.020 **and section 4 of this 2015 Act,** or any *[rights granted or*

1 *authorized under those statutes*] **right or privilege granted by ORS 758.010 and 758.020 and sec-**
 2 **tion 4 of this 2015 Act.**

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

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

7 758.020. (1) The county court, board of county commissioners or *[the]* Department of Transpor-
 8 tation, when designating the location where **lines**, poles or other aboveground facilities described
 9 in ORS 758.010 **and section 4 of this 2015 Act** may be placed *[on]* **along** a road or highway
 10 *[which]* **that** fronts on the ocean, *[or on]* a river or other body of water, and **when** the water
 11 frontage of the highway is being developed or maintained for its scenic or recreational value, may
 12 require *[all lines]* **the lines, poles or other aboveground facilities** to occupy the opposite side of
 13 the right of way, if *[such joint]* **the** occupancy can be maintained without undue impairment of ser-
 14 vice or damage to public life and property.

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

30 (3) The right of any public utility, telecommunications utility or transmission company to con-
 31 struct, maintain and operate *[on]* **along** a public highway **lines**, poles or *[fixtures]* **other**
 32 **aboveground facilities** is contingent on compliance with reasonable requirements established by the
 33 *[Department of Transportation,]* county courts, boards of county commissioners, **Department of**
 34 **Transportation** or *[the]* Public Utility Commission under *[authority of]* this section and ORS 758.010
 35 **and section 4 of this 2015 Act.** Such rights are *[likewise]* **also** contingent *[and conditioned]* on all
 36 facilities, equipment and installations being constructed and maintained in strict conformance with
 37 modern and approved standards.

38 **SECTION 8.** Section 4 of this 2015 Act and the amendments to ORS 758.010 by section 2
 39 **of this 2015 Act apply to the construction, maintenance or operation of a line, fixture or**
 40 **other facility that occurs on or after the effective date of this 2015 Act.**

41 **SECTION 9.** This 2015 Act being necessary for the immediate preservation of the public
 42 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 43 **on its passage.**