



March 8, 2017

Senator Mark Haas, Chair  
Finance and Revenue Committee  
900 Court Street, NE H-280  
Salem, OR 97301

**RE: Opposition to Senate Bill 202 and 840.**

Chair Haas and members of the Committee:

Thank you for the opportunity to speak in strong opposition to Senate Bills 202 and 840. For the record, my name is Joe Zaludek and I am the Eugene-Springfield Fire Chief. In addition to my 31 years within the Fire Service, I have served as the interim Information Services Director for the City of Eugene. In this role, I oversaw the City's telecommunications program, and hence have a clear understanding of the importance of the public right of way; right of way management and compensation principles; and how the responsible stewardship of this public resource can foster community growth and development, without shortchanging necessary public services like public safety.

Our opposition to this bill is broad, but can be distilled to three key points.

**First**, Oregon cities have historically had the responsibility for managing and maintaining their public right of way, making it more a matter of local concern than 'a matter of statewide concern' as stated in the bill.

**Second**, as numerous courts have affirmed, including most recently the Oregon Supreme Court in *Comcast vs. City of Eugene*, commercial use of the publicly owned right of way is a *privilege* that can be granted to both public and private utilities. City residents pay taxes that are used to maintain the right of way and they should be fairly compensated by those who profit from its use. Such users, particularly those that are generating millions in revenue from such use, must fairly compensate the public for the benefits and opportunities that are provided their business interests. Furthermore, the value of this benefit can only be recognized when the public, through its locally elected officials, feels it is receiving equitable compensation from commercial firms that benefit from right of way use.

**Lastly**, these bills are a direct assault on the ability of cities to generate local General Fund revenue to support the needs of their community, most notably public safety. If these local authority pre-emption bills pass, Eugene alone stands to lose more than \$3 million annually, directly impacting our fire, police, parks and cultural services, library, and public assistance budgets.

The only beneficiaries of these bills are privately owned utilities, telecommunications companies and shareholders that do not live and work in Oregon. Our residents are unlikely to see ratepayer relief but the residents will see decreases in local government revenues that are necessary to provide public services and support community growth. Simply put, this is a legislative attempt to overturn decades of thoughtful and publicly decided local laws and court decisions, which have determined that Oregon's local governments are, and should be, responsible for managing their own public right of way to meet the needs of their communities.

These bills contain a number of inherent failures that are antithetical Oregon's system of government, are detrimental to Oregon's cities, and do not serve public interest. For instance:

- 'Cost based' fees will expose cities to the risk of lengthy and costly litigation as utility and telecommunications firms will undoubtedly reject unfavorable methodologies for determining cost. Furthermore, the value of the public right of way is already, and has been, valued effectively by the market, because the fees charged to firms is directly based upon the revenues generated within the community.
- Roughly 50% of Oregon cities currently charge over 5% for use of the public right of way, most being 6% or 7% (following enactment of a 1989 Oregon law and not changing since). A cap at 5% would mean a reduction in local revenues that directly support General Fund activities, such as libraries, fire services, and police protection. That is particularly troubling at this point in time when there is little likelihood that the Oregon legislature can move to provide replacement compensation to local communities for the loss of these current revenues.
- Carving out internet access revenue from the revenue base is also problematic because as more and more companies move their transmission platforms to high speed internet, cities will be forced to forgo revenues from this increasing service and also receive less compensation from the decrease in other services. Additionally, there is no experience or stated commitment from the companies that will benefit economically from these bill to share those benefits with either the communities these companies serve or their own subscribers.

In conclusion, these bills do not convey a good rationale for making local public right of way management a "statewide issue" and impacting the home rule authority of Oregon cities. To be clear, city right of way, is a public resource and cities are responsible for managing that resource to best meet the needs of their citizens.

I ask that you respect the home rule authority given to municipalities in the Oregon Constitution, and not interfere with the continued responsible management of the public right of way by Oregon's cities. These bills are not necessary, are not in the public interest, and hurt communities. Please Vote No and stop these private interest bills today.

Sincerely,

Joe Zaludek, Chief  
Eugene-Springfield Fire