

D R A F T

SUMMARY

Authorizes county governing body to require and charge fee for permit to construct or alter line, fixture or facility within right of way of public road under jurisdiction of county.

Authorizes public bodies to charge utilities for costs incurred resulting from failure of utilities to relocate utility facilities in highway right of way under certain circumstances.

A BILL FOR AN ACT

Relating to facilities along public roads; amending ORS 758.010 and 758.025.

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

SECTION 1. ORS 758.010 is amended to read:

758.010. (1) **As used in this section, “state government” has the meaning given that term in ORS 174.111.**

(2) Except within cities, any person has a right and privilege to construct, maintain and operate its water, gas, electric or communication service lines, fixtures and other facilities along the public roads in this state, as defined in ORS 368.001, or across rivers or over any lands belonging to state government[, *as defined in ORS 174.111,*] free of charge, and over lands of private individuals, as provided in ORS 772.210. Such lines, fixtures and facilities shall not be constructed so as to obstruct any public road or navigable stream.

[(2)] (3) A county governing body and the Department of Transportation have authority to designate the location upon roads under their respective jurisdiction, outside of cities, where lines, fixtures and facilities described in this section may be located, and subject to ORS 758.025 may order the

location of any such line, fixture or facility to be changed when such governing body or department deems it expedient. Any line, fixture or facility erected or remaining in a different location upon such road than that designated in any order of the governing body or department is a public nuisance and may be abated accordingly.

[(3)] (4) The state officer, agency, board or commission having jurisdiction over any land belonging to state government[, *as defined in ORS 174.111,*] with respect to which the right and privilege granted under subsection (1) of this section is exercised may impose reasonable requirements for the location, construction, operation and maintenance of the lines, fixtures and facilities on such land. The person exercising such right and privilege over any land belonging to state government[, *as defined in ORS 174.111,*] shall pay the current market value for the existing forest products that are damaged or destroyed in exercising such right and privilege. Such right and privilege of any person is conditioned upon compliance with the requirements imposed by this subsection.

(5) Notwithstanding subsection (2) of this section, a county governing body may require a permit for the construction or alteration of a line, fixture or other facility within the right of way of a public road under the jurisdiction of the county, and may charge a fee for administration and issuance of the permit.

SECTION 2. ORS 758.025 is amended to read:

758.025. (1) As used in this section:

(a) "Highway" has the meaning given that term in ORS 801.305 (1) but does not include highways located on property owned by the Port of Portland that is subject to federal relocation regulations authorized under 49 U.S.C. 47107, as in effect on January 1, 2010.

(b) "Public body" has the meaning given that term in ORS 174.109.

(c) "Utility" means a public utility, as defined in ORS 757.005, or a telecommunications utility or competitive telecommunications provider, as those terms are defined in ORS 759.005.

1 (2) If a public body plans a project that would require utilities to relocate
2 their utility facilities that are located in the highway right of way, the
3 public body shall notify affected utilities of the project in writing as soon
4 as is practicable.

5 (3) During the planning and design phase of a project, the public body
6 shall coordinate with the affected utilities to discuss the project's scope and
7 schedule. At a minimum, the discussion must include a description of the
8 plans, goals and objectives of the proposed project and options to minimize
9 or eliminate costs to the public body and the utilities. The public body is
10 not required to avoid or minimize costs to the utilities in a way that mate-
11 rially affects the project's scope, costs or schedule. Failure of the affected
12 utilities to respond or participate in the coordination or discussion does not
13 affect the ability of the public body to proceed with design and construction
14 of the project.

15 (4) A public body having jurisdiction over a highway may not prohibit a
16 utility from seeking reimbursement from private parties or customers for
17 costs under this section in any permit application, license application or
18 other written agreement authorizing the utility to relocate the facilities.

19 (5)(a) Notwithstanding any other provision of ORS chapter 759, a tele-
20 communications utility that is not subject to rate-of-return regulation, in-
21 cluding a utility regulated under ORS 759.255 may, after participating in the
22 process described in subsection (3) of this section, request authorization from
23 the Public Utility Commission to recover from customers prudent costs in-
24 curred for the relocation of facilities required by a public body that are not
25 otherwise paid or reimbursed from another source. Recoverable relocation
26 costs are the nonfacility costs incurred in the relocation plus the undepr-
27 eciated value of the facilities replaced, including the cost of placing such fa-
28 cilities underground if underground placement is required by the public body
29 or other provision of law. The commission may authorize the recovery of
30 relocation costs that the commission determines to be substantial and beyond
31 the normal course of business.

(b) The commission shall:

(A) Verify the relocation costs for which the utility requests recovery;

(B) Determine the allocation of costs between interstate and intrastate services, geographic areas, customers and services; and

(C) Prescribe the method of cost recovery.

(c) In determining the level of cost recovery and the allocation of costs, the commission shall consider:

(A) The overall impact on the utility; and

(B) Other relevant factors identified by the commission.

(d) Relocation costs may be recovered for a reasonable period of time subject to approval by the commission and not to exceed the depreciable life of the facilities.

(6) If a public body provides an affected utility with notice and the opportunity to coordinate pursuant to subsections (2) and (3) of this section, the public body may charge the affected utility for costs incurred by the public body that result from a failure by the utility to relocate utility facilities, including actual damages and liquidated damages.