

House Bill 2613

Sponsored by Representative BREESE-IVERSON; Representatives POST, SMITH DB (Presession filed.)

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**.

Sets forth certain requirements related to the permitting and siting of broadband infrastructure.

A BILL FOR AN ACT

Relating to utilities; creating new provisions; and amending ORS 758.010.

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

SECTION 1. (1) As used in this section:

(a) **"Broadband" has the meaning given that term in ORS 276A.406.**

(b) **"Excavation" has the meaning given that term in ORS 757.542.**

(c) **"State agency" has the meaning given that term in ORS 279A.010.**

(d) **"Telecommunications provider" means any person that is capable of providing broadband and communications services including, but not limited to, a telecommunications utility as defined in ORS 759.005, a competitive telecommunications provider as defined in ORS 759.005, a cable television provider or an interstate telecommunications provider.**

(e) **"Underground utility infrastructure" means any underground wires, cables, conduits, switches, transmission equipment or other equipment for use in transmitting or processing broadband services or for providing support or connections to such equipment.**

(2) **A city, county or state agency that permits or plans to conduct an excavation project within a public right of way under the jurisdiction or control of the city, county or state agency shall provide notice pursuant to subsection (3) of this section if the excavation project:**

(a) **Will involve the construction of underground utility infrastructure, road construction, road resurfacing or other work that will result in an excavation that could reasonably include, or prepare for, the installation of broadband conduit; or**

(b) **Will span 900 feet or more within the right of way, involves terrain that is difficult or expensive to traverse or is an element of a larger project that will require the installation or upgrading of underground utility infrastructure.**

(3) **A city, county or state agency shall:**

(a) **Provide notice of an excavation project described in subsection (2) of this section to every telecommunications provider with a history of installing underground utility infrastructure in the right of way or that has a potential to install underground utility infrastructure in the right of way in the future; and**

(b) **Provide each telecommunications provider that receives a notice under paragraph (a) of this subsection no less than 30 days from the date the notice is issued to submit to the city, county or state agency a statement of interest to colocate underground utility**

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 infrastructure within the excavation site.

2 (4)(a) Each city and county shall develop and implement an open trench notification pol-
 3 icy establishing the standards and processes to carry out this section.

4 (b) The policy must include, at a minimum:

5 (A) Procedures for maintaining a list of potentially interested telecommunications pro-
 6 viders and providing notice as required under subsection (3)(a) of this section;

7 (B) Procedures for receiving, processing and reviewing statements of interest received
 8 from telecommunications providers under subsection (3)(b) of this section;

9 (C) Procedures for interested parties to negotiate colocation of facilities within the ex-
 10 cavation project; and

11 (D) Protest procedures.

12 (5) The State Chief Information Officer, in consultation with the Department of Trans-
 13 portation, the Department of State Lands and the Oregon Broadband Office, shall adopt by
 14 rule an open trench notification policy applicable to state agencies. The policy shall meet the
 15 requirements of subsection (4) of this section.

16 (6) The requirements of this section may be waived in the event of an emergency or if
 17 the city, county or state agency determines that the waiver is in the interest of public health
 18 and safety.

19 **SECTION 2.** (1) As used in this section:

20 (a) "Broadband" has the meaning given that term in ORS 276A.406.

21 (b) "Broadband utility infrastructure" means any wires, cables, conduits, switches,
 22 transmission equipment or other equipment for use in transmitting or processing broadband
 23 services or for providing support or connections to such equipment.

24 (c) "Telecommunications provider" means any person that is capable of providing
 25 broadband and communications services including, but not limited to, a telecommunications
 26 utility as defined in ORS 759.005, a competitive telecommunications provider as defined in
 27 ORS 759.005, a cable television provider or an interstate telecommunications provider.

28 (2) Notwithstanding any contrary provision of law, a city or county must respond to a
 29 request by a telecommunications provider for a permit to install broadband utility
 30 infrastructure:

31 (a) Within 72 hours of receipt of the request if the request is for a permit to obtain ac-
 32 cess to an established right of way under the jurisdiction or control of the city or county;
 33 and

34 (b) Within 60 days of receipt of the request if the request is for a permit other than one
 35 described in paragraph (a) of this subsection.

36 **SECTION 3.** ORS 758.010 is amended to read:

37 758.010. (1) As used in this section:

38 (a) "Public road" has the meaning given that term in ORS 368.001.

39 (b) "State government" has the meaning given that term in ORS 174.111.

40 (c) "State highway" has the meaning given that term in ORS 377.605.

41 [(1)] Except within cities, any person has a right and privilege to construct, maintain and oper-
 42 ate its water, gas, electric or communication service lines, fixtures and other facilities along the
 43 public roads in this state, [as defined in ORS 368.001] **within the right of way of a state highway**
 44 **on federal land**, or across rivers or over any lands belonging to state government, [as defined in
 45 ORS 174.111,] free of charge, and over lands of private individuals, as provided in ORS 772.210. Such

1 lines, fixtures and facilities shall not be constructed so as to obstruct any public road or navigable
 2 stream.

3 [(2)] (3) A county governing body and the Department of Transportation have authority to des-
 4 ignate the location upon roads **or state highways** under their respective jurisdiction, outside of
 5 cities, where lines, fixtures and facilities described in this section may be located, and subject to
 6 ORS 758.025 may order the location of any such line, fixture or facility to be changed when such
 7 governing body or department deems it expedient. Any line, fixture or facility erected or remaining
 8 in a different location upon such road than that designated in any order of the governing body or
 9 department is a public nuisance and may be abated accordingly.

10 [(3)] (4) The state officer, agency, board or commission having jurisdiction over any land be-
 11 longing to state government, [*as defined in ORS 174.111,*] with respect to which the right and priv-
 12 ilege granted under subsection [(1)] (2) of this section is exercised may impose reasonable
 13 requirements for the location, construction, operation and maintenance of the lines, fixtures and
 14 facilities on such land. The person exercising such right and privilege over any land belonging to
 15 state government, [*as defined in ORS 174.111,*] shall pay the current market value for the existing
 16 forest products that are damaged or destroyed in exercising such right and privilege. Such right and
 17 privilege of any person is conditioned upon compliance with the requirements imposed by this sub-
 18 section.

19 **SECTION 4. (1) As used in this section:**

20 (a) **“Broadband” has the meaning given that term in ORS 276A.406.**

21 (b) **“Broadband utility infrastructure” means any wires, cables, conduits, switches,**
 22 **transmission equipment or other equipment for use in transmitting or processing broadband**
 23 **services or for providing support or connections to such equipment.**

24 (c) **“Telecommunications provider” means any person that is capable of providing**
 25 **broadband and communications services including, but not limited to, a telecommunications**
 26 **utility as defined in ORS 759.005, a competitive telecommunications provider as defined in**
 27 **ORS 759.005, a cable television provider or an interstate telecommunications provider.**

28 (d) **“Underground facilities” has the meaning given that term in ORS 757.542.**

29 (2) **A city or county may not require a telecommunications provider, in a permit appli-**
 30 **cation for a proposed project to construct underground broadband utility infrastructure, to**
 31 **include prepared plans detailing the depth and location of other underground facilities in the**
 32 **area of the proposed project if the project is for the construction of a segment of linear**
 33 **broadband utility infrastructure that is 1000 feet or less in length.**

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