

February 8, 2024

Co-Chairs Chris Gorsek and Susan McLain
Joint Committee on Transportation
900 Court St. NE
Salem, OR 97301

Re: Senate Bill 1566 – County Right of Way Permit Fees

Co-chairs Gorsek and McLain, vice-chairs Boquist and Boshart-Davis, and members of the committee,
Thank you for the opportunity to provide testimony on Senate Bill 1566.

We, the undersigned, participated in the interim workgroup convened by Senators Findley and Gorsek addressing the application of county right of way permit fees on utilities and telecommunications providers. As you know, counties have sought right of way fee authority for several sessions, which we have opposed, including in the 2023 Legislative Session.

Throughout the interim, several hours of workgroup meetings were held across the state that included counties, utilities, and telecommunications providers. Together, we developed a compromise that affords counties reasonable cost recovery for the most impactful utility projects while excluding critical emergency and maintenance activities and capping the fees that can be assessed.

We understand Legislative Counsel is working on amendment language that more accurately reflects the negotiations in which we engaged.

Specifically, and to align with the agreement, we have alerted Senators Findley and Gorsek that SB 1566 should be revised as follows:

- Add the following definitions:
 1. **“Occupant”** has the meaning licensee, government entity, or other entity that constructs, operates, or maintains attachments on poles, structures or within conduits.
 2. **“Operator”** has the meaning every person as defined in ORS 756.010, public utility as defined in ORS 757.005, electricity service supplier as defined in OAR 860-038-0005, telecommunications utility as defined in ORS 759.005, telecommunications carrier as defined in ORS 759.400, telecommunications provider that includes competitive providers, cooperatives, and telecommunication utilities, consumer-owned utility as defined in ORS 757.270, cable operator as defined in ORS 30.192, association, cooperative, or government entity and their agents, lessees, or acting trustees or receivers, appointed by court, engaged in the management, operation, ownership, or control of any facility within Oregon.
 3. **“Owner”** has the meaning a public utility, telecommunications utility, or consumer-owned utility that owns or controls poles, structures, ducts, conduits, right of way, manholes, handholes or other similar facilities.

4. **Emergency or urgent projects** includes, but is not limited to, work required resulting from accident or casualty, fire, flood, drought, wind, action of the elements, court orders, litigation, breakdown of or damage to facilities of the utility or of third parties, acts of God, civil, military, or governmental authority, and acts or omissions of third parties.
- Add owner/occupant language: “It is the responsibility of each registered operator, occupant, or owner to apply for all required county right of way permits and pay any required permit fees.”
 - Page 1, lines 18-20: Add broader vegetation management language “County governing bodies may not charge a fee for any vegetation clearance or management that are required by ORS 757.035, and ORS 758.280 through 758.286 or under the current National Electric Safety Code.”
 - Page 1, line 21: replace Section 1 (3) (b) language with agreed upon language that specifically calls out pole and equipment replacement: “Routine replacement or maintenance of facilities, including but not limited to, pole and equipment replacements and work required by ORS 757.035, and ORS 758.280 through 758.286 or under the current National Electric Safety Code.”
 - Add intergovernmental exemption language: “Counties that enter into or have an existing intergovernmental agreement, as defined under ORS 190.010, with a public utility addressing the use of the county’s right of way.”
 - Add cable exemption language: This act does not apply to facilities governed by the terms of any existing or future cable agreements, including memorialized understandings and franchises. Nothing in this act shall prevent the county from entering into any such agreement or be construed to allow a county to assess a franchise fee or a privilege tax on any operator or other person for use of the public right-of-way.
 - Page 1 line 16: change “competitively” to “technology”
 - Page 2, line 11: delete “shall” and add “may”
 - Page 2, line 9 replace with “Counties may charge up to a \$500 fee to recover county expenses related to permit issuance and compliance.”

In addition to Senators Findley and Gorsek, we would like to thank our county partners for the productive interim conversation. The compromise we have forged alleviates our concerns about the sweeping nature of previous legislation on this topic. We appreciate the counties’ stewardship of the right way that affords us access for the provision of vital of utility services.

Sincerely,

Avista Corporation
Idaho Power
Northwest Gas Association
Northwest Natural
Oregon Municipal Electric Utilities Association (OMEU)
Oregon People’s Utility District Association (OPUDA)
Oregon Rural Electric Cooperative Association (ORECA)
Oregon Telecommunications Association (OTA)
Pacific Power
Portland General Electric
Special Districts Association of Oregon (SDAO)