

Senate Bill 669

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**.

Prohibits cities from imposing franchise fees, privilege taxes or other fees on certain districts for occupancy of streets, alleys, highways or other public property.

A BILL FOR AN ACT

1
2 Relating to the occupancy of public property by districts; creating new provisions; and amending
3 ORS 221.420, 221.450 and 221.655.

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

5 **SECTION 1. (1) As used in this section, "district" means any type of district listed in ORS**
6 **198.010.**

7 **(2) Notwithstanding ORS 221.420, 221.450 or 221.655, a city may not impose a franchise fee,**
8 **privilege tax or other fee for the occupancy of streets, alleys, highways or other public**
9 **property on any district that provides services or has facilities within the boundaries of the**
10 **city.**

11 **SECTION 2.** ORS 221.420 is amended to read:

12 221.420. (1) As used in this section:

13 (a) "Public utility" has the meaning for that term provided in ORS 757.005.

14 *[(b) "Commission" means the Public Utility Commission of Oregon.]*

15 *[(c) "Council" means the common council, city council, commission or any other governing body of*
16 *any municipality wherein the property of the public utility is located.]*

17 *[(d) "Municipality" means any town, city or other municipal government wherein property of the*
18 *public utility is located.]*

19 *[(e)]* **(b)** "Service" is used in its broadest and most inclusive sense and includes equipment and
20 facilities.

21 *[(f)]* **(c)** "Heating company" means any person furnishing heat but not electricity or natural gas
22 to its customers.

23 (2) Subject to ORS 758.025, a city may:

24 (a) Determine by contract or prescribe by ordinance or otherwise, the terms and conditions, in-
25 cluding payment of charges and fees, upon which any public utility, electric cooperative[, *people's*
26 *utility district*] or heating company, or Oregon Community Power, may be permitted to occupy the
27 streets, highways or other public property within such city and exclude or eject any public utility
28 or heating company therefrom.

29 (b) Require any public utility, by ordinance or otherwise, to make such modifications, additions
30 and extensions to its physical equipment, facilities or plant or service within such city as shall be
31 reasonable or necessary in the interest of the public, and designate the location and nature of all

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 additions and extensions, the time within which they must be completed, and all conditions under
2 which they must be constructed.

3 (c) Fix by contract, prescribe by ordinance, or in any other lawful manner, the rates, charges
4 or tolls to be paid to, or that may be collected by, any public utility or the quality and character
5 of each kind of product or service to be furnished or rendered by any public utility furnishing any
6 product or service within such city. No schedule of rates, charges or tolls, fixed in the manner
7 provided in this paragraph, shall be so fixed for a longer period than five years. Whenever it is
8 proposed by any city to enter into any contract, or to enact any ordinance, or other municipal law
9 or regulation concerning the matters specified in this paragraph, a copy of such proposed contract,
10 ordinance or other municipal law or resolution shall be filed with the Public Utility Commission of
11 Oregon before the same may be lawfully signed or enacted, as the case may be, and the commission
12 shall thereafter have 90 days within which to examine into the terms thereof. If the commission is
13 of the opinion that in any respect the provisions of the proposed contract, ordinance or other mu-
14 nicipal law or resolution are not in the public interest, the commission shall file, in writing, with
15 the clerk or other officer who has the custody of the files and records of the city, the commission's
16 reasons therefor. If the objections are filed within said period of 90 days, no proposed contract, or-
17 dinance or other municipal law or regulation shall be valid or go into effect until it has been sub-
18 mitted to or ratified by the vote of the electors of the city. Unless and until a city exercises its
19 powers as provided in this paragraph, the commission is vested with all powers with respect to the
20 matters specified in this paragraph. If the schedule of rates, charges and tolls or the quality and
21 character of each kind of product or service is fixed by contract, ordinance or other municipal law
22 or regulation and in the manner provided in this paragraph, the commission has no power or juris-
23 diction to interfere with, modify or change it during the period fixed thereby. Upon the expiration
24 of said period such powers shall again be vested in the commission, to be exercised by the commis-
25 sion unless and until a new schedule of rates or the quality and character for such service or
26 product is fixed or prescribed by contract, ordinance or other municipal law or regulation in the
27 manner provided in this paragraph.

28 (d) Provide for a penalty for noncompliance with the provisions of any charter provision, ordi-
29 nance or resolution adopted by the city in furtherance of the powers specified in this subsection.

30 **SECTION 3.** ORS 221.450 is amended to read:

31 221.450. Except as provided in ORS 221.655, the city council or other governing body of every
32 incorporated city may levy and collect a privilege tax from Oregon Community Power and from ev-
33 ery electric cooperative, [*people's utility district*,] privately owned public utility, telecommunications
34 carrier as defined in ORS 133.721 or heating company. The privilege tax may be collected only if the
35 entity is operating for a period of 30 days within the city without a franchise from the city and
36 actually using the streets, alleys or highways, or all of them, in such city for other than travel on
37 such streets or highways. The privilege tax shall be for the use of those public streets, alleys or
38 highways, or all of them, in such city in an amount not exceeding five percent of the gross revenues
39 of the cooperative, utility[, *district*] or company currently earned within the boundary of the city.
40 However, the gross revenues earned in interstate commerce or on the business of the United States
41 Government shall be exempt from the provisions of this section. The privilege tax authorized in this
42 section shall be for each year, or part of each year, such utility, cooperative[, *district*] or company,
43 or Oregon Community Power, operates without a franchise.

44 **SECTION 4.** ORS 221.655 is amended to read:

45 221.655. (1) The city council or governing body of an incorporated city may levy and collect from

1 a distribution utility providing direct access to electricity services under ORS 757.601 (1) or 757.676,
 2 except a municipal electric utility **or a people's utility district**, operating for a period of 30 days
 3 within the city without a franchise from the city and actually using the streets, alleys or highways
 4 in such city for other than travel, a privilege tax for the use of those public streets, alleys or
 5 highways. The privilege tax shall be based on a volumetric rate times the volume of electric energy
 6 in kilowatt hours delivered, transmitted or distributed to retail electricity consumers within the city
 7 by the distribution utility, provided that the privilege tax shall not be applied to electric energy
 8 generated by a retail electricity consumer's own generating facilities or to electric energy delivered
 9 by the federal government. The volumetric rate of the privilege tax for the distribution utility may
 10 vary by customer class.

11 (2) The privilege tax described in subsection (1) of this section shall be subject to the following:

12 (a) The volumetric rate, in cents per kilowatt hour, for any customer class shall not exceed five
 13 percent of the 1999 gross revenue of an electric utility within the city for the customer class divided
 14 by the amount of electric energy in kilowatt hours delivered to the customer class in 1999.

15 (b) A city with a franchise fee or privilege tax in effect on July 1, 1999, that was less than five
 16 percent shall not establish a volumetric rate for any customer class of the distribution utility in an
 17 amount in excess of the city's 1999 franchise fee or privilege tax rate times the 1999 gross revenue
 18 of any electric utility within the city from the customer class divided by the amount of electric en-
 19 ergy in kilowatt hours delivered to the customer class in 1999, except following a hearing with no-
 20 tice and opportunity for public comment.

21 (3) Subject to the limitations established in subsection (2) of this section, once a city has es-
 22 tablished volumetric rates for the purpose of calculating the privilege tax under this section, any
 23 subsequent change in the volumetric rates shall be applied on an equal percentage basis to all cus-
 24 tomer classes.

25 (4)(a) The Public Utility Commission shall determine the manner in which a privilege tax under
 26 this section is collected from the customers of an electric company. The privilege tax shall be allo-
 27 cated across an electric company's customer classes in the same proportional amounts as levied by
 28 the city against the electric company.

29 (b) The governing body of an electric cooperative [*or people's utility district*] shall determine the
 30 manner in which a privilege tax under this section is collected from the customers of the electric
 31 cooperative [*or people's utility district*]. The governing body shall allocate the privilege tax across
 32 customer classes in the same proportional amounts as levied by the city against the electric coop-
 33 erative [*or people's utility district*].

34 **SECTION 5. Section 1 of this 2013 Act and the amendments to ORS 221.420, 221.450 and**
 35 **221.655 by sections 2 to 4 of this 2013 Act do not apply to any contract entered into by a city**
 36 **and a district, as defined in section 1 of this 2013 Act, on or before the effective date of this**
 37 **2013 Act.**