

# DRAFT

## SUMMARY

Broadens types of communications services on which municipalities may impose privilege tax. Lowers privilege tax rate imposed on gross revenues of communications service providers. Broadens definition of “gross revenues.”

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to privilege taxation of communications services; amending ORS 221.505, 221.510 and 221.515; and prescribing an effective date.

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

**SECTION 1.** ORS 221.505 is amended to read:

221.505. The Legislative Assembly recognizes that significant changes have occurred in the regulation, technology and marketing of [*telecommunications carriers as defined in ORS 133.721 over the past decade*] **communications services**. It is the intent of the Legislative Assembly in adopting the privilege tax authorized by ORS 221.505 to 221.515 and 759.219 to respond to these changes by establishing a uniform base for municipal charges for street use by [*telecommunications carriers*] **communications service providers**.

**SECTION 2.** ORS 221.510 is amended to read:

221.510. (1) As used in [*this section*] **ORS 221.505 to 221.515:**

[(a) “Telecommunications carrier” has the meaning given that term in ORS 133.721.]

[(b) “Commission” means the Public Utility Commission of Oregon.]

**(a) “Communications service provider” means:**

**(A) A competitive telecommunications provider as defined in ORS**

**759.005;**

**(B) A telecommunications utility as defined in ORS 759.005;**

**(C) An unincorporated association or cooperative corporation providing intrastate telecommunications service; or**

**(D) A provider of interconnected Voice over Internet Protocol service.**

[(c)] **(b)** “Council” means the common council, city council, commission or any other governing body of any municipality [*wherein the property of the telecommunications carrier is located*].

**(c) “Gross revenues” means the revenues derived from the provision of telecommunications service or from interconnected Voice over Internet Protocol service provided to customers in a municipality but does not include:**

**(A) Net uncollectibles from the revenues; or**

**(B) Any amount billed as a separate tax or surcharge for amounts payable to any federal, state or local government authority, whether imposed on the customer or on the communications service provider, including any privilege tax imposed under this section or ORS 221.515.**

**(d) “Interconnected Voice over Internet Protocol service” means a service that:**

**(A) Enables real-time, two-way voice communications;**

**(B) Requires a broadband connection from the user’s location;**

**(C) Requires Internet protocol-compatible customer premises equipment; and**

**(D) Permits users to receive calls that originate on, and to terminate calls to, the public switched telephone network.**

[(d)] **(e)** “Municipality” means any town[, *municipality*] or other municipal government [*wherein property of the telecommunications carrier is located*].

[(e)] “Service” is used in its broadest and most inclusive sense and includes equipment and facilities.]

(f) **“Privilege tax” means any tax, fee or assessment of any kind, imposed or collected by the council of a municipality on or from a communications service provider for the use of the public streets, alleys or highways in the municipality, including but not limited to:**

(A) **Franchise fees;**

(B) **License fees; or**

(C) **Nonmonetary consideration, such as the construction or free use of telecommunications service or interconnected Voice over Internet Protocol service facilities and equipment.**

(g) **“Telecommunications service” has the meaning given that term in ORS 759.005. “Telecommunications service” does not include Internet access as defined in ORS 305.822 (1)(b).**

(2) Every municipality may, **solely on a competitively neutral and nondiscriminatory basis:**

(a) Determine by contract **or franchise agreement**, or prescribe by ordinance or otherwise, the terms and conditions, including payment of a privilege tax to the extent authorized by ORS 221.515 [*and other charges and fees*], upon which [*any telecommunications carrier*] **a communications service provider** may be permitted to occupy the **public** streets, **alleys**, highways or other public property within [*such*] **the** municipality [*and exclude or eject any telecommunications carrier therefrom*].

(b)(A) Require [*any telecommunications carrier*], by ordinance or otherwise, [*to*] **that, in the interest of the public, a communications service provider** make [*such*] **reasonable or necessary** modifications, additions and extensions to [*its*] **the** physical equipment, facilities or plant [*or service*] **used by the communications service provider to provide communications services** within [*such*] **the** municipality [*as shall be reasonable or necessary in the interest of the public,*]; and

(B) Designate the location and nature of [*all*] **the modifications**, additions and extensions, the time within which they must be completed and all conditions under which they must be constructed.

(c) Provide for a penalty for noncompliance with the provisions of any charter provision, ordinance or resolution adopted by the municipality in furtherance of the powers specified in this subsection.

**SECTION 3.** ORS 221.515 is amended to read:

221.515. (1) The council of every municipality in this state may *[levy]* **impose** and collect from every *[telecommunications carrier operating within the municipality and actually using the streets, alleys or highways, or all of them, in such municipality for other than travel, a privilege tax for the use of those streets, alleys or highways, or all of them, in such]* **communications service provider providing communications services to customers within the municipality a privilege tax for the privilege of using the public rights of way to provide communications services in the** municipality *[in an amount which]*.

(2)(a) **Except as provided in paragraph (b) of this subsection, the amount of a privilege tax imposed under this section** may not exceed *[seven]* **five** percent of the gross revenues of the *[telecommunications carrier]* **communications service provider** currently earned within the boundaries of the municipality. The privilege tax *[authorized in this section]* shall be for each year, or part of *[each]* **a** year, that *[such telecommunications carrier]* **the communications service provider** operates within the municipality.

(b) **Privilege taxes and fees that were imposed and collected by a municipality from communications service providers for the privilege of providing communications services within the municipality on July 1, 2014, are not subject to the percentage limitation in paragraph (a) of this subsection and may continue to be imposed and collected after July 1, 2014, at the rate in effect on July 1, 2014.**

*[(2) As used in this section, "gross revenues" means those revenues derived from exchange access services, as defined in ORS 403.105, less net uncollectibles from such revenues.]*

(3)(a) A *[telecommunications carrier]* **communications service provider**

1 paying the privilege tax authorized by this section [*shall*] **may** not be re-  
 2 quired to pay any additional fee, compensation or **other** consideration[, *in-*  
 3 *cluding the free use or construction of telecommunications facilities and*  
 4 *equipment,*] to the municipality for [*its*] use **by the communications ser-**  
 5 **vice provider of the** public streets, alleys[, or highways[, *or all of them,*]  
 6 and [*shall*] **may** not be required to pay any additional tax or fee on the gross  
 7 revenues that are the measure of the privilege tax. [*As used in this sub-*  
 8 *section, “use” includes, but is not limited to, street openings, construction and*  
 9 *maintenance of fixtures or facilities by telecommunications carriers.*]

10 (b) [*As used in this subsection, “additional fee, compensation or consider-*  
 11 *ation” does not include commissions paid for siting public telephones on mu-*  
 12 *nicipal property.*] **Notwithstanding paragraph (a) of this subsection, in**  
 13 **addition to a privilege tax imposed under this section, a municipality**  
 14 **may charge a communications service provider:**

15 (A) **A commission for siting public telephones on municipal prop-**  
 16 **erty;**

17 (B) **Separate fees for street openings, construction and inspection**  
 18 **or maintenance of fixtures and facilities; and**

19 (C) **Separate fees for the privilege of providing communications**  
 20 **services in the municipality.**

21 (c) [*To the extent that separate fees are imposed by the municipality on*  
 22 *telecommunications carriers for street openings, construction, inspection or*  
 23 *maintenance of fixtures or facilities, such fees may be deducted from the priv-*  
 24 *ilege tax authorized by this section. However, telecommunications carriers*  
 25 *shall not deduct charges and penalties imposed by the municipality for non-*  
 26 *compliance with charter provisions, ordinances, resolutions or permit condi-*  
 27 *tions from the privilege tax authorized by this section.*] **A communications**  
 28 **service provider may deduct separate fees imposed by the municipality**  
 29 **for the privilege of providing communications services in the munic-**  
 30 **ipality from any privilege tax imposed by the municipality under this**  
 31 **section.**

1       (4) *[For purposes of this section, “telecommunications carrier” has the*  
2 *meaning given that term in ORS 133.721.]* **A municipality may not restrict**  
3 **a communications service provider from recovering the amounts pay-**  
4 **able by the communications service provider as a privilege tax under**  
5 **this section from the communications service provider’s customers**  
6 **receiving services subject to the privilege tax.**

7       (5) **A cable operator as defined in ORS 30.192 paying a franchise fee**  
8 **as defined in 47 U.S.C. 542, as in effect on January 1, 2014, to a**  
9 **municipality under a franchise as defined in 47 U.S.C. 522 (9), as in**  
10 **effect on January 1, 2014, may not be required to pay additional taxes**  
11 **or fees on the gross revenues that are the measure of the franchise**  
12 **fee paid under the cable franchise.**

13       **SECTION 4. This 2015 Act takes effect on the 91st day after the date**  
14 **on which the 2015 regular session of the Seventy-eighth Legislative**  
15 **Assembly adjourns sine die.**