

Senate Bill 457

Sponsored by Senators PROZANSKI, KRUSE (Pre-session 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**.

Requires natural gas company, if company is condemning private property for purpose of laying pipeline, to make proposal to owner of property that includes offer to pay owner annual payment and certain other guarantees. Provides that violation is unlawful practice subject to enforcement under Unlawful Trade Practices Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to condemnation of private property by natural gas companies; creating new provisions; amending ORS 35.235, 646.608, 772.210, 772.510 and 772.615; and declaring an emergency.

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

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

(a) "Natural gas company" has the meaning given that term in ORS 772.610.

(b) "Pipeline" has the meaning given that term in ORS 772.505.

(2) **If a natural gas company is condemning private property for the purpose of laying a pipeline, the natural gas company shall, in making an attempt to agree to compensation under ORS 35.235, make a proposal to the owner of the property that includes the following:**

(a) **An offer to pay the owner an annual payment in an amount that is comparable to annual payments for easements or leases of comparable type and size for comparable locations.**

(b)(A) **A guarantee that the natural gas company will provide the owner with at least 14 days' notice before entering the property to construct, inspect, repair or maintain a pipeline unless the natural gas company needs to enter the property to make an emergency repair.**

(B) **The owner may stipulate the form and manner of providing notice under this paragraph.**

(c)(A) **A guarantee that the natural gas company:**

(i) **Will create no more than two points of ingress and egress across the property to the pipeline for each linear mile of the pipeline;**

(ii) **Will provide the owner with a description of each point of ingress and egress; and**

(iii) **Will not create points of ingress and egress that are larger than is necessary to access the pipeline for the purpose of constructing, inspecting, repairing or maintaining the pipeline.**

(B) **The owner may stipulate the form and manner of providing a description under this paragraph.**

(d) **If the property is devoted to a farm or forest use, a guarantee that a pipeline's casing will be sufficient to protect the pipeline, when buried at the depth required by ORS 772.515 or 772.620, from farm or forest machinery.**

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 (e) A guarantee that the natural gas company will comply with any good agricultural
 2 practices established by the United States Department of Agriculture when accessing the
 3 property or when constructing, inspecting, repairing or maintaining the pipeline or a point
 4 of ingress or egress.

5 (3) A natural gas company that violates this section engages in an unlawful practice in
 6 violation of ORS 646.608.

7 **SECTION 2.** ORS 35.235 is amended to read:

8 35.235. (1) Subject to ORS 758.015 and 836.050 and section 1 of this 2015 Act, whenever in the
 9 judgment of the condemner it is necessary to acquire property for a purpose for which the
 10 condemner is authorized by law to acquire property, the condemner shall, after first declaring by
 11 resolution or ordinance [*such*] **the** necessity and the purpose for which [*it*] **acquiring the property**
 12 is required, attempt to agree with the owner with respect to the compensation to be paid [*therefor*]
 13 **for the property**, and the damages, if any, [*for the*] **caused by** taking [*thereof*] **the property**.

14 (2) The resolution or ordinance of a public condemner is presumptive evidence of the public
 15 necessity of the proposed use, **improvement or project**, that the property is necessary [*therefor*]
 16 **for the proposed use, improvement or project** and that the proposed use, improvement or project
 17 is planned or located in a manner [*which*] **that** will be most compatible with the greatest public good
 18 and the least private injury.

19 (3) The commencement of an action to condemn property by a private condemner creates a
 20 disputable presumption of the necessity of the proposed use, **improvement or project**, that the
 21 property is necessary [*therefor*] **for the proposed use, improvement or project**, and that the pro-
 22 posed use, improvement or project is planned or located in a manner [*which*] **that** will be most
 23 compatible with the greatest public good and the least private injury.

24 (4) **If raised**, the question of the validity of [*the*] a disputable [*presumptions*] **presumption** cre-
 25 ated in subsection (3) of this section[, *if raised, shall*] **must** be determined by the court in a summary
 26 proceeding prior to trial.

27 (5) It is not a prerequisite to the exercise of the right of eminent domain by the condemner to
 28 **first** attempt [*first*] to agree with an owner or to allege or prove any effort to agree with [*such*] **an**
 29 owner as to reasonable [*value, when such*] **value when the** owner is at the time concealed within
 30 the state or, after reasonable effort by **the** condemner, cannot be found within the state.

31 **SECTION 3.** ORS 772.210 is amended to read:

32 772.210. (1) Any public utility, electrical cooperative association or transmission company may:

33 (a) Enter upon lands within this state:

34 (A) In the manner provided by ORS 35.220 for the purpose of examining, [*locating and surveying*
 35 *the line thereof and also other lands*] **surveying and locating lines, including poles, towers, wires,**
 36 **supports and necessary equipment for the lines; and**

37 (B) **That are** necessary and convenient for the purpose of [*construction of*] **constructing** service
 38 facilities, [*doing no unnecessary damage thereby.*] **provided that the public utility electrical coop-**
 39 **erative association or transmission company does not cause any unnecessary damage.**

40 (b)(A) Condemn [*such*] lands **within this state:**

41 (i) Not exceeding 100 feet in width for [*its*] lines [*(including)*, **including** poles, towers, wires,
 42 supports and necessary equipment [*therefor*] *and in addition thereto, other lands*] **for the lines; and**

43 (ii) **That are** necessary and convenient for the purpose of [*construction of*] **constructing** service
 44 facilities.

45 (B) If [*the*] lands **condemned under this paragraph** are covered by trees that are liable to fall

1 and constitute a hazard to *[its wire or line, any]* **a line of poles and wires**, a public utility or
 2 transmission company organized for the purpose of building, maintaining and operating a line of
 3 poles and wires for the transmission of electricity *[for lighting or power purposes]* may condemn
 4 *[such]* **the trees** for a width not exceeding 300 feet, as may be necessary or convenient for *[such]*
 5 **the purpose of building, maintaining and operating the line of poles and wires.**

6 (2)(a) Notwithstanding subsection (1) of this section, *[any]* a public utility, electrical cooperative
 7 association or transmission company *[may]*, when necessary or convenient for transmission lines
 8 *[(including poles, towers, wires, supports and necessary equipment therefor)]* designed for voltages in
 9 excess of 330,000 volts, **including poles, towers, wires, supports and necessary equipment for**
 10 **the transmission lines, may** condemn land not to exceed 300 feet in width.

11 (b) *[In addition,]* If *[the]* lands **condemned under this subsection** are covered by trees that are
 12 liable to fall and constitute a hazard to *[its wire or]* **a transmission line**, *[such]* a public utility or
 13 transmission company **organized for the purpose of building, maintaining and operating a**
 14 **transmission line** may condemn *[such]* **the trees** for a width not exceeding 100 feet on either side
 15 of the condemned land, as may be necessary or convenient for *[such]* **the purpose of building,**
 16 **maintaining and operating the transmission line.**

17 (3) Notwithstanding subsection (1) of this section, a water or gas public utility may condemn
 18 *[such]* lands **within this state**, not exceeding 50 feet in width, as may be necessary or convenient
 19 for **the purposes of constructing, laying, maintaining and operating** *[its]* **the public utility's** lines,
 20 including **any** necessary equipment *[therefor]* **for the lines.**

21 (4) The proceedings for the condemnation of *[such lands shall be the same as that provided in]*
 22 **lands under this section are subject to** ORS chapter 35, provided that:

23 (a) Any award *[shall]* **of compensation must** include*[, but shall not be limited to,]* **the damages**
 24 for destruction of forest growth, premature cutting of timber and diminution in value to remaining
 25 timber caused by increased harvesting costs*[,] and*

26 (b) **If a natural gas company is condemning private property for the purpose of laying a**
 27 **pipeline, the natural gas company shall, in making an attempt to agree to compensation**
 28 **under ORS 35.235, make a proposal to the owner of the property as described in section 1 of**
 29 **this 2015 Act.**

30 **SECTION 4.** ORS 772.510 is amended to read:

31 772.510. (1) *[Any]* **A pipeline company** that is a common carrier and that is regulated *[as to its*
 32 *rates or practices by the United States or any agency thereof,]* **under federal law or regulation** may
 33 enter *[in the manner provided by ORS 35.220]* upon lands within this state **that are** outside the
 34 boundaries of incorporated cities **in the manner provided by ORS 35.220.**

35 (2) *[This]* **The right described in this section** may be exercised for the purpose of examining,
 36 surveying and locating a route for any pipeline, *[but it shall not be done so as to create unnecessary*
 37 *damage]* **provided that the pipeline company does not cause any unnecessary damage.**

38 (3) *[These]* **A pipeline** *[companies]* **company** may appropriate and condemn *[such]* lands*[,] de-*
 39 **scribed in subsection (1) of this section** or easements *[thereon or thereover,]* **on or over lands**
 40 **described in subsection (1) of this section** in *[such]* **any** width *[as is]* reasonably necessary to
 41 accomplish *[their pipeline company]* **the purposes***[, by proceedings for condemnation as]* **of the pipe-**
 42 **line company, in the manner** prescribed by ORS chapter 35 **and section 1 of this 2015 Act.**

43 **SECTION 5.** ORS 772.615 is amended to read:

44 772.615. *[Any]* **A natural gas company** may condemn **property** for its use for the **purpose of**
 45 **establishing an** underground reservoir, *[as well as]* **including** other property or interests in prop-

erty [which] **that** may be necessary to adequately maintain and utilize the underground reservoir [for the underground storage of natural gas, including], **such as** easements and rights of way for access to and egress from the underground storage reservoir. The provisions of [ORS chapter 35 and] ORS 520.340 and 520.350 **and section 1 of this 2015 Act and ORS chapter 35** are applicable to [any] a condemnation action brought under this section.

SECTION 6. ORS 646.608, as amended by section 3, chapter 19, Oregon Laws 2014, is amended to read:

646.608. (1) A person engages in an unlawful practice if in the course of the person's business, vocation or occupation the person does any of the following:

(a) Passes off real estate, goods or services as the real estate, goods or services of another.

(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.

(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.

(d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.

(e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

(f) Represents that real estate or goods are original or new if the real estate or goods are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

(g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if the real estate, goods or services are of another.

(h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.

(i) Advertises real estate, goods or services with intent not to provide the real estate, goods or services as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

(j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.

(k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.

(L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.

(m) Performs service on or dismantles any goods or real estate if the owner or apparent owner of the goods or real estate does not authorize the service or dismantling.

(n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.

(o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,

1 discount or other value is contingent upon an event occurring after the time the customer enters
2 into the transaction.

3 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
4 cize a product, business or service.

5 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
6 not to deliver the real estate, goods or services as promised.

7 (r) Organizes or induces or attempts to induce membership in a pyramid club.

8 (s) Makes false or misleading representations of fact concerning the offering price of, or the
9 person's cost for real estate, goods or services.

10 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
11 known material defect or material nonconformity.

12 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

13 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
14 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
15 ation.

16 (w) Manufactures mercury fever thermometers.

17 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
18 law, or is:

19 (A) Prescribed by a person licensed under ORS chapter 677; and

20 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
21 on the proper cleanup of mercury should breakage occur.

22 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
23 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
24 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
25 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
26 graph, "thermostat" means a device commonly used to sense and, through electrical communication
27 with heating, cooling or ventilation equipment, control room temperature.

28 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
29 mercury light switches.

30 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

31 (bb) Violates ORS 646A.070 (1).

32 (cc) Violates any requirement of ORS 646A.030 to 646A.040.

33 (dd) Violates the provisions of ORS 128.801 to 128.898.

34 (ee) Violates ORS 646.883 or 646.885.

35 (ff) Violates ORS 646.569.

36 (gg) Violates the provisions of ORS 646A.142.

37 (hh) Violates ORS 646A.360.

38 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

39 (jj) Violates ORS 646.563.

40 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

41 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
42 thereto.

43 (mm) Violates ORS 646A.210 or 646A.214.

44 (nn) Violates any provision of ORS 646A.124 to 646A.134.

45 (oo) Violates ORS 646A.095.

- 1 (pp) Violates ORS 822.046.
2 (qq) Violates ORS 128.001.
3 (rr) Violates ORS 646A.800 (2) to (4).
4 (ss) Violates ORS 646A.090 (2) to (4).
5 (tt) Violates ORS 87.686.
6 (uu) Violates ORS 646A.803.
7 (vv) Violates ORS 646A.362.
8 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
9 (xx) Violates ORS 180.440 (1) or 180.486 (1).
10 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
11 (zz) Violates ORS 87.007 (2) or (3).
12 (aaa) Violates ORS 92.405 (1), (2) or (3).
13 (bbb) Engages in an unlawful practice under ORS 646.648.
14 (ccc) Violates ORS 646A.365.
15 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
16 (eee) Sells a gift card in violation of ORS 646A.276.
17 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
18 (ggg) Violates ORS 646A.430 to 646A.450.
19 (hhh) Violates a provision of ORS 744.318 to 744.384.
20 (iii) Violates a provision of ORS 646A.702 to 646A.720.
21 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
22 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
23 subject of the violation.
24 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
25 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
26 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
27 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
28 (nnn) Violates ORS 646A.082.
29 (ooo) Violates ORS 646.647.
30 (ppp) Violates ORS 646A.115.
31 (qqq) Violates a provision of ORS 646A.405.
32 (rrr) Violates ORS 646A.092.
33 (sss) Violates a provision of ORS 646.644.
34 (ttt) Violates a provision of ORS 646A.295.
35 (uuu) Violates ORS 646A.564.
36 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
37 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
38 do so or unless the person is an active member of the Oregon State Bar.
39 (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
40 (xxx) Violates ORS 646A.806.
41 (yyy) Violates section 2 (2), chapter 19, Oregon Laws 2014.
42 **(zzz) Violates section 1 of this 2015 Act.**
43 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
44 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
45 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney

1 need not prove competition between the parties or actual confusion or misunderstanding.

2 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
3 torney General has first established a rule in accordance with the provisions of ORS chapter 183
4 declaring the conduct to be unfair or deceptive in trade or commerce.

5 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
6 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-
7 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

8 **SECTION 7. Section 1 of this 2015 Act and the amendments to ORS 35.235, 646.608,**
9 **772.210, 772.510 and 772.615 by sections 2 to 6 of this 2015 Act apply to agreements for com-**
10 **penensation described in ORS 35.235 that have not been accepted or rejected by an owner of**
11 **property on or before the effective date of this 2015 Act.**

12 **SECTION 8. This 2015 Act being necessary for the immediate preservation of the public**
13 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
14 **on its passage.**

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