

Senate Bill 635

Sponsored by Senator FREDERICK (at the request of Association of Oregon Counties) (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**.

Authorizes county governing body to require and charge fee for permit to construct or alter line, fixture or facility within right of way of public road under jurisdiction of county.

Authorizes public bodies to charge utilities for costs incurred resulting from failure of utilities to relocate utility facilities in highway right of way under certain circumstances.

A BILL FOR AN ACT

1
2 Relating to facilities along public roads; amending ORS 758.010 and 758.025.

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

4 **SECTION 1.** ORS 758.010 is amended to read:

5 758.010. (1) **As used in this section, "state government" has the meaning given that term**
6 **in ORS 174.111.**

7 (2) Except within cities, any person has a right and privilege to construct, maintain and operate
8 its water, gas, electric or communication service lines, fixtures and other facilities along the public
9 roads in this state, as defined in ORS 368.001, or across rivers or over any lands belonging to state
10 government[, *as defined in ORS 174.111,*] free of charge, and over lands of private individuals, as
11 provided in ORS 772.210. Such lines, fixtures and facilities shall not be constructed so as to obstruct
12 any public road or navigable stream.

13 [(2)] (3) A county governing body and the Department of Transportation have authority to des-
14 ignate the location upon roads under their respective jurisdiction, outside of cities, where lines,
15 fixtures and facilities described in this section may be located, and subject to ORS 758.025 may order
16 the location of any such line, fixture or facility to be changed when such governing body or de-
17 partment deems it expedient. Any line, fixture or facility erected or remaining in a different location
18 upon such road than that designated in any order of the governing body or department is a public
19 nuisance and may be abated accordingly.

20 [(3)] (4) The state officer, agency, board or commission having jurisdiction over any land be-
21 longing to state government[, *as defined in ORS 174.111,*] with respect to which the right and priv-
22 ilege granted under subsection [(1)] (2) of this section is exercised may impose reasonable
23 requirements for the location, construction, operation and maintenance of the lines, fixtures and
24 facilities on such land. The person exercising such right and privilege over any land belonging to
25 state government[, *as defined in ORS 174.111,*] shall pay the current market value for the existing
26 forest products that are damaged or destroyed in exercising such right and privilege. Such right and
27 privilege of any person is conditioned upon compliance with the requirements imposed by this sub-
28 section.

29 (5) **Notwithstanding subsection (2) of this section, a county governing body may require**
30 **a permit for the construction or alteration of a line, fixture or other facility within the right**

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 **of way of a public road under the jurisdiction of the county, and may charge a fee for ad-**
2 **ministration and issuance of the permit.**

3 **SECTION 2.** ORS 758.025 is amended to read:

4 758.025. (1) As used in this section:

5 (a) "Highway" has the meaning given that term in ORS 801.305 (1) but does not include high-
6 ways located on property owned by the Port of Portland that is subject to federal relocation regu-
7 lations authorized under 49 U.S.C. 47107, as in effect on January 1, 2010.

8 (b) "Public body" has the meaning given that term in ORS 174.109.

9 (c) "Utility" means a public utility, as defined in ORS 757.005, or a telecommunications utility
10 or competitive telecommunications provider, as those terms are defined in ORS 759.005.

11 (2) If a public body plans a project that would require utilities to relocate their utility facilities
12 that are located in the highway right of way, the public body shall notify affected utilities of the
13 project in writing as soon as is practicable.

14 (3) During the planning and design phase of a project, the public body shall coordinate with the
15 affected utilities to discuss the project's scope and schedule. At a minimum, the discussion must in-
16 clude a description of the plans, goals and objectives of the proposed project and options to minimize
17 or eliminate costs to the public body and the utilities. The public body is not required to avoid or
18 minimize costs to the utilities in a way that materially affects the project's scope, costs or schedule.
19 Failure of the affected utilities to respond or participate in the coordination or discussion does not
20 affect the ability of the public body to proceed with design and construction of the project.

21 (4) A public body having jurisdiction over a highway may not prohibit a utility from seeking
22 reimbursement from private parties or customers for costs under this section in any permit appli-
23 cation, license application or other written agreement authorizing the utility to relocate the facili-
24 ties.

25 (5)(a) Notwithstanding any other provision of ORS chapter 759, a telecommunications utility that
26 is not subject to rate-of-return regulation, including a utility regulated under ORS 759.255 may, after
27 participating in the process described in subsection (3) of this section, request authorization from
28 the Public Utility Commission to recover from customers prudent costs incurred for the relocation
29 of facilities required by a public body that are not otherwise paid or reimbursed from another
30 source. Recoverable relocation costs are the nonfacility costs incurred in the relocation plus the
31 undepreciated value of the facilities replaced, including the cost of placing such facilities under-
32 ground if underground placement is required by the public body or other provision of law. The
33 commission may authorize the recovery of relocation costs that the commission determines to be
34 substantial and beyond the normal course of business.

35 (b) The commission shall:

36 (A) Verify the relocation costs for which the utility requests recovery;

37 (B) Determine the allocation of costs between interstate and intrastate services, geographic
38 areas, customers and services; and

39 (C) Prescribe the method of cost recovery.

40 (c) In determining the level of cost recovery and the allocation of costs, the commission shall
41 consider:

42 (A) The overall impact on the utility; and

43 (B) Other relevant factors identified by the commission.

44 (d) Relocation costs may be recovered for a reasonable period of time subject to approval by the
45 commission and not to exceed the depreciable life of the facilities.

1 **(6) If a public body provides an affected utility with notice and the opportunity to coor-**
2 **dinate pursuant to subsections (2) and (3) of this section, the public body may charge the**
3 **affected utility for costs incurred by the public body that result from a failure by the utility**
4 **to relocate utility facilities, including actual damages and liquidated damages.**

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