

B-Engrossed

Senate Bill 611

Ordered by the House March 19
Including Senate Amendments dated February 27 and House Amendments
dated March 19

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.

Grants property tax exemption to property of centrally assessed company in amount of positive value obtained by subtracting from real market value of company's real property and tangible and intangible personal property included in unit subject to central assessment, reduced by amount of certain elective exemptions, amount equal to historical or original cost of company's real property and tangible personal property included in unit subject to central assessment, without reduction for certain elective exemptions, multiplied by 130 percent. Provides amount of exemption may not exceed amount equal to 95 percent of **real market value of company's real property and tangible and intangible personal property included in unit subject to central assessment.**

Grants property tax exemption to property of centrally assessed company if company [*completes and*] **builds, maintains and operates** communication infrastructure project that meets certain service standards. Requires submission of application to Public Utility Commission with fee to be distributed equally to commission for costs of reviewing application and Department of Revenue for costs of appraising project property. Provides for exemption in amount of positive value obtained by subtracting from Oregon-allocated real market value of company's real property and tangible and intangible personal property included in unit subject to central assessment, reduced by Oregon-allocated amount of certain elective exemptions, amount equal to greater of \$250 million or real market value of company's real and tangible personal property located in Oregon, without reduction for certain elective exemptions. Provides exemption granted for lesser of 20 consecutive property tax years or period during which [*company*] **owner** maintains and operates communication infrastructure project.

Provides, for company eligible for both property tax exemptions, Department of Revenue shall [*compute property taxes on property under both exemptions and impose taxes that result in least amount of*] **appraise company's property using provisions of exemption that result in lowest taxable value.** Requires Public Utility Commission to report on [*property tax exemptions*] **communication infrastructure project exemption** to interim committees of Legislative Assembly related to revenue no later than February 1 of each year.

Allows company that owns, leases or uses licenses granted by Federal Communications Commission, franchises used in business of communication or satellites used to provide communication services directly to retail customers and licenses granted by Federal Communications Commission related to use of satellites, to elect one of above types of property for property tax exemption. Provides value of property shall equal cost of property carried in accounting records of owner, less accrued depreciation reserve. [*Provides that value of franchises allocated to Oregon shall be subtracted from assessed value of company's property.*]

Removes, for purposes of exclusion from central assessment, requirement that data center company have tax abatement agreement with sponsors of enterprise zone. Clarifies that statute applies only to company in business of communication. Raises maximum allowable percentage of cost of property other than data center property and changes base to cost of property used in business of communication. Specifies certain noncommunication-related property excluded from determination of maximum allowable percentage. Provides that company is not subject to central assessment solely because company manufactures or sells property used by any person in communication.

Provides for local assessment of data center property used or held for future use by company whose property is not centrally assessed or by company whose property is centrally assessed if historical or original cost of tangible property of all company's data centers in Oregon is at least \$200 million.

Excludes from definition of "data transmission services" providing electronic mail accounts or search engine services solely by means of contractual agreement with another company that owns transmission property if providing such accounts or services are only data transmission services provided by company in Oregon.

Takes effect on 91st day following adjournment sine die.

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.

A BILL FOR AN ACT

1
2
3 Relating to central assessment; creating new provisions; amending ORS 307.126, 308.505 and 308.516;
4 and prescribing an effective date.

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

6 **SECTION 1. ORS 307.126 and sections 2, 3, 5, 6, 8 and 10 of this 2015 Act are added to and**
7 **made a part of ORS 308.505 to 308.665.**

8 **SECTION 2. (1) The property of a company described in ORS 308.515 (1) may be granted**
9 **an exemption under section 3 of this 2015 Act or section 5 of this 2015 Act, but not under**
10 **both sections 3 and 5 of this 2015 Act.**

11 **(2) For any company whose property is eligible for an exemption under both sections 3**
12 **and 5 of this 2015 Act, the Department of Revenue shall appraise the value of the property**
13 **under sections 3 and 5 of this 2015 Act for each property tax year and use the provisions of**
14 **the section that result in the lowest amount of taxable value.**

15 **SECTION 3. (1) Subject to section 2 of this 2015 Act, the property of a company described**
16 **in ORS 308.515 (1) shall be granted an exemption in the amount of the positive value, if any,**
17 **obtained by subtracting from the real market value of the company's real property and tan-**
18 **gible and intangible personal property included in the unit subject to central assessment,**
19 **reduced by the amount of any exemption elected under ORS 307.126, an amount equal to the**
20 **historical or original cost of the company's real property and tangible personal property in-**
21 **cluded in the unit subject to central assessment, without reduction for any exemption elected**
22 **under ORS 307.126, multiplied by 130 percent.**

23 **(2) If the amount determined under subsection (1) of this section is not positive, subject**
24 **to section 2 of this 2015 Act, the real market value of the company's real property and tan-**
25 **gible and intangible personal property included in the unit subject to central assessment,**
26 **reduced by the amount of any exemption elected under ORS 307.126, shall be the real market**
27 **value of the company's property for the property tax year.**

28 **(3) Notwithstanding subsection (1) of this section, an exemption granted under this sec-**
29 **tion may not exceed an amount equal to 95 percent of the real market value of the**
30 **company's real property and tangible and intangible personal property included in the unit**
31 **subject to central assessment.**

32 **(4)(a) If the property of a company is granted an exemption under this section for a**
33 **property tax year, the property is not eligible for any other exemption from ad valorem**
34 **property taxation for the property tax year.**

35 **(b) Notwithstanding paragraph (a) of this subsection:**

36 **(A) An exemption granted under ORS 307.126 to property that is granted an exemption**
37 **under this section shall be allowed in the manner provided under this section and ORS**
38 **307.126.**

39 **(B) An exemption granted under this section for a property tax year has no effect on the**
40 **benefits that the property of the company or the company may be granted under ORS**
41 **chapter 285C or ORS 307.123 for the property tax year.**

42 **SECTION 4. ORS 307.126 is amended to read:**

43 **307.126. (1) [*Licenses granted by the Federal Communications Commission are exempt from ad***
44 ***valorem property taxation, and the value of the licenses may not be reflected in the value of real or***
45 ***tangible personal property.*] A company described in ORS 308.515 (1) that owns, leases or uses**

1 property listed in subsection (2) of this section may elect property described in one paragraph
2 of subsection (2) of this section to be exempt from ad valorem property taxation.

3 (2) The property referred to in subsection (1) of this section consists of:

4 (a) Licenses granted by the Federal Communications Commission.

5 (b) If the company is in the business of communication, franchises.

6 (c) Satellites that are used by the company to provide communication services directly
7 to retail customers or that are being constructed for such use and Federal Communications
8 Commission licenses related to the use of the satellites to provide the communication ser-
9 vices.

10 (3) The value of the property listed in subsection (2) of this section shall be equal to the
11 cost of the property carried in the accounting records of the owner of the property, less the
12 accrued depreciation reserve for the property.

13 **SECTION 5.** (1) Subject to section 2 of this 2015 Act, the property of a company described
14 in ORS 308.515 (1) shall be granted an exemption under subsection (5) of this section if the
15 company builds, maintains and operates a qualified project in Oregon.

16 (2) A project is qualified under this section if:

17 (a) The project requires capital investment in newly constructed or installed real or
18 tangible personal property constituting infrastructure that enables the company to offer
19 communication services, including a capacity of at least one gigabit per second symmetrical
20 service, to a majority of the residential customers of the company's broadband services; and

21 (b) With respect to communication services offered by the company using the
22 infrastructure, the company does not deny access to the communication services to any
23 group of residential customers because of the income level of the residential customers in
24 the local service area in which the residential customers reside.

25 (3)(a) A company seeking the exemption granted under this section must submit an ap-
26 plication to the Public Utility Commission, with a copy to the Department of Revenue, on
27 or before January 15 preceding the first property tax year for which the exemption is sought.

28 (b) The application must include:

29 (A) A certification that the project meets the requirements of subsection (2) of this sec-
30 tion; and

31 (B) An application fee of \$50,000.

32 (c) The application fee shall be distributed evenly to the commission and the department
33 to reimburse the commission for the costs of reviewing the application and the department
34 for the costs of appraising the property of the company submitting the application.

35 (4)(a) On or before March 1 of the year in which the application is submitted under sub-
36 section (3) of this section, the commission shall determine whether the project is a qualified
37 project.

38 (b) During the period in which the commission is making a determination under this
39 subsection:

40 (A) The commission may discuss the information included in the application with the
41 company and the department;

42 (B) The commission shall consult with any city with which the company has entered into
43 a franchise fee agreement to provide services to which the application relates;

44 (C) The company may amend the application; and

45 (D) Upon request of the company, the commission may grant an extension of not more

1 than two weeks for a determination under this subsection.

2 (c) If the commission determines that the project is not a qualified project, the applica-
3 tion may not be approved. The commission shall notify the company of the negative deter-
4 mination and state the reasons.

5 (d) If the commission determines that the project is a qualified project:

6 (A) The application shall be approved.

7 (B) The commission shall notify the company, the department and the assessor of each
8 county in which the project is located of the approval.

9 (C) Subject to section 2 of this 2015 Act, the property of the company shall be granted
10 the exemption under subsection (5) of this section beginning with the first property tax year
11 that begins after the date of the determination.

12 (5)(a) The property of a company described in subsection (1) of this section shall be
13 granted an exemption for a property tax year in an amount equal to the positive value, if
14 any, obtained by subtracting from the real market value of the company's real property and
15 tangible and intangible personal property, including property that would otherwise be as-
16 sessed under section 8 of this 2015 Act, that is allocated to Oregon and included in the unit
17 subject to central assessment, reduced by the portion of the value of any exemption elected
18 under ORS 307.126 that is allocated to Oregon, an amount equal to the greater of \$250 million
19 or the real market value of the company's real and tangible personal property located in
20 Oregon as of the assessment date, without reduction for any exemption elected under ORS
21 307.126.

22 (b) The exemption shall be granted for the lesser of 20 consecutive property tax years
23 or the period during which an owner maintains and operates the qualified project.

24 (6) If the amount determined under subsection (5)(a) of this section is not positive, sub-
25 ject to section 2 of this 2015 Act, the real market value of the company's real property and
26 tangible and intangible personal property, excluding property that is assessed under section
27 8 of this 2015 Act, allocated to Oregon and included in the unit subject to central assessment,
28 reduced by the portion of the value of any exemption elected under ORS 307.126 that is allo-
29 cated to Oregon, shall be the real market value of the company's property allocated to
30 Oregon for the property tax year.

31 (7)(a) If the property of a company is granted an exemption under this section for a
32 property tax year, the property is not eligible for any other exemption from ad valorem
33 property taxation for the property tax year.

34 (b) Notwithstanding paragraph (a) of this subsection:

35 (A) An exemption granted under ORS 307.126 to property that is granted an exemption
36 under this section shall be allowed in the manner provided under this section and ORS
37 307.126.

38 (B) An exemption granted under this section for a property tax year has no effect on the
39 benefits that the property of the company or the company may be granted under ORS
40 chapter 285C or ORS 307.123 for the property tax year.

41 **SECTION 6.** (1)(a) Notwithstanding any other provision of law relating to the
42 confidentiality of public records, on or before December 15 of each year, each assessor of a
43 county in which property granted an exemption under section 5 of this 2015 Act, in accord-
44 ance with section 2 of this 2015 Act, is located shall submit to the Department of Revenue
45 a report stating the amount of the exemption granted to the property of each company, the

1 amount of property taxes imposed on the property and the amount of property taxes that
2 were not imposed on the property because of the exemption for the current property tax year
3 and estimates of these amounts for the following property tax year.

4 (b) No later than January 1 of each year, the department shall submit a report compiling
5 the information received from counties under paragraph (a) of this subsection to the Public
6 Utility Commission.

7 (2) No later than February 1 of each year, the commission shall submit a report in the
8 manner provided by ORS 192.245 to the interim committees of the Legislative Assembly re-
9 lated to revenue that states or describes:

10 (a) The name and business of each company whose property is granted an exemption
11 under section 5 of this 2015 Act.

12 (b) For each company described in paragraph (a) of this subsection:

13 (A) The capital investment made by the company in Oregon in newly constructed or in-
14 stalled real or tangible personal property constituting communication infrastructure.

15 (B) Whether the company has met the requirements for service capacity and offering
16 service to residential customers.

17 (C) Who is served by the communication infrastructure and how they are served.

18 (D) The compiled information received from the department pursuant to subsection (1)
19 of this section.

20 (c) Any other information the commission considers necessary for a thorough analysis
21 of the exemption granted under section 5 of this 2015 Act.

22 **SECTION 7.** ORS 308.516 is amended to read:

23 308.516. (1) A company is not a company described in ORS 308.515 (1) to the extent that the
24 company furnishes undiluted liquefied or industrial gas in bottles, tanks or similar containers.

25 (2) A company is not a company described in ORS 308.515 (1) if:

26 (a) The company generates electricity primarily for the company's own use and makes no more
27 than incidental sales of the company's surplus electricity to other persons; or

28 (b)(A) The company's generating facility is primarily fueled by wood waste or other biomass fuel;

29 (B) The generating facility has a maximum capacity of 20 megawatts; and

30 (C) The company, if selling the generated electricity, does so only directly to an electric utility,
31 as defined in ORS 758.505, for the electric utility's distribution to utility customers.

32 (3)(a) A company that **is in the business of communication and** is the owner or lessee of a
33 data center is not a company described in ORS 308.515 (1) if[.]

34 [(a) *The company has entered into a written tax abatement agreement, or is entitled by assignment*
35 *or succession to the benefits of a tax abatement agreement entered into, with the sponsors of an enter-*
36 *prise zone with respect to a data center, pursuant to ORS 285C.050 to 285C.250 or 285C.400 to*
37 *285C.420; and]*

38 [(b)(A) *the original cost of construction and installation of all real and tangible personal property*
39 *owned or leased by the company in Oregon other than data centers does not equal more than five] **the***

40 **historical or original cost of all real and tangible personal property, other than data centers,**
41 **that is owned or leased by the company in Oregon, is in service and is used by the company**
42 **in the business of communication, is less than or equal to 10 percent of the historical or ori-**
43 **ginal cost of the real and tangible personal property of all data centers owned, leased or used by**
44 **the company in Oregon and all additions to the data center property[; and].**

45 (b) For purposes of this subsection, property other than data centers used in the business

1 **of communication does not include property to the extent the property constitutes:**

2 **(A) An office;**

3 **(B) A warehouse;**

4 **(C) A manufacturing plant;**

5 **(D) A retail outlet;**

6 **(E) Property used in connection with a data center to generate electricity; or**

7 **(F) Electricity generated by property described in subparagraph (E) of this paragraph.**

8 *[(B) The property in Oregon other than data centers described in subparagraph (A) of this para-*
9 *graph consists of real or tangible personal property used in the operation of an office or a warehouse*
10 *or in connection with the construction, installation or operation of data center property.]*

11 *[(4)(a) Property of a company described in subsection (3) of this section may not be assessed under*
12 *ORS 308.505 to 308.665 during the term of an exemption granted pursuant to an agreement described*
13 *in subsection (3)(a) of this section or during the term of any statutorily authorized extensions of the*
14 *exemption, waivers or periods of in lieu payments.]*

15 *[(b) For purposes of the notations required under ORS 285C.175 (7) and 285C.409 (3), the county*
16 *assessor shall record the real market value, the assessed value and the amount of potential additional*
17 *taxes as determined without regard to ORS 308.505 to 308.665.]*

18 *[(5) If a company described in subsection (3) of this section owns or leases a data center in more*
19 *than one county in this state, each data center must satisfy all applicable requirements under subsection*
20 *(3) of this section.]*

21 *[(6)(a) As used in this section:]*

22 *[(A) "Data center" means an online service data center or an independent data center.]*

23 *[(B) "Independent data center" means real and personal property consisting of buildings or struc-*
24 *tures specifically designed or modified to house networked computers and data and transaction pro-*
25 *cessing equipment and related infrastructure support equipment, including, without limitation, power*
26 *and cooling equipment, used primarily to provide, as a service to persons other than the company op-*
27 *erating the independent data center, data and transaction processing services, outsource information*
28 *technology services and computer equipment colocation services.]*

29 *[(C) "Online service data center" means real and personal property consisting of buildings or*
30 *structures specifically designed or modified to house networked computers and data and transaction*
31 *processing equipment and related infrastructure support equipment, including, without limitation, power*
32 *and cooling equipment, used primarily to provide, to a single user, including the user's affiliates, cus-*
33 *tomers, lessees, vendors and other persons authorized by the user, data and transaction processing*
34 *services.]*

35 *[(b) For purposes of this subsection, the primary use of property is based on the relative proportion*
36 *of the original cost of property used for all purposes.]*

37 **(4) For purposes of ORS 308.515 (1), a company is not a company in the business of**
38 **communication solely because the company manufactures or holds out for sale property used**
39 **by any person in communication.**

40 **SECTION 8. (1) The following real and tangible personal property used or held for future**
41 **use by a company described in subsection (2) of this section shall be locally assessed:**

42 **(a) Property constituting a data center or used in connection with the operation of data**
43 **center property;**

44 **(b) Property used on the data center property to generate electricity; and**

45 **(c) Electricity generated by property described in paragraph (b) of this subsection.**

1 **(2) Subsection (1) of this section applies to a company that is:**

2 **(a) Not a company described in ORS 308.515 (1); or**

3 **(b) A company described in ORS 308.515 (1) and the historical or original cost of the real**
4 **and tangible personal property of all data centers owned, leased or used by the company in**
5 **Oregon and all additions to the data center property, excluding property described in sub-**
6 **section (1)(b) and (c) of this section, is equal to or greater than \$200 million.**

7 **(3)(a) For purposes of ORS 308.505 to 308.665, property described in subsection (1) of this**
8 **section, and intangible personal property that is related to the property, may not be included**
9 **in any unit subject to central assessment.**

10 **(b) Notwithstanding paragraph (a) of this subsection, property that is used or held for**
11 **future use by a company whose property is granted an exemption under section 5 of this 2015**
12 **Act and that would otherwise be assessed under this section shall be assessed under section**
13 **5 of this 2015 Act.**

14 **SECTION 9.** ORS 308.505 is amended to read:

15 308.505. As used in ORS 308.505 to 308.665:

16 (1) “Car” or “railcar” means a vehicle adapted to the rails of a railroad.

17 (2) “Centrally assessed” means the assessment of property by the Department of Revenue under
18 ORS 308.505 to 308.665.

19 (3) “Communication” includes telephone communication and data transmission services by
20 whatever means provided.

21 (4) “Data center” means an online service data center or an independent data center.

22 (5) “Data transmission services” does not include providing electronic mail accounts or
23 search engine services solely by means of contractual agreement with another company that
24 owns the transmission property if providing such accounts or services are the only data
25 transmission services provided by the company in Oregon.

26 (6) “Historical or original cost” means all costs incurred by a company in placing prop-
27 erty in service for the property’s intended use by the company, including, but not limited to,
28 purchase price, freight, engineering fees, legal fees, materials, labor, overhead, taxes, inter-
29 est, entrepreneurial profit and other fees, expenses and charges related to construction or
30 installation.

31 (7) “Independent data center” means real and personal property consisting of buildings
32 or structures specifically designed or modified to house networked computers and data and
33 transaction processing equipment and related infrastructure support equipment, including,
34 without limitation, power and cooling equipment, used primarily to provide, as a service to
35 persons other than the company operating the independent data center, data and transaction
36 processing services, outsource information technology services and computer equipment
37 colocation services. For purposes of this subsection, the primary use of property is based on
38 the relative proportion of the original cost of property used for all purposes.

39 [(4)] (8) “Inland water” means all water or waters within the State of Oregon, all interstate
40 rivers touching Oregon and all tidewaters extending to the ocean bars.

41 [(5)] (9) “Interstate” means transit between the State of Oregon and:

42 (a) Another state;

43 (b) A district, territory or possession of the United States; or

44 (c) A foreign country.

45 [(6)] (10) “Large private railcar company” means a private railcar company with personal

1 property with a real market value for the tax year that exceeds \$1 million.

2 [(7)] (11) “Locally assessed” means the assessment of property for property tax purposes by the
3 county assessor that is not conducted under ORS 308.505 to 308.665.

4 (12) **“Online service data center” means real and personal property consisting of buildings
5 or structures specifically designed or modified to house networked computers and data and
6 transaction processing equipment and related infrastructure support equipment, including,
7 without limitation, power and cooling equipment, used primarily to provide, to a single user,
8 including the user’s affiliates, customers, lessees, vendors and other persons authorized by
9 the user, data and transaction processing services. For purposes of this subsection, the pri-
10 mary use of property is based on the relative proportion of the original cost of property used
11 for all purposes.**

12 [(8)] (13) “Person,” “company,” “corporation” or “association” means any person, group of per-
13 sons, whether organized or unorganized, firm, joint stock company, association, cooperative or mu-
14 tual organization, people’s utility district, joint operating agency as defined in ORS 262.005,
15 syndicate, entity formed to partner or combine public and private interests, partnership or corpo-
16 ration engaged in performing or maintaining any business or service or in selling any commodity
17 as set forth in ORS 308.515, whether or not the activity is pursuant to any franchise and whether
18 or not the person or other entity or combination of entities possesses characteristics of limited or
19 unlimited liability.

20 [(9)] (14) “Property”:

21 (a) Means all property of any kind, whether real, personal, tangible or intangible, that is used
22 or held by a company as owner, occupant, lessee or otherwise, for the performance or maintenance
23 of a business or service or for the sale of a commodity, as described in ORS 308.515;

24 (b) Includes, but is not limited to, the lands and buildings, rights of way, roadbed, water powers,
25 vehicles, cars, rolling stock, tracks, office furniture, telephone and transmission lines, poles, wires,
26 conduits, switchboards, machinery, appliances, appurtenances, docks, watercraft irrespective of the
27 place of registry or enrollment, merchandise, inventories, tools, equipment, machinery, franchises
28 and special franchises, work in progress and all other goods or chattels; and

29 (c) Does not include items of intangible property that represent:

30 (A) Claims on other property, including money at interest, bonds, notes, claims, demands or any
31 other evidence of indebtedness, secured or unsecured; or

32 (B) Any shares of stock in corporations, joint stock companies or associations.

33 [(10)] (15) “Property having situs in this state” means all property, real and personal, of a
34 company, owned, leased, used, operated or occupied by it and situated wholly within this state, and,
35 as determined under ORS 308.550 and 308.640, the proportion of the movable, transitory or migratory
36 personal property owned, leased, used, operated or occupied by a company, including but not limited
37 to watercraft, aircraft, rolling stock, vehicles and construction equipment, as is used partly within
38 and partly outside of this state.

39 [(11)] (16) “Small private railcar company” means a private railcar company with personal
40 property with a real market value for the tax year that does not exceed \$1 million.

41 [(12)] (17) “Transportation” means carrying, conveying or moving passengers or property from
42 one place to another.

43 [(13)] (18) “Vehicle” means any wheeled or tracked device used in transportation under, on or
44 in connection with the physical surface of the earth.

45 **SECTION 10. The Legislative Assembly declares that the intention of the amendments**

1 to ORS 308.516 by section 7 of this 2015 Act is to exclude from central assessment the prop-
2 erty of qualifying companies that own or operate data centers.

3 **SECTION 11.** (1) Sections 8 and 10 of this 2015 Act and the amendments to ORS 308.505
4 and 308.516 by sections 7 and 9 of this 2015 Act apply to property tax years beginning on or
5 after July 1, 2015.

6 (2) Sections 2, 3, 5 and 6 of this 2015 Act and the amendments to ORS 307.126 by section
7 4 of this 2015 Act apply to property tax years beginning on or after July 1, 2016.

8 **SECTION 12.** This 2015 Act takes effect on the 91st day after the date on which the 2015
9 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

10