

House Bill 2362

Sponsored by Representative WILSON (Presession 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**.

Provides that right and privilege to construct, maintain or operate water, gas, electric or communication service line, fixture or other facility along public roads, free of charge, does not extend to county roads. Prohibits governing bodies of counties from charging other public bodies fees for construction, maintenance or operation of such lines, fixtures and facilities.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to construction of facilities along public roads; creating new provisions; amending ORS
3 98.654, 374.325, 758.010 and 758.020; and declaring an emergency.

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

5 **SECTION 1. On the effective date of this 2017 Act, the right and privilege to construct,**
6 **maintain and operate a water, gas, electric or communication service line, fixture or other**
7 **facility along county roads, free of charge, ceases.**

8 **SECTION 2. ORS 758.010 is amended to read:**

9 758.010. (1) **For purposes of this section:**

10 (a) **“County road” has the meaning given that term in ORS 368.001; and**

11 (b) **“Public road” has the meaning given that term in ORS 368.001.**

12 [(1)] (2)(a) Except within cities **and along county roads**, any person has a right and privilege
13 to construct, maintain and operate [its] **the person’s** water, gas, electric or communication service
14 lines, fixtures and other facilities:

15 (A) Along [the] public roads [in this state, as defined in ORS 368.001] or across rivers or over
16 [any] lands belonging to state government, as defined in ORS 174.111, free of charge[,] and

17 (B) Over lands of private individuals, as provided in ORS 772.210.

18 (b) [Such] Lines, fixtures and facilities [shall] **described in paragraph (a) of this subsection**
19 **may not be constructed [so as to obstruct any] in a manner that obstructs a public road or**
20 **navigable stream.**

21 [(2)] A county governing body and the Department of Transportation have authority to designate the
22 location upon roads under their respective jurisdiction, outside of cities, where lines, fixtures and fa-
23 cilities described in this section may be located, and subject to ORS 758.025 may order the location of
24 any such line, fixture or facility to be changed when such governing body or department deems it ex-
25 pedient. Any line, fixture or facility erected or remaining in a different location upon such road than
26 that designated in any order of the governing body or department is a public nuisance and may be
27 abated accordingly.]

28 (3) **Except within cities, the Department of Transportation may designate where a line,**
29 **fixture or other facility described in subsection (2) of this section may be located along a**
30 **public road under the jurisdiction of the department. Subject to ORS 758.025, if the depart-**

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 **ment finds that changing the location of a line, fixture or other facility is expedient, the**
 2 **department may order a change in the location. If a designation is made or an order is issued**
 3 **under this subsection, a line, fixture or other facility erected or remaining in a location dif-**
 4 **ferent from that designated or ordered is a public nuisance and may be abated accordingly.**

5 [(3)] (4) [The state officer, agency, board or commission having jurisdiction over any land belong-
 6 ing to state government, as defined in ORS 174.111, with respect to which the right and privilege
 7 granted under subsection (1) of this section is exercised may impose reasonable requirements for the
 8 location, construction, operation and maintenance of the lines, fixtures and facilities on such land.] **A**
 9 **state officer, agency, board or commission may impose reasonable requirements on a person**
 10 **that constructs, maintains or operates a line, fixture or other facility over land that is under**
 11 **the jurisdiction of the state officer, agency, board or commission pursuant to the right and**
 12 **privilege described in subsection (2) of this section.** The person exercising [such] the right and
 13 privilege over [any] land belonging to state government, as defined in ORS 174.111, shall pay the
 14 current market value for the existing forest products that are damaged or destroyed in exercising
 15 [such] the right and privilege. [Such] **The** right and privilege [of any person] is conditioned upon
 16 compliance with the requirements imposed by this subsection.

17 **SECTION 3.** Section 4 of this 2017 Act is added to and made a part of ORS chapter 758.

18 **SECTION 4.** (1) As used in this section, “county road” has the meaning given that term
 19 in ORS 368.001.

20 (2) Except as provided in subsection (4) of this section, the governing body of a county
 21 may impose, pursuant to a contract or ordinance, a charge or fee on a person that con-
 22 structs, maintains or operates a water, gas, electric or communication service line, fixture
 23 or other facility located along a county road.

24 (3) The governing body of a county may designate where a line, fixture or other facility
 25 described in subsection (2) of this section may be located along a county road under the ju-
 26 risdiction of the governing body. Subject to ORS 758.025, if the governing body finds that
 27 changing the location of a line, fixture or other facility is expedient, the governing body may
 28 order a change in the location. If a designation is made or an order is issued under this
 29 subsection, a line, fixture or other facility erected or remaining in a location different from
 30 that designated or ordered is a public nuisance and may be abated accordingly.

31 (4) The governing body of a county may not impose a charge or fee on another public
 32 body, as defined in ORS 174.109, for the construction, maintenance or operation of the public
 33 body’s water, gas, electric or communication service line, fixture or other facility located
 34 along a county road.

35 **SECTION 5.** ORS 98.654 is amended to read:

36 98.654. The provisions of ORS 98.650 and 98.652 [shall] **do** not apply to trees, timber, logs, poles
 37 or [piling which] **pilings that** have been placed or deposited or allowed to remain upon the right
 38 of way of a county road under the provisions of a permit granted by the county court or board of
 39 county commissioners [having jurisdiction over said] **that has jurisdiction over the** county road,
 40 [nor] **or** to poles placed upon the right of way of a county road [under authority of] **pursuant to**
 41 ORS 758.010 or 758.020 **or section 4 of this 2017 Act,** [nor] **or** to any county road [which] **that** is
 42 not maintained for public travel by the county court or board of county commissioners of the county
 43 in which the road is located.

44 **SECTION 6.** ORS 374.325 is amended to read:

45 374.325. [Nothing in] ORS 374.305 to 374.325 [shall] **do not:**

1 (1) Limit or affect any of the powers granted to, or duties imposed upon, the county courts,
 2 [or] boards of county commissioners, [the] Department of Transportation or [the] Public Utility
 3 Commission by ORS 758.010 and 758.020 **and section 4 of this 2017 Act**, or any [rights granted or
 4 authorized under those statutes] **right or privilege granted by ORS 758.010 and 758.020 and sec-**
 5 **tion 4 of this 2017 Act.**

6 (2) Grant any right for the construction or placing of an approach road, structure, pipeline,
 7 ditch, cable, [or] wire[,] or other facility[, thing] or appurtenance on the right of way of [any] a
 8 highway.

9 **SECTION 7.** ORS 758.020 is amended to read:

10 758.020. (1) The county court, board of county commissioners or [the] Department of Transpor-
 11 tation, when designating the location where **lines**, poles or other aboveground facilities described
 12 in ORS 758.010 **and section 4 of this 2017 Act** may be placed [on] **along** a road or highway
 13 [which] **that** fronts on the ocean, [or on] a river or other body of water, and **when** the water
 14 frontage of the highway is being developed or maintained for its scenic or recreational value, may
 15 require [all lines] **the lines, poles or other aboveground facilities** to occupy the opposite side of
 16 the right of way, if [such joint] **the** occupancy can be maintained without undue impairment of ser-
 17 vice or damage to public life and property.

18 (2) If [the] **multiple** owners of [such lines] **lines, poles or other aboveground facilities** are
 19 unable to agree on the terms and conditions of [joint occupancy, such department, court or board]
 20 **jointly occupying the opposite side of the right of way, the county court, board of county**
 21 **commissioners or department** shall request the Public Utility Commission to determine the
 22 practicability of [such] joint occupancy and the effect [thereof] **of joint occupancy** upon adequate
 23 and safe service by the prospective joint occupants[, the location of the lines, and, if found to be
 24 practicable,] **and, if practicable**, to fix and prescribe the terms and conditions pursuant to which
 25 joint occupancy shall be accomplished. Before making or entering an order, [such] **the Public Util-**
 26 **ity** Commission shall hold a hearing and make findings in accordance with ORS 756.500 to 756.610.
 27 The order of the commission is subject to judicial review as an order in a contested case in the
 28 manner provided by ORS 756.610. In fixing terms and conditions pursuant to which joint occupancy
 29 shall be accomplished, the [Public Utility] commission shall require the installation by each
 30 [occupant] **of the joint occupants** of standards, devices and equipment reasonably necessary to
 31 protect the equipment of the other occupants from damage and the public from injury [arising from
 32 such joint occupancy].

33 (3) The right of any public utility, telecommunications utility or transmission company to con-
 34 struct, maintain and operate [on] **along** a public highway **lines**, poles or [fixtures] **other**
 35 **aboveground facilities** is contingent on compliance with reasonable requirements established by the
 36 [Department of Transportation,] county courts, boards of county commissioners, **Department of**
 37 **Transportation** or [the] Public Utility Commission under [authority of] this section and ORS 758.010
 38 **and section 4 of this 2017 Act**. Such rights are [likewise] **also** contingent [and conditioned] on all
 39 facilities, equipment and installations being constructed and maintained in strict conformance with
 40 modern and approved standards.

41 **SECTION 8. Section 4 of this 2017 Act and the amendments to ORS 758.010 by section 2**
 42 **of this 2017 Act apply to the construction, maintenance or operation of a line, fixture or**
 43 **other facility that occurs on or after the effective date of this 2017 Act.**

44 **SECTION 9. This 2017 Act being necessary for the immediate preservation of the public**
 45 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**

1 **on its passage.**

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