USE OF PUBLIC LANDS; EASEMENTS

271.005 Definitions

271.430 Lease of space above or below street or highway; effect on prior dedication or grant for public purpose

271.440 Agreements for location of transmission lines on property of political subdivision

281.045 Definition

281.060 Relocation duties of public entity; use of certain federal relocation assistance programs; policies

HIGHWAYS, ROADS, BRIDGES AND FERRIES

366.005 Definitions. As used in this chapter and in ORS chapter 367, unless the context requires otherwise:

366.332 Definitions for ORS 366.332 and 366.333

366.321 Expense of relocating municipal facilities payable by department; exceptions

366.333 Acquisition of utility real property; exchange of land for right of way

366.365 Going upon private property

ROADS AND HIGHWAYS THROUGH CITIES

373.020 Jurisdiction over streets taken over for state highway routing through cities; effect on public utility duties

Return to Top

APPROACH ROADS, PRIVATE CROSSINGS AND OTHER FACILITIES UPON RIGHT OF WAY

374.305 Necessity of permission to build on rights of way

374.307 Removal or repair of installation constructed without permission

374.310 Rules and regulations; issuing permits

374.315 Construction under permits; maintenance after construction

374.320 Removal or repair of installation on right of way at expense of applicant

374.325 Effect of ORS 374.305 to 374.325

374.330 Prior status preserved

OREGON UTILITY NOTIFICATION CENTER

757.542 Definitions

757.547 Oregon Utility Notification Center; board; member qualifications; terms; meetings

757.552 Duties of center; fees for services; rules; exemption from certain financial administration laws

757.557 Underground utility facility operators required to subscribe to center; liability for damage from excavation for nonsubscribers; exemption

757.562 Report to Legislative Assembly of center activities; contracts to carry out duties

757.993 Penalty for violation of utility excavation notification provisions

RIGHTS OF WAY; ALLOCATION; COGENERATION
UTILITY REGULATION

758.010 Authority to construct lines and facilities; requirements and conditions by public officials

758.020 Joint occupancy of poles required

758.035 Commission's power to enforce joint use of facilities

Return to Top

271.005 Definitions. As used in ORS 271.005 to 271.540:

(1) "Governing body" means the board or body in which the general legislative power of a political subdivision is vested.

(2) "Governmental body" means the State of Oregon, a political subdivision, the United States of America or an agency thereof.

(3) "Political subdivision" means any local government unit, including, but not limited to, a county, city, town, port, dock commission or district, that exists under the laws of Oregon and has power to levy and collect taxes. [1981 c.787 s.2]

271.430 Lease of space above or below street or highway; effect on prior dedication or grant for public purpose. Any political subdivision holding the easement or fee title to a street or highway may lease the space above or below that street or highway for private purposes for such period as the governing body determines the space will not be needed for public purposes, and upon other terms and conditions the governing body finds to be in the public interest. Before leasing the space, the governing body shall determine that the use of the space will not unreasonably interfere with the public use and utility use of the street or highway, and shall notify the property owners abutting the space proposed to be leased under this section and give them an opportunity to be heard with respect to the proposed leasing. Lease of space above or below a street or highway for private purposes shall not affect prior dedication or grant of the area for street or highway purposes. [1969 c.586 s.2; 1981 c.787 s.37]

271.440 Agreements for location of transmission lines on property of political subdivision. Any political subdivision, owning or controlling any real property or rights therein, may enter into agreements with the United States or any agency thereof, relative to the conditions for and places where electrical and other transmission lines may be placed and maintained across that property. The agreements may be in perpetuity or for a shorter period. However, an agreement shall not affect the constitutional rights of any owners of private property who do not join therein. [Formerly 758.030; 1981 c.787 s.38]

281.045 Definitions. (1) "Displaced person" means any person who moves, or is required to move the person's residence and personal property incident thereto, or the person's business or farm operation as a result of:

(a) Acquisition of the real property, in whole or in part, by a public entity; or

(b) Receipt of a written order by such person from a public entity to vacate the property for public use.

(2) "Person" means any individual, partnership, corporation or association.

(3) "Public entity" includes the state, a county, a city, a consolidated city-county as defined in ORS 199.705 (1), a district, public authority, public agency and any other political subdivision or public corporation in the state when acquiring real property or any interest therein for public use. "Public entity" also includes a private corporation which has the power to exercise the right of eminent domain.

(4) "Public use" means a use for which real property may be acquired by a public entity as provided by law.

(5) "Real property" or any interest therein includes tenements and hereditaments, and includes every interest, freehold and chattel, legal and equitable, present and future, vested and contingent, in such tenements and hereditaments. [1975 c.613 s.2; 1985 c.664 s.14]

281.060 Relocation duties of public entity; use of certain federal relocation assistance programs; policies. Whenever any program or project is undertaken by a public entity which

program or project will result in the acquisition of real property, notwithstanding any other statute, charter, ordinance, or rule or regulation, the public entity shall:

(1) Provide fair and reasonable relocation payments and assistance to or for displaced persons as provided under sections 202, 203, 204 and 206 of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Uniform Relocation Act amendments of 1987;

(2) Provide relocation assistance programs offering to displaced persons and others occupying property immediately adjacent to the real property acquired the services described in section 205 of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987 on the conditions prescribed therein;

(3) In acquiring the real property, be guided by the land acquisition policies in section 301 of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987 and the provisions of section 302 of the 1970 federal Act;

(4) Pay or reimburse property owners for necessary expenses as specified in sections 303 and 304 of the 1970 federal Act;

(5) Share costs of providing payments and assistance with the Federal Government in the manner and to the extent required by sections 211 (a) and (b) of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987; and

(6) Appoint such officers, enter into such contracts, utilize federal funds for planning and providing comparable replacement housing, and take such other actions as may be necessary to comply with the conditions and requirements of the 1970 federal Act as amended by the Uniform Relocation Act amendments of 1987. [1971 c.142 s.2; 1973 c.373 s.1; 1975 c.613 s.5; 1989 c.14 s.1]

Return to Top

373.020 Jurisdiction over streets taken over for state highway routing through cities; effect on public utility duties. (1) Complete jurisdiction and control of streets taken over by the Department of Transportation as provided in ORS chapter 366 and ORS 105.760, 373.010, 373.015, 373.030 and this section, is vested in the department and extends from curb to curb, or, if there is no regular established curb, then such control extends over such portion of the right of way as may be utilized by the department for highway purposes. Responsibility for and jurisdiction over all other portions of the street or road remains in the city.

(2) All cities retain the right to grant the privilege to open the surface of any such street or road, but all damage occasioned thereby shall promptly be repaired by the city, either itself or at its direction, and the responsibility for the cost thereof shall be upon the city permitting the opening.

(3) Cities retain the exclusive right to grant franchises over, beneath and upon any such street or road, and to control and regulate such franchises and the utilization thereof, but the department may utilize any storm sewers thereon or thereunder without cost or charge therefor by the city.

(4) Nothing contained in ORS chapter 366 and ORS 105.760, 373.010, 373.015, 373.030 and this section, relieves any public utility or telecommunications utility from the maintenance and repair of any street or portion thereof or the performance of any other obligation required under any franchise granted to it by any city. [Amended by 1979 c.186 §14; 1987 c.447 §121; 1995 c.79 §202]
Return to Top

366.005 Definitions. As used in this chapter and in ORS chapter 367, unless the context requires otherwise:
(1) "Chief engineer" or "engineer" means the person designated by the director under ORS 184.628.
(2) "Commission" means the Oregon Transportation Commission.
(3) "Department" means the Department of Transportation.
(4) "Director" means the Director of Transportation.
(5) "Federal funds" means any funds provided by the United States for cooperative road work with states, counties, cities or other municipal subdivisions of the state under Acts of Congress enacted for those purposes.
(6) "Highway fund" means the State Highway Fund.
(7) "State highway" means any road or highway designated as such by law or by the Oregon Transportation Commission pursuant to law and includes both primary and secondary state highways.
(8) "This Act" means this chapter and ORS 105.760, 373.010, 373.015, 373.020 and 373.030.
[Amended by 1969 c.599 s.16; 1973 c.249 s.28; 1979 c.186 s.8; 1989 c.904 s.34; 1993 c.741 s.34]

366.321 Expense of relocating municipal facilities payable by department; exceptions. (1) When location, construction, relocation, reconstruction, maintenance or repair of a state highway requires relocation of any facilities placed or maintained in or on a public right of way by any municipal corporation, or a district or authority established under ORS chapter 264, 450, 451, 523 or 545, the Department of Transportation shall pay the municipal corporation, district or authority whose facilities are so required to be relocated the reasonable expenses of relocation, less any benefits and salvage of the relocation.

(2) Subsection (1) of this section shall not apply to:

(a) Facilities located in or on the right of way of a state highway under permits issued by the department upon the condition that the permittee would bear the cost of any relocation; or

(b) Facilities located in or on the right of way of a state highway where the municipal corporation, district or authority established under ORS chapter 264, 450, 451 or 545, has placed such facilities in or on the right of way of the state highway without a permit from the Oregon

Transportation Commission or has refused to execute a permit as required by law or commission regulations. However, this paragraph shall not apply where such municipal corporation, district or authority has located facilities in or on the right of way of a city street or county road with the permission of the governing body of such city or county before such city street or county road was selected and designated a state highway by the Department of Transportation pursuant to ORS 366.290 or 373.010. [1967 c.272 s.1; 1975 c.587 s.1; 1975 c.782 s.51a]

366.332 Definitions for ORS 366.332 and 366.333. As used in ORS 366.332 and 366.333:

(1) "Real property" includes any right, title or interest in real property.

(2) "Utility" means any corporation, including municipal or quasi-municipal corporation, company, individual, association of individuals, lessee, trustee or receiver, that owns, operates, manages or controls all or part of any plant or equipment in this state, whether or not such plant or equipment or part thereof is wholly within or outside any city, which plant or equipment is used, directly or indirectly:

(a) For the conveyance of telegraph or telephone messages, with or without wires;

(b) For the transportation of water, gas or petroleum products by pipelines;

(c) For the production, transmission, delivery or furnishing of heat, light, water, power, electricity or electrical impulses; or

(d) For the transmission and delivery of television pictures and sound by cables. [1965 c.382 s.2]

Return to Top

366.333 Acquisition of utility real property; exchange of land for right of way. (1) If real property upon which utility facilities are located is necessary for city street, public road or state highway location, relocation, construction, reconstruction, betterment or maintenance, and any portion of the real property is likewise required by the utility for the proper operation of its business, but the utility is willing to convey the real property to the state for city street, public road or state highway purposes in exchange for other real property within a reasonable distance, the state, through the Department of Transportation, may acquire by purchase, agreement or by the exercise of the power of eminent domain, other real property, except that of another utility, within a reasonable distance. After having acquired such real property, the state, through the department, may convey it to the utility in exchange for the real property required from the utility for city street, public road or state highway purposes. The difference in the value of the respective real properties shall be considered by the department in making the exchange.

(2) ORS 366.332 and this section do not vest in any utility any right, title or interest in any city street, public road, state highway or other public property. [1965 c.382 ss.3,4]

366.365 Going upon private property. The Department of Transportation may go upon private property for the purpose of examination, inspection or survey to determine the advisability or

practicability of locating and constructing a highway thereover, or the source, suitability or availability of road-building materials thereon. The department may exercise this authority prior to the filing or commencement of condemnation proceedings, but in the exercise of such authority no damage shall be done the property nor shall the owner be unnecessarily inconvenienced or disturbed in the use and enjoyment of the property of the owner. [Amended by 1953 c.252 s.2]

APPROACH ROADS, PRIVATE CROSSINGS AND OTHER FACILITIES UPON RIGHT OF WAY

374.305 Necessity of permission to build on rights of way. (1) No person, firm or corporation may place, build or construct on the right of way of any state highway or county road, any approach road, structure, pipeline, ditch, cable or wire, or any other facility, thing or appurtenance, or substantially alter any such facility, thing or appurtenance or change the manner of using any such approach road without first obtaining written permission from the Department of Transportation with respect to state highways or the county court or board of county commissioners with respect to county roads.

(2) After written notice of not less than 10 days to the permittee and an opportunity for a hearing, the department with respect to crossings over a state highway and the county court or board of county commissioners with respect to crossings over a county road may abolish any crossing at grade by a private road or may alter or change any private road crossing when the public safety, public convenience and the general welfare require the alteration or change.

(3) As used in ORS 374.305 to 374.330:

(a) "Approach road" includes a private road that crosses a state highway or a county road.

(b) "Private road crossing" means a privately owned road designed for use by trucks which are prohibited by law from using state highways, county roads or other public highways. [Amended by 1955 c.424 s.1; 1957 c.323 s.1; 1967 c.497 s.1]

Return to Top

374.307 Removal or repair of installation constructed without permission. (1) If any person, firm or corporation builds or constructs on the right of way of any state highway or county road any approach road or any other facility, thing or appurtenance without first obtaining the written permission required by ORS 374.305, the Department of Transportation or the county governing body shall, after the expiration of 30 days following the transmittal of a written notice to such person, firm or corporation, at the expense of such person, firm or corporation, remove all such installations from the right of way or reconstruct, repair or maintain any such installation in accordance with or as required by the rules and regulations. This expense may be recovered from such person, firm or corporation by the state or county in any court of competent jurisdiction.

(2) Notwithstanding subsection (1) of this section, if the Department of Transportation, county

governing body or designated agent of the department or governing body, whichever is applicable, determines that a traffic or pedestrian hazard is created by the construction which causes imminent danger of personal injury, it may:

(a) Order the construction removed, repaired or maintained to eliminate the hazard, within 24 hours after delivery of written notice to the person, firm or corporation which caused the construction, and to the owner of the property on which the construction occurred.

(b) If the hazard is not removed within the time set under paragraph (a) of this subsection, remove the hazard and recover the expenses of any removal, repair or maintenance from any such person, firm or corporation in any court of competent jurisdiction. [1955 c.424 s.5; 1979 c.873 s.1]

374.310 Rules and regulations; issuing permits. (1) The Department of Transportation with respect to state highways and the county court or board of county commissioners with respect to county roads shall adopt reasonable rules and regulations and may issue permits, not inconsistent with law, for the use of the rights of way of such highways and roads for the purposes described in ORS 374.305. However, the department shall issue no permit for the construction of any approach road at a location where no rights of access exist between the highway and abutting real property.

(2) Such rules and regulations and such permits shall include such provisions, terms and conditions as in the judgment of the granting authority may be in the best interest of the public for the protection of the highway or road and the traveling public and may include, but need not be limited to:

(a) Provisions for construction of culverts under approaches, requirements as to depth of fills over culverts and requirements for drainage facilities, curbs, islands and other facilities for traffic channelization as may be deemed necessary.

(b) With respect to private road crossings, additional provisions for the angle of intersection, crossing at grade or other than grade, sight distances, safety measures including flaggers, crossing signs and signals, reinforcement for protection of the highway, maintenance of the crossing and for payment by the applicant of the costs of any of the foregoing.

(c) With respect to private road crossings, the granting authority may also require the applicant to furnish public liability and property damage insurance in a sum fixed by the granting authority, which insurance shall also indemnify the members, officers, employees and agents of such authority from any claim that might arise on account of the granting of the permit and the crossing of the highway or road by vehicles operating under the permit; and the granting authority may also require the applicant to furnish indemnity insurance, an indemnity bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in a sum fixed by the granting authority, indemnifying such authority for any damage to the highways or roads that may be caused by the use of the crossing.

(3) The powers granted by this section and ORS 374.315 shall not be exercised so as to deny any

property adjoining the road or highway reasonable access. [Amended by 1955 c.424 s.2; 1957 c.323 s.2; 1967 c.497 s.2; 1991 c.331 s.59; 1997 c.249 s.119; 1997 c.631 s.467]

Return to Top

374.315 Construction under permits; maintenance after construction. All construction under the permits issued under ORS 374.310 shall be under the supervision of the granting authority and at the expense of the applicant. After completion of the construction of the particular approach road, facility, thing or appurtenance, they shall be maintained at the expense of the applicant and in accordance with the rules and regulations adopted pursuant to ORS 374.310.

374.320 Removal or repair of installation on right of way at expense of applicant. (1) Upon failure of the applicant to construct or maintain the particular approach road, facility, thing or appurtenance in accordance with the rules and regulations and the conditions of the permit, the Department of Transportation or the county governing body shall, after the expiration of 30 days following the transmittal of a written notice to the applicant, at applicant's expense, remove all such installations from the right of way or reconstruct, repair or maintain any such installation in accordance with or as required by such rules and regulations and the conditions of such permit. This expense may be recovered from the applicant by the state or county in any court of competent jurisdiction.

(2) Notwithstanding subsection (1) of this section, if the Department of Transportation, county governing body or designated agent of the department or governing body, whichever is applicable, determines that a traffic or pedestrian hazard is created by the noncompliance which causes imminent danger of personal injury, it may:

(a) Order the construction removed, repaired or maintained to eliminate the hazard, within 24 hours after delivery of written notice to the applicant, and to the owner of the property on which the noncompliance occurred.

(b) If the hazard is not removed within the time set under paragraph (a) of this subsection, remove the hazard and recover the expenses of any removal, repair or maintenance from the applicant in any court of competent jurisdiction. [Amended by 1955 c.424 s.3; 1979 c.873 s.2]

374.325 Effect of ORS 374.305 to 374.325. Nothing in ORS 374.305 to 374.325 shall:

(1) Limit or affect any of the powers granted to, or duties imposed upon, the county courts or boards of county commissioners, the Department of Transportation or the Public Utility Commission by ORS 758.010 and 758.020, or any rights granted or authorized under those statutes.

(2) Grant any right for the construction or placing of an approach road, structure, pipeline, ditch, cable or wire, or other facility, thing or appurtenance on the right of way of any highway. [Amended by 1957 c.323 s.3]

374.330 Prior status preserved. (1) Nothing in ORS 374.305, 374.310 and 374.325, as such sections were amended by chapter 323, Oregon Laws 1957, shall be deemed to affect any approach road, structure, pipeline, ditch, cable or wire, or other facility, thing or appurtenance lawfully placed or constructed upon the right of way of any highway prior to August 20, 1957.

(2)(a) Nothing in ORS 374.305 or 374.310 as such sections are amended by chapter 497, Oregon Laws 1967, shall be deemed to affect any approach road, structure, pipeline, ditch, cable or wire, or other facility, thing or appurtenance lawfully placed or constructed upon the right of way of any state highway or county road prior to September 13, 1967.

(b) Except as provided in paragraph (a) of this subsection, private road crossings authorized by the Public Utility Commission under ORS 374.205 to 374.260 (1965 Replacement Part) are subject to ORS 374.305 to 374.330 after September 13, 1967. [1957 c.323 s.4; 1967 c.497 s.3]

Return to Top

OREGON UTILITY NOTIFICATION CENTER

757.542 Definitions. As used in ORS 757.542 to 757.562 and 757.993:

(1) "Business day" means any 24-hour day other than a Saturday, Sunday or federal or state legal holiday.

(2) "Damage" means harm to or destruction of underground facilities including, but not limited to, the weakening of structural, lateral or subjacent support; the penetration, impairment or destruction of any coating, housing or other protective device; and the denting of, penetration into or severance of underground facilities.

(3) "Excavation" means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except sidewalk, road and ditch maintenance less than 12 inches in depth that does not lower the road grade or original ditch flow line. "Excavation" does not include the tilling of soil for agricultural purposes conducted on private property that is not within the boundaries of a recorded right of way or easement for underground facilities.

(4) "Excavator" means any person who engages in excavation.

(5) "Operator" means any person, public utility, municipal corporation, political subdivision of the state or other person with control over underground facilities.

(6) "Underground facilities" means items partially or entirely below the surface of the ground for use in connection with the storage or conveyance of electrical energy, water, sewage, petroleum products, gas, gaseous vapors or hazardous liquids, or the transmission of electronic, telephonic, telegraphic or cable communications. Such items include, but are not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors that are underground.

(7) "Unlocatable underground facilities" means underground facilities that cannot be marked with reasonable accuracy, including nonconductive sewers and nonmetallic underground facilities that have no trace wires. [1995 c.691 s.1]

Note: 757.542 to 757.562 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 757 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

757.545 [Repealed by 1971 c.655 s.250]

757.546 [1987 c.599 s.2; repealed by 1995 c.691 s.8]

757.547 Oregon Utility Notification Center; board; member qualifications; terms; meetings. (1)(a) The Oregon Utility Notification Center is created as an independent not-for-profit public corporation. The corporation shall be governed by a board of directors consisting of one member appointed to represent each of the following:

(A) Cities with a population of 25,000 or more;

(B) Cities with a population under 25,000;

(C) Counties;

(D) Natural gas utilities regulated by the Public Utility Commission under ORS chapter 757;

(E) Electric utilities regulated by the Public Utility Commission under ORS chapter 757;

(F) Water districts, special districts, sanitary districts or water and sanitary authorities;

(G) Telecommunications utilities serving less than 15,000 access lines and regulated by the Public Utility Commission under ORS chapter 759;

(H) Telecommunications utilities serving 15,000 access lines or more and regulated by the Public Utility Commission under ORS chapter 759;

(I) Telecommunications cooperatives;

(J) Electric cooperatives;

(K) People's utility districts;

(L) Contractors;

(M) Excavators;

(N) Railroads;

(O) Cable system operators; and

(P) Municipal electric utilities.

(b) To facilitate appointment of members of the first board of directors, the Public Utility Commission shall, by order, select organizations that are most representative of each of the groups set forth in paragraph (a) of this subsection. Each organization so selected may nominate a member for the board and may, within the time allowed by the commission's order, submit the name of the nominee to the Governor, who shall consider the nominee before making any other appointment to the board.

(c) After appointment of the first board of directors, to facilitate appointment of new members to the board, the board shall, by rule, select organizations that are most representative of each of the groups set forth in paragraph (a) of this subsection. Each organization so selected may nominate a member for the board and may, within the time allowed by rule, submit the name of the nominee to the Governor, who shall consider the nominee before making any other appointment to the board.

(d) If the board of directors determines that a group not listed in paragraph (a) of this subsection should be represented on the board, the board may select an organization that is most representative of the group and may ask that organization to nominate a member. Upon receipt of the nomination, the board may request that the Governor appoint the nominee.

(e) The Governor shall also appoint to the board of directors one employee of the commission and one employee of the Department of Transportation.

(2) The term of office of a member is four years. A member is eligible for reappointment. Before the expiration of the term of a member, the board of directors shall solicit a nomination as provided in subsection (1) of this section and the Governor shall appoint a successor. If there is a vacancy for any cause, the board shall solicit a nomination as provided in subsection (1) of this section and the Governor shall make an appointment to become immediately effective for the unexpired term. A member may continue to serve until a successor is appointed. Nothing in this subsection or subsection (1) of this section shall restrict the authority of the Governor to appoint a person other than one of the persons nominated according to this subsection or subsection (1) of this section.

(3) The board of directors shall select one of its members as chairperson and another as vice chairperson, for such terms and with such duties and powers as the board considers necessary for the performance of the functions of those offices. A minimum of seven of the members of the board constitutes a quorum for the transaction of business.

(4) The board of directors shall meet at least once every three months at a time and place determined by the board. The board shall meet at such other times and places specified by the call of the chairperson or of a majority of the members of the board. [1995 c.691 s.2]

Note: See note under 757.542.

757.550 [Repealed by 1971 c.655 s.250]

757.551 [1987 c.599 s.3; repealed by 1995 c.691 s.8]

Return to Top

757.552 Duties of center; fees for services; rules; exemption from certain financial administration laws. (1) It is the function of the board of directors to operate the Oregon Utility Notification Center, through which a person shall notify operators of underground facilities of proposed excavations and request that the underground facilities be marked.

(2) The board of directors shall:

(a) Utilize a competitive process to contract with any qualified person to provide the notification required under subsection (1) of this section.

(b) Subject to subsection (3) of this section, establish rates, on a per call basis, under which subscribers shall pay to fund all of the activities of the Oregon Utility Notification Center.

(c) Adopt rules according to ORS 183.310 to 183.550 to become effective July 1, 1997, that regulate the notification and marking of underground facilities to prevent damage to underground facilities. The rules, insofar as is practicable, shall be consistent with the Oregon Utilities Coordinating Council Standards Manual of March 31, 1995.

(3) The Oregon Utility Notification Center shall have all of the powers of a state agency. Except as provided in subsection (2) of this section, the provisions of ORS chapters 240, 276, 279, 282, 283, 291, 292 and 293 shall not apply to the Oregon Utility Notification Center.

(4) Notwithstanding subsection (2)(b) of this section, the board of directors shall not establish rates or other charges that require payments from any subscriber who receives fewer than 50 telephone calls in the calendar year or that result in annual payments of more than $500 for any of the following subscribers:

(a) Cities with a population under 15,000;

(b) Telecommunications utilities serving fewer than 15,000 access lines and regulated by the Public Utility Commission under ORS chapter 759;

(c) Cable system operators serving fewer than 15,000 customers;

(d) Utilities, special districts, people's utility districts or authorities providing electricity, water or sanitary sewer service to fewer than 15,000 residential customers; and

(e) Telecommunications cooperatives. [1995 c.691 s.3]

Note: See note under 757.542.

757.555 [Amended by 1971 c.655 s.49; renumbered 756.555]

757.556 [1987 c.599 s.5; repealed by 1995 c.691 s.8]

Return to Top

757.557 Underground utility facility operators required to subscribe to center; liability for damage from excavation for nonsubscribers; exemption. (1) On or before July 1, 1997, every operator of underground facilities shall subscribe to the Oregon Utility Notification Center.

(2) On and after July 1, 1997, any person intending to excavate shall notify the Oregon Utility Notification Center at least two but not more than 10 business days before commencing an excavation. The board of directors shall, by rule, provide an exception to the requirement of advance notice for excavators in cases that involve an immediate danger to life or property, or a customer service outage. The board may adopt additional exceptions as the board, in its discretion, determines necessary.

(3) After July 1, 1997, nonsubscribing operators of underground facilities shall be responsible to all injured parties for all costs associated with damages to such facilities, loss of product or service or damages that occur as a result of excavation where the facilities damaged are under the control of the nonsubscribing operator and proper notice was given to the Oregon Utility Notification Center.

(4) The provisions of this section shall not apply to operators of underground facilities that are located entirely on private property and that provide services exclusively for the use of residents or owners of the property. [1995 c.691 s.4]

Note: See note under 757.542.

757.560 [Repealed by 1971 c.655 s.250]

757.561 [1987 c.599 s.4; repealed by 1995 c.691 s.8]

757.562 Report to Legislative Assembly of center activities; contracts to carry out duties. (1) The board of directors shall file with the Legislative Assembly and the Governor, not later than April 15 of each year, a report covering the activities and operations of the Oregon Utility Notification Center for the preceding calendar year according to the provisions of ORS 192.230 to 192.250.

(2) In carrying out the duties, functions and powers imposed by law on the Oregon Utility

Notification Center, the board of directors may contract with any state agency or private party for the performance of such duties, functions and powers as the board considers appropriate. [1995 c.691 s.5]

757.993 Penalty for violation of utility excavation notification provisions. (1) Except as provided in subsection (2) of this section and in addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than $1,000 for the first violation and not more than $5,000 for each subsequent violation.

(2) In addition to all other penalties provided by law, every person who intentionally violates or who intentionally procures, aids or abets in the violation of any rule of the Oregon Utility Notification Center shall incur a penalty of not more than $5,000 for the first violation and not more than $10,000 for each subsequent violation.

(3) Each violation of any rule of the Oregon Utility Notification Center shall be a separate offense. In the case of a continuing violation, each day that the violation continues shall constitute a separate violation.

(4) Penalties under this section shall not be imposed except by order following complaint as provided in ORS 756.500 to 756.610. A complaint must be filed within two years following the date of the violation.

(5) The Public Utility Commission may reduce any penalty provided in this section on such terms as the commission considers proper if:

(a) The defendant admits to the violation or violations alleged in the complaint and makes a timely request for reduction of the penalty; or

(b) The defendant submits to the commission a written request for reduction of the penalty within 15 days from the date of the penalty order.

(6) If the amount of the penalty is not paid to the commission, the Attorney General, at the request of the commission, shall bring an action in the name of the State of Oregon in the Circuit Court for Marion County to recover the penalty. The action shall not be commenced until after the time has expired for an appeal from the findings, conclusions and order of the commission.

(7) Notwithstanding any other provision of law, the commission shall pay penalties recovered under this section to the Oregon Utility Notification Center.

(8) The commission shall not seek penalties under this section except in response to a complaint alleging a violation of a rule or rules adopted by the Oregon Utility Notification Center. The commission may investigate any such complaint, and the commission shall have sole discretion to seek penalties under this section. [1995 c.691 s.7]

RIGHTS OF WAY

758.010 Authority to construct lines and facilities; requirements and conditions by public officials. (1) Except within cities, any person or corporation has a right and privilege to construct, maintain and operate its water, gas, electric or communication service lines, fixtures and other facilities along the public roads in this state, as defined in ORS 368.001 or across rivers or over any lands belonging to the state, free of charge, and over lands of private individuals, as provided in ORS 772.210. Such lines, fixtures and facilities shall not be constructed so as to obstruct any public road or navigable stream.

(2) A county governing body and the Department of Transportation have authority to designate the location upon roads under their respective jurisdiction, outside of cities, where lines, fixtures and facilities described in this section may be located, and may order the location of any such line, fixture or facility to be changed when such governing body or department deems it expedient. Any line, fixture or facility erected or remaining in a different location upon such road than that designated in any order of the governing body or department is a public nuisance and may be abated accordingly.

(3) The state officer, agency, board or commission having jurisdiction over any land belonging to the state with respect to which the right and privilege granted under subsection (1) of this section is exercised may impose reasonable requirements for the location, construction, operation and maintenance of the lines, fixtures and facilities on such land. The person or corporation exercising such right and privilege over any land belonging to the state shall pay the current market value for the existing forest products that are damaged or destroyed in exercising such right and privilege. Such right and privilege of any person or corporation is conditioned upon compliance with the requirements imposed by this subsection. [Amended by 1955 c.123 s.1; 1971 c.655 s.100; 1981 c.153 s.76]

758.020 Joint occupancy of poles required. (1) The county court, board of county commissioners or the Department of Transportation, when designating the location where poles or other aboveground facilities described in ORS 758.010 may be placed on a road or highway which fronts on the ocean or on a river or other body of water and the water frontage of the highway is being developed or maintained for its scenic or recreational value, may require all lines to occupy the opposite side of the right of way, if such joint occupancy can be maintained without undue impairment of service or damage to public life and property.

(2) If the owners of such lines are unable to agree on the terms and conditions of joint occupancy, such department, court or board shall request the Public Utility Commission to determine the practicability of such joint occupancy and the effect thereof upon adequate and safe service by the prospective joint occupants, the location of the lines, and, if found to be practicable, to fix and prescribe the terms and conditions pursuant to which joint occupancy shall be accomplished. Before making or entering an order, such commission shall hold a hearing and make findings in accordance with ORS 756.500 to 756.610, subject to review as provided in ORS 756.580 to 756.610. In fixing terms and conditions pursuant to which joint occupancy shall be accomplished, the Public Utility Commission shall require the installation by each occupant of standards, devices and equipment reasonably necessary to protect the equipment of the other

occupants from damage and the public from injury arising from such joint occupancy.

(3) The right of any public utility or telecommunications utility to construct, maintain and operate on a public highway poles or fixtures is contingent on compliance with reasonable requirements established by the Department of Transportation, county courts, boards of county commissioners or the Public Utility Commission under authority of this section and ORS 758.010. Such rights are likewise contingent and conditioned on all facilities, equipment and installations being constructed and maintained in strict conformance with modern and approved standards. [Amended by 1971 c.655 s.102; 1987 c.447 s.98]

758.035 Commission's power to enforce joint use of facilities. (1) Every public utility, telecommunications utility, person, association or corporation having conduits, subways, street railway tracks, poles or other equipment on, over or under any street or highway shall for a reasonable compensation permit the use of the same by any public utility or telecommunications utility whenever public convenience or necessity requires such use and such use will not result in irreparable injury to the owner or other users of such equipment nor in any substantial detriment to the service to be rendered by such owners or other users.

(2) In case of failure to agree upon such use or the conditions or compensation for such use, any public utility, telecommunications utility, person, association or corporation interested may apply to the Public Utility Commission, and if after investigation the commission ascertains that public convenience or necessity requires such use and that it would not result in irreparable injury to the owner or other users of such equipment, the commission shall by order direct that such use be permitted and prescribe reasonable conditions and compensation for such joint use.

(3) The use so ordered shall be permitted and the prescribed conditions and compensation shall be the lawful conditions and compensation to be observed, followed and paid, subject to recourse to the courts upon the complaint of any interested party as provided in ORS 756.580 to 756.610, and such statutes so far as applicable shall apply to any suit arising on a complaint so made. Any such order of the commission may be from time to time revised by the commission upon application of any interested party or upon the commission's own motion. All public utilities and telecommunications utilities shall afford all reasonable facilities and make all necessary regulations for the interchange of business, or traffic carried or their product between them, when ordered by the commission so to do. [Formerly 757.040; 1987 c.447 s.99]