Chapter 772

1955 REPLACEMENT PART

Rights of Way for Public Uses

CONDEMNATION OF PROPERTY BY PRIVATE CORPORATIONS GENERALLY

772.005 Definition of "road"
772.010 Right of entry for survey of proposed right of way
772.015 Condemnation of lands for rights of way and necessary facilities
772.020 Condemnation of additional land for railway purposes
772.025 Necessity of approval of Public Utility Commissioner before railroad may cross or connect with another railroad
772.030 Condemnation of right of way through canyon or pass for joint use by railroads
772.035 Acquisition of water rights by corporations for canal, irrigation, domestic or stock purposes
772.040 Condemnation rights of pipe corporations
772.045 Right to cut timber and build aqueducts
772.050 Condemnation of riparian rights and for reservoirs
772.055 Condemnation procedure
772.060 Condemnation rights for change of grade or location of road, canal or pipes
772.065 Appropriation of county road or property in lieu thereof by agreement with county court
772.070 Procedure on dispute between county and corporation

APPROPRIATION OF PUBLIC LANDS FOR ROADS AND BRIDGES

772.100 Definitions
772.105 Authority to appropriate; when tolls may be collected
772.110 Width of road and width of clearing through timber
772.115 Bridges and ferries required on the road line
772.120 Notice of completion of road; right of travel on payment of tolls
772.125 Tolls chargeable only at gate; posting of tolls; exempt travel
772.130 Fixing of toll rates by county court
772.135 Forfeiture of charter for unlawful toll charges; prosecutions
772.140 Civil penalty for evading payment of toll or for illegal collection of toll
772.145 Bridge as common highway following notice of completion; limiting rate of speed
772.150 Collection and posting of tolls on bridges; civil penalty for evasion and illegal collection of tolls
772.155 Accounting of expenditures and collections
772.160 Purchase or condemnation of toll road or bridge by county for free public use

CONDEMNATION BY TELEPHONE, TELEGRAPH AND ELECTRIC CORPORATIONS

772.205 Definition of "telephone, telegraph and electric corporation"
772.210 Right of entry and condemnation of lands and timber
772.215 Appropriation of public lands for poles and lines
772.220 Appraisal method of determining and awarding damages

CONDEMNATION FOR DRAINAGE, IRRIGATION, WATER SYSTEMS OR SEWER SYSTEMS

772.305 Condemnation of right of way for drainage or irrigation
772.310 Right to enlarge existing irrigation system
772.315 Condemnation of lands and water rights for water and sewer systems

CONDEMNATION BY CORPORATIONS FOR REDUCTION OF ORES, MINING, QUARRIES, LUMBERING AND TRANSPORTATION OF MINING PRODUCTS

772.405 Condemnation by corporations for reduction of ores
772.410 Right of entry and condemnation by mining, quarrying and lumber corporations
772.415 Public benefit and use of facilities constructed under ORS 772.410
772.420 Condemnation for transportation of minerals; conditions of reversion

CONDEMNATION BY PIPE LINE AND GAS CORPORATIONS

772.505 Definitions for ORS 772 505 to 772.525
772.510 Right of entry and condemnation by pipeline corporations
772.515 Regulations concerning location of pipes
772.520 Resolution to be adopted and filed prior to condemnation showing route and termini of pipe line
772.525 Effect of ORS 772 505 to 772.520 on ORS 772 555 and 772.560
772.555 Right of entry and condemnation by gas corporations
772.560 Appropriation of public lands by gas corporation

CONDEMNATION FOR HARD SURFACE ROAD CORPORATIONS

772.605 Right of entry and condemnation by corporations constructing hard surface roads; use of roads; tolls

CROSS REFERENCES

Approval of planning commission or governing body of city or county required before creating street or way to partition land, 92 014
Cemetery lands exempt from condemnation, 64 040, 64 080, 64 280, 64 320
Condemnation of private property not permitted without compensation, Const Art XI, § 4, Const Art. I, § 18
Foreign utilities, condemnation by, 57 815
Lis pendens, necessity for filing in action or suit affecting land, 93 740, 94 515
Navigable streams, lines or bridges across, construction of when authorized by State Land Board, 376 620
Public uses for which private property may be condemned, Const Art I, § 18
State Highway Commission acquisition of rights of way by, 366 320 to 366 335

772.020

Clearing railroad right of way of debris on forest lands, 477 246
Crossing located but unconstructed railway, 35 010
Fences and crossings on railroad right of way, 608 310
Highways, through, interference with railroad facilities, 374 020
Railroad crossings, Ch 763
Railroads crossing each other, determination of method of crossing, 763.180 to 763.200
Side lines and extensions, procedure for construction, 760.060
State lands, right of way over, 273 180
Water rights, condemnation of for railroad purposes, 537 310

772.040

Construction and maintenance of adequate bridge or culvert over ditch or pipe across highway, 376 615

772.105

Franchise toll roads, 383 210 to 383 280

772.145

Toll bridges, 383 310 to 383 380

772.210

Condemnation for municipal telephone systems, 225 130 to 225 160

772.305

Drainage districts, condemnation of land by, 547 305

772.315

Appropriation of waters generally, Ch 537
City improvements, special condemnation procedure for, 223 005 to 223 040
City sewer systems, condemnation of, 224.020, 224 210
Drainage districts, appropriation of water by, 547 310
Joint condemnation of water rights with other cities, 225 050
Municipal condemnation proceedings generally, 223 105 to 223 175
Municipal utilities, condemnation of, 225 020
People's utility districts, appropriation of waters by, 261 325, 261 330
Power projects, appropriation of water for, 543 110 to 543 150
Water, appropriation for municipal use, 225 290, 225 300
Water resources policy, state conformance with required, 536 300 to 536 400

772.410

Flume ways for floating timber, permits by county court for construction of on county roads, 376 610
Forest products, condemnation for transportation of, Ch 768
Logging railroads, acquisition of right of way for, 376 145, 376 505 to 376 540

772.515

Construction of adequate bridges over pipe lines crossing highways, 376 615

772.560

Construction of adequate bridges over pipe lines crossing highways, 376 615

772.605

Franchise toll roads, 383 210 to 383 280

CONDEMNATION OF PROPERTY BY PRIVATE CORPORATIONS GENERALLY

772.005 Definition of "road." As used in ORS 772.010 to 772.070, unless the context requires otherwise, "road" means any macadamized road, plank road and clay road.

772.010 Right of entry for survey of proposed right of way. A corporation organized for the construction of a railway, road, canal or bridge, or of any ditch or flume for the conducting of water for irrigation or domestic purposes, or for the purpose of selling water to the public for general purposes for public use, or for conducting water by means of pipe laid upon or under the surface of the ground; or for the manufacture, use or sale of electricity for lighting or power purposes, or desiring to use such electrical power in the operation of any railway, shall have a right to enter upon any land, between the termini thereof or elsewhere, for the purpose of examining, locating or surveying the lines of such electric company, railway, road, canal, bridge, ditch, flume or pipeline, for the purpose of surveying or measuring any lands or rights appurtenant thereto needed for such purposes, doing no unnecessary damage thereby

772.015 Condemnation of lands for rights of way and necessary facilities. Any corporation mentioned in ORS 772.010 may condemn so much land as may be necessary for the lines of such railway, road, canal, bridge, ditch, flume or pipeline, not exceeding 100 feet in width, besides a sufficient quantity of land for toolhouses, workshops, materials for construction, timber excepted, and a right through such adjacent land to enable such corporation to construct and repair its lines, poles, towers, wires, underground wires, supports and necessary equipment, railway, road, canal, bridge, ditch, flume or other pipeline, and to make proper drains; except that any corporation organized for the manufacture, use or sale of electricity for lighting or power purposes may condemn so much land as may be necessary for the lines of such corporation (including poles, towers, wires, supports and necessary equipment therefor) not exceeding 100 feet in width, beside a sufficient quantity thereof for substations and switching stations

772.020 Condemnation of additional land for railway purposes. (1) Any railway corporation mentioned in ORS 772.010 may condemn a sufficient quantity of land in addition to that specified in ORS 772.015, for necessary sidetracks, spur tracks and laterals reasonably necessary for manufacuring establishments, also for depot and water stations, cuttings and embankments, and for the proper construction, security and convenient operation of its road.

(2) Any such railway corporation may cross, intersect, join and unite its railway with any other railway at any point in its route, and upon the grounds of such other railway corporation, and make the necessary turnouts, sidings, switches and other conveniences in furtherance of the object of its connection and may condemn to make such crossings. The railway which is or may be intersected by new railways, may unite with the owners of such new railways in forming the intersection and connection, and grant the facilities mentioned in this subsection

772.025 Necessity of approval of Public Utility Commissioner before railroad may cross or connect with another railroad. (1) Whenever any railroad corporation, authorized by ORS 772.020 to condemn the right to cross or connect with any other right of way or constructed line of railroad, is unable to agree with the owner of the line which it desires to cross, it may apply to the Public Utility Commissioner in the manner provided by ORS 760 510, 761 130 to 761.150 and 763 180 to 763.200

(2) Upon such application and upon notice and hearing as provided in ORS 760.510, the commissioner shall determine the right to crossing, intersection or connection, the mode and manner thereof and the compensation to be paid therefor.

(3) No agreement for the crossing of one railroad by another shall be valid without the approval of the commissioner.

772.030 Condemnation of right of way through canyon or pass for joint use by railroads. (1) Any railroad company whose right of way passes through any canyon, pass or defile shall not prevent any other railroad company from the use and occupancy of said canyon, pass or defile for the purpose of its railroad in common with the railroad first located.

(2) Any railroad company authorized by law to condemn property for right of

way or any other corporate purpose, may commence an action for condemnation of a right of way through any canyon, pass or defile for the purpose of its railroad, where right of way has already been located, condemned or occupied by some other railroad company through such canyon, pass or defile for the purpose of its railroad.

(3) Thereupon like proceedings shall be had as are provided by the laws of this state for the condemnation of land for right of way and other railroad purposes. At the time of rendering judgment for damages, the court or judge thereof shall enter a judgment or decree authorizing the railroad to occupy and use the right of way, roadbed and track, if necessary, in common with the railroad company already occupying or owning the same, and defining the terms and conditions upon which the same shall be so occupied and used in common.

772.035 Acquisition of water rights by corporations for canal, irrigation, domestic or stock purposes. Any corporation organized in whole or in part for the construction of a canal for navigating or manufacturing purposes or of any ditch or flume for the purpose of conveying water for irrigating, domestic or stock purposes may condemn such waterways, water rights or privileges, or otherwise acquire established water rights or privileges, or those initiated by performing any acts required, provided or permitted by law, as may be necessary or convenient for the purpose of supplying, operating, constructing or maintaining the same.

772.040 Condemnation rights of pipe corporations. Except in cities, any corporation organized for conducting water by means of pipe laid upon or under the surface of the ground may, so far as may be necessary for the laying and keeping in repair its water pipes, condemn the use of so much land as may be necessary, and may make whatever cuts and excavations as soon as practicable after condemnation.

772.045 Right to cut timber and build aqueducts. Any electric corporation or railway corporation mentioned in ORS 772.010 may cut down any standing timber in danger of falling upon its line or road, making compensation therefor as provided in ORS 772.055 for lands taken for the use of the corporation, and shall have the right, and may condemn the right, to conduct water thereto by aqueducts.

772.050 Condemnation of riparian rights and for reservoirs. Any corporation mentioned in ORS 772.010 may also condemn:

(1) The rights of riparian proprietors in any lake or stream, to enable such corporation to develop, manufacture or furnish electrical energy for lighting or power purposes, for the operation of any railway in this state, or to manufacture, furnish or sell electrical energy for lighting or power purposes to any city or town in this state, or to any public service corporation doing business therein.

(2) Lands for the sites of reservoirs for storing water for future use, and for rights of way for feeders carrying water to reservoirs, and for ditches, canals, flumes or pipelines carrying the same away.

772.055 Condemnation procedure. No condemnation of private property shall be made under ORS 772.010 to 772.020 or 772.030 to 772.050 until compensation is made to the owner thereof, irrespective of any increased value thereof by reason of the proposed improvement by such corporation, in the manner provided in ORS chapter 35.

772.060 Condemnation rights for change of grade or location of road, canal or pipes. Any corporation may change the grade or location of its road, canal or pipes, not departing from the general route specified in the articles of incorporation, for the purpose of avoiding annoyances to public travel or dangerous or deficient curves or grades, or unsafe or unsubstantial grounds or foundation, or for other like reasonable causes. For the accomplishment of such change it has the same right to enter upon, examine, survey and appropriate the necessary lands and materials as in the original location and construction of such road, canal or water pipes

772.065 Appropriation of county road or property in lieu thereof by agreement with county court. (1) Whenever it is necessary for any corporation mentioned in ORS 772.010 to appropriate all or part of any county road or highway for right of way, the corporation may appropriate so much of the road as may be necessary, and in lieu thereof may condemn or otherwise acquire property contiguous to or as near adjacent to the road as possible in an amount equal to the property to be appropriated

(2) Upon construction by the corporation of a county road or highway on the property so acquired in a manner conformable in the material character of the construction of said highways appropriated and upon the same grade or such other grade as may be agreed upon by the corporation and the county court or board of county commissioners of the county in which the road is located, and upon the acceptance by the county court or board of such newly constructed road, and on the conveyance of same to the county, the corporation shall then become the owner and entitled to the possession of so much of the county road or highway so appropriated.

(3) ORS 772.065 and 772.070 do not apply to roads or streets within any platted or incorporated city or town, or any addition thereto.

772.070 Procedure on dispute between county and corporation. (1) If the county court or board of county commissioners and corporation cannot agree upon the matters of appropriation under ORS 772 065, the dispute shall be referred to the Public Utility Commissioner.

(2) The commissioner, after notice and hearing, shall determine the terms and conditions upon which the corporation may appropriate the county road or highway.

(3) In the proceedings before the commissioner, a full and complete record shall be kept as provided by ORS 760.565

(4) Either party may appeal from the decision of the commissioner to the circuit court of the county in which the road or highway to be appropriated is located, if notice thereof is served on the commissioner and the adverse party within 30 days from the date of the order of the commissioner.

(5) Whenever a notice of appeal is served upon the commissioner under this section, he shall cause a transcript of said proceedings forthwith to be prepared and filed with the county clerk of the county to which the appeal is taken, and in the manner provided by ORS 760 565

(6) The circuit court shall examine into all the questions of law and fact and make such order or decree as may be equitable in the premises.

(7) Either party may appeal to the Supreme Court in the manner prescribed for appeals in equity cases. The taking of such appeal from the decision of the circuit court shall not operate to stay or suspend the decision of the circuit court so appealed from, but the decision shall be effective immediately upon being rendered, and shall be acted upon by the county and corporation and followed, recognized and complied with by them pending such appeal to the Supreme Court and until the final determination thereof.

772.075 to 772.095 [Reserved for expansion]

APPROPRIATION OF PUBLIC LANDS FOR ROADS AND BRIDGES

772.100 Definitions. As used in ORS 772 105 to 772 160, unless the context requires otherwise:

(1) "County court" means the governing body of a county, whether it is a county court or board of county commissioners.

(2) "Road" means any macadamized road, plank road or clay road.

772.105 Authority to appropriate; when tolls may be collected. (1) When it is necessary or convenient in the location of any road or railway to appropriate any part of any public road, street, alley or public grounds not within the corporate limits of a municipal corporation, the county court of the county wherein such road, street, alley or public grounds is located, may agree with the corporation constructing the road, upon the extent, terms and conditions upon which the same may be appropriated or used, and occupied by such corporation. If the parties are unable to agree, the corporation may appropriate so much thereof as is necessary and convenient in the location and construction of the road

(2) Whenever a private corporation is authorized to appropriate any public highway or grounds as mentioned in subsection (1) of this section, within the limits of any town, whether incorporated or not, such corporation shall locate their road upon such particular road, street, alley or public grounds, within such town as the local authorities designate. If the local authorities fail to make such designation within a reasonable time when requested, the corporation may make such appropriation without reference thereto.

(3) Whenever a public highway or grounds is taken by a private corporation by agreement with the local authorities mentioned in subsection (1) of this section, the corporation may place such gates thereon,

and charge and receive such tolls thereat, as the local authorities may consent to by agreement, and none other; but when the same is appropriated without such agreement, as provided in subsection (2) of this section, the corporation shall not place any gate or other obstruction on the public highway or grounds appropriated, nor charge or receive any toll from any person passing over or along the same

772.110 Width of road and width of clearing through timber. Any road constructed by a corporation formed under ORS chapter 57 shall be cleared of standing timber for 30 feet in width of the road, and shall have a track in the center not less than 16 feet wide, finished and kept in good traveling condition, except when the cutting on the road is six feet or more deep on either side, in which case such track need not be more than 10 feet wide, with turnouts of 16 feet in width for every quarter of a mile of such narrow track

772.115 Bridges and ferries required on the road line. All streams or other waters upon the line of such roads shall be safely and securely bridged, except where:

(1) The county court of the county wherein the line of such road may cross such other waters or, if such waters form the boundary between two counties, the county court of either county may authorize the corporation to place a ferry boat upon such waters, to be kept and run for such toll as the county court may prescribe, and in the manner required of ferries established under the general statutes in relation to ferries

(2) The county court may authorize such corporation to connect its road with a ferry already established over such waters under the general statutes in relation to ferries

772.120 Notice of completion of road; right of travel on payment of tolls. (1) Whenever all or a section of a road is completed or fit for public travel, the corporation shall give notice thereof, by publication in some newspaper of general circulation, along the line of such road or section, or by posting notices along the line of such road or section, or by posting notices along such line in some conspicuous place, not less than five miles apart.

(2) Thereafter such road or section is a common highway, so that every person with his stock and vehicles of every description may travel thereon upon the payment of the tolls prescribed by the corporation, subject to the power of the corporation, by giving notice thereof in like manner, to suspend such right of travel upon all or any portion of such road, for a reasonable time, to enable it to make any necessary repairs or improvements thereon

772.125 Tolls chargeable only at gate; posting of tolls; exempt travel. (1) A corporation shall only collect and receive toll on its road at a gate thereon, and such toll shall be plainly and specifically printed or written upon a signboard posted at such gate in plain view of the travel on the road, but such corporation shall not establish any gate within the limits of any town except as provided in subsection (3) of ORS 772 105.

(2) No charge shall be made for a person going with or without property from one part of his farm to another part for traveling upon such road. [Amended by 1953 c.160 §3]

772.130 Fixing of toll rates by county court. (1) The rates of toll that may be charged, collected and received shall be fixed and established by the county court of the county where the road is located or where it has its principal office, at the April term of the court annually, or as soon thereafter as practicable.

(2) This order shall be entered of record, and shall distinctly specify the amount of toll that may be charged upon the following items or classes of persons or property:

(a) Sheep and hogs

(b) Horses, mules, asses and cattle, whether being driven loose or led.

(c) A person other than a footman not traveling in a vehicle.

(d) A two-wheeled vehicle loaded or unloaded

(e) A four-wheeled vehicle loaded or unloaded, with two horses, mules or oxen, and for each additional horse, mule or ox attached to said vehicle

(3) The amount of toll shall be graded and regulated according to the distance traveled or to be traveled upon such road at so much per mile

(4) No greater amount shall be charged or received than that fixed by the county court under this section.

772.135 Forfeiture of charter for unlawful toll charges; prosecutions. If a greater toll is charged, demanded or received than

that allowed by the order of the county court under ORS 772.130, the corporation shall forfeit its charter. The district attorney of the proper county shall prosecute such corporation for violating the laws of this state governing such roads by action or suit in the name of the state

772.140 Civil penalty for evading payment of toll or for illegal collection of toll. (1) Any person traveling upon any road who passes through a gate thereon, without paying the toll legally chargeable thereat, or who goes around such gate, with intent to avoid the payment of such toll, is liable to the corporation for three times the amount of the toll

(2) Any corporation which, by its agents or servants, or in any manner, illegally collects toll from any person traveling on such road, is liable to such person for three times the amount of the toll

772.145 Bridge as common highway following notice of completion; limiting rate of speed. Any bridge constructed by a corporation formed under ORS chapter 57, when completed and fit for public travel, and notice thereof is posted in some conspicuous place on such bridge or by publication in a newspaper, as in the case of a road, is a common highway, within the meaning and subject to the conditions specified in ORS 772.120 as to roads, and subject to the further power of the corporation to prescribe, by advertisement in some conspicuous place in such bridge, the rate of speed anyone may travel on such bridge

772.150 Collection and posting of tolls on bridges; civil penalty for evasion and illegal collection of tolls. (1) A corporation may collect and receive such tolls for crossing its bridge as may be plainly written or printed upon a signboard posted in some conspicuous place on such bridge

(2) Any person who passes over such bridge without paying the toll legally chargeable thereat, or any corporation which illegally collects any toll from any person crossing such bridge, shall be respectively liable to each other for three times the amount of such toll, as provided in ORS 772 140 in case of roads.

772.155 Accounting of expenditures and collections. (1) Every corporation organized for the construction of any road or bridge shall keep an accurate statement or account of the moneys expended by it in the construction of any such road or bridge, and keeping the same in repair, including any sums paid for lands appropriated by it as necessary.

(2) This statement or account shall be verified at the time of the annual meeting held for the election of directors by the president or one of the directors of the corporation, to the effect that he believes the account to be just and correct.

(3) A copy of such verified account shall, within 10 days after the annual election, be deposited with the clerk of the county with whom the articles of incorporation are filed.

(4) The corporation shall also keep an accurate account of the tolls received for traveling upon the road or bridge, or of other profits accruing to it, to be verified in like manner, and a copy thereof to be deposited with the county clerk within 10 days after the annual election

772.160 Purchase or condemnation of toll road or bridge by county for free public use. (1) At any time after the expiration of 10 years from the time of taking tolls on any road or bridge, the county court of any county through which all or part of the road passes, or in which the bridge is situated, may pay to such corporation the amount of money expended by it in the construction of such road or bridge, and keeping the same in repair, and all other necessary expenses, including any sums paid for lands appropriated by such corporation, together with interest on said account, and sums of money at the rate of 20 percent per annum, after deducting from said amount the tolls and other profits annually received by the corporation

(2) After payment under subsection (1) by the county court, the road or bridge shall become free for public travel.

(3) This section does not prohibit the county court, at any time before the expiration of 10 years, from purchasing the road or bridge, for any sum that may be agreed upon by the county court and corporation, nor does it prohibit the county court at any time from acquiring the road or bridge under its power of eminent domain in the usual manner of acquiring rights of way for county and state roads.

772.165 to 772.200 [Reserved for expansion]

CONDEMNATION BY TELEPHONE, TELEGRAPH AND ELECTRIC CORPORATIONS

772.205 Definition of "telephone, telegraph and electric corporation." As used in ORS 772.205 to 772 220, unless the context requires otherwise, "telephone, telegraph and electric corporation" means any corporation organized for the purpose of:

(1) Building, maintaining and operating telephone or telegraph lines for transmission of messages for hire

(2) Building, maintaining and operating lines for the transmission of electricity for lighting or power purposes

(3) Furnishing electric lights or power for hire.

772.210 Right of entry and condemnation of lands and timber. Any telephone, telegraph and electric corporation may:

(1) Enter upon lands within this state for the purpose of examining, locating and surveying the line thereof and also other lands necessary and convenient for the purpose of construction of substations and switching stations by such corporation, doing no unnecessary damage thereby.

(2) Condemn such lands not exceeding 100 feet in width for its lines (including poles, towers, wires, supports and necessary equipment therefor) and in addition thereto, other lands necessary and convenient for the purpose of construction of substations and switching stations by such corporation; and if the lands are covered by trees which are liable to fall and constitute a hazard to its wire or line, any corporation organized for the purpose of building, maintaining and operating a line of poles and wires for the transmission of electricity for lighting or power purposes, and for furnishing lights or power for hire, may condemn such trees for a width not exceeding 300 feet, as may be necessary or convenient for such purpose. The proceedings for the condemnation of such lands shall be the same as that provided in ORS chapter 35.

772.215 Appropriation of public lands for poles and lines. (1) When it is necessary or convenient, in the location of any poles or line of wire mentioned in ORS 772.210, to appropriate any part of any public road, street, alley or public grounds not within the corporate limits of any municipal corporation, the county court or board of county commissioners of the county within which such road, street, alley or public grounds is located, may agree with the corporation erecting the poles or line of wire upon the extent, terms and conditions upon which the same may be appropriated or used and occupied by such corporation. If such parties are unable to agree, the corporation may condemn so much thereof as is necessary and convenient in the location and construction of the poles or line of wire. The provisions of ORS 35 040 to 35 060 are applicable to condemnations under this section.

(2) This section shall not be construed to impair the rights acquired prior to May 21, 1903, by any such corporation in any public road, street, alley or public grounds, whether within the corporate limits of any incorporated town or otherwise, or to authorize a county, city or town to interfere with or to remove any poles or wires already located therein, unless they become public nuisances and interfere with public travel. Any agreement or grant made prior to May 21, 1903, by a county court or municipal corporation of the right to build or maintain any lines of poles and wires for the purposes mentioned in this section or ORS 772 210, in any county or city within which such line of poles and wires is already located, hereby is confirmed, and such line of poles and wires may be maintained and operated so long as they are kept in repair and do not interfere with the convenient use of the highway for travel.

772.220 Appraisal method of determining and awarding damages. (1) Fixtures erected under ORS 758.010 and 758 020 shall not be so constructed as to obstruct any highway, street or navigable stream, nor shall they be set upon the lands of an individual, unless by contract, without paying him for the damages sustained.

(2) If the person over whose land the telegraph, telephone or other line or wire passes, claims more damages than the owners of such wire or line are willing to pay, the amount of damages may be ascertained by having each party select one disinterested person, who together shall select a third person, all of whom shall constitute a board of appraisers, who shall proceed together to the premises and make appraisement of damages. The award of damages by a majority of such board shall be final.

(3) The award shall be reduced to writing, subscribed and sworn to by the apprais-

ers agreeing to the same, and filed in the office of the clerk of the county in which it is made.

(4) The claim for damages in all cases by a private individual shall be made within 12 months after the telegraph is erected over his land.

772.225 to 772.300 [Reserved for expansion]

CONDEMNATION FOR DRAINAGE, IRRIGATION, WATER SYSTEMS OR SEWER SYSTEMS

772.305 Condemnation of right of way for drainage or irrigation. (1) The United States, the state, or any person, firm, cooperative association or corporation, shall have the right of way across and upon public, private and corporate lands or other rights of way, for the construction, maintenance, repair and use of all necessary reservoirs, dams, water gates, canals, ditches, flumes, tunnels, pipe lines or other means of securing, storing and conveying water for irrigation or for drainage, or any other beneficial purpose, upon payment of just compensation therefor.

(2) But such right of way shall in all cases be so constructed, obtained, located and exercised in a manner consistent with proper and economical and engineering construction, so as not to unnecessarily impair practical use of any other right of way, highway or public or private road, nor to unnecessarily injure any public or private property.

(3) Such right may be acquired in the manner provided by law for the taking of private property for public use

772.310 Right to enlarge existing irrigation system. (1) When the United States, the state, or any person, firm or corporation desires to convey water for irrigation, drainage or for any other beneficial purpose, and there is a canal or ditch already constructed that can be enlarged to convey the required quantity of water, then the United States, the state, or any such person, firm or corporation, or the owner or owners of the land through which a new canal or ditch would have to be constructed to convey the quantity of water necessary, may enlarge the canal or ditch already constructed, by compensating the owner of the canal or ditch to be enlarged for the damages, if any, caused by the enlargement

(2) The enlargement may be made at any time between October 1 and March 1, but not any other times, unless upon agreement in writing with the owner or owners of the canal or ditch.

772.315 Condemnation of lands and water rights for water and sewer systems. All municipalities operating water systems and sewer systems, and all water companies operating under charter from the state or license from municipalities, which may maintain public water supplies, may acquire by condemnation such lands and rights in lands and water as are necessary for the successful operation and protection of their plants by proceedings as prescribed by ORS chapter 35.

772.320 to 772.400 [Reserved for expansion]

CONDEMNATION BY CORPORATIONS FOR REDUCTION OF ORES, MINING, QUARRIES, LUMBERING AND TRANSPORTATION OF MINING PRODUCTS

772.405 Condemnation by corporations for reduction of ores. (1) Every corporation organized for the construction and operation of mills, smelters and other works for the reduction of ores authorized to do business within the state may condemn lands and property for the discharge and natural distribution of smoke, fumes and dust from such works in the manner provided by ORS chapter 35

(2) The use of lands by such corporation for the purpose of the discharge and natural distribution of smoke, fumes and dust from any such mill, smelter or other works for the reduction of ores, under the conditions prescribed in this section hereby is declared to be a public use.

(3) The right of eminent domain shall not be exercised by such corporation

(a) Beyond a radius of four miles from such mill, smelter or other works for the reduction of ores

(b) On any land situated within a radius of five miles of the corporate limits of any city in the state.

(c) Until after such corporation has acquired the right to use 50 percent of the area of the lands within a radius of four miles from the mill, smelter or other works for the reduction of ores

772.410 Right of entry and condemnation by mining, quarrying and lumber corporations. Any corporation organized for

the purpose of opening or operating any gold, silver, or copper vein or lode, or any coal or other mine, or any marble, stone or other quarry, or for cutting or transporting timber, lumber, or cordwood, or for the manufacture of lumber:

(1) May construct and operate railroads, skid roads, tramways, chutes, pipe lines and flumes between such points as may be indicated in their articles of incorporation.

(2) May enter upon any land between such points for the purpose of examining, locating and surveying the line of such railroads, skid roads, tramways, chutes, pipe lines and flumes, doing no unnecessary damage thereby.

(3) May condemn so much of said land as may be necessary for the purposes of this section, not exceeding 60 feet in width by a condemnation action as prescribed by ORS chapter 35. [Amended by 1953 c.559 §3]

772.415 Public benefit and use of facilities constructed under ORS 772.410. (1) Railroads, skid roads, tramways, chutes, pipe lines or flumes constructed under ORS 772.410 shall be deemed to be for public benefit.

(2) Such railroad shall afford to all persons equal facilities for the transportation of freight upon payment or tender of reasonable compensation therefor, but shall not be required to carry passengers.

(3) Such skidway, tramway, chute, pipe line or flume shall afford to all persons equal facilities in the use thereof for the purpose to which they are adapted, upon tender or payment of the reasonable compensation for such use. [Amended by 1953 c.559 §3]

772.420 Condemnation for transportation of minerals; conditions of reversion. (1) Any person requiring land for a right of way for the transportation of the products of mines located in this state may acquire such land for such purposes in the manner and subject to the rights, privileges and liabilities under ORS 376.505 to 376.540.

(2) Lands acquired under this section shall not revert to the original owner, his heirs and assigns, until their use as contemplated in this section has ceased for a period of five years

772.425 to 772.500 [Reserved for expansion]

CONDEMNATION BY PIPE LINE AND GAS CORPORATIONS

772.505 Definitions for ORS 772.505 to 772.525. As used in ORS 772 505 to 772 525, unless the context otherwise requires·

(1) "Corporation" includes any corporation transporting, selling or distributing fluids, including petroleum and petroleum products, or natural gases and those organized for constructing, laying, maintaining or operating pipe lines, which are engaged, or which propose to engage in, the transportation of such fluids or natural gases.

(2) "Pipe line" includes pipes, lines, natural gas mains or lines and their appurtenances, including but not limited to pumps and pumping stations, used in transporting or distributing fluids, including petroleum and petroleum products or natural gases.

772.510 Right of entry and condemnation by pipe-line corporations. (1) Any pipeline corporation which is a common carrier and which is regulated as to its rates or practices by the United States or any agency thereof, or which is subject as to its rates for distribution in Oregon as a public utility, may enter upon lands within this state outside the boundaries of incorporated cities.

(2) This right may be exercised for the purpose of examining, surveying and locating a route for any pipe line, but it shall not be done so as to create unnecessary damage.

(3) These corporations may appropriate and condemn such lands, or easements thereon or thereover, in such width as is reasonably necessary to accomplish their corporate purposes, by proceedings for condemnation as prescribed by ORS chapter 35.

772.515 Regulations concerning location of pipes. (1) Whenever such pipe lines are laid along a public road, they shall be placed as closely as practicable to the extreme outside edge of the right of way of such road.

(2) Such pipes or pipe lines shall not pass through or under any cemetery, church, college, school house, residence, business or storehouse, or through or under any building in this state, except by the consent of the owner thereof.

(3) When cultivated lands are appropriated under ORS 772.510, such pipes and pipe lines shall be well buried under ground, at least 20 inches under the surface, and such surface shall be properly and promptly restored by such corporation unless otherwise consented to by the owner of such land.

(4) When unimproved lands of another are appropriated under ORS 772.510 and such lands thereafter become cultivated or improved, such pipes or pipe lines shall be buried by the corporation as provided in subsection (3) of this section, within a reasonable time after notice by the owner of such lands, or his agent, to the corporation or its agent.

772.520 Resolution to be adopted and filed prior to condemnation showing route and termini of pipe line. (1) Prior to the filing of any condemnation action under ORS 772.510, the board of directors of the corporation shall adopt a resolution showing the approximate route and termini of the proposed pipe line, or the extension or branch of any existing pipe line.

(2) A copy of this resolution, certified by the corporate secretary, shall be filed in the office of the Secretary of State, and also in the office of each county clerk of those counties where such pipe line, extension or branch of an existing pipe line is proposed to be constructed.

772.525 Effect of ORS 772.505 to 772.520 on ORS 772.555 and 772.560. ORS 772.505 to 772.520 shall not affect the right of any corporation specified in ORS 772.555 or 772.560, to appropriate and condemn land in the manner and for the purposes therein provided.

772.530 to 772.550 [Reserved for expansion]

772.555 Right of entry and condemnation by gas corporations. Any corporation organized for the purpose of manufacturing, generating, selling or distributing gas for light, heat or power purposes, or for the purpose of constructing, laying, maintaining or operating gas mains, gas lines, pipes and appurtenances therefor, may enter upon lands in this state outside of the boundaries of incorporated cities for the purpose of examining, surveying and locating the lines for any gas mains, gas pipe lines, pipes and the appurtenances therefor, doing no unnecessary damage thereby, and may appropriate and condemn such lands, not exceeding 20 feet in width, as may be necessary or convenient for any such purpose by proceedings for condemnation as prescribed by ORS chapter 35.

772.560 Appropriation of public lands by gas corporation. When it is necessary or convenient in the location of any gas mains, gas pipe lines, pipes and appurtenances therefor, to appropriate any part of any public road, street, alley or public grounds not within the corporate limits of any city, the county court or the board of county commissioners of the county wherein such road, street, alley or public grounds are located, may agree with the corporation so constructing such gas mains, gas pipe lines, pipes and appurtenances therefor, upon the extent, terms and conditions upon which the same may be appropriated, used and occupied by such corporation. If such parties are unable to agree, the corporation may appropriate so much thereof as is necessary or convenient in the location and construction of gas mains, gas pipe lines, pipes and appurtenances therefor. This section and ORS 772.555 shall not be construed to impair any rights acquired by any such corporation from any county court or board of county commissioners prior to May 21, 1915.

772.565 to 772.600 [Reserved for expansion]

CONDEMNATION FOR HARD SURFACE ROAD CORPORATIONS

772.605 Right of entry and condemnation by corporations constructing hard surface roads; use of roads; tolls. (1) A corporation organized for the construction of any hard surface road over its own right of way for public use, may enter upon any land between the termini thereof for the purpose of examining, locating or surveying the line of such hard surface road, doing no unnecessary damage thereby, and may condemn so much of said land as necessary for the line of such hard surface road, not exceeding 100 feet in width, in the manner provided by ORS chapter 35.

(2) Such corporation may use the hard surface road in the carrying of freight and passengers for a use beneficial to the public, with the right to charge and collect tolls therefor, subject to the supervision and regulation of the Public Utility Commissioner.

(3) Before being entitled to exercise the rights granted in this section, the corporation must obtain from the commissioner a certificate of necessity and convenience. For the purposes of such certificate any railroad or electric line serving the same community shall be considered a public utility of the same kind and nature as provided in this section.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173 170, I, Sam R Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173 160 and other changes specifically authorized by law

Done at Salem, Oregon,
on October 15, 1955

Sam R Haley
Legislative Counsel

CHAPTERS 773 TO 775

[Reserved for expansion]