

Chapter 758

1969 REPLACEMENT PART

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GENERAL PROVISIONS

758.010 Authority to construct lines; requirements and conditions by public officials. (1) Except within incorporated cities, any person or corporation has a right and privilege to construct, maintain and operate telegraph lines, telephone lines and lines and wires for the purpose of conveying electric power or electricity along the public roads, highways and streets of the state, or across rivers or over any lands belonging to the state, free of charge, and over lands of private individuals, as provided in ORS 772.205 to 772.220. Such persons or corporations may also erect the necessary fixtures therefor.

(2) The county courts or boards of county commissioners of the several counties through which such lines may be constructed, if the road upon which such lines are constructed is a county highway, and the State Highway Commission, if the road upon which such lines are constructed is a state highway, has power and authority to designate the location upon such roads and highways, outside of cities, where such fixtures may be located, and may order the location of any such fixture to be changed when such court, board or commission deems it expedient. Any fixture erected or remaining in a different location upon such highway than that designated in any order of such court, board or commission 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, wires and fixtures 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 of the requirements imposed pursuant to this subsection and upon making the payments required by this subsection.

[Amended by 1955 c.123 §1]

758.015 Certificate of public convenience and necessity. (1) When any person, as defined in ORS 757.605, providing electric utility service, as defined in ORS 757.605,

proposes to construct an overhead transmission line which will necessitate a condemnation of land or an interest therein, it shall petition the Public Utility Commissioner for a certificate of public convenience and necessity setting forth a detailed description and the purpose of the proposed transmission line, the estimated cost, the route to be followed, the availability of alternate routes, a description of other transmission lines connecting the same areas, and such other information in such form as the commissioner may reasonably require in determining the public convenience and necessity.

(2) The commissioner shall give notice and hold a public hearing on such petition. The commissioner, in addition to considering facts presented at such hearing, shall make his own investigation to determine the necessity, safety, practicability and justification in the public interest for the proposed transmission line and shall enter his order accordingly. The order shall be subject to review as in other cases. In any proceeding for condemnation, a certified copy of such order shall be conclusive evidence that the transmission line for which the land is required is a public use and necessary for public convenience.

(3) This section shall not apply to construction of transmission lines in connection with a project for which a permit or license is otherwise obtained pursuant to state or federal law.

[1961 c.691 §19]

758.020 Joint occupancy of poles required. (1) The county court, board of county commissioners or the State Highway Commission, when designating the location where poles or facilities described in ORS 758.010 may be placed on a road or highway, may require all lines for conveying electric power or electricity to occupy a single pole line on one side of the highway right of way and may require all telegraph, telephone or other lines of communication to occupy a single pole line on the opposite side of the highway and, with respect to any 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 commission, court or board shall request the Public Utility Commissioner 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 commissioner shall hold a hearing and make findings in accordance with ORS 756.510 to 756.570, 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 Commissioner 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 person or corporation to construct, maintain and operate on a public highway poles or fixtures for telegraph, telephone or power purposes is contingent on compliance with reasonable requirements established by the State Highway Commission, county courts, boards of county commissioners or the Public Utility Commissioner 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.

758.030 Public agencies authorized to contract with Federal Government involving location of transmission lines on their property. The State of Oregon, any municipal corporation, including counties, incorporated cities, school districts, reclamation districts, irrigation districts and other public bodies of any kind 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 any such property, which agreements may be in perpetuity or for such length of time as may be specified. However, no such agreement shall affect the constitutional

rights of any owners of private property who do not join therein.

758.040 Sending telegrams in order of receipt. (1) Except as provided in ORS 758.050 and in subsection (2) of this section, any telegraph company doing business in this state who fails to transmit all dispatches in the order in which they are received, is subject to a penalty of \$100, to be recovered with costs of suit by the person whose dispatch is postponed out of its order.

(2) Communications from other telegraphic lines in connection with lines in this state may have precedence over all ordinary private communications and intelligence of general and public interest may be transmitted for publication out of its order.

758.050 Telegrams having priority in time of war or crisis. Every telegraph company shall, on application of any officer of this state or the United States, in case of any war, insurrection, riot or other civil commotion, or resistance of public authority, or for the prevention and punishment of crime, or for the arrest of persons suspected or charged therewith, give to the communications of such officers, immediate dispatch, at the price of ordinary communications of the same length.

758.060 Wrongful disclosure or alteration of telegraphic message. (1) No officer, agent, operator, clerk or employe of any telegraph company, or any other person, shall wilfully:

(a) Divulge to any other person than the party from whom it was received, or to whom it is addressed, or his agent or attorney, any message received, sent or intended to be sent over any telegraph line, or the contents, substance, purport, effect or meaning of such message, or any part thereof; or

(b) Alter any such message by adding thereto or omitting therefrom any words or figures, so as to materially change the sense, purport or meaning of such message, to the injury of the person sending or desiring to send the message, or to whom it was directed.

(2) However, when numerals or words of number occur in any message, the operator or clerk sending or receiving may express the same in words or figures, or in both words and figures, and such fact shall not be deemed an alteration of the message, nor in any manner affect its genuineness, force, or validity.

(3) Any person violating this section, in addition to the penalty prescribed in ORS 758.990, is liable in a civil suit for all damages occasioned thereby.

758.070 Use by company's agent of information contained in message. (1) No agent, operator or employe in any telegraph office, shall in any way use or appropriate any information derived by him from any private message passing through his hands and addressed to any other person, or in any other manner acquired by him by reason of his trust as such agent, operator or employe, or trade or speculate upon any such information so obtained, or in any manner turn or attempt to turn the same to his account, profit or advantage.

(2) Any person violating this section, in addition to the penalty prescribed in ORS 758.990, is liable in treble damages to the party aggrieved, for all loss or injury sustained by reason of such wrongful act.

758.080 Refusing to send or deliver message or sending message out of order. (1) Except as provided in subsection (2) of this section, no agent, operator or employe in any telegraph office, shall unreasonably and wilfully:

(a) Refuse or neglect to send any message received at such office for transmission;

(b) Postpone any message out of its order; or

(c) Refuse or neglect to deliver any message received by telegraph.

(2) This section does not require:

(a) Any message to be received, transmitted or delivered, unless the charges thereon have been paid or tendered;

(b) The sending, receiving or delivery of any message counseling, aiding, abetting or encouraging treason against the Government of the United States or of this state, or other resistance to the lawful authority, or any message calculated to further any fraudulent plan or purpose, or to instigate or encourage the perpetration of any unlawful act, or to facilitate the escape of any criminal or person accused of crime.

758.090 Meaning of "telegraphic copy" for ORS 758.100 and 758.110. As used in ORS 758.100 and 758.110, "telegraphic copy" means any copy of a message made or prepared for delivery at the office to

which the message may have been sent by telegraph.

758.100 Making and drawing of checks and notes by wire. (1) Checks, duebills, promissory notes, bills of exchange and all orders or agreements for the payment or delivery of money or other thing of value may be made or drawn by telegraph, and when so made or drawn:

(a) Have the same force and effect to charge the maker, drawer, indorser or acceptor thereof;

(b) Create the same rights and equities in favor of the payee, drawee, indorsee, acceptor, holder or bearer thereof; and

(c) Are entitled to the same days of grace, as if duly made or drawn and delivered in writing.

(2) No person other than the maker or drawer thereof shall cause any such instrument to be sent by telegraph so as to charge any person thereby.

(3) Except as provided in ORS 41.730, whenever the genuineness or execution of any such instrument received by telegraph is denied on oath by the person sought to be charged thereby, it is incumbent upon the party claiming under or alleging the same to prove the existence and execution of the original writing from which the telegraphic copy was transmitted.

(4) The original message shall in all cases be preserved in the telegraph office from which it is sent.

758.110 Manner of expressing private and official seals in telegrams. Whenever any document to be sent by telegraph bears a seal, either private or official, it is not necessary for the operator to telegraph a description of the seal, or any word or device thereon, but the seal may be expressed in the telegraphic copy by the letters "L. S.," or by the word "seal."

UNDERGROUND ELECTRIC AND COMMUNICATIONS FACILITIES

758.210 Policy. The legislature finds that in many areas of this state landowners, utilities and public authorities desire to convert existing overhead electric and communication facilities to underground facilities by means of special assessment proceedings. The legislature declares that a public purpose will be served and that the public welfare will be

promoted by providing a procedure to accomplish such conversion by special assessment proceedings and that it is in the public interest for such conversion to be accomplished as provided in ORS 758.210 to 758.270.

[1969 c. 385 §1]

758.215 Definitions for ORS 758.210 to 758.270. As used in ORS 758.210 to 758.270, unless the context requires otherwise:

(1) "Convert," "converting" or "conversion" means the removal of overhead electric or communication facilities and the replacement thereof with underground electric or communication facilities at the same or different locations.

(2) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including but not limited to poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cutouts, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances, and all related facilities required for the acceptance of electric or communication services; however:

(a) "Electric facilities" does not include any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of 35,000 volts.

(b) "Communication facilities" does not include facilities used or intended to be used for the transmission of intelligence by microwave or radio, apparatus cabinets or outdoor public telephones.

(c) "Electric or communication facilities" does not include any electric or communication facilities owned or used by or provided for a railroad or pipeline and located upon or above the right of way of the railroad or pipeline.

(3) "Landowner" or "owner" means the owner of the title to real property or the contract purchaser of real property of record as shown on the last available complete assessment roll in the office of the county assessor.

(4) "Overhead electric or communication facilities" means electric or communication facilities located above the surface of the ground.

(5) "Public authority" means a city or county

(6) "Public lands and right of way" includes rights of way for streets, roads and highways and all land or interests in land owned by a public authority.

(7) "Underground assessment district" or "district" means an assessment district created as provided by ORS 758.210 to 758.270.

(8) "Underground electric or communication facilities" means electric or communication facilities located below the surface of the ground exclusive of those facilities such as substations, transformers, pull boxes, service terminals, pedestal terminals, splice closures, apparatus cabinets and similar facilities which normally are above the surface in areas where utility facilities are underground in accordance with standard underground practices.

(9) "Utility" means any electric or communication utility described by ORS 757.005, any person furnishing community antenna television service to the public and any cooperative corporation or people's utility district engaged in furnishing electric or communication service to consumers.

[1969 c.385 §2]

758.220 Authority for conversion to underground facilities; formation of assessment district.

(1) A public authority shall have the power to require the conversion of overhead electric or communication facilities to underground facilities; to provide and receive funds to pay for such conversion; and to assess the whole or any part of the cost thereof against the real property included in the underground assessment district specially benefited by such conversion.

(2) An underground assessment district shall include an area having a frontage of not less than 400 feet upon a public street, road or highway along which overhead electric or communication facilities are located.

(3) An underground assessment district:

(a) Created by a city, may include area along city streets, county roads and state highways or any part thereof located within the district.

(b) Created by a county, may include areas along county roads, state highways or any part thereof located within the district.

[1969 c.385 §3]

758.225 Petition, ordinance or resolution for conversion; contents; filing. (1) A proceeding for conversion may be initiated:

(a) By a petition signed by not less than 60 percent of the landowners within the proposed assessment district who own not less than 60 percent of the land area within the district; or

(b) By an ordinance or resolution of a public authority declaring its intention to order a conversion

(2) A petition shall:

(a) Describe the proposed boundaries of the assessment district;

(b) Generally describe the proposed conversion; and

(c) Request that a proceeding for such conversion be taken pursuant to ORS 758.210 to 758.270.

(3) The petition shall be filed with the city recorder, county clerk or other person designated by the public authority to receive the petition and to verify the signatures. If the petition is signed by the requisite number of qualified signers, the official so designated shall execute a certificate of sufficiency and present the petition and certificate to the governing body of the city or to the county court or board of county commissioners, as the case may be.

[1969 c.385 §4]

758.230 Assessment procedure; objections to conversion. (1) Upon presentation of the petition and certificate of sufficiency, or upon adoption of an ordinance or resolution, the public authority shall proceed in the manner provided by ORS 223.389.

(2) Unless the charter of a county provides otherwise, a county shall declare a proposed conversion abandoned if, after notice as provided by ORS 223.389, objections to the conversion are received by a county court or board of county commissioners signed by more than 50 percent of the landowners within the proposed assessment district who own more than 50 percent of land within the district. If a proposed conversion is abandoned because of objections, no new proceeding for the conversion shall be undertaken within a period of one year thereafter.

[1969 c.385 §5]

758.235 Applicability of local improvement laws; issuance of bonds. Unless otherwise provided by ORS 758.210 to 758.270, the provisions relating to the procedure for local improvements in cities, as set forth in ORS 223.205 to 223.300, 223.387 to 223.399, 223.401, 223.405 to 223.485, 223.505 to 223.595, 223.610, 223.615 to 223.650, 223.770 and 287.502 to 287.510, apply to proceedings for a conversion by a city or county under ORS 758.210 to 758.270. In a proceeding conducted by a county, where the statutes referred to in this section refer to officials of cities, the corresponding officials of the county shall perform the required functions, unless otherwise provided by order of the county court or

board of county commissioners. Cities and counties may, as provided by ORS 223.205 to 223.300, issue improvement bonds in the total amount of the valid applications received to pay assessments in instalments.

[1969 c.385 §6]

758.240 Contract with utility for conversion. (1) When a public authority in accordance with ORS 758.230 determines that a conversion shall be made, it may contract with the utilities supplying electric or communication service within the underground assessment district to perform the conversion. A contract shall provide:

(a) A description of the electric and communication facilities to be converted;

(b) That plans and specifications for such conversion shall be supplied or approved by the affected utility,

(c) The time and manner in which underground electric and communication facilities will be installed and overhead electric and communication facilities will be removed;

(d) The estimated cost of converting overhead facilities located on public lands and right of way to underground facilities;

(e) The estimated cost of converting related utility service facilities located on privately owned lots and parcels;

(f) The time and manner of making payments and the source of funds for such payments; and

(g) That upon completion of the work of conversion, the utility performing the conversion shall have legal title to the electric or communication facilities, which shall thereafter constitute a part of a system of the utility and be used, operated, maintained and managed by it as part of its system.

(2) Upon approval and execution of the conversion contracts by the utilities and public authority, the public authority shall direct the utilities owning overhead electric or communication facilities within the district to convert such facilities as required by the contract.

[1969 c.385 §7]

758.245 Payment of costs for conversion; removal of overhead facilities. Upon completion of the conversion of the overhead electric or communication facilities on public lands and right of way to underground, the affected utility shall file a verified statement of the costs of such conversion with the public authority. The public authority shall adopt an ordinance assessing the whole or any part of the cost of the conversion against the real

property in the underground assessment district specifically benefited and shall promptly thereafter mail to each landowner a statement of the amount of such costs assessed to his property. With the statement the public authority shall mail to each landowner a notice stating that:

(1) Service from the underground facilities is available;

(2) The landowner has 90 days after the date of the mailing of such notice to convert all overhead electric or communication facilities providing service to any structure or improvement located on his lot or parcel to underground service facilities; and

(3) After the 90-day period following the date of the mailing of the notice, the public authority will order the utilities to disconnect and remove all overhead electric and communication facilities providing service to any structure or improvement within the area.

[1969 c.385 §8]

758.250 Conversion of facilities on private lands; procedure; payment of costs.

(1) Any conversion of electric or communication service facilities, including service connections, located on a privately owned lot or parcel shall be made at the expense of the landowner by the utility owning the facility. The conversion shall be made in accordance with applicable safety rules, codes, regulations, tariffs or ordinances. The utility shall not be required to convert service lines on property, other than public lands and right of way, until the landowner furnishes to the utility a permit or easement authorizing the utility and its employes, agents and contractors to enter upon real property of the landowner for the purpose of performing conversion work thereon.

(2) Upon completion of the conversion of overhead electric or communication service facilities on privately owned lots and parcels within a district, the utility shall file with the public authority a verified statement of the costs of the conversion of such service facilities of each landowner in the district. Promptly thereafter the public authority shall mail to each landowner a copy of such verified statement.

[1969 c.385 §9]

758.255 Discontinuance of utility service for noncompliance with conversion provisions.

If the owner of any structure or improvement served from the overhead electric or communication service facilities within an underground assessment district does not grant the

utility a permit or easement referred to in ORS 758.250 or if such an owner fails to convert to underground service facilities within 90 days after the mailing to him of the notice provided by ORS 758.245, the public authority shall order the utility to complete the conversion and to disconnect and remove all overhead facilities, including service facilities, providing service to such structure or improvement.

[1969 c.385 §10]

758.260 Competitive bidding for utility conversion inapplicable. To the extent that the contract between the utility and the public authority provides that all or any part of the conversion work shall be performed by the utility, any statute or charter provision requiring competitive bidding and the award of a contract to the lowest responsible bidder does not apply.

[1969 c.385 §11]

758.265 Overhead facilities prohibited in assessment district after conversion. Once converted, no overhead electric or communication facilities shall be installed, maintained or operated in any underground assessment district except as authorized by ORS 758.210 to 758.270.

[1969 c.385 §12]

758.270 ORS 758.210 to 758.270 supplemental to existing laws and rights. ORS 758.210 to 758.270 are supplemental and cumulative of existing rights, laws, charters, ordinances and franchises and shall not abrogate or modify any franchise granted to a utility by any local government or abrogate or modify in any way existing rights, laws, charters or ordinances of any local government.

[1969 c.385 §13]

PENALTIES

758.990 Penalties. (1) Any officer, agent, operator or employe of any telegraph company who refuses or wilfully omits to transmit communications in accordance with ORS 758.050, or designedly alters or falsifies such communications, is liable to indictment and, upon conviction, may be punished by fine or imprisonment, at the discretion of the court.

(2) Violation of ORS 758.060 or 758.070 is punishable, upon conviction, by a fine of not exceeding \$1,000 or imprisonment in the county jail for not exceeding one year, or both.

(3) Violation of ORS 758.080 is punishable, upon conviction, by a fine of not exceeding \$500 or imprisonment in the county jail for not exceeding six months, or both.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, 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 December 1, 1969

Robert W. Lundy
Legislative Counsel

CHAPTER 759

[Reserved for expansion]