

House Bill 2654

Sponsored by Representatives SMITH DB, MARSH, Senators BEYER, FINDLEY; Representative OWENS (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes electric utility to use or allow for use of electric easement in provision of broadband services. Provides process for property owner to bring action for damages if use in provision of broadband services results in expanded use of easement.

A BILL FOR AN ACT

1
2 Relating to use of easements for provision of broadband.

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

4 **SECTION 1. (1) As used in this section:**

5 (a) **"Broadband" has the meaning given that term in ORS 276A.406.**

6 (b) **"Electric easement" means any recorded or unrecorded easement or license, including**
7 **easements created by operation of law, held or used by an electric utility for the installation**
8 **and maintenance of electric facilities, regardless of whether the easement is for the exclusive**
9 **benefit of the electric utility or is also for use in connection with other utility services that**
10 **may or may not be provided by the electric utility.**

11 (c) **"Electric facilities" means any line, wire, pipe, conduit, main, pump, pole, tower, fix-**
12 **ture, manhole, handhole or other similar facility or facilities, and any other related or an-**
13 **cillary materials, which are owned or controlled, in whole or in part, by one or more electric**
14 **utility.**

15 (d) **"Electric utility" has the meaning given that term in ORS 757.600.**

16 (e) **"Property owner" means a person with a recorded fee simple interest in land upon**
17 **which an electric easement is located.**

18 (2) **An electric utility may use or allow for the use of an electric easement in the pro-**
19 **vision of broadband services. If the use of an electric easement in the provision of broadband**
20 **services would result in an expansion of the uses for which the easement is granted or ac-**
21 **quired, the electric utility must, no later than 60 days prior to the expansion of use, provide**
22 **written notice to the property owner pursuant to subsection (3) of this section.**

23 (3)(a) **Written notice as required by subsection (2) of this section must be sent by first**
24 **class mail to the last known address of the property owner, by a printed insertion in the**
25 **property owner's electric utility bill or by other commonly used publication or communi-**
26 **cation channels employed by the electric utility. The notice must contain:**

27 (A) **The name and mailing address of the electric utility;**

28 (B) **The mailing address, telephone number and electronic mail address for a represen-**
29 **tative of the electric utility; and**

30 (C) **A summary statement of the purpose and character of the expansion of the use of**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 the easement.

2 (b) If the activities necessary to expand use of the easement for provision of broadband
3 services will require trenching or other underground work that is not included in the uses
4 for which the easement is granted or acquired, the notice provided under this section must
5 also include:

6 (A) A summary statement describing the activities to be conducted during the trenching
7 or other underground work; and

8 (B) The approximate dates when the trenching or other underground work will start and
9 end.

10 (4) Except as provided in subsection (7) of this section, a property owner that receives
11 notice under subsection (3) of this section may bring a cause of action, in the circuit court
12 of the county where the electric easement is located, against the electric utility for damages
13 relating to a decrease in the value of the property owner's real property caused by the use
14 of the easement in the provision of broadband services. A cause of action authorized by this
15 subsection must be brought no later than 18 months after the date that the electric utility
16 provided notice under subsection (3) of this section. If a cause of action is not commenced
17 within the period set forth in this subsection, the expanded use of the electric easement by
18 the electric utility is deemed vested and shall run with the land.

19 (5) In an action commenced under subsection (4) of this section:

20 (a) The court or jury shall ascertain and assess the decrease in value of property, if any,
21 based on the difference between:

22 (A) The fair market value of the entire parcel of real property upon which the electric
23 easement is located immediately before the expanded use; and

24 (B) The fair market value of the entire parcel immediately after the expanded use;

25 (b) Evidence of revenues or profits derived from the expanded use or related attachment
26 rates are not admissible in determining fair market value;

27 (c) Evidence of the increase in fair market value due to the availability of broadband
28 services is admissible in determining fair market value; and

29 (d) Neither party is entitled to recover appraisal and other expert costs or attorney fees.

30 (6) An expansion of use subject to an action commenced under subsection (4) of this
31 section is deemed vested and shall run with the land as of the date that moneys have been
32 fully provided in payment of all damages awarded in the action. The electric utility may in-
33 clude required reimbursement for expanded use compensation awards and litigation costs in
34 any attachment license agreement with a provider of broadband services that is not the
35 electric utility and that is benefited by the expanded use.

36 (7) A class action may not be maintained against an electric utility in any action for
37 damages based on a claim of expanded use for broadband services.

38 (8) This section does not alter the rights of an electric utility to acquire the rights to
39 use real property for broadband services through any other means authorized by law.

40 (9) This section does not authorize an expanded use that is expressly prohibited by the
41 terms of a written utility easement.

42 (10) Nothing in this section requires an electric utility to initiate the expanded use pro-
43 cess at the request of a provider of broadband services that is not the electric utility.

44