Chapter 772

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Rights of Way for Public Uses

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CONDEMNATION OF PROPERTY BY PRIVATE CORPORATIONS GENERALLY

772.010 Right of entry for survey of proposed right of way; notice required. (1) A corporation organized for the construction of a railway, sewer or canal 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 potable or waste water by means of pipe laid upon or under the surface of the ground; or desiring to use 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 or other railway, sewer, canal, 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.

(2) Prior to entering upon private land under this section, a person who intends to enter upon the land shall first provide written notice by first class mail to the record owner of the private property of such intent to enter. [Amended by 1971 c.655 §232; 1999 c.629 §1]

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, sewer, canal, 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, sewer, canal, ditch, flume or other pipeline, and to make proper drains. [Amended by 1971 c.655 §233; 1999 c.629 §2]

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 manufacturing 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 Approval of Department of Transportation required 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 Department of Transportation in the manner provided by ORS 824.228 to 824.232.

(2) Upon such application and upon notice and hearing as provided in ORS chapter 183 for contested cases, the department 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 department. [Amended by 1971 c.655 §234; 1995 c.733 §97; 1997 c.275 §23]

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 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. [Amended by 2003 c.576 §564]

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 railway corporation mentioned in ORS 772.010 may cut down any standing timber in danger of falling upon its line or railway, making compensation therefor as provided in ORS 772.055 for lands taken for the use of the corporation. [Amended by 1971 c.655 §235]

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 the operation of any railway in this state.

(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. [Amended by 1971 c.655 §236]

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 railway, canal or pipes. Any corporation may change the grade or location of its railway, canal or pipes 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 railway, canal or water pipes. [Amended by 1971 c.655 §237]

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 Commission.

(2) The commission, after notice and hearing, shall by order determine the terms and conditions upon which the corporation may appropriate the county road or highway. [Amended by 1971 c.655 §238]

772.100 [Repealed by 1971 c.655 §250]

APPROPRIATION OF PUBLIC LANDS FOR RAILROADS

772.105 Authority to appropriate. (1) When it is necessary or convenient in the location of any 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. [Amended by 1971 c.655 §239]

772.110 [Repealed by 1971 c.655 §250]

772.115 [Repealed by 1971 c.655 §250]

772.120 [Repealed by 1971 c.655 §250]

772.125 [Amended by 1953 c.160 §3; repealed by 1971 c.655 §250]

772.130 [Repealed by 1971 c.655 §250]

772.135 [Repealed by 1971 c.655 §250]

772.140 [Repealed by 1971 c.655 §250]

772.145 [Repealed by 1971 c.655 §250]

772.150 [Repealed by 1971 c.655 §250]

772.155 [Repealed by 1971 c.655 §250]

772.160 [Repealed by 1971 c.655 §250]

CONDEMNATION BY PUBLIC UTILITIES AND ELECTRICAL COOPERATIVE ASSOCIATIONS

772.205 Definitions for ORS 772.210 and 772.215. As used in ORS 772.210 and 772.215, unless the context requires otherwise:

(1) "Electrical cooperative association" means a cooperative association which is subject to a tax on gross revenue derived from the use or operation of transmission and distribution lines pursuant to ORS 308.805 to 308.820.

(2) "Public utility" has the meaning given that term in ORS 757.005.

(3) "Service facilities" include any line, wire, pipe, conduit, main, pump, pole, tower, fixture, structure, shop, office or building for any use or purpose reasonably necessary and incident to the conduct of the business of a public utility.

(4) "Transmission company" has the meaning given that term in ORS 758.015. [Amended by 1971 c.655 §240; 1977 c.225 §1; 2001 c.913 §8]

772.210 Right of entry and condemnation of lands for construction of service facilities. (1) Any public utility, electrical cooperative association or transmission company may:

(a) Enter upon lands within this state in the manner provided by ORS 35.220 for the purpose of examining, locating and surveying the line thereof and also other lands necessary and convenient for the purpose of construction of service facilities, doing no unnecessary damage thereby.

(b) 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 service facilities. If the lands are covered by trees that are liable to fall and constitute a hazard to its wire or line, any public utility or transmission company 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 may condemn such trees for a width not exceeding 300 feet, as may be necessary or convenient for such purpose.

(2) Notwithstanding subsection (1) of this section, any public utility, electrical cooperative association or transmission company may, when necessary or convenient for transmission lines (including poles, towers, wires, supports and necessary equipment therefor) designed for voltages in excess of 330,000 volts, condemn land not to exceed 300 feet in width. In addition, if the lands are covered by trees that are liable to fall and constitute a hazard to its wire or line, such public utility or transmission company may condemn such trees for a width not exceeding 100 feet on either side of the condemned land, as may be necessary or convenient for such purpose.

(3) Notwithstanding subsection (1) of this section, a water or gas public utility may condemn such lands, not exceeding 50 feet in width, as may be necessary or convenient for purposes of constructing, laying, maintaining and operating its lines, including necessary equipment therefor.

(4) The proceedings for the condemnation of such lands shall be the same as that provided in ORS chapter 35, provided that any award shall include, but shall not be limited to, damages for destruction of forest growth, premature cutting of timber and diminution in value to remaining timber caused by increased harvesting costs. [Amended by 1963 c.138 §1; 1971 c.655 §241; 1977 c.225 §2; 2001 c.913 §9; 2003 c.477 §10]

772.215 Appropriation of public lands. When it is necessary or convenient, in the location of any poles or lines 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 public utility or electrical cooperative association 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 public utility or electrical cooperative association may condemn so much thereof as is necessary and convenient in the location and construction of the poles or lines. The provisions of ORS chapter 35 are applicable to condemnations under this section. [Amended by 1971 c.655 §242; 1971 c.741 §24; 1977 c.225 §3]

772.220 [Repealed by 1971 c.655 §250]

CONDEMNATION FOR DRAINAGE OR IRRIGATION

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, pipelines 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 of way may be acquired in the manner provided by law for the taking of private property for public use. If a water right permit is required under the applicable provisions of ORS chapter 537 in order to use, store or convey water within the right of way, a person, firm, cooperative, association or corporation may not acquire a right of way under this subsection before obtaining a water right permit or obtaining a final order of the Water Resources Department approving an application for a water right permit.

(4) In determining just compensation under subsection (1) of this section for a right of way across forestlands, consideration shall be given, but not limited to, the effect of the right of way on:

(a) Access to the whole of the affected parcel;

(b) Ease and method of timber harvesting or other commercial uses of the affected parcel; and

(c) Any agricultural or silvicultural activities on the affected parcel, including but not limited to application of chemicals, cultivation or harvesting activities and movement of equipment associated with any of the above activities. [Amended by 1989 c.509 §1; 1995 c.365 §8]

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.

(3) If a water right permit is required under the applicable provisions of ORS chapter 537 in order to use, store or convey water within the enlargement, a person, firm, cooperative, association or corporation may not acquire an enlargement under this section before obtaining a water right permit or obtaining a final order of the Water Resources Department approving an application for a water right permit. [Amended by 1989 c.509 §2; 1995 c.365 §9]

772.315 [Repealed by 1971 c.655 §250]

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, pipelines and flumes between such points as may be indicated in their articles of incorporation.

(2) May enter upon any land between such points in the manner provided by ORS 35.220 for the purpose of examining, locating and surveying the line of such railroads, skid roads, tramways, chutes, pipelines 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; 2003 c.477 §11]

772.415 Public benefit and use of facilities constructed under ORS 772.410. (1) Railroads, skid roads, tramways, chutes, pipelines 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, pipeline 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, the heirs and assigns of the original owner, until their use as contemplated in this section has ceased for a period of five years.

CONDEMNATION BY PIPELINE AND GAS COMPANIES

772.505 Definitions for ORS 772.505 to 772.520. As used in ORS 772.505 to 772.520, unless the context otherwise requires:

(1) "Pipeline" 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.

(2) "Pipeline company" includes any corporation, partnership or limited partnership, transporting, selling or distributing fluids, including petroleum products, or natural gases and those organized for constructing, laying, maintaining or operating pipelines, which are engaged, or which propose to engage in, the transportation of such fluids or natural gases. [Amended by 1971 c.655 §242a; 1989 c.821 §1]

772.510 Right of entry and condemnation by pipeline companies. (1) Any pipeline company that is a common carrier and that is regulated as to its rates or practices by the United States or any agency thereof, may enter in the manner provided by ORS 35.220 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 pipeline, but it shall not be done so as to create unnecessary damage.

(3) These pipeline companies may appropriate and condemn such lands, or easements thereon or thereover, in such width as is reasonably necessary to accomplish their pipeline company purposes, by proceedings for condemnation as prescribed by ORS

chapter 35. [Amended by 1971 c.655 §243; 1989 c.821 §2; 2003 c.477 §12]

772.515 Regulation concerning location of facilities. (1) Whenever such pipelines 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) With the exception of pumping, compressor, regulator or meter station buildings, no pipes or pipelines shall pass under any building in this state. Such pipes or pipelines shall not pass through or under any cemetery except by the consent of the owner thereof.

(3) When cultivated lands are appropriated under ORS 772.510, such pipes and pipelines shall be well buried under ground, in conformance with federal pipeline safety regulations in effect at the time of construction, and such surface shall be properly and promptly restored by such pipeline company 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 pipelines shall be buried by the pipeline company as provided in subsection (3) of this section, within a reasonable time after notice by the owner of such lands, or the agent of the owner, to the pipeline company or its agent. [Amended by 1989 c.821 §3]

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

(2) A copy of this resolution, certified by the pipeline company, shall be filed in the office of the Secretary of State, in the office of each county clerk of those counties where such pipeline, extension or branch of an existing pipeline is proposed to be constructed, and also in the office of the Public Utility Commission. [Amended by 1989 c.821 §4]

772.525 [Repealed by 1971 c.655 §250]

772.555 [Repealed by 1971 c.655 §250]

772.560 [Repealed by 1971 c.655 §250]

772.605 [Repealed by 1971 c.655 §250]

CONDEMNATION FOR UNDERGROUND NATURAL GAS STORAGE

772.610 Definitions for ORS 772.610 to 772.625. As used in ORS 772.610 to 772.625, unless the context otherwise requires:

(1) "Natural gas company" means every corporation, company, association, joint stock association, partnership or person authorized to do business in this state and engaged in the transportation, distribution or underground storage of natural gas.

(2) "Pipeline" has the meaning given that term in ORS 772.505 (1).

(3) "Underground reservoir" means any subsurface sand, strata, formation, aquifer, cavern or void whether natural or artificially created, suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom, but excluding a "pool."

(4) "Underground storage" means the process of injecting and storing natural gas within and withdrawing natural gas from an underground reservoir. [1977 c.296 §8; 1989 c.821 §5]

772.615 Condemnation for underground reservoirs; applicability of ORS chapter 35. Any natural gas company may condemn for its use for the underground reservoir, as well as other property or interests in property which may be necessary to adequately maintain and utilize the underground reservoir for the underground storage of natural gas, including easements and rights of way for access to and egress from the underground storage reservoir. The provisions of ORS chapter 35 and ORS 520.340 and 520.350 are applicable to any condemnation action brought under this section. [1977 c.296 §9]

772.620 Placement of pipeline facilities. (1) Whenever a pipeline or appurtenance used in conjunction with the underground storage of natural gas in an underground reservoir is laid along a public road, it shall be placed as closely as practicable to the extreme outside edge of the right of way of the road.

(2) Such pipeline or appurtenance shall not be located under or pass through or under any cemetery, church, college, schoolhouse, 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 772.615, such pipelines shall be well buried underground, at least 20 inches under the surface, which shall be properly and promptly restored by the natural gas company unless otherwise consented to by the owner of the land.

(4) When unimproved lands are appropriated under ORS 772.615 and thereafter become cultivated or improved, such pipelines shall be buried by the natural gas company as provided in subsection (3) of this section,

within a reasonable time after notice by the owner of such lands, or the agent of the owner, to the natural gas company or its agent. [1977 c.296 §10]

772.625 Route proposal to be adopted and filed prior to condemnation action. (1) Prior to the filing of any condemnation action under ORS 772.615, the natural gas company shall adopt a resolution showing the approximate route and termini of any proposed pipeline, or the extension or branch of any existing pipeline, to be used in conjunction with the underground storage of natural gas, and showing the location and formation of any underground reservoir to be used for the underground storage of natural gas.

(2) A copy of this resolution shall be filed in the office of the Secretary of State, and also in the office of the county clerk of each county or counties where such pipeline, extension or branch of an existing pipeline, or underground reservoir is proposed to be constructed or utilized for the underground storage of natural gas, and also published in a newspaper of general circulation in each county. [1977 c.296 §11]