

B-Engrossed Senate Bill 479

Ordered by the House June 21
Including Senate Amendments dated March 7 and House Amendments
dated June 21

Sponsored by COMMITTEE ON INFORMATION MANAGEMENT AND TECHNOLOGY

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.

[Establishes tax credit for advanced telecommunications facilities, equal to 20 percent of certified cost of facilities. Requires taxpayer to obtain certification from Economic and Community Development Department in order to claim tax credit. Permits certifications to be made on or after January 1, 2002, and before December 31, 2005. Limits certifications to \$10 million per year.]

[Directs Oregon Economic and Community Development Commission to report to Seventy-third Legislative Assembly on efficacy of advanced telecommunications facilities tax credit.]

[Prohibits Public Utility Commission from requiring telecommunications utility rate reduction due to allowance of tax credit.]

Imposes requirements on local governments with respect to provision of telecommunication service by local government. Provides exceptions. Includes telecommunications infrastructure in definition of infrastructure project for purposes of financial assistance from Special Public Works Fund. Modifies provisions dealing with payment of privilege tax by telecommunications utilities.

A BILL FOR AN ACT

Relating to telecommunications; creating new provisions; and amending ORS 285B.410, 285B.413, 285B.428 and 759.105.

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

SECTION 1. As used in sections 1 to 4 of this 2001 Act:

(1) "Local government" means a county, a city or an entity created by a city.

(2) "Telecommunication service" means providing to the public, for a fee:

(a) Cable television access; or

(b) Transmission of voice, video or data information chosen by the consumer, to recipients chosen by the consumer, without change in the form or content of the information sent and received.

SECTION 2. (1) Before commencing the provision of a telecommunication service, a local government must prepare a three-year cost projection that identifies all anticipated direct and indirect costs of providing the telecommunication service. The projection must also identify the revenues that the local government anticipates will be derived from providing the telecommunication service. The projection must include a cost-benefit analysis of providing the telecommunication service over the three-year period. The costs of providing the telecommunication service must be determined by using generally accepted governmental accounting principles.

(2) Before commencing the provision of a telecommunication service, a local government shall conduct at least one public hearing. A notice of the time, place and date of the hearing

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 shall be published in a newspaper of general circulation within the boundaries of the local
2 government once a week for the two weeks preceding the week in which the hearing is to
3 be held.

4 (3) A local government must initially receive elector approval of the method of financing
5 the provision of the telecommunication service or any capital construction associated with
6 the provision of the telecommunication service before commencing the provision of a tele-
7 communication service.

8 **SECTION 3.** (1) All records of a local government relating to the provision of a telecom-
9 munication service are subject to ORS 192.410 to 192.505.

10 (2) All meetings of a local government relating to the provision of a telecommunication
11 service are subject to ORS 192.610 to 192.690.

12 **SECTION 4.** Sections 1 to 4 of this 2001 Act do not apply to:

13 (1) Any library that provides a telecommunication service;

14 (2) Any telecommunication service provided by a local government to a public body as
15 defined in ORS 192.410; or

16 (3) Any telecommunication service provided by a local government as part of a 9-1-1
17 emergency reporting system or other telecommunications network for police, fire or public
18 safety purposes.

19 **SECTION 5.** ORS 285B.413 is amended to read:

20 285B.413. (1) The Legislative Assembly finds that:

21 (a) The improvement, expansion and new construction of the state's sewage treatment works,
22 water supply works, roads, [and] public transportation **and telecommunications infrastructure**
23 provides the basic framework for continuing and expanding economic activity in this state, thereby
24 providing jobs and economic opportunity for the people of Oregon.

25 (b) It is essential to maintain usable and developable industrial and commercial lands in Oregon.

26 (2) Since municipalities in this state often suffer from a lack of available financing for such
27 projects, it is the purpose of ORS 285B.410 to 285B.479 to provide financial assistance in order that
28 they may construct, improve and repair those facilities that are essential for supporting continuing
29 and expanded economic activity. It is the intent of the Legislative Assembly, by providing that as-
30 sistance, to stimulate industrial growth and commercial enterprise and to promote employment op-
31 portunities in Oregon.

32 (3) The money in the Special Public Works Fund shall be used primarily to provide loans to
33 municipalities for infrastructure projects. Grants shall be given only when loans are not feasible due
34 to the economic need of the applicant municipality and special circumstances of the project. The
35 Director of the Economic and Community Development Department is authorized to determine the
36 level of grant or loan funding, if any, on a case-by-case basis.

37 **SECTION 6.** ORS 285B.410 is amended to read:

38 285B.410. As used in ORS 285B.410 to 285B.479, unless the context requires otherwise:

39 (1) "Municipality" means a city, a county, a port incorporated under ORS 777.010 and 777.050,
40 the Port of Portland created by ORS 778.010, a metropolitan service district organized under ORS
41 chapter 268, a domestic water supply district organized under ORS chapter 264, a water authority
42 or sanitary authority organized under ORS 450.600 to 450.989, a water improvement district organ-
43 ized under ORS chapter 552, a water control district organized under ORS chapter 553, a sanitary
44 district organized under ORS 450.005 to 450.245, a county service district organized under ORS
45 chapter 451 or a tribal council of an Indian tribe in this state.

(2) "Infrastructure project" means:

(a) A project for the construction of sewage treatment works, solid waste disposal sites, water supply works, roads, public transportation, railroad industrial spurs or sidings, **telecommunications infrastructure** or other facilities that comprise the physical foundation for industrial and commercial activity. The costs of property acquisition directly related to the infrastructure project and acquisition of easements or rights of way necessary to accomplish construction of the infrastructure project are eligible for assistance under ORS 285B.410 to 285B.479. The costs of activities related to performing an environmental evaluation of a brownfield are eligible for assistance under ORS 285B.416 (2) and 285B.455 (5). Purchases of off-site property for project-related purposes such as wetland mitigation or other uses not directly related to the infrastructure are not eligible for assistance. As used in this paragraph, "brownfield" and "environmental evaluation" have the meanings given those terms respectively in ORS 285A.185 and 285A.188.

(b) A project, in consultation with the Department of Transportation and other affected agencies, for the acquisition, reconstruction or rehabilitation of an abandoned railroad line or railroad line that has been designated by the owner and operator thereof as subject to abandonment within a three-year period pursuant to federal law and regulations governing abandonment of common carrier railroad lines. The project may include operation or maintenance costs if the project also includes acquisition, reconstruction or rehabilitation.

(c) A safe drinking water project, in consultation with the Water Resources Department, the Health Division of the Department of Human Services or the Department of Land Conservation and Development, for improving a drinking water system for the purpose of achieving or maintaining compliance with applicable state or federal drinking water quality regulations.

(d) A project for the acquisition, construction or development of community facilities, including the acquisition of land, the construction, acquisition, renovation or reconstruction of buildings, structures and other real property and the acquisition or construction of related equipment and fixtures. "Community facilities" includes facilities that are owned by a municipality and are operated by either the municipality or a person under a management contract or operating agreement with the municipality.

(3) "Public transportation" includes public depots, public parking, public docks, public wharves, railroads and airport facilities.

(4) "Roads" includes:

(a) Ways described as streets, highways, throughways or alleys;

(b) Road related structures that are in the right of way such as tunnels, culverts or similar structures; and

(c) Structures that provide for continuity of the right of way such as bridges.

(5) "Sewage treatment works" includes all facilities necessary for collecting, pumping, treating and disposing of sanitary or storm sewage.

(6) "Solid waste disposal site" has the meaning given to the term "disposal site" by ORS 459.005.

(7) "Telecommunications infrastructure" means real and personal property, structures or equipment constructed, used or configured for the electronic transmission or receipt of voice, data, text, images or video between sites and facilities.

[/7] (8) "Water supply works" includes all facilities necessary for tapping natural sources of domestic and industrial water, treating and protecting the quality of the water and transmitting it to the point of sale to any public or private agency for domestic, municipal and industrial water supply service.

1 [(8)] **(9)** “Urban infrastructure projects” includes all those projects located in whole or in part
 2 within the acknowledged Portland Metropolitan Area Regional Urban Growth Boundary, and the
 3 acknowledged urban growth boundaries of the cities of Eugene, Springfield, Salem, Keizer or
 4 Medford or projects that will principally benefit these areas. The Director of the Economic and
 5 Community Development Department is authorized to resolve situations left in question by this de-
 6 finition.

7 [(9)] **(10)** “Nonurban infrastructure projects” includes all those projects [*which*] **that** do not meet
 8 the definition of urban infrastructure projects.

9 **SECTION 7.** ORS 285B.428 is amended to read:

10 285B.428. (1) Any municipality may file an application with the Economic and Community De-
 11 velopment Department to obtain financial assistance from the Special Public Works Fund. The ap-
 12 plication shall be filed in such manner and contain or be accompanied by such information as the
 13 department may require.

14 (2) In addition to other requirements prescribed by the department, an application filed under
 15 this section shall:

16 (a) Describe the nature and purposes of the proposed infrastructure project, including the need
 17 for the project and the reasons why the project is in the public interest.

18 (b) Set forth or be accompanied by a feasibility study of the proposed infrastructure project and
 19 an estimate of the costs of construction.

20 (c) State whether any moneys other than those in the Special Public Works Fund are proposed
 21 to be used for the infrastructure project and whether any other moneys are available or have been
 22 sought for the project.

23 **(d) If the financial assistance is to be used for an infrastructure project for telecommu-
 24 nications infrastructure, provide a resolution adopted by the governing body of the local
 25 government after a public hearing that includes findings and states that the proposed
 26 infrastructure project is necessary and appropriate and would not otherwise be provided
 27 within a reasonable time and for a reasonable cost by a for-profit entity.**

28 **SECTION 8.** ORS 759.105 is amended to read:

29 759.105. **(1)** The privilege tax authorized by ORS 221.515, or **any** other similar [*exactions*] **ex-**
 30 **action** imposed by any municipality in this state upon telecommunications utilities for use and oc-
 31 cupancy of streets, alleys or highways, or all of them, [*shall be allowed as an operating expense of*
 32 *the affected telecommunications utilities operating in the municipality for rate-making purposes by the*
 33 *Public Utility Commission*] **may be paid on a quarterly basis.**

34 **(2) In the sole discretion of a telecommunications utility,** the [*cost of such*] **amount of the**
 35 **privilege tax, or the amount of any** other similar [*exactions shall*] **exaction, may** be charged pro
 36 rata to the [*users of such telecommunications utility*] **end users of the telecommunications utility**
 37 within the municipality [*unless the Public Utility Commission determines on a statewide basis that*
 38 *such pro rata charges would be inequitable, in whole or in part, to city ratepayers or should otherwise*
 39 *be borne as a statewide operating expense by the telecommunications utility*]. **If the privilege tax, or**
 40 **other similar exaction, is not charged to the end users, the Public Utility Commission must**
 41 **allow a telecommunications utility to recover the amount of the tax, or any other similar**
 42 **exaction, as an operating expense for rate-making purposes.**

43 **SECTION 9.** The amendments to ORS 759.105 (1) by section 8 of this 2001 Act apply to the
 44 privilege tax authorized by ORS 221.515, or any other similar exaction, imposed pursuant to
 45 an agreement entered into or amended for any purpose on or after the effective date of this

1 **2001 Act for use and occupancy of streets, alleys or highways, or all of them.**

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