

# House Bill 2052

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## 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 Public Utility Commission to impose fees on telecommunications cooperatives, consumer-owned utilities and cable system operators to recoup commission costs incurred in safety and reliability regulation and in conducting hearings related to telecommunications cooperatives, consumer-owned utilities and cable system operators. Limits amount of fees.

Applies to fees imposed for calendar years beginning on or after January 1, 2008.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to Public Utility Commission funding; creating new provisions; amending ORS 291.055,  
3 756.310, 756.320, 756.360, 757.279 and 759.660; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 756.**

6 **SECTION 2. (1) Each telecommunications cooperative, consumer-owned utility and cable**  
7 **system operator shall pay to the Public Utility Commission in each year all fees that the**  
8 **commission finds and determines to be necessary to defray the cost of performing safety and**  
9 **reliability duties imposed by law upon the commission, and the cost of conducting hearings**  
10 **required by law to be conducted, with respect to telecommunications cooperatives,**  
11 **consumer-owned utilities and cable system operators.**

12 **(2) In each calendar year, the commission shall by order entered on or after March 1 of**  
13 **the year determine the fee to be paid under subsection (1) of this section by a consumer-**  
14 **owned utility for the year. Notice of orders shall be given to each consumer-owned utility.**  
15 **The consumer-owned utility shall pay to the commission the fee, or portion of the fee, by the**  
16 **date specified in the notice, which shall be at least 15 days after the date of mailing of the**  
17 **notice.**

18 **(3)(a) The fee payable under subsection (1) of this section by a consumer-owned utility**  
19 **that provides electricity services to consumers shall be based on a percentage of gross re-**  
20 **venue of the utility for the calendar year, but may not exceed two-hundredths of one percent**  
21 **of the gross revenue of the utility for the calendar year.**

22 **(b) Notwithstanding paragraph (a) of this subsection, the fee may not be less than \$100**  
23 **in each calendar year.**

24 **(4) For each calendar year, the commission shall by order determine the fee to be paid**  
25 **under subsection (1) of this section by each telecommunications cooperative and cable sys-**  
26 **tem operator and shall give notice of the orders to the cooperatives and operators. The**  
27 **commission shall give notice of the orders at least 60 days before the start of the year for**  
28 **which the fee is determined. The cooperative or operator shall pay the fee to the commission**

**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 on or before April 1 of the year following the year for which the fee is determined.

2 (5)(a) The fee payable under subsection (1) of this section by a telecommunications co-  
 3 operative or a cable system operator shall be based on a percentage of gross retail intrastate  
 4 revenue of the cooperative or operator for the calendar year, but may not exceed two-  
 5 hundredths of one percent of the gross retail intrastate revenue of the cooperative or oper-  
 6 ator for the year.

7 (b) Notwithstanding paragraph (a) of this subsection, the fee may not be less than \$100  
 8 for the calendar year.

9 (6) The fees imposed under this section are in addition to and not in lieu of any other fee  
 10 imposed by the commission on a telecommunications cooperative, consumer-owned utility  
 11 or cable system operator.

12 (7) The commission may use any investigative and enforcement powers granted the  
 13 commission under this chapter to administer and enforce this section.

14 (8) As used in this section:

15 (a) "Cable system operator" means a person that:

16 (A) Lawfully provides cable service over a cable system, as those terms are defined in  
 17 ORS 30.192, in which the person directly or through one or more affiliates owns a significant  
 18 interest; or

19 (B) Lawfully controls or is responsible for the management and operation of a cable  
 20 system.

21 (b) "Consumer-owned utility" has the meaning given that term in ORS 757.270.

22 (c) "Telecommunications cooperative" means an unincorporated association or a cooper-  
 23 ative corporation that provides telecommunications services.

24 **SECTION 3.** Section 2 of this 2007 Act applies to fees imposed by the Public Utility  
 25 Commission for calendar years beginning on or after January 1, 2008.

26 **SECTION 4.** ORS 756.310 is amended to read:

27 756.310. (1) Subject to the provisions of subsections (3), (5) and (6) of this section, each public  
 28 utility and telecommunications provider shall pay to the Public Utility Commission in each year  
 29 such fee as the commission finds and determines to be necessary, with the amount of all other fees  
 30 paid or payable to the commission by such public utilities and telecommunications providers in the  
 31 current calendar year, to defray the costs of performing the duties imposed by law upon the com-  
 32 mission in respect to such public utilities and telecommunications providers, respectively[, and to  
 33 pay such amounts as may be necessary to obtain matching funds to implement the program referred to  
 34 in ORS 824.058].

35 (2) In each calendar year the fee per kilowatt-hour delivered to end users required to be paid  
 36 by each electric company that is a public utility shall be determined by orders entered by the com-  
 37 mission on or after March 1 of each year and notice thereof shall be given to each electric company.  
 38 The company shall pay to the commission the fee or portion thereof so computed on the date spec-  
 39 ified in the notice, which date shall be at least 15 days after the date of mailing the notice.

40 (3)(a) The average fee payable under subsection (1) of this section by each electric company  
 41 shall not exceed eighteen-hundredths of one mill per kilowatt-hour applied to kilowatt-hours deliv-  
 42 ered in the preceding calendar year or portion thereof but in no case shall the fee be less than \$10.  
 43 If appropriate to meet the conditions of paragraph (b) of this subsection, fees for customer classes  
 44 may exceed these limitations.

45 (b) The fees established by the commission for different electric companies shall bear the same

1 approximate relationship as the gross revenue fees per kilowatt-hour delivered to end users paid by  
 2 electric companies in 1997. The commission shall adopt rules for allocation of a company's fee  
 3 among the company's retail customer classes so that the fees established for different classes bear  
 4 the same approximate relationship as the gross revenues per kilowatt-hour paid by those classes in  
 5 1997. After December 31, 2000, the commission may establish or allow fees that are the same by  
 6 customer classes for all such companies, provided that the approximate relationship between cus-  
 7 tomer classes referred to in this subsection shall be maintained.

8 (4) In each calendar year the percentage rate of the fee required to be paid by public utilities,  
 9 except electric companies, shall be determined by orders entered by the commission on or after  
 10 March 1 of each year, and notice thereof shall be given to each utility. The utility shall pay to the  
 11 commission the fee or portion thereof so computed upon the date specified in such notice, which  
 12 date shall be at least 15 days after the date of mailing such notice.

13 (5) The fee payable under subsection (1) of this section by each public utility, except electric  
 14 companies, shall not exceed twenty-five hundredths of one percent of such utility's gross operating  
 15 revenues derived within this state in the preceding calendar year or portion thereof, but in no case  
 16 shall the fee be less than \$10.

17 (6)(a) For a telecommunications provider, the fee payable under subsection (1) of this section  
 18 shall be a percentage amount not to exceed twenty-five hundredths of one percent of the provider's  
 19 gross retail intrastate revenue for each calendar year, but in no case shall the fee be less than \$100.  
 20 The percentage amount shall be determined by order of the commission not less than 60 days prior  
 21 to the calendar year upon which the fee is based. The fee shall be payable to the commission not  
 22 later than April 1 of the year following that calendar year.

23 (b) A telecommunications provider shall collect the fee payable under subsection (1) of this  
 24 section by charging an apportioned amount to each of the provider's retail customers. The amount  
 25 of the charge shall be described on the retail customer's bill in a manner determined by the pro-  
 26 vider.

27 (c) In the event a telecommunications utility has an approved rate that includes the fee required  
 28 under subsection (1) of this section and separately charges retail customers for the fee described in  
 29 this section, at the time the utility begins collecting the charge the utility shall file with the com-  
 30 mission a rate schedule reducing rates in an amount projected to equal the amount separately  
 31 charged to customers.

32 (7) The commission may use any of its investigatory and enforcement powers provided under this  
 33 chapter for the purpose of administering and enforcing the provisions of this section.

34 (8) As used in this section:

35 (a) "Electric company" means any entity that is a public utility under ORS 757.005 that is en-  
 36 gaged in the business of distributing electricity to retail electric customers in Oregon.

37 (b) "Retail customer" does not include a purchaser of intrastate telecommunications services  
 38 who is a telecommunications provider, telecommunications cooperative, interexchange carrier or  
 39 radio common carrier.

40 (c) "Telecommunications provider" means any entity that is a telecommunications utility or a  
 41 competitive telecommunications provider as defined in ORS 759.005.

42 **SECTION 5.** ORS 756.320 is amended to read:

43 756.320. Payment of each fee or portion [*thereof*] **of a fee** provided for in ORS 756.310 **or section**  
 44 **2 of this 2007 Act** shall be accompanied by a statement verified by the [*public utility or telecom-*  
 45 *munications provider involved*] **entity filing the statement**, showing the basis upon which the fee

1 or portion [thereof] of the fee is computed. [This] The statement shall be in such form and detail  
 2 as the Public Utility Commission shall prescribe and shall be subject to audit by the commission.  
 3 The commission may refund any overpayment of any [such] fee **described in this section** in the  
 4 same manner as other claims and expenses of the commission are payable as provided by law.

5 **SECTION 6.** ORS 756.360 is amended to read:

6 756.360. All fees, fines, penalties and other moneys collected by the Public Utility Commission  
 7 under ORS 756.310, 756.320, 756.350, 758.015, 758.400 to 758.475 **and section 2 of this 2007 Act** and  
 8 ORS chapter 759 shall be paid by the commission into the State Treasury within 30 days after the  
 9 collection thereof, and shall be placed by the State Treasurer to the credit of the Public Utility  
 10 Commission Account and the fees, fines, penalties and other moneys collected from:

11 (1) Public utilities shall be used only for the purpose of paying the expenses of the commission  
 12 in performing the duties imposed by law upon the commission [in] **with** respect to utilities, and for  
 13 the purpose of paying the expenses of the Office of the Governor for its responsibilities in adminis-  
 14 tering energy conservation and allocation programs.

15 (2) Telecommunications providers shall be used only for the purpose of paying the expenses of  
 16 the commission in performing the duties imposed by law upon the commission [in] **with** respect to  
 17 telecommunications providers, and for the purpose of paying the expenses of the Office of the Gov-  
 18 ernor for its responsibilities in administering energy conservation and allocation programs.

19 **(3) Entities subject to section 2 of this 2007 Act shall be used only for the purpose of**  
 20 **paying the expenses of the commission in performing the duties imposed by law upon the**  
 21 **commission with respect to telecommunications cooperatives, consumer owned utilities and**  
 22 **cable system operators.**

23 **SECTION 7.** ORS 757.279 is amended to read:

24 757.279. [(1)] Whenever the Public Utility Commission of Oregon finds, after hearing had upon  
 25 complaint by a licensee, a public utility, a telecommunications utility or a consumer-owned utility  
 26 that the rates, terms or conditions demanded, exacted, charged or collected in connection with at-  
 27 tachments or availability of surplus space for such attachments are unjust or unreasonable, or that  
 28 such rates or charges are insufficient to yield a reasonable compensation for the attachment and the  
 29 costs of administering the same, the commission shall determine the just and reasonable rates, terms  
 30 and conditions thereafter to be observed and in force and shall fix the same by order. In determining  
 31 and fixing such rates, terms and conditions, the commission shall consider the interest of the cus-  
 32 tomers of the licensee, as well as the interest of the customers of the public utility, telecommuni-  
 33 cations utility or consumer-owned utility that owns the facility upon which the attachment is made.

34 [(2) *When the order applies to a consumer-owned utility, the order shall also provide for payment*  
 35 *by the parties of the cost of the hearing. The payment shall be made in a manner which the commission*  
 36 *considers equitable.*]

37 **SECTION 8.** ORS 759.660 is amended to read:

38 759.660. [(1)] Whenever the Public Utility Commission of Oregon finds, after hearing had upon  
 39 complaint by a licensee or people’s utility district or a telecommunications utility that the rates,  
 40 terms or conditions demanded, exacted, charged or collected in connection with attachments or  
 41 availability of surplus space for such attachments are unjust or unreasonable, or that such rates or  
 42 charges are insufficient to yield a reasonable compensation for the attachment and the costs of ad-  
 43 ministering the same, the commission shall determine the just and reasonable rates, terms and con-  
 44 ditions thereafter to be observed and in force and shall fix the same by order. In determining and  
 45 fixing such rates, terms and conditions, the commission shall consider the interest of the customers

1 of the licensee, as well as the interest of the customers of the telecommunications utility or people's  
 2 utility district which owns the facility upon which the attachment is made.

3 *[(2) When the order applies to a people's utility district, the order also shall provide for payment*  
 4 *by the parties of the cost of the hearing. The payment shall be made in a manner which the commission*  
 5 *considers equitable.]*

6 **SECTION 9.** ORS 291.055 is amended to read:

7 291.055. (1) Notwithstanding any other law that grants to a state agency the authority to es-  
 8 tablish fees, all new state agency fees or fee increases adopted after July 1 of any odd-numbered  
 9 year:

10 (a) Are not effective for agencies in the executive department of government unless approved  
 11 in writing by the Director of the Oregon Department of Administrative Services;

12 (b) Are not effective for agencies in the judicial department of government unless approved in  
 13 writing by the Chief Justice of the Supreme Court;

14 (c) Are not effective for agencies in the legislative department of government unless approved  
 15 in writing by the President of the Senate and the Speaker of the House of Representatives;

16 (d) Shall be reported by the state agency to the Oregon Department of Administrative Services  
 17 within 10 days of their adoption; and

18 (e) Are rescinded on July 1 of the next following odd-numbered year, or on adjournment sine  
 19 die of the regular session of the Legislative Assembly meeting in that year, whichever is later, un-  
 20 less otherwise authorized by enabling legislation setting forth the approved fees.

21 (2) This section does not apply to:

22 (a) Any tuition or fees charged by the State Board of Higher Education and state institutions  
 23 of higher education.

24 (b) Taxes or other payments made or collected from employers for unemployment insurance re-  
 25 quired by ORS chapter 657 or premium assessments required by ORS 656.612 and 656.614 or contri-  
 26 butions and assessments calculated by cents per hour for workers' compensation coverage required  
 27 by ORS 656.506.

28 (c) Fees or payments required for:

29 (A) Health care services provided by the Oregon Health and Science University, by the Oregon  
 30 Veterans' Homes and by other state agencies and institutions pursuant to ORS 179.610 to 179.770.

31 (B) Assessments and premiums paid to the Oregon Medical Insurance Pool established by ORS  
 32 735.614 and 735.625.

33 (C) Copayments and premiums paid to the Oregon medical assistance program.

34 (D) Assessments paid to the Office of Private Health Partnerships under section 12, chapter 727,  
 35 Oregon Laws 2005.

36 (d) Fees created or authorized by statute that have no established rate or amount but are cal-  
 37 culated for each separate instance for each fee payer and the fee assessed is based on actual cost  
 38 of services provided.

39 (e) State agency charges on employees for benefits and services.

40 (f) Any intergovernmental charges.

41 (g) Forest protection district assessment rates established by ORS 477.210 to 477.265 and the  
 42 Oregon Forest Land Protection Fund fees established by ORS 477.760.

43 (h) State Department of Energy assessments required by ORS 469.421 (8) and 469.681.

44 (i) Any charges established by the State Parks and Recreation Director in accordance with ORS  
 45 565.080 (3).

1 (j) Assessments on premiums charged by the Insurance Division of the Department of Consumer  
 2 and Business Services pursuant to ORS 731.804 or fees charged by the Division of Finance and  
 3 Corporate Securities of the Department of Consumer and Business Services to banks, trusts and  
 4 credit unions pursuant to ORS 706.530 and 723.114.

5 (k) Public Utility Commission operating assessments required by ORS 756.310 **or section 2 of**  
 6 **this 2007 Act**, or charges paid to the Residential Service Protection Fund required by chapter 290,  
 7 Oregon Laws 1987.

8 (L) Fees charged by the Housing and Community Services Department for intellectual property  
 9 pursuant to ORS 456.562.

10 (3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unex-  
 11 pected and temporary revenue surpluses may be restored to their normal level if, at the time the fee  
 12 is decreased, the state agency specifies the following:

13 (A) The reason for the fee decrease; and

14 (B) The conditions under which the fee will be restored to its normal level.

15 (b) Fees that are decreased for reasons other than those described in paragraph (a) of this sub-  
 16 section may not be subsequently increased except as allowed by ORS 291.050 to 291.060 and 294.160.

17 **SECTION 10.** ORS 291.055, as amended by section 15, chapter 727, Oregon Laws 2005, and  
 18 section 24e, chapter 744, Oregon Laws 2005, is amended to read:

19 291.055. (1) Notwithstanding any other law that grants to a state agency the authority to es-  
 20 tablish fees, all new state agency fees or fee increases adopted after July 1 of any odd-numbered  
 21 year:

22 (a) Are not effective for agencies in the executive department of government unless approved  
 23 in writing by the Director of the Oregon Department of Administrative Services;

24 (b) Are not effective for agencies in the judicial department of government unless approved in  
 25 writing by the Chief Justice of the Supreme Court;

26 (c) Are not effective for agencies in the legislative department of government unless approved  
 27 in writing by the President of the Senate and the Speaker of the House of Representatives;

28 (d) Shall be reported by the state agency to the Oregon Department of Administrative Services  
 29 within 10 days of their adoption; and

30 (e) Are rescinded on July 1 of the next following odd-numbered year, or on adjournment sine  
 31 die of the regular session of the Legislative Assembly meeting in that year, whichever is later, un-  
 32 less otherwise authorized by enabling legislation setting forth the approved fees.

33 (2) This section does not apply to:

34 (a) Any tuition or fees charged by the State Board of Higher Education and state institutions  
 35 of higher education.

36 (b) Taxes or other payments made or collected from employers for unemployment insurance re-  
 37 quired by ORS chapter 657 or premium assessments required by ORS 656.612 and 656.614 or contri-  
 38 butions and assessments calculated by cents per hour for workers' compensation coverage required  
 39 by ORS 656.506.

40 (c) Fees or payments required for:

41 (A) Health care services provided by the Oregon Health and Science University, by the Oregon  
 42 Veterans' Homes and by other state agencies and institutions pursuant to ORS 179.610 to 179.770.

43 (B) Assessments and premiums paid to the Oregon Medical Insurance Pool established by ORS  
 44 735.614 and 735.625.

45 (C) Copayments and premiums paid to the Oregon medical assistance program.

1 (d) Fees created or authorized by statute that have no established rate or amount but are cal-  
2 culated for each separate instance for each fee payer and the fee assessed is based on actual cost  
3 of services provided.

4 (e) State agency charges on employees for benefits and services.

5 (f) Any intergovernmental charges.

6 (g) Forest protection district assessment rates established by ORS 477.210 to 477.265 and the  
7 Oregon Forest Land Protection Fund fees established by ORS 477.760.

8 (h) State Department of Energy assessments required by ORS 469.421 (8) and 469.681.

9 (i) Any charges established by the State Parks and Recreation Director in accordance with ORS  
10 565.080 (3).

11 (j) Assessments on premiums charged by the Insurance Division of the Department of Consumer  
12 and Business Services pursuant to ORS 731.804 or fees charged by the Division of Finance and  
13 Corporate Securities of the Department of Consumer and Business Services to banks, trusts and  
14 credit unions pursuant to ORS 706.530 and 723.114.

15 (k) Public Utility Commission operating assessments required by ORS 756.310 **or section 2 of**  
16 **this 2007 Act**, or charges paid to the Residential Service Protection Fund required by chapter 290,  
17 Oregon Laws 1987.

18 (L) Fees charged by the Housing and Community Services Department for intellectual property  
19 pursuant to ORS 456.562.

20 (3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unex-  
21 pected and temporary revenue surpluses may be restored to their normal level if, at the time the fee  
22 is decreased, the state agency specifies the following:

23 (A) The reason for the fee decrease; and

24 (B) The conditions under which the fee will be restored to its normal level.

25 (b) Fees that are decreased for reasons other than those described in paragraph (a) of this sub-  
26 section may not be subsequently increased except as allowed by ORS 291.050 to 291.060 and 294.160.

27 **SECTION 11. The amendments to ORS 756.310, 756.320, 756.360, 757.279 and 759.660 by**  
28 **sections 4 to 8 of this 2007 Act become operative on January 1, 2008.**

29 **SECTION 12. This 2007 Act being necessary for the immediate preservation of the public**  
30 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**  
31 **on its passage.**

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