

# House Bill 3462

Sponsored by Representative WHISNANT (at the request of Industrial Customers of Northwest Utilities)

## 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**.

Requires Public Utility Commission to ensure that taxes included in public utility rates are based on taxes that public utility expects to pay to state or federal government by reason of revenues generated in state. Requires public utility disclosure of tax information to parties to general rate case that have executed confidentiality agreement.

## A BILL FOR AN ACT

1  
2 Relating to taxes paid by public utilities; creating new provisions; amending ORS 757.210 and  
3 757.267; and repealing ORS 757.268.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 757.**

6 **SECTION 2. (1) In every general rate proceeding filed under ORS 757.210, the Public**  
7 **Utility Commission shall perform a detailed review of income tax expense, both current and**  
8 **deferred.**

9 (2) Each public utility shall include the following information in its general rate case fil-  
10 ing in addition to any other information required by rule or requested by the parties partic-  
11 ipating in the general rate case:

12 (a) Schedules prescribed by the commission that will provide detailed information com-  
13 paring book net income and taxable net income, the current provision for deferred income  
14 taxes, the accumulated deferred income taxes and any other information necessary to ade-  
15 quately review and analyze the public utility's income tax expense, both current and de-  
16 ferred. The commission shall develop rules, based on input from all interested parties, to  
17 establish the schedules.

18 (b) Income tax calculations of both current and deferred state and federal income taxes,  
19 based on the rates and rate of return proposed in the general rate case, using the federal  
20 income tax return format.

21 (3) The commission shall set rates in a general rate case based on the information pro-  
22 vided pursuant to subsection (2) of this section, so that income taxes included in the rates  
23 are:

24 (a) Consistent with the actual tax returns expected to be prepared for the public utility  
25 and filed with taxing authorities; or

26 (b) If the public utility is a member of an affiliated group for federal income tax purposes,  
27 consistent with the utility's tax return information that will be included in the consolidated  
28 income tax return in which the utility is included that will be filed with taxing authorities.

29 (4) Unless it is shown to the satisfaction of the commission that it was reasonable to  
30 choose not to consolidate returns, a public utility's income taxes shall be computed as

**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 though a consolidated return had been filed and the public utility had realized its propor-  
2 tionate share of savings resulting from that return if:

3 (a) The public utility is a member of an affiliated group eligible to file a consolidated in-  
4 come tax return; and

5 (b) It is advantageous for the public utility to do so.

6 (5) The public utility's proportionate share of savings is determined by multiplying the  
7 following two values:

8 (a) The public utility's taxable income as defined by the Internal Revenue Code and re-  
9 flected on the public utility's tax return, divided by the sum of the taxable incomes reported  
10 by all members of the affiliated group reporting taxable incomes, excluding tax losses re-  
11 ported by members of the group.

12 (b) The tax benefit of the sum of the losses reported by all members of the affiliated  
13 group.

14 (6) If the public utility is a member of an affiliated group, the public utility shall provide  
15 a complete copy of the schedule from the consolidated federal income tax return in which  
16 the public utility is included that shows the income, deductions and taxable income for each  
17 entity included in the affiliated group. A copy of the schedule must be provided to each party  
18 authorized to receive confidential documents under the commission's standard protective  
19 order.

20 (7) Parties to a general rate case that have executed a confidentiality agreement pursu-  
21 ant to the commission's standard protective order shall be provided with two copies of all  
22 tax information provided to the commission by the public utility. The public utility shall  
23 provide the parties with both paper and fully functional electronic documents.

24 (8) Notwithstanding any other provision of this section or ORS 757.267, the amount of  
25 income tax included in the rates of a public utility may not exceed the amount of taxes that  
26 would be payable by the public utility if income taxes were calculated on a stand-alone basis,  
27 using straight-line depreciation.

28 (9) As used in this section, "affiliated group" means an affiliated group of corporations  
29 of which the public utility is a member and that files a consolidated federal income tax re-  
30 turn.

31 **SECTION 3.** Within 30 days following the effective date of this 2011 Act, the Public Utility  
32 Commission shall commence a rulemaking proceeding to adopt rules ensuring that the rates  
33 of public utilities comply with the provisions of section 2 of this 2011 Act.

34 **SECTION 4.** ORS 757.210 is amended to read:

35 757.210. (1)(a) Whenever any public utility files with the Public Utility Commission any rate or  
36 schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing  
37 rate or schedule of rates, the commission may, either upon written complaint or upon the  
38 commission's own initiative, after reasonable notice, conduct a hearing to determine whether the  
39 rate or schedule is fair, just and reasonable. The commission shall conduct the hearing upon written  
40 complaint filed by the utility, its customer or customers, or any other proper party within 60 days  
41 of the utility's filing; provided that no hearing need be held if the particular rate change is the re-  
42 sult of an automatic adjustment clause. At the hearing the utility shall bear the burden of showing  
43 that the rate or schedule of rates proposed to be established or increased or changed is fair, just  
44 and reasonable. The commission may not authorize a rate or schedule of rates that is not fair, just  
45 and reasonable.

1 (b) As used in this subsection, “automatic adjustment clause” means a provision of a rate  
 2 schedule that provides for rate increases or decreases or both, without prior hearing, reflecting in-  
 3 creases or decreases or both in costs incurred, taxes paid to units of government or revenues earned  
 4 by a utility and that is subject to review by the commission at least once every two years.

5 (2)(a) Subsection (1) of this section does not apply to rate changes under an approved alternative  
 6 form of regulation plan, including a resource rate plan under ORS 757.212.

7 (b) Any alternative form of regulation plan shall include provisions to ensure that the plan op-  
 8 erates in the interests of utility customers and the public generally and results in rates that are just  
 9 and reasonable and may include provisions establishing a reasonable range for rate of return on  
 10 investment. In approving a plan, the commission shall, at a minimum, consider whether the plan:

11 (A) Promotes increased efficiencies and cost control;

12 (B) Is consistent with least-cost resources acquisition policies;

13 (C) Yields rates that are consistent with those that would be obtained following application of  
 14 [ORS 757.268] **section 2 of this 2011 Act**;

15 (D) Is consistent with maintenance of safe, adequate and reliable service; and

16 (E) Is beneficial to utility customers generally, for example, by minimizing utility rates.

17 (c) As used in this subsection, “alternative form of regulation plan” means a plan adopted by the  
 18 commission upon petition by a public utility, after notice and an opportunity for a hearing, that sets  
 19 rates and revenues and a method for changes in rates and revenues using alternatives to cost-of-  
 20 service rate regulation.

21 (d) Prior to implementing a rate change under an alternative form of regulation plan, the utility  
 22 shall present a report that demonstrates the calculation of any proposed rate change at a public  
 23 meeting of the commission.

24 (3) Except as provided in ORS 757.212, the commission, at any time, may order a utility to ap-  
 25 pear and establish that any, or all, of its rates in a plan authorized under subsection (2) of this  
 26 section are in conformity with the plan and are just and reasonable. Except as provided in ORS  
 27 757.212, such rates, and the alternative form of regulation plan under which the rates are set, also  
 28 shall be subject to complaint under ORS 756.500.

29 (4) Periodically, but not less often than every two years after the implementation of a plan re-  
 30 ferred to in subsection (2) of this section, the commission shall submit a report to the Legislative  
 31 Assembly that shows the impact of the plan on rates paid by utility customers.

32 (5) The commission and staff may consult at any time with, and provide technical assistance to,  
 33 utilities, their customers, and other interested parties on matters relevant to utility rates and  
 34 charges. If a hearing is held with respect to a rate change, the commission’s decisions shall be based  
 35 on the record made at the hearing.

36 **SECTION 5.** ORS 757.267 is amended to read:

37 757.267. (1) The Legislative Assembly finds and declares that:

38 (a) The alignment of taxes collected by public utilities from utility customers with taxes paid to  
 39 units of government by utilities, or affiliated groups that include utilities, is of special interest to  
 40 this state.

41 (b) Taxes are a unique utility cost because the tax liability is affected by the operations or tax  
 42 attributes of the parent company or other affiliates of the utility.

43 (c) The Public Utility Commission permits a utility to include costs for taxes that assume the  
 44 utility is not part of an affiliated group of corporations for tax purposes.

45 (d) The parent company of a utility may employ accounting methods, debt, consolidated tax re-

1 turn rules and other techniques in a way that results in a difference between the tax liability paid  
2 to units of government by the utility, or the affiliated group of corporations of which the utility is  
3 a member, and the amount of taxes collected, directly or indirectly, from customers.

4 (e) Tax uncertainty in the ratemaking process may result in collecting taxes from ratepayers  
5 that are not paid to units of government.

6 (f) Utility rates that include amounts for taxes should reflect the taxes that are paid to units  
7 of government to be considered fair, just and reasonable.

8 (g) Tax information of a business is commercially sensitive. Public disclosure of tax information  
9 could provide a commercial advantage to other businesses.

10 *[(2) The definitions in ORS 757.268 apply to this section.]*

11 **(2) As used in this section, “affiliated group” has the meaning given that term in section**  
12 **2 of this 2011 Act.**

13 **SECTION 6. ORS 757.268 is repealed.**

14

---