

House Bill 3268

Sponsored by Representatives KENY-GUYER, PILUSO, Senator BOQUIST; Senator MONNES ANDERSON

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**.

Repeals provisions directing Public Utility Commission to administer residential telecommunication service program.

A BILL FOR AN ACT

1
2 Relating to telecommunications; creating new provisions; amending ORS 291.055, 403.230, 759.050
3 and section 16, chapter 290, Oregon Laws 1987; and repealing sections 1, 2, 3, 4, 5, 6, 7, 8 and
4 15, chapter 290, Oregon Laws 1987, and section 2, chapter 204, Oregon Laws 2005.

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

6 **SECTION 1. (1) Sections 1, 2, 3, 4, 5 and 15, chapter 290, Oregon Laws 1987, are repealed.**

7 **(2) Section 6, chapter 290, Oregon Laws 1987, as amended by section 1, chapter 622,**
8 **Oregon Laws 1991, section 1, chapter 29, Oregon Laws 2007, section 25, chapter 599, Oregon**
9 **Laws 2009, section 1, chapter 77, Oregon Laws 2011, and section 1, chapter 29, Oregon Laws**
10 **2013, is repealed.**

11 **(3) Section 7, chapter 290, Oregon Laws 1987, as amended by section 2, chapter 622,**
12 **Oregon Laws 1991, section 8, chapter 872, Oregon Laws 1991, section 1, chapter 231, Oregon**
13 **Laws 1993, section 387, chapter 79, Oregon Laws 1995, section 1, chapter 451, Oregon Laws**
14 **1995, section 2, chapter 408, Oregon Laws 2001, and section 1, chapter 78, Oregon Laws 2011,**
15 **is repealed.**

16 **(4) Section 8, chapter 290, Oregon Laws 1987, as amended by section 74, chapter 966,**
17 **Oregon Laws 1989, section 3, chapter 622, Oregon Laws 1991, section 1, chapter 872, Oregon**
18 **Laws 1991, and section 2, chapter 231, Oregon Laws 1993, is repealed.**

19 **(5) Section 2, chapter 204, Oregon Laws 2005, as amended by section 359, chapter 70,**
20 **Oregon Laws 2007, is repealed.**

21 **SECTION 2. The Residential Service Protection Fund is abolished. All moneys remaining**
22 **in the Residential Service Protection Fund on the effective date of this 2017 Act shall be**
23 **transferred to the General Fund and may be used for general governmental purposes.**

24 **SECTION 3. Section 16, chapter 290, Oregon Laws 1987, as amended by section 4, chapter 622,**
25 **Oregon Laws 1991, section 1, chapter 481, Oregon Laws 1997, section 1, chapter 408, Oregon Laws**
26 **2001, and section 1, chapter 544, Oregon Laws 2009, is amended to read:**

27 **Sec. 16.** [*Chapter 290, Oregon Laws 1987, is repealed January 1, 2020.*]

28 **(1) Section 9, chapter 290, Oregon Laws 1987, as amended by section 2, chapter 872,**
29 **Oregon Laws 1991, section 32, chapter 280, Oregon Laws 1995, section 2, chapter 451, Oregon**
30 **Laws 1995, section 1, chapter 384, Oregon Laws 1999, section 1, chapter 28, Oregon Laws 2007,**
31 **section 353, chapter 70, Oregon Laws 2007, section 2, chapter 78, Oregon Laws 2011, section**

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 **1, chapter 264, Oregon Laws 2011, and section 83, chapter 45, Oregon Laws 2014, is repealed**
 2 **on January 1, 2020.**

3 **(2) Section 10, chapter 290, Oregon Laws 1987, as amended by section 3, chapter 872,**
 4 **Oregon Laws 1991, section 2, chapter 384, Oregon Laws 1999, section 354, chapter 70, Oregon**
 5 **Laws 2007, and section 2, chapter 264, Oregon Laws 2011, is repealed on January 1, 2020.**

6 **(3) Section 11, chapter 290, Oregon Laws 1987, as amended by section 4, chapter 872,**
 7 **Oregon Laws 1991, section 3, chapter 384, Oregon Laws 1999, section 355, chapter 70, Oregon**
 8 **Laws 2007, section 3, chapter 78, Oregon Laws 2011, and section 3, chapter 264, Oregon Laws**
 9 **2011, is repealed on January 1, 2020.**

10 **(4) Section 12, chapter 290, Oregon Laws 1987, as amended by section 5, chapter 872,**
 11 **Oregon Laws 1991, and section 356, chapter 70, Oregon Laws 2007, is repealed on January 1,**
 12 **2020.**

13 **(5) Section 13, chapter 290, Oregon Laws 1987, as amended by section 6, chapter 872,**
 14 **Oregon Laws 1991, and section 4, chapter 384, Oregon Laws 1999, is repealed on January 1,**
 15 **2020.**

16 **(6) Section 14, chapter 290, Oregon Laws 1987, as amended by section 1, chapter 115,**
 17 **Oregon Laws 1989, section 7, chapter 872, Oregon Laws 1991, section 33, chapter 280, Oregon**
 18 **Laws 1995, section 5, chapter 384, Oregon Laws 1999, section 2, chapter 28, Oregon Laws 2007,**
 19 **section 357, chapter 70, Oregon Laws 2007, section 4, chapter 264, Oregon Laws 2011, and**
 20 **section 84, chapter 45, Oregon Laws 2014, is repealed on January 1, 2020.**

21 **SECTION 4.** ORS 291.055 is amended to read:

22 291.055. (1) Notwithstanding any other law that grants to a state agency the authority to es-
 23 tablish fees, all new state agency fees or fee increases adopted during the period beginning on the
 24 date of adjournment sine die of a regular session of the Legislative Assembly and ending on the date
 25 of adjournment sine die of the next regular session of the Legislative Assembly:

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

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

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

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

34 (e) Are rescinded on adjournment sine die of the next regular session of the Legislative Assem-
 35 bly as described in this subsection, unless otherwise authorized by enabling legislation setting forth
 36 the approved fees.

37 (2) This section does not apply to:

38 (a) Any tuition or fees charged by a public university listed in ORS 352.002.

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

43 (c) Fees or payments required for:

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

1 (B) Assessments imposed by the Oregon Medical Insurance Pool Board under section 2, chapter
2 698, Oregon Laws 2013.

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

4 (d) Fees created or authorized by statute that have no established rate or amount but are cal-
5 culated for each separate instance for each fee payer and are based on actual cost of services pro-
6 vided.

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

8 (f) Any intergovernmental charges.

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

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

12 (i) Assessments on premiums charged by the Department of Consumer and Business Services
13 pursuant to ORS 731.804 or fees charged by the Division of Finance and Corporate Securities of the
14 Department of Consumer and Business Services to banks, trusts and credit unions pursuant to ORS
15 706.530 and 723.114.

16 (j) Public Utility Commission operating assessments required by ORS 756.310 [*or charges paid*
17 *to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987*].

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

20 (L) New or increased fees that are anticipated in the legislative budgeting process for an
21 agency, revenues from which are included, explicitly or implicitly, in the legislatively adopted
22 budget or the legislatively approved budget for the agency.

23 (m) Tolls approved by the Oregon Transportation Commission pursuant to ORS 383.004.

24 (n) Convenience fees as defined in ORS 182.126 and established by the State Chief Information
25 Officer under ORS 182.132 (3) and recommended by the Electronic Government Portal Advisory
26 Board.

27 (3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unex-
28 pected and temporary revenue surpluses may be increased to not more than their prior level without
29 compliance with subsection (1) of this section if, at the time the fee is decreased, the state agency
30 specifies the following:

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

32 (B) The conditions under which the fee will be increased to not more than its prior level.

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

35 **SECTION 5.** ORS 291.055, as amended by section 36, chapter 698, Oregon Laws 2013, section
36 20, chapter 70, Oregon Laws 2015, and section 44b, chapter 807, Oregon Laws 2015, is amended to
37 read:

38 291.055. (1) Notwithstanding any other law that grants to a state agency the authority to es-
39 tablish fees, all new state agency fees or fee increases adopted during the period beginning on the
40 date of adjournment sine die of a regular session of the Legislative Assembly and ending on the date
41 of adjournment sine die of the next regular session of the Legislative Assembly:

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

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

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

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

5 (e) Are rescinded on adjournment sine die of the next regular session of the Legislative Assem-
 6 bly as described in this subsection, unless otherwise authorized by enabling legislation setting forth
 7 the approved fees.

8 (2) This section does not apply to:

9 (a) Any tuition or fees charged by a public university listed in ORS 352.002.

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

14 (c) Fees or payments required for:

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

17 (B) Copayments and premiums paid to the Oregon medical assistance program.

18 (d) Fees created or authorized by statute that have no established rate or amount but are cal-
 19 culated for each separate instance for each fee payer and are based on actual cost of services pro-
 20 vided.

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

22 (f) Any intergovernmental charges.

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

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

26 (i) Assessments on premiums charged by the Department of Consumer and Business Services
 27 pursuant to ORS 731.804 or fees charged by the Division of Finance and Corporate Securities of the
 28 Department of Consumer and Business Services to banks, trusts and credit unions pursuant to ORS
 29 706.530 and 723.114.

30 (j) Public Utility Commission operating assessments required by ORS 756.310 [*or charges paid*
 31 *to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987*].

32 (k) Fees charged by the Housing and Community Services Department for intellectual property
 33 pursuant to ORS 456.562.

34 (L) New or increased fees that are anticipated in the legislative budgeting process for an
 35 agency, revenues from which are included, explicitly or implicitly, in the legislatively adopted
 36 budget or the legislatively approved budget for the agency.

37 (m) Tolls approved by the Oregon Transportation Commission pursuant to ORS 383.004.

38 (n) Convenience fees as defined in ORS 182.126 and established by the State Chief Information
 39 Officer under ORS 182.132 (3) and recommended by the Electronic Government Portal Advisory
 40 Board.

41 (3)(a) Fees temporarily decreased for competitive or promotional reasons or because of unex-
 42 pected and temporary revenue surpluses may be increased to not more than their prior level without
 43 compliance with subsection (1) of this section if, at the time the fee is decreased, the state agency
 44 specifies the following:

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

1 (B) The conditions under which the fee will be increased to not more than its prior level.

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

4 **SECTION 6.** ORS 403.230 is amended to read:

5 403.230. [(1)] Unless the context requires otherwise, the provisions of ORS chapters 305, 314 and
6 316 as to the audit and examination of reports and returns, determination of deficiencies, assess-
7 ments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences and ap-
8 peals to the Oregon Tax Court, and procedures relating thereto, apply to ORS 403.200 to 403.230 the
9 same as if the tax were a tax imposed upon or measured by net income. The provisions apply to the
10 consumer or subscriber liable for the tax and to the provider or seller required to collect the tax.
11 As to any amount collected and required to be remitted to the Department of Revenue, the tax is
12 considered a tax upon the provider or seller required to collect the tax and that provider or seller
13 is considered a taxpayer.

14 [(2) *Notwithstanding ORS 314.835 and 314.840, the Department of Revenue may disclose informa-*
15 *tion received under ORS 403.200 to 403.230 to the Public Utility Commission to carry out the provisions*
16 *of chapter 290, Oregon Laws 1987.*]

17 [(3) *The Public Utility Commission may disclose information obtained pursuant to chapter 290,*
18 *Oregon Laws 1987, to the Department of Revenue to administer the tax imposed under ORS 403.200*
19 *to 403.230.*]

20 **SECTION 7.** ORS 759.050 is amended to read:

21 759.050. (1) As used in this section:

22 (a) "Competitive zone" means a telecommunications service area within all or part of a local
23 exchange, described both by service and territory, that has been designated a competitive zone by
24 the Public Utility Commission under subsection (2) or (4) of this section.

25 (b) "Competitive zone service" means a local exchange telecommunications service that the
26 commission has authorized to be provided within a competitive zone.

27 (c) "Essential function" means a functional component of a competitive zone service necessary
28 to the provision of the service by a telecommunications provider for which there is no adequate al-
29 ternative in terms of quality, quantity and price to the incumbent telecommunications utility.

30 (d) "Telecommunications utility" and "competitive provider" mean those entities that are clas-
31 sified as such by the commission under ORS 759.020. "Telecommunications provider" includes both
32 telecommunications utilities and competitive providers.

33 (2)(a) Notwithstanding the provisions of ORS 759.020 (3), the commission may certify one or
34 more persons, including another telecommunications utility, to provide local exchange telecommu-
35 nications service within the local exchange telecommunications service area of a certificated tele-
36 communications utility if the commission determines that the authorization would be in the public
37 interest. For the purpose of determining whether the authorization would be in the public interest,
38 the commission shall consider:

39 (A) The effect on rates for local exchange telecommunications service customers both within and
40 outside the competitive zone.

41 (B) The effect on competition in the local exchange telecommunications service area.

42 (C) The effect on access by customers to high quality, innovative telecommunications service in
43 the local exchange telecommunications service area.

44 (D) Any other facts the commission considers relevant.

45 (b) Upon certification of a telecommunications provider under paragraph (a) of this subsection,

1 the commission shall establish a competitive zone defined by the services to be provided by the
 2 telecommunications provider and the geographic area to be served by the telecommunications pro-
 3 vider. Price and service competition within the meaning of ORS 759.052 may not be deemed to exist
 4 by virtue of the establishment of a competitive zone.

5 (c) At the time of certification of a telecommunications provider, or thereafter, the commission
 6 may impose reasonable conditions upon the authority of the telecommunications provider to provide
 7 competitive zone service within the competitive zone. Reasonable conditions include, but are not
 8 limited to, conditions:

9 (A) Designed to promote fair competition, such as interconnection; and

10 (B) Requiring contributions of the type required of a telecommunications utility on account of
 11 the provision of local exchange service, including those to [*the Residential Service Protection Fund*
 12 *or*] the Telecommunication Devices Access Program.

13 (3) Upon demand, a competitive provider of competitive zone services shall make available to
 14 the commission any information relating to competitive zone services that the commission requests.
 15 Information provided to the commission by a competitive provider under this subsection shall be
 16 confidential and may not be disclosed by the commission, except for regulatory purposes in the
 17 context of a proceeding before the commission.

18 (4) Upon application by a telecommunications utility and a showing of competition within its
 19 local exchange, whether or not from certificated providers, the commission may designate all or part
 20 of the local exchange a competitive zone.

21 (5)(a) Except with respect to telecommunications utilities that are exempt from the provisions
 22 of ORS 759.180 to 759.190, unless the commission determines that it is not in the public interest at
 23 the time a competitive zone is created, upon designation of a competitive zone, price changes, ser-
 24 vice variations and modifications of competitive zone services offered by a telecommunications util-
 25 ity in the zone are not subject to ORS 759.180 to 759.190 and, at the telecommunication utility's
 26 discretion, may be made effective upon filing with the commission.

27 (b) The price and terms of service offered by a telecommunications utility for a competitive zone
 28 service within a competitive zone may differ from that outside of the zone. However, the price for
 29 a competitive zone service within the zone may not be lower than the total service long run incre-
 30 mental cost, for nonessential functions, of providing the service within the zone and the charges for
 31 essential functions used in providing the service, but the commission may establish rates for resi-
 32 dential local exchange telecommunications service at any level necessary to achieve the
 33 commission's universal service objectives. Within the zone, the price of a competitive zone service,
 34 or any essential function used in providing the competitive zone service, may not be higher than
 35 those prices in effect when the competitive zone was established, unless authorized by the commis-
 36 sion.

37 (c) The commission may revoke the exemption of a telecommunications utility from ORS 759.180
 38 to 759.190 if the commission finds that the utility has violated statutes, rules or conditions of the
 39 commission applicable to competitive zone services or that there has been a substantial change in
 40 the circumstances that prevailed at the time the competitive zone was first established.

41 (d) On the motion of a telecommunications provider or on its own motion, the commission may
 42 order a telecommunications utility to disaggregate and offer essential functions of the telecommu-
 43 nications utility's local exchange network.

44 (6) A decision of the commission, with respect to the terms and conditions under which com-
 45 petitive zone services may be offered within a competitive zone by a telecommunications utility, to

1 authorize a competitor to provide service within the local exchange service area of a telecommuni-
2 cations utility or to otherwise designate a competitive zone shall be subject to judicial review, but
3 may not be stayed other than by order of the commission, except upon a showing by clear and
4 convincing evidence that failure to stay the decision will result in irreparable harm to the aggrieved
5 party.

6 (7) The exclusive remedy of a telecommunications provider aggrieved by the prices, terms of
7 service or practices of another provider with respect to competitive zone services within a compet-
8 itive zone is to file a complaint with the commission under ORS 756.500. The commission, either
9 upon complaint or its own motion, may permanently suspend a filing made by a provider with re-
10 spect to a competitive zone service or take such other action as the commission deems appropriate,
11 except an award for damages. A claim for damages arising from a commission decision in favor of
12 the provider on a matter alleged in the complaint shall be brought as a separate action at law.

13 (8) Nothing in this section shall serve to shield any telecommunications provider of local ex-
14 change telecommunications service from state or federal antitrust laws.

15 (9) The commission shall report annually to the Legislative Assembly:

16 (a) The number of competitive zones created under ORS 759.020 and 759.050;

17 (b) The number of competitive providers authorized under ORS 759.020 and 759.050;

18 (c) The number and types of competitive services made available to consumers; and

19 (d) Consumer comments on competitive telecommunications services.

20