

A-Engrossed
Senate Bill 83

Ordered by the Senate February 13
Including Senate Amendments dated February 13

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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.

Clarifies requirements for judicial review of orders of Public Utility Commission.

A BILL FOR AN ACT

1
2 Relating to administrative procedures of the agency that regulates utilities; creating new provisions;
3 and amending ORS 183.315, 756.450, 756.610, 757.110, 757.495, 758.020, 758.035, 758.425, 758.445,
4 759.390 and 759.455.

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

6 **SECTION 1.** ORS 183.315 is amended to read:

7 183.315. (1) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452,
8 183.458, 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created
9 pursuant to ORS 199.430, the Department of Revenue, State Accident Insurance Fund Corporation,
10 Department of Consumer and Business Services with respect to its functions under ORS chapters
11 654 and 656, State Board of Parole and Post-Prison Supervision, Psychiatric Security Review Board
12 or Oregon Health Authority with respect to its functions under ORS 161.315 to 161.351.

13 (2) This chapter does not apply with respect to actions of the Governor authorized under ORS
14 chapter 240 and ORS 396.125 or actions of the Adjutant General authorized under ORS 396.160 (14).

15 (3) The provisions of ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.452, 183.458 and
16 183.460 do not apply to the Employment Appeals Board or the Employment Department.

17 (4) The Employment Department shall be exempt from the provisions of this chapter to the ex-
18 tent that a formal finding of the United States Secretary of Labor is made that such provision con-
19 flicts with the terms of the federal law, acceptance of which by the state is a condition precedent
20 to continued certification by the United States Secretary of Labor of the state's law.

21 (5) The provisions of ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490
22 to 183.500 do not apply to orders issued to persons who:

23 (a) Have been committed pursuant to ORS 137.124 to the custody of the Department of Cor-
24 rections or are otherwise confined in a Department of Corrections facility; or

25 (b) Seek to visit an inmate confined in a Department of Corrections facility.

26 (6) ORS 183.410, 183.415, 183.417, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.482 (3) do
27 not apply to the Public Utility Commission. *[Notwithstanding ORS 183.480 and except as provided in*
28 *ORS 757.495 and 759.390, only a party to a hearing before the Public Utility Commission is entitled*

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 *to seek judicial review of an order of the commission.] Except as provided in ORS 774.180, judicial*
 2 **review of an order issued by the commission in a contested case may be sought only by a**
 3 **party to the contested case.**

4 (7) The provisions of this chapter do not apply to the suspension, cancellation or termination
 5 of an apprenticeship or training agreement under ORS 660.060.

6 (8) The provisions of ORS 183.413 to 183.497 do not apply to administrative proceedings con-
 7 ducted under rules adopted by the Secretary of State under ORS 246.190.

8 **SECTION 2.** ORS 756.450 is amended to read:

9 756.450. On petition of any interested person, the Public Utility Commission may issue a
 10 declaratory ruling with respect to the applicability to any person, property, or state of facts of any
 11 rule or statute enforceable by the commission. A declaratory ruling is binding between the com-
 12 mission and the petitioner on the state of facts alleged, unless it is modified, remanded or set aside
 13 by a court. However, the commission may review the ruling and modify or set it aside if requested
 14 by the petitioner or other party to the proceeding. Binding rulings [*provided by*] **issued under** this
 15 section are subject to judicial review as orders [*in contested cases*] in the manner provided by ORS
 16 756.610.

17 **SECTION 3.** ORS 756.610 is amended to read:

18 756.610. (1)(a) Except as provided in subsections (2) and (3) of this section, final orders of the
 19 Public Utility Commission are subject to judicial review as orders [*in contested cases*] under the
 20 provisions of ORS 183.480 to 183.497.

21 **(b) Binding rulings issued under ORS 756.450 are subject to review in the Court of Ap-**
 22 **peals in the manner provided in ORS 183.480 for the review of orders in contested cases.**

23 (2) ORS 183.482 (3) does not apply to judicial review of an order of the Public Utility Commis-
 24 sion. At any time after filing a petition for judicial review of a final order of the commission **in a**
 25 **contested case**, the petitioner may apply to the Court of Appeals for a stay of the order until the
 26 final disposition of the appeal. The court may grant a stay for cause shown. As a condition of
 27 granting a stay, the court may require a bond or other security, or impose such other conditions
 28 as the court deems appropriate. A stay may be granted only after notice to the commission and
 29 opportunity for hearing. Any bond required by the court must be executed in favor of the commis-
 30 sion for the benefit of interested persons, and may be enforced by the commission or by any inter-
 31 ested person.

32 (3) An order of the Public Utility Commission related to the petition for a certificate of public
 33 convenience and necessity under ORS 758.015, where the petitioner also seeks approval from the
 34 Energy Facility Siting Council for the proposed transmission line, is subject to judicial review as
 35 provided in ORS 758.017.

36 **SECTION 4.** ORS 757.110 is amended to read:

37 757.110. (1) Any finding and order made and entered by the Public Utility Commission under
 38 ORS 757.105 or 757.107 shall have the effect of prohibiting any unapproved or rejected expenditure
 39 from being recognized as an operating expense or capital expenditure in any rate valuation pro-
 40 ceeding or in any proceeding or hearing unless and until the propriety thereof has been established
 41 to the satisfaction of the commission. Any such finding and order shall remain in full force and ef-
 42 fect, unless and until it is modified or set aside by the commission or is set aside, modified or re-
 43 manded in a proceeding for judicial review of an order [*in a contested case*] in the manner provided
 44 by ORS 756.610.

45 (2) Nothing in ORS 757.105 or 757.107 prevents the commission from at any time making and

1 filing orders rejecting imprudent and unwise expenditures or payments. Such orders when so made
2 shall be in full force and effect, and the public utility shall not have the right to make such expen-
3 ditures or payments found to be imprudent or unwise until the order has been modified or set aside
4 by the commission or is set aside, modified or remanded in a proceeding for judicial review of an
5 order [*in a contested case*] in the manner provided by ORS 756.610.

6 **SECTION 5.** ORS 757.495 is amended to read:

7 757.495. (1) When any public utility doing business in this state enters into any contract to make
8 any payment, directly or indirectly, to any person or corporation having an affiliated interest, for
9 service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal
10 or other services, or enter any charges therefor on its books, which shall be recognized as an op-
11 erating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the
12 contract shall be filed with the Public Utility Commission within 90 days of execution of the con-
13 tract. The contract shall be deemed to be executed on the date the parties sign a written contract
14 or on the date the parties begin to transact business under the contract, whichever date is earlier.

15 (2) When any public utility doing business in this state enters into any contract, oral or written,
16 with any person or corporation having an affiliated interest relating to the construction, operation,
17 maintenance, leasing or use of the property of such public utility in Oregon, or the purchase of
18 property, materials or supplies, which shall be recognized as the basis of an operating expense or
19 capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be
20 filed with the commission within 90 days of execution of the contract. The contract shall be deemed
21 to be executed on the date the parties sign a written contract or on the date the parties begin to
22 transact business under the contract, whichever date is earlier.

23 (3) When any such contract has been submitted to the commission, the commission promptly
24 shall examine and investigate the contract. If, after such investigation, the commission determines
25 that the contract is fair and reasonable and not contrary to the public interest, the commission shall
26 enter findings and an order to this effect and serve a copy thereof upon the public utility, whereupon
27 any expenses and capital expenditures incurred by the public utility under the contract may be re-
28 cognized in any rate valuation or other hearing or proceeding. If, after such investigation, the
29 commission determines that the contract is not fair and reasonable in all its terms and is contrary
30 to the public interest, the commission shall enter findings and an order accordingly and serve a copy
31 thereof upon the public utility, and, except as provided in subsection (4) of this section, it shall be
32 unlawful to recognize the contract for the purposes specified in this section.

33 (4) When any such contract has been filed with the commission within 90 days of execution and
34 the commission has not entered an order disapproving the contract under subsection (3) of this
35 section, the commission may not base its refusal to recognize any expenses or capital expenditures
36 incurred under the contract in any rate valuation or other hearing or proceeding solely on the basis
37 that such contract has not been approved under subsection (3) of this section.

38 (5) No public utility shall issue notes or lend its funds or give credit on its books or otherwise
39 to any person or corporation having an affiliated interest, either directly or indirectly, without the
40 approval of the commission.

41 (6) The action of the commission with respect to all the matters described in this section when
42 submitted to the commission shall be by findings and an order to be entered within 90 days after the
43 matter has been submitted to the commission for consideration, and the findings and order of the
44 commission with respect to any of such matters shall be and remain in full force and effect, unless
45 and until set aside, modified or remanded in a proceeding for judicial review of an order [*in a con-*

1 *tested case*] in the manner provided by ORS 756.610. [*The public utility, or any other person or cor-*
 2 *poration affected by any such findings and order, may seek judicial review in the manner provided by*
 3 *ORS 756.610.*]

4 **SECTION 6.** ORS 758.020 is amended to read:

5 758.020. (1) The county court, board of county commissioners or the Department of Transporta-
 6 tion, when designating the location where poles or other aboveground facilities described in ORS
 7 758.010 may be placed on a road or highway which fronts on the ocean or on a river or other body
 8 of water and the water frontage of the highway is being developed or maintained for its scenic or
 9 recreational value, may require all lines to occupy the opposite side of the right of way, if such joint
 10 occupancy can be maintained without undue impairment of service or damage to public life and
 11 property.

12 (2) If the owners of such lines are unable to agree on the terms and conditions of joint occu-
 13 pancy, such department, court or board shall request the Public Utility Commission to determine the
 14 practicability of such joint occupancy and the effect thereof upon adequate and safe service by the
 15 prospective joint occupants, the location of the lines, and, if found to be practicable, to fix and
 16 prescribe the terms and conditions pursuant to which joint occupancy shall be accomplished. Before
 17 making or entering an order, such commission shall hold a hearing and make findings in accordance
 18 with ORS 756.500 to 756.610. The order of the commission is subject to judicial review [*as an order*
 19 *in a contested case*] in the manner provided by ORS 756.610. In fixing terms and conditions pursuant
 20 to which joint occupancy shall be accomplished, the Public Utility Commission shall require the in-
 21 stallation by each occupant of standards, devices and equipment reasonably necessary to protect the
 22 equipment of the other occupants from damage and the public from injury arising from such joint
 23 occupancy.

24 (3) The right of any public utility, telecommunications utility or transmission company to con-
 25 struct, maintain and operate on a public highway poles or fixtures is contingent on compliance with
 26 reasonable requirements established by the Department of Transportation, county courts, boards of
 27 county commissioners or the Public Utility Commission under authority of this section and ORS
 28 758.010. Such rights are likewise contingent and conditioned on all facilities, equipment and instal-
 29 lations being constructed and maintained in strict conformance with modern and approved stan-
 30 dards.

31 **SECTION 7.** ORS 758.035 is amended to read:

32 758.035. (1) Every public utility, telecommunications utility, person, association or corporation
 33 having conduits, subways, street railway tracks, poles or other equipment on, over or under any
 34 street or highway shall for a reasonable compensation permit the use of the same by any public
 35 utility or telecommunications utility whenever public convenience or necessity requires such use
 36 and such use will not result in irreparable injury to the owner or other users of such equipment nor
 37 in any substantial detriment to the service to be rendered by such owners or other users.

38 (2) In case of failure to agree upon such use or the conditions or compensation for such use, any
 39 public utility, telecommunications utility, person, association or corporation interested may apply to
 40 the Public Utility Commission, and if after investigation the commission ascertains that public con-
 41 venience or necessity requires such use and that it would not result in irreparable injury to the
 42 owner or other users of such equipment, the commission shall by order direct that such use be
 43 permitted and prescribe reasonable conditions and compensation for such joint use.

44 (3) The use so ordered shall be permitted and the prescribed conditions and compensation shall
 45 be the lawful conditions and compensation to be observed, followed and paid. The order of the

1 commission is subject to judicial review [*as an order in a contested case*] in the manner provided by
2 ORS 756.610. The order may be modified by the commission upon application of any interested party
3 or upon the commission's own motion. All public utilities and telecommunications utilities shall af-
4 ford all reasonable facilities and make all necessary regulations for the interchange of business, or
5 traffic carried or their product between them, when ordered by the commission so to do.

6 **SECTION 8.** ORS 758.425 is amended to read:

7 758.425. (1) On the basis of the applicant's filing or, if there is a hearing, on the record made
8 at the hearing held pursuant to ORS 758.420, the Public Utility Commission shall enter an order
9 either approving or disapproving the contract as filed, together with any appropriate findings of the
10 facts supporting such order.

11 (2) An order of the commission under this section is subject to judicial review [*as an order in*
12 *a contested case*] in the manner provided by ORS 756.610.

13 (3) If the commission approves a contract and a petition for judicial review is not filed, the
14 contract shall be deemed to be valid and enforceable for all purposes from the date on which the
15 right to file a petition for judicial review expires.

16 **SECTION 9.** ORS 758.445 is amended to read:

17 758.445. An order of the Public Utility Commission under ORS 758.440 is subject to judicial re-
18 view [*as an order in a contested case*] in the manner provided by ORS 756.610. If a petition for judi-
19 cial review is not filed within the specified time, the order shall thereafter be valid and enforceable
20 for the purposes herein specified from the date on which the right to file a petition for judicial re-
21 view expires.

22 **SECTION 10.** ORS 759.390 is amended to read:

23 759.390. (1) As used in this section, "affiliated interest" with a telecommunications utility means:

24 (a) Every person owning or holding directly or indirectly five percent or more of the voting se-
25 curities of the telecommunications utility.

26 (b) Every person in any chain of successive ownership of five percent or more of the voting se-
27 curities of the telecommunications utility.

28 (c) Every corporation five percent or more of whose voting securities are owned by any person
29 owning five percent or more of the voting securities of the telecommunications utility or by any
30 person in any chain of successive ownership of five percent or more of the voting securities of the
31 telecommunications utility.

32 (d) Every individual who is an officer or director of the telecommunications utility or of any
33 person in any chain of successive ownership of five percent or more of the voting securities of the
34 telecommunications utility.

35 (e) Every corporation that has two or more officers or two or more directors in common with
36 the telecommunications utility.

37 (f) Every entity, five percent or more of which is directly or indirectly owned by a telecommu-
38 nications utility.

39 (g) Every person that the Public Utility Commission determines as a matter of fact, after in-
40 vestigation and hearing, actually is exercising any substantial influence over the policies and
41 actions of the telecommunications utility, even though the influence is not based upon stockholdings,
42 stockholders, directors or officers to the extent specified in this section.

43 (h) Every person that the commission determines as a matter of fact, after investigation and
44 hearing, actually is exercising such substantial influence over the policies and actions of the tele-
45 communications utility in conjunction with one or more other persons with whom they are related

1 by ownership or blood or by action in concert that together they are affiliated with the telecom-
2 munications utility within the meaning of this section even though no one of them alone is so affil-
3 iated.

4 (2) When any telecommunications utility doing business in this state, except a telecommuni-
5 cations carrier that has elected to be subject to ORS 759.405 and 759.410, enters into any contract
6 to make any payment, directly or indirectly, to any person having an affiliated interest, for service,
7 advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal or other
8 services, or enters any charge on the books of the utility, and the contract is to be recognized as
9 an operating expense or capital expenditure in any rate valuation or any other hearing or proceed-
10 ing, the contract shall be filed with the commission within 90 days of execution of the contract. The
11 contract shall be deemed to be executed on the date the parties sign a written contract or on the
12 date the parties begin to transact business under the contract, whichever date is earlier.

13 (3) When any telecommunications utility doing business in this state enters into any contract,
14 oral or written, with any person having an affiliated interest relating to the construction, operation,
15 maintenance, leasing or use of the property of the telecommunications utility in Oregon, or the
16 purchase of property, materials or supplies that is to be recognized as the basis of an operating
17 expense or capital expenditure in any rate valuation or any other hearing or proceeding, the con-
18 tract shall be filed with the commission within 90 days of execution of the contract. The contract
19 shall be deemed to be executed on the date the parties sign a written contract or on the date the
20 parties begin to transact business under the contract, whichever date is earlier.

21 (4) The commission promptly shall examine and investigate any contract submitted to the com-
22 mission under subsection (2) or (3) of this section. If, after the investigation, the commission deter-
23 mines that it is fair and reasonable and not contrary to the public interest, the commission shall
24 enter findings and order approving the contract and serve a copy of the findings and order upon the
25 telecommunications utility. Following the commission's determination of fairness and reasonableness,
26 any expenses and capital expenditures incurred by the telecommunications utility under the contract
27 may be recognized in any rate valuation or other hearing or proceeding. If, after the investigation,
28 the commission determines that the contract is not fair and reasonable in all its terms and is con-
29 trary to the public interest, the commission shall enter findings and order disapproving the contract
30 and serve a copy of the findings and order upon the telecommunications utility. Except as provided
31 in subsection (5) of this section, it is unlawful to recognize a disapproved contract for the purposes
32 specified in this section.

33 (5) When any contract described in subsection (2) or (3) of this section has been filed with the
34 commission within 90 days of execution and the commission has not entered an order disapproving
35 the contract under subsection (4) of this section, the commission may not base its refusal to recog-
36 nize any expenses or capital expenditures incurred under the contract in any rate valuation or other
37 hearing or proceeding solely on the basis that the contract has not been approved under subsection
38 (4) of this section.

39 (6) A telecommunications utility may not issue notes or loan its funds or give credit on its books
40 or otherwise to any person having an affiliated interest, either directly or indirectly, without the
41 approval of the commission.

42 (7) The action of the commission with respect to all the matters described in this section shall
43 be by findings and order to be entered within 90 days after the matter has been submitted to the
44 commission for consideration. *[The telecommunications utility, or any other person affected by any*
45 *findings and order of the commission under this section, may seek judicial review of the order of the*

1 *commission.*] An order of the commission under this section is subject to judicial review [*as an order*
2 *in a contested case*] in the manner provided by ORS 756.610.

3 (8) This section applies only to transactions in which the telecommunications utility's Oregon
4 intrastate expenditure to the affiliate is more than \$100,000.

5 **SECTION 11.** ORS 759.455 is amended to read:

6 759.455. (1) Unless exempt from compliance under section 251(f) of the federal Telecommuni-
7 cations Act of 1996 (47 U.S.C. 251(f)), a telecommunications utility shall not:

8 (a) Discriminate against another provider of retail telecommunications services by unreasonably
9 refusing or delaying access to the telecommunications utility's local exchange services.

10 (b) Discriminate against another provider of retail telecommunications services by providing
11 access to required facilities on terms or conditions less favorable than those the telecommunications
12 utility provides to itself and its affiliates. A telecommunications facility, feature or function is a
13 required facility if:

14 (A) Access to a proprietary facility, feature or function is necessary; and

15 (B) Failure to provide access to the facility, feature or function would impair a telecommuni-
16 cations carrier seeking access from providing the services the carrier is seeking to provide.

17 (c) Unreasonably degrade or impair the speed, quality or efficiency of access or any other ser-
18 vice, product or facility provided to another provider of telecommunications services.

19 (d) Fail to disclose in a timely and uniform manner, upon reasonable request and pursuant to a
20 protective agreement concerning proprietary information, all information reasonably necessary for
21 the design of network interface equipment, services or software that will meet the specifications of
22 the telecommunications utility's local exchange network.

23 (e) Unreasonably refuse or delay interconnections or provide inferior interconnections to an-
24 other provider of telecommunications services.

25 (f) Use basic exchange services rates, directly or indirectly, to subsidize or offset the cost of
26 other products or services offered by the telecommunications utility.

27 (g) Discriminate in favor of itself or an affiliate in the provision and pricing of, or extension of
28 credit for, any telephone service.

29 (h) Fail to provide a service, product or facility in accordance with applicable contracts, and
30 tariffs and rules of the Public Utility Commission.

31 (i) Impose unreasonable or discriminatory restrictions on network elements or the resale of its
32 services, except that:

33 (A) The telecommunications utility may require that residential service not be resold as a dif-
34 ferent class of service; and

35 (B) The commission may prohibit the resale of services the commission has approved for pro-
36 vision to a not-for-profit entity at rates below those offered to the general public.

37 (j) Provide telephone service to a person acting as a telecommunications provider if the com-
38 mission has ordered the telecommunications utility to discontinue telephone service to the person.

39 (2) A complaint alleging a violation of subsection (1) of this section shall be heard by the Public
40 Utility Commission or, at the commission's discretion, by an Administrative Law Judge designated
41 by the commission. A hearing under this subsection shall be conducted in an expedited manner
42 consistent with the following:

43 (a) The complaint shall be served upon the telecommunications carrier and filed with the com-
44 mission.

45 (b) An answer or other responsive pleading to the complaint shall be filed with the commission

1 not more than 10 days after receipt of the complaint. Copies of the answer or responsive pleading
2 shall be served upon the complainant and upon the commission.

3 (c) A prehearing conference shall be held not later than 15 days after the complaint is filed.
4 Hearing on the complaint shall commence not later than 30 days after the complaint is filed. Within
5 45 days after the complaint is filed, the commission shall either prepare a final decision or approve
6 as final the decision of the Administrative Law Judge. The final decision shall be issued as an order
7 of the commission in the manner provided under ORS 756.558.

8 (3) If the commission or Administrative Law Judge finds that a violation of this section has oc-
9 curred, the commission shall, within five business days, order the telecommunications utility to
10 remedy the violation within a specified period of time. The commission may prescribe specific action
11 to be taken by the utility, including but not limited to submitting a plan for preventing future vio-
12 lations. If the violation continues beyond the time period specified in the commission's order, the
13 commission on its own motion or upon the motion of an interested party may seek penalties as
14 provided in ORS 759.990 or otherwise may seek enforcement under ORS 756.160 or 756.180, or both.

15 (4) Total annual penalties imposed on a telecommunications utility under this section and ORS
16 759.450 shall not exceed two percent of the utility's gross intrastate revenue from the sale of tele-
17 communications services for the year preceding the year in which the violation occurred.

18 (5) An order of the commission under this section is subject to judicial review [*as an order in*
19 *a contested case*] in the manner provided by ORS 756.610.

20 (6) The Court of Appeals shall give proceedings **brought before the court** under this section
21 priority over all other matters before the court.

22 **SECTION 12. The amendments to ORS 183.315, 756.450, 756.610, 757.110, 757.495, 758.020,**
23 **758.035, 758.425, 758.445, 759.390 and 759.455 by sections 1 to 11 of this 2017 Act apply to ad-**
24 **ministrative procedures pending on or commencing on or after the effective date of this 2017**
25 **Act.**

26