

HB 3268-1
(LC 4170)
3/28/17 (MBM/ps)

Requested by Representative KENY-GUYER

**PROPOSED AMENDMENTS TO
HOUSE BILL 3268**

1 On page 1 of the printed bill, line 3, delete “section 16,” and insert
2 “sections 7, 8 and 16,” and delete “, 7, 8”.

3 Delete lines 6 through 31 and pages 2 through 7 and insert:

4 **“SECTION 1. The Public Utility Commission shall enter into an**
5 **agreement with a federal agency or an agent of a federal agency for**
6 **the purpose of administering a federal program through which eligible**
7 **low income households and eligible federal program participant**
8 **households receive a monthly benefit for home telephone, cellular**
9 **telephone or broadband service assistance. In administering the pro-**
10 **gram, the commission may not limit eligibility in a manner that is**
11 **inconsistent with the federal program or establish policies or processes**
12 **that are inconsistent with or contrary to the purposes of the federal**
13 **program.**

14 **“SECTION 2. Section 7, chapter 290, Oregon Laws 1987, as amended by**
15 **section 2, chapter 622, Oregon Laws 1991, section 8, chapter 872, Oregon**
16 **Laws 1991, section 1, chapter 231, Oregon Laws 1993, section 387, chapter 79,**
17 **Oregon Laws 1995, section 1, chapter 451, Oregon Laws 1995, section 2,**
18 **chapter 408, Oregon Laws 2001, and section 1, chapter 78, Oregon Laws 2011,**
19 **is amended to read:**

20 **“Sec. 7. (1) In order to fund the programs [*provided in*] described in**
21 **section 1 of this 2017 Act and sections [2 to 6 and] 9 to 14, chapter 290,**

1 Oregon Laws 1987, the Public Utility Commission shall develop and imple-
2 ment a system for assessing a surcharge in an amount not to exceed 35 cents
3 per month against each paying retail subscriber who has telecommunications
4 service with access to the telecommunications relay service. The surcharge
5 shall be applied on a telecommunications circuit designated for a particular
6 subscriber. One subscriber line shall be counted for each circuit that is ca-
7 pable of generating usage on the line side of the switched network regardless
8 of the quantity of customer premises equipment connected to each circuit.
9 For providers of central office based services, the surcharge shall be applied
10 to each line that has unrestricted connection to the telecommunications re-
11 lay service. These central office based service lines that have restricted ac-
12 cess to the telecommunications relay service shall be charged based on
13 software design. For cellular, wireless or other radio common carriers, the
14 surcharge shall be applied on a per instrument basis, but applies only to
15 subscribers whose place of primary use, as defined and determined under 4
16 U.S.C. 116 to 126, is within this state.

17 “(2) The surcharge imposed by subsection (1) of this section does not ap-
18 ply to:

19 “(a) Services upon which the state is prohibited from imposing the sur-
20 charge by the Constitution or laws of the United States or the Constitution
21 or laws of the State of Oregon.

22 “(b) Interconnection between telecommunications utilities, telecommuni-
23 cations cooperatives, competitive telecommunications services providers cer-
24 tified pursuant to ORS 759.020, radio common carriers and interexchange
25 carriers.

26 “(3) The commission annually shall review the surcharge and the balance
27 in the Residential Service Protection Fund and may make adjustments to the
28 amount of the surcharge to ensure that the fund has adequate resources but
29 that the fund balance does not exceed six months of projected expenses.

30 “(4) Moneys collected pursuant to the surcharge shall not be considered

1 in any proceeding to establish rates for telecommunication service.

2 “(5) The commission shall direct telecommunications public utilities to
3 identify separately in bills to customers for service the surcharge imposed
4 pursuant to this section.

5 “(6) Notwithstanding ORS 314.835 and 314.840, the Department of Revenue
6 may disclose information received under ORS 403.200 to 403.230 to the Public
7 Utility Commission to carry out the provisions of **section 1 of this 2017**
8 **Act and sections 9 to 14**, chapter 290, Oregon Laws 1987.

9 “(7) The Public Utility Commission may disclose information obtained
10 pursuant to **section 1 of this 2017 Act and sections 9 to 14**, chapter 290,
11 Oregon Laws 1987, to the Department of Revenue to administer the tax im-
12 posed under ORS 403.200 to 403.230.

13 **“SECTION 3.** Section 7, chapter 290, Oregon Laws 1987, as amended by
14 section 2, chapter 622, Oregon Laws 1991, section 8, chapter 872, Oregon
15 Laws 1991, section 1, chapter 231, Oregon Laws 1993, section 387, chapter 79,
16 Oregon Laws 1995, section 1, chapter 451, Oregon Laws 1995, section 2,
17 chapter 408, Oregon Laws 2001, section 1, chapter 78, Oregon Laws 2011, and
18 section 2 of this 2017 Act, is amended to read:

19 **“Sec. 7.** (1) In order to fund the [*programs*] **program** described in section
20 1 of this 2017 Act [*and sections 9 to 14, chapter 290, Oregon Laws 1987*], the
21 Public Utility Commission shall develop and implement a system for assess-
22 ing a surcharge in an amount not to exceed 35 cents per month against each
23 paying retail subscriber who has telecommunications service with access to
24 the telecommunications relay service. The surcharge shall be applied on a
25 telecommunications circuit designated for a particular subscriber. One sub-
26 scriber line shall be counted for each circuit that is capable of generating
27 usage on the line side of the switched network regardless of the quantity of
28 customer premises equipment connected to each circuit. For providers of
29 central office based services, the surcharge shall be applied to each line that
30 has unrestricted connection to the telecommunications relay service. These

1 central office based service lines that have restricted access to the telecom-
2 munications relay service shall be charged based on software design. For
3 cellular, wireless or other radio common carriers, the surcharge shall be
4 applied on a per instrument basis, but applies only to subscribers whose
5 place of primary use, as defined and determined under 4 U.S.C. 116 to 126,
6 is within this state.

7 “(2) The surcharge imposed by subsection (1) of this section does not ap-
8 ply to:

9 “(a) Services upon which the state is prohibited from imposing the sur-
10 charge by the Constitution or laws of the United States or the Constitution
11 or laws of the State of Oregon.

12 “(b) Interconnection between telecommunications utilities, telecommuni-
13 cations cooperatives, competitive telecommunications services providers cer-
14 tified pursuant to ORS 759.020, radio common carriers and interexchange
15 carriers.

16 “(3) The commission annually shall review the surcharge and the balance
17 in the Residential Service Protection Fund and may make adjustments to the
18 amount of the surcharge to ensure that the fund has adequate resources but
19 that the fund balance does not exceed six months of projected expenses.

20 “(4) Moneys collected pursuant to the surcharge shall not be considered
21 in any proceeding to establish rates for telecommunication service.

22 “(5) The commission shall direct telecommunications public utilities to
23 identify separately in bills to customers for service the surcharge imposed
24 pursuant to this section.

25 “(6) Notwithstanding ORS 314.835 and 314.840, the Department of Revenue
26 may disclose information received under ORS 403.200 to 403.230 to the Public
27 Utility Commission to carry out the provisions of section 1 of this 2017 Act
28 [*and sections 9 to 14, chapter 290, Oregon Laws 1987*].

29 “(7) The Public Utility Commission may disclose information obtained
30 pursuant to section 1 of this 2017 Act [*and sections 9 to 14, chapter 290,*

1 *Oregon Laws 1987,*] to the Department of Revenue to administer the tax im-
2 posed under ORS 403.200 to 403.230.

3 **“SECTION 4.** Section 8, chapter 290, Oregon Laws 1987, as amended by
4 section 74, chapter 966, Oregon Laws 1989, section 3, chapter 622, Oregon
5 Laws 1991, section 1, chapter 872, Oregon Laws 1991, and section 2, chapter
6 231, Oregon Laws 1993, is amended to read:

7 **“Sec. 8.** The Residential Service Protection Fund is established in the
8 State Treasury, separate and distinct from the General Fund. Interest earned
9 by moneys in the fund shall be credited to the fund. All moneys in the fund
10 are appropriated to the Public Utility Commission to carry out the pro-
11 visions of **section 1 of this 2017 Act and sections 9 to 14,** chapter 290,
12 Oregon Laws 1987.

13 **“SECTION 5.** Section 8, chapter 290, Oregon Laws 1987, as amended by
14 section 74, chapter 966, Oregon Laws 1989, section 3, chapter 622, Oregon
15 Laws 1991, section 1, chapter 872, Oregon Laws 1991, section 2, chapter 231,
16 Oregon Laws 1993, and section 4 of this 2017 Act, is amended to read:

17 **“Sec. 8.** The Residential Service Protection Fund is established in the
18 State Treasury, separate and distinct from the General Fund. Interest earned
19 by moneys in the fund shall be credited to the fund. All moneys in the fund
20 are appropriated to the Public Utility Commission to carry out the pro-
21 visions of section 1 of this 2017 Act [*and sections 9 to 14, chapter 290, Oregon*
22 *Laws 1987*].

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

25 **“(2) Section 6, chapter 290, Oregon Laws 1987, as amended by section**
26 **1, chapter 622, Oregon Laws 1991, section 1, chapter 29, Oregon Laws**
27 **2007, section 25, chapter 599, Oregon Laws 2009, section 1, chapter 77,**
28 **Oregon Laws 2011, and section 1, chapter 29, Oregon Laws 2013, is re-**
29 **pealed.**

30 **“(3) Section 2, chapter 204, Oregon Laws 2005, as amended by section**

1 **359, chapter 70, Oregon Laws 2007, is repealed.**

2 **“SECTION 7.** Section 16, chapter 290, Oregon Laws 1987, as amended by
3 section 4, chapter 622, Oregon Laws 1991, section 1, chapter 481, Oregon
4 Laws 1997, section 1, chapter 408, Oregon Laws 2001, and section 1, chapter
5 544, Oregon Laws 2009, is amended to read:

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

7 **“(1) Section 9, chapter 290, Oregon Laws 1987, as amended by section**
8 **2, chapter 872, Oregon Laws 1991, section 32, chapter 280, Oregon Laws**
9 **1995, section 2, chapter 451, Oregon Laws 1995, section 1, chapter 384,**
10 **Oregon Laws 1999, section 1, chapter 28, Oregon Laws 2007, section 353,**
11 **chapter 70, Oregon Laws 2007, section 2, chapter 78, Oregon Laws 2011,**
12 **section 1, chapter 264, Oregon Laws 2011, and section 83, chapter 45,**
13 **Oregon Laws 2014, is repealed on January 1, 2020.**

14 **“(2) Section 10, chapter 290, Oregon Laws 1987, as amended by sec-**
15 **tion 3, chapter 872, Oregon Laws 1991, section 2, chapter 384, Oregon**
16 **Laws 1999, section 354, chapter 70, Oregon Laws 2007, and section 2,**
17 **chapter 264, Oregon Laws 2011, is repealed on January 1, 2020.**

18 **“(3) Section 11, chapter 290, Oregon Laws 1987, as amended by sec-**
19 **tion 4, chapter 872, Oregon Laws 1991, section 3, chapter 384, Oregon**
20 **Laws 1999, section 355, chapter 70, Oregon Laws 2007, section 3, chapter**
21 **78, Oregon Laws 2011, and section 3, chapter 264, Oregon Laws 2011, is**
22 **repealed on January 1, 2020.**

23 **“(4) Section 12, chapter 290, Oregon Laws 1987, as amended by sec-**
24 **tion 5, chapter 872, Oregon Laws 1991, and section 356, chapter 70,**
25 **Oregon Laws 2007, is repealed on January 1, 2020.**

26 **“(5) Section 13, chapter 290, Oregon Laws 1987, as amended by sec-**
27 **tion 6, chapter 872, Oregon Laws 1991, and section 4, chapter 384,**
28 **Oregon Laws 1999, is repealed on January 1, 2020.**

29 **“(6) Section 14, chapter 290, Oregon Laws 1987, as amended by sec-**
30 **tion 1, chapter 115, Oregon Laws 1989, section 7, chapter 872, Oregon**

1 **Laws 1991, section 33, chapter 280, Oregon Laws 1995, section 5, chapter**
2 **384, Oregon Laws 1999, section 2, chapter 28, Oregon Laws 2007, section**
3 **357, chapter 70, Oregon Laws 2007, section 4, chapter 264, Oregon Laws**
4 **2011, and section 84, chapter 45, Oregon Laws 2014, is repealed on**
5 **January 1, 2020.**

6 **“SECTION 8.** ORS 291.055 is amended to read:

7 “291.055. (1) Notwithstanding any other law that grants to a state agency
8 the authority to establish fees, all new state agency fees or fee increases
9 adopted during the period beginning on the date of adjournment sine die of
10 a regular session of the Legislative Assembly and ending on the date of
11 adjournment sine die of the next regular session of the Legislative Assembly:

12 “(a) Are not effective for agencies in the executive department of gov-
13 ernment unless approved in writing by the Director of the Oregon Depart-
14 ment of Administrative Services;

15 “(b) Are not effective for agencies in the judicial department of govern-
16 ment unless approved in writing by the Chief Justice of the Supreme Court;

17 “(c) Are not effective for agencies in the legislative department of gov-
18 ernment unless approved in writing by the President of the Senate and the
19 Speaker of the House of Representatives;

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

22 “(e) Are rescinded on adjournment sine die of the next regular session of
23 the Legislative Assembly as described in this subsection, unless otherwise
24 authorized by enabling legislation setting forth the approved fees.

25 “(2) This section does not apply to:

26 “(a) Any tuition or fees charged by a public university listed in ORS
27 352.002.

28 “(b) Taxes or other payments made or collected from employers for un-
29 employment insurance required by ORS chapter 657 or premium assessments
30 required by ORS 656.612 and 656.614 or contributions and assessments cal-

1 culated by cents per hour for workers' compensation coverage required by
2 ORS 656.506.

3 “(c) Fees or payments required for:

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

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

9 “(C) Copayments and premiums paid to the Oregon medical assistance
10 program.

11 “(d) Fees created or authorized by statute that have no established rate
12 or amount but are calculated for each separate instance for each fee payer
13 and are based on actual cost of services provided.

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

15 “(f) Any intergovernmental charges.

16 “(g) Forest protection district assessment rates established by ORS 477.210
17 to 477.265 and the Oregon Forest Land Protection Fund fees established by
18 ORS 477.760.

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

21 “(i) Assessments on premiums charged by the Department of Consumer
22 and Business Services pursuant to ORS 731.804 or fees charged by the Divi-
23 sion of Finance and Corporate Securities of the Department of Consumer and
24 Business Services to banks, trusts and credit unions pursuant to ORS 706.530
25 and 723.114.

26 “(j) Public Utility Commission operating assessments required by ORS
27 756.310 or charges paid to the Residential Service Protection Fund required
28 by **section 7**, chapter 290, Oregon Laws 1987.

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

1 “(L) New or increased fees that are anticipated in the legislative budget-
2 ing process for an agency, revenues from which are included, explicitly or
3 implicitly, in the legislatively adopted budget or the legislatively approved
4 budget for the agency.

5 “(m) Tolls approved by the Oregon Transportation Commission pursuant
6 to ORS 383.004.

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

10 “(3)(a) Fees temporarily decreased for competitive or promotional reasons
11 or because of unexpected and temporary revenue surpluses may be increased
12 to not more than their prior level without compliance with subsection (1)
13 of this section if, at the time the fee is decreased, the state agency specifies
14 the following:

15 “(A) The reason for the fee decrease; and

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

18 “(b) Fees that are decreased for reasons other than those described in
19 paragraph (a) of this subsection may not be subsequently increased except
20 as allowed by ORS 291.050 to 291.060 and 294.160.

21 **“SECTION 9.** ORS 291.055, as amended by section 36, chapter 698, Oregon
22 Laws 2013, section 20, chapter 70, Oregon Laws 2015, and section 44b, chapter
23 807, Oregon Laws 2015, is amended to read:

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

29 “(a) Are not effective for agencies in the executive department of gov-
30 ernment unless approved in writing by the Director of the Oregon Depart-

1 ment of Administrative Services;

2 “(b) Are not effective for agencies in the judicial department of govern-
3 ment unless approved in writing by the Chief Justice of the Supreme Court;

4 “(c) Are not effective for agencies in the legislative department of gov-
5 ernment unless approved in writing by the President of the Senate and the
6 Speaker of the House of Representatives;

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

9 “(e) Are rescinded on adjournment sine die of the next regular session of
10 the Legislative Assembly as described in this subsection, unless otherwise
11 authorized by enabling legislation setting forth the approved fees.

12 “(2) This section does not apply to:

13 “(a) Any tuition or fees charged by a public university listed in ORS
14 352.002.

15 “(b) Taxes or other payments made or collected from employers for un-
16 employment insurance required by ORS chapter 657 or premium assessments
17 required by ORS 656.612 and 656.614 or contributions and assessments cal-
18 culated by cents per hour for workers’ compensation coverage required by
19 ORS 656.506.

20 “(c) Fees or payments required for:

21 “(A) Health care services provided by the Oregon Health and Science
22 University, by the Oregon Veterans’ Homes and by other state agencies and
23 institutions pursuant to ORS 179.610 to 179.770.

24 “(B) Copayments and premiums paid to the Oregon medical assistance
25 program.

26 “(d) Fees created or authorized by statute that have no established rate
27 or amount but are calculated for each separate instance for each fee payer
28 and are based on actual cost of services provided.

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

30 “(f) Any intergovernmental charges.

1 “(g) Forest protection district assessment rates established by ORS 477.210
2 to 477.265 and the Oregon Forest Land Protection Fund fees established by
3 ORS 477.760.

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

6 “(i) Assessments on premiums charged by the Department of Consumer
7 and Business Services pursuant to ORS 731.804 or fees charged by the Divi-
8 sion of Finance and Corporate Securities of the Department of Consumer and
9 Business Services to banks, trusts and credit unions pursuant to ORS 706.530
10 and 723.114.

11 “(j) Public Utility Commission operating assessments required by ORS
12 756.310 or charges paid to the Residential Service Protection Fund required
13 by **section 7**, chapter 290, Oregon Laws 1987.

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

16 “(L) New or increased fees that are anticipated in the legislative budget-
17 ing process for an agency, revenues from which are included, explicitly or
18 implicitly, in the legislatively adopted budget or the legislatively approved
19 budget for the agency.

20 “(m) Tolls approved by the Oregon Transportation Commission pursuant
21 to ORS 383.004.

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

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

30 “(A) The reason for the fee decrease; and

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

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

6 “**SECTION 10.** ORS 403.230 is amended to read:

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

18 “(2) Notwithstanding ORS 314.835 and 314.840, the Department of Revenue
19 may disclose information received under ORS 403.200 to 403.230 to the Public
20 Utility Commission to carry out the provisions of **section 1 of this 2017**
21 **Act or sections 9 to 14**, chapter 290, Oregon Laws 1987.

22 “(3) The Public Utility Commission may disclose information obtained
23 pursuant to **section 1 of this 2017 Act or sections 9 to 14**, chapter 290,
24 Oregon Laws 1987, to the Department of Revenue to administer the tax im-
25 posed under ORS 403.200 to 403.230.

26 “**SECTION 11.** ORS 403.230, as amended by section 10 of this 2017 Act,
27 is amended to read:

28 “403.230. (1) Unless the context requires otherwise, the provisions of ORS
29 chapters 305, 314 and 316 as to the audit and examination of reports and
30 returns, determination of deficiencies, assessments, claims for refunds, pen-

1 alties, interest, jeopardy assessments, warrants, conferences and appeals to
2 the Oregon Tax Court, and procedures relating thereto, apply to ORS 403.200
3 to 403.230 the same as if the tax were a tax imposed upon or measured by
4 net income. The provisions apply to the consumer or subscriber liable for the
5 tax and to the provider or seller required to collect the tax. As to any
6 amount collected and required to be remitted to the Department of Revenue,
7 the tax is considered a tax upon the provider or seller required to collect the
8 tax and that provider or seller is considered a taxpayer.

9 “(2) Notwithstanding ORS 314.835 and 314.840, the Department of Revenue
10 may disclose information received under ORS 403.200 to 403.230 to the Public
11 Utility Commission to carry out the provisions of section 1 of this 2017 Act[
12 *or sections 9 to 14, chapter 290, Oregon Laws 1987*].

13 “(3) The Public Utility Commission may disclose information obtained
14 pursuant to section 1 of this 2017 Act[*or sections 9 to 14, chapter 290, Oregon*
15 *Laws 1987,*] to the Department of Revenue to administer the tax imposed
16 under ORS 403.200 to 403.230.

17 **“SECTION 12.** ORS 759.050 is amended to read:

18 “759.050. (1) As used in this section:

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

23 “(b) ‘Competitive zone service’ means a local exchange telecommuni-
24 cations service that the commission has authorized to be provided within a
25 competitive zone.

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

30 “(d) ‘Telecommunications utility’ and ‘competitive provider’ mean those

1 entities that are classified as such by the commission under ORS 759.020.
2 ‘Telecommunications provider’ includes both telecommunications utilities
3 and competitive providers.

4 “(2)(a) Notwithstanding the provisions of ORS 759.020 (3), the commission
5 may certify one or more persons, including another telecommunications
6 utility, to provide local exchange telecommunications service within the lo-
7 cal exchange telecommunications service area of a certificated telecommu-
8 nications utility if the commission determines that the authorization would
9 be in the public interest. For the purpose of determining whether the au-
10 thorization would be in the public interest, the commission shall consider:

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

13 “(B) The effect on competition in the local exchange telecommunications
14 service area.

15 “(C) The effect on access by customers to high quality, innovative tele-
16 communications service in the local exchange telecommunications service
17 area.

18 “(D) Any other facts the commission considers relevant.

19 “(b) Upon certification of a telecommunications provider under paragraph
20 (a) of this subsection, the commission shall establish a competitive zone de-
21 fined by the services to be provided by the telecommunications provider and
22 the geographic area to be served by the telecommunications provider. Price
23 and service competition within the meaning of ORS 759.052 may not be
24 deemed to exist by virtue of the establishment of a competitive zone.

25 “(c) At the time of certification of a telecommunications provider, or
26 thereafter, the commission may impose reasonable conditions upon the au-
27 thority of the telecommunications provider to provide competitive zone ser-
28 vice within the competitive zone. Reasonable conditions include, but are not
29 limited to, conditions:

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

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

5 “(3) Upon demand, a competitive provider of competitive zone services
6 shall make available to the commission any information relating to compet-
7 itive zone services that the commission requests. Information provided to the
8 commission by a competitive provider under this subsection shall be confi-
9 dential and may not be disclosed by the commission, except for regulatory
10 purposes in the context of a proceeding before the commission.

11 “(4) Upon application by a telecommunications utility and a showing of
12 competition within its local exchange, whether or not from certificated pro-
13 viders, the commission may designate all or part of the local exchange a
14 competitive zone.

15 “(5)(a) Except with respect to telecommunications utilities that are ex-
16 empt from the provisions of ORS 759.180 to 759.190, unless the commission
17 determines that it is not in the public interest at the time a competitive zone
18 is created, upon designation of a competitive zone, price changes, service
19 variations and modifications of competitive zone services offered by a tele-
20 communications utility in the zone are not subject to ORS 759.180 to 759.190
21 and, at the telecommunication utility’s discretion, may be made effective
22 upon filing with the commission.

23 “(b) The price and terms of service offered by a telecommunications util-
24 ity for a competitive zone service within a competitive zone may differ from
25 that outside of the zone. However, the price for a competitive zone service
26 within the zone may not be lower than the total service long run incremental
27 cost, for nonessential functions, of providing the service within the zone and
28 the charges for essential functions used in providing the service, but the
29 commission may establish rates for residential local exchange telecommuni-
30 cations service at any level necessary to achieve the commission’s universal

1 service objectives. Within the zone, the price of a competitive zone service,
2 or any essential function used in providing the competitive zone service, may
3 not be higher than those prices in effect when the competitive zone was es-
4 tablished, unless authorized by the commission.

5 “(c) The commission may revoke the exemption of a telecommunications
6 utility from ORS 759.180 to 759.190 if the commission finds that the utility
7 has violated statutes, rules or conditions of the commission applicable to
8 competitive zone services or that there has been a substantial change in the
9 circumstances that prevailed at the time the competitive zone was first es-
10 tablished.

11 “(d) On the motion of a telecommunications provider or on its own mo-
12 tion, the commission may order a telecommunications utility to disaggregate
13 and offer essential functions of the telecommunications utility’s local ex-
14 change network.

15 “(6) A decision of the commission, with respect to the terms and condi-
16 tions under which competitive zone services may be offered within a com-
17 petitive zone by a telecommunications utility, to authorize a competitor to
18 provide service within the local exchange service area of a telecommuni-
19 cations utility or to otherwise designate a competitive zone shall be subject
20 to judicial review, but may not be stayed other than by order of the com-
21 mission, except upon a showing by clear and convincing evidence that failure
22 to stay the decision will result in irreparable harm to the aggrieved party.

23 “(7) The exclusive remedy of a telecommunications provider aggrieved by
24 the prices, terms of service or practices of another provider with respect to
25 competitive zone services within a competitive zone is to file a complaint
26 with the commission under ORS 756.500. The commission, either upon com-
27 plaint or its own motion, may permanently suspend a filing made by a pro-
28 vider with respect to a competitive zone service or take such other action
29 as the commission deems appropriate, except an award for damages. A claim
30 for damages arising from a commission decision in favor of the provider on

1 a matter alleged in the complaint shall be brought as a separate action at
2 law.

3 “(8) Nothing in this section shall serve to shield any telecommunications
4 provider of local exchange telecommunications service from state or federal
5 antitrust laws.

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

7 “(a) The number of competitive zones created under ORS 759.020 and
8 759.050;

9 “(b) The number of competitive providers authorized under ORS 759.020
10 and 759.050;

11 “(c) The number and types of competitive services made available to
12 consumers; and

13 “(d) Consumer comments on competitive telecommunications services.

14 **“SECTION 13. (1) The amendments to section 7, chapter 290, Oregon**
15 **Laws 1987, by section 3 of this 2017 Act become operative on January**
16 **1, 2020.**

17 **“(2) The amendments to section 8, chapter 290, Oregon Laws 1987,**
18 **by section 5 of this 2017 Act become operative on January 1, 2020.**

19 **“(3) The amendments to ORS 403.230 and 759.050 by sections 11 and**
20 **12 of this 2017 Act become operative on January 1, 2020.”.**

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