

A-Engrossed
House Bill 3160

Ordered by the House February 27
Including House Amendments dated February 27

Sponsored by Representative HOLVEY

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.

Modifies period of suspension of proposed utility rate or schedule of rates pending investigation and determination from initial six-month period plus additional three-month period to single nine-month period.

Extends period during which Public Utility Commission shall issue order on application to acquire public utility from within 19 business days of receiving application to 11 months. Permits commission to extend period to issue order *[for up to four months for cause]* **by agreement between commission and applicant.**

Requires water utility that applies for order designating area as exclusive service territory to include in application copy of notice of filing and to give notice within 30 days of filing application **by mail or** electronic mail to all customers of record of water utility in area described in application, *[and]* by press release to news media local to area described in application **and by publication in one or more newspapers of general circulation in area described in application.** Requires notice to describe area of proposed exclusive service territory and general rate impact to existing customers. *[Removes requirement that notice be published in local newspaper or newspapers of general circulation.]*

Requires person providing utility service who contracts with another person providing similar utility service for purpose of allocating territories and customers to give notice of contract filed with Public Utility Commission **by mail or** electronic mail to all customers of record affected by contract, *[and]* by press release to news media local to area affected by contract **and by publication in one or more newspapers of general circulation in area affected by contract.** Requires notice to describe area subject to contract and general rate impact to existing customers. *[Removes requirement that notice be published in local newspaper or newspapers of general circulation.]*

Requires person providing utility service in territory that applies for order allocating such territory to person to include in application copy of notice of filing and to give notice within 30 days of filing application **by mail or** electronic mail to all customers of record in area *[described in]* **covered by** application, *[and]* by press release to news media local to area *[described in]* **covered by application and by publication in one or more newspapers of general circulation in area covered by application.** Requires notice to describe area and general rate impact to existing customers. *[Removes requirement that notice be published in local newspaper or newspapers of general circulation.]*

A BILL FOR AN ACT

1
2 Relating to procedures associated with filings made with the Public Utility Commission; amending
3 ORS 757.215, 757.511, 758.302, 758.410, 758.420 and 758.435.

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

5 **SECTION 1.** ORS 757.215 is amended to read:

6 757.215. (1) The Public Utility Commission may, pending such investigation and determination,
7 order the suspension of the rate or schedule of rates¹, *provided the initial period of suspension shall*
8 *not extend more than six* **for a period of up to nine** months beyond the time when such rate or
9 schedule would otherwise go into effect. *[If the commission finds that the investigation will not be*
10 *completed at the expiration of the initial suspension, the commission may enter an order further sus-*
11 *pending such rate or schedule for not more than three months beyond the last day of the initial sus-*

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 *pension.]*

2 (2) This section does not prevent the commission and the utility from entering into a written
3 stipulation at any time extending any period of suspension.

4 (3) After full hearing, whether completed before or after such rate or schedule has gone into
5 effect, the commission may make such order in reference thereto as would be proper in a proceeding
6 initiated after such rate or schedule has become effective.

7 (4) If the commission is required to or determines to conduct a hearing on a rate or schedule
8 of rates filed pursuant to ORS 757.210, but does not order a suspension thereof, any increased re-
9 venue collected by the utility as a result of such rate or rate schedule becoming effective shall be
10 received subject to being refunded. If the rate or rate schedule thereafter approved by the commis-
11 sion is for a lesser increase or for no increase, the utility shall refund the amount of revenues re-
12 ceived that exceeds the amount approved as nearly as possible to the customers from whom such
13 excess revenues were collected, by a credit against future bills or otherwise, in such manner as the
14 commission orders.

15 (5) The commission may in a suspension order authorize an interim rate or rate schedule under
16 which the utility's revenues will be increased by an amount deemed reasonable by the commission,
17 not exceeding the amount requested by the utility. Any such interim increase for a public utility as
18 defined in ORS 757.005 that produces, transmits, delivers or furnishes heat, light or power shall be
19 effected by rates designed to increase the utility's revenues without materially changing the revenue
20 relationships among customer classes or between the revenues derived from demand charges and
21 from energy charges. An interim rate or rate schedule shall remain in effect until terminated by the
22 commission. Upon completion of the hearing and decision, the commission shall order the utility to
23 refund that portion of the increase in the interim rate or schedule that the commission finds is not
24 justified. Any refund of an interim increase under this subsection shall be based upon an analysis
25 of the utility's earnings for a period reasonably representative of the period during which the in-
26 terim increase was in effect. Refunds shall be made as nearly as possible to the customers against
27 whom the interim rates were charged, by credits against future bills or in such other manner as the
28 commission orders.

29 (6) Refunds ordered by the commission under subsection (4) or (5) of this section shall include
30 interest on the amount determined to be subject to refund from the date such interim rate or rate
31 schedules took effect.

32 **SECTION 2.** ORS 757.511 is amended to read:

33 757.511. (1) No person, directly or indirectly, shall acquire the power to exercise any substantial
34 influence over the policies and actions of a public utility which provides heat, light or power with-
35 out first securing from the Public Utility Commission, upon application, an order authorizing such
36 acquisition if such person is, or by such acquisition would become, an affiliated interest with such
37 public utility as defined in ORS 757.015 (1), (2) or (3).

38 (2) Notice must be given to the commission of an application under this section at least 60 days
39 before the application is filed with the commission. The notice must indicate whether the transaction
40 is a transaction described in ORS 757.814 (1). If the transaction is a transaction as described in ORS
41 757.814 (1), the commission shall give notice to cities and counties as required by ORS 757.814 (1).

42 (3) The application required by subsection (1) of this section shall set forth detailed information
43 regarding:

44 (a) The applicant's identity and financial ability;

45 (b) The background of the key personnel associated with the applicant;

- 1 (c) The source and amounts of funds or other consideration to be used in the acquisition;
- 2 (d) The applicant's compliance with federal law in carrying out the acquisition;
- 3 (e) Whether the applicant or the key personnel associated with the applicant have violated any
- 4 state or federal statutes regulating the activities of public utilities;
- 5 (f) All documents relating to the transaction giving rise to the application;
- 6 (g) The applicant's experience in operating public utilities providing heat, light or power;
- 7 (h) The applicant's plan for operating the public utility;
- 8 (i) How the acquisition will serve the public utility's customers in the public interest; and
- 9 (j) Such other information as the commission may require by rule.

10 (4)(a) The commission [*promptly*] shall examine and investigate each application received pursu-
11 ant to this section. [*Except as provided in subsection (5) of this section,*] The commission shall issue
12 an order disposing of the application within [*19 business days of its receipt.*] **11 months of the date**
13 **the application is filed, unless extended by agreement between the commission and applicant.**
14 If the commission determines that approval of the application will serve the public utility's custom-
15 ers and is in the public interest, the commission shall issue an order granting the application. The
16 commission may condition an order authorizing the acquisition upon the applicant's satisfactory
17 performance or adherence to specific requirements. The commission otherwise shall issue an order
18 denying the application. The applicant shall bear the burden of showing that granting the applica-
19 tion is in the public interest.

20 (b) In reviewing an application received pursuant to this section for an electricity or natural
21 gas utility, the Public Utility Commission must consider the effect of the acquisition or merger on
22 the amount of income taxes paid by the utility or its affiliated group and make any necessary ad-
23 justments to the rates of the utility, including the establishment of a balancing account to track
24 income tax expense, to ensure that the acquisition or merger serves the utility's customers and is
25 in the public interest.

26 [*(5) The commission may postpone issuance of an order disposing of an application under this*
27 *section if notice has been given to cities and counties under ORS 757.814 (1). In no event may the*
28 *commission postpone issuance of an order disposing of the application for more than 90 days under the*
29 *provisions of this subsection.*]

30 [(6)] (5) Nothing in this section shall prohibit dissemination by any party of information con-
31 cerning the acquisition so long as such dissemination is not otherwise in conflict with state or fed-
32 eral law.

33 **SECTION 3.** ORS 758.302 is amended to read:

34 758.302. (1) A water utility may apply to the Public Utility Commission for an order designating
35 **an area as** an exclusive service territory for the water utility. The commission may designate as
36 an exclusive service territory any area that on the date of application is being served in an adequate
37 manner by the applicant and is not being served by any other water provider.

38 (2) In addition to the area described in subsection (1) of this section, a private water utility may
39 apply for inclusion in an exclusive service territory designated for the private water utility any area
40 adjacent to the area described in subsection (1) of this section if:

41 (a) The applicant plans to extend service to the adjacent area in the six months immediately
42 following the date of the application;

43 (b) The adjacent area is not being served by any other water provider; and

44 (c) The applicant demonstrates that it is more economical and feasible to provide services to the
45 adjacent area by an extension of the applicant's existing facilities than by an extension of the fa-

1 cilities of another water provider or community water supply system.

2 (3) An application under this section [*shall*] **must** be made on forms provided by the
3 commission, [*and shall*] contain all information required by commission rule[.] **and include a copy**
4 **of the notice of the filing to be given to all customers of record. The applicant shall, within**
5 **30 days after filing an application under this section, give notice of the filing in the manner**
6 **provided by subsection (5) of this section.**

7 (4) Within 30 days after the filing of an application under this section, the commission shall give
8 notice of the filing[:]

9 [*(a) By publication at least once weekly for two consecutive weeks in a newspaper or newspapers*
10 *of general circulation in the area described in the application; and]*

11 [*(b) By written notice of the application]* to all other water providers in the areas adjacent to the
12 area described in the application.

13 **(5)(a) A notice given pursuant to this subsection shall be given:**

14 **(A) By mail or electronic mail to all customers of record of the water utility in the area**
15 **described in the application;**

16 **(B) By press release to news media local to the area described in the application; and**

17 **(C) By publication in one or more newspapers of general circulation in the area described**
18 **in the application at least once weekly for two successive weeks.**

19 **(b) The notice must describe the area of the proposed exclusive service territory and the**
20 **general rate impact to existing customers.**

21 [*(5) The commission may, on its own motion, hold a hearing on the application. The commission*
22 *shall hold a hearing on the application if a customer of the water utility requests a hearing on the*
23 *application within 30 days after the final publication of notice in the manner required by subsection (4)*
24 *of this section.]*

25 **(6) If the commission, on its own motion, chooses, or if any customer or customers of**
26 **the water utility request a hearing on the application within 30 days of the date notice is**
27 **given under subsection (3) of this section, the commission shall hold a hearing.** [*If a hearing*
28 *is scheduled,]* The commission shall give notice of the time and place of the hearing in the manner
29 provided by subsection [(4)] (5) of this section [*for notice of the filing of an application*]. If the hearing
30 is held by reason of a customer's request, the commission shall give notice of the hearing within 30
31 days after the request is received by the commission. The hearing shall be held at a place within
32 or conveniently accessible to the area described in the application.

33 [(6)] (7) The commission may make such investigations relating to an application under this
34 section as the commission deems proper, including physical examination and evaluation of the fa-
35 cilities and systems of the applicant, estimates of their operating costs and revenues, and studies
36 of such other information as the commission deems relevant.

37 [(7)] (8) The commission shall enter an order granting or denying an application for an exclusive
38 service territory under this section. The order must contain findings of fact supporting the order.
39 The commission may grant an application subject to such conditions and limitations as the com-
40 mission deems appropriate.

41 [(8)] (9) ORS 756.500 to 756.610 govern the conduct of hearings under this section and any ap-
42 peal of the commission's order.

43 [(9)] (10) If the commission considers competing applications under subsection (2) of this section
44 to extend exclusive service to the same area, there is a disputable presumption that applicants have
45 an equal ability to extend, improve, enlarge, build, operate and maintain existing or proposed facil-

ities.

SECTION 4. ORS 758.420 is amended to read:

758.420. (1) **A person who enters into** a contract [*entered into*] pursuant to ORS 758.410 shall [be] promptly [*filed*] **file the contract** with the Public Utility Commission[, *and the commission shall, within 30 days after such filing, give notice of such filing*]. **A contract filed under this section must include a copy of the notice of the filing to be given to all customers of record, and the person shall, within 30 days after filing a contract under this section, give notice of the filing in the manner provided by subsection (3) of this section.**

(2) If the commission chooses or if any customer or customers request a hearing on the matter within 30 days of the notice, the commission shall hold a hearing by telephone, **video conference or other electronic means of communication** or in person. The commission shall give notice of such hearing **in the manner provided by subsection (3) of this section** within 30 days of the customer's request [*which*]. **The** notice shall set the date and place of hearing on the question as to whether or not such contract will be approved. The hearing shall be held at a place within or conveniently accessible to the territories affected by the contract.

[*(2) The commission shall publish notice of the filing in a newspaper or newspapers of general circulation in each of the territories affected by the contract. Each such notice shall be published at least once weekly for two successive weeks.*]

(3)(a) A notice given under this section shall be given:

(A) By mail or electronic mail to all customers of record affected by the contract;

(B) By press release to news media local to the area affected by the contract; and

(C) By publication in one or more newspapers of general circulation in the area affected by the contract at least once weekly for two successive weeks.

(b) The notice must include a description of the area subject to the contract and the general rate impact to existing customers.

SECTION 5. ORS 758.410 is amended to read:

758.410. (1) Any person providing a utility service may contract with any other person providing a similar utility service for the purpose of allocating territories and customers between the parties and designating which territories and customers are to be served by which of said contracting parties; and the territories and customers so allocated and designated may include all or any portion of the territories and customers which are being served by either or both of the parties at the time the contract is entered into, or which could be economically served by the then existing facilities of either party, or by reasonable and economic extensions thereto.

(2) Any such contracting parties may also contract in writing for the sale, exchange, transfer, or lease of equipment or facilities located within territory which is the subject of the allocation agreed upon pursuant to subsection (1) of this section. Any sale, exchange, transfer or lease of equipment, plant or facilities made pursuant to this subsection by any person which is a "public utility" as defined in ORS 757.005 is also subject to the approval of the Public Utility Commission to the extent required by ORS chapter 757.

(3) The commission may approve a contract entered into under this section that authorizes Coos County to construct a natural gas pipeline into allocated territory in Coos County and that contains terms for the allocation of industrial customers in Coos County between the county and the other party to the contract. The contract need not specify the territory in which industrial customers subject to the allocation are located. The commission may approve the provisions of a contract under this subsection that govern allocation of industrial customers only if the commission determines

1 that the provisions promote the purposes specified in ORS 758.405. The commission shall actively
 2 supervise the implementation of any contract entered into pursuant to this subsection to ensure that
 3 the contract continues to promote the purposes specified in ORS 758.405. *[A contract entered into*
 4 *under this subsection is not subject to ORS 758.420 (2).]*

5 **SECTION 6.** ORS 758.435 is amended to read:

6 758.435. (1) Any person providing a utility service in a territory that is not served by another
 7 person providing a similar utility service may *[make]* **file an** application *[to]* **with** the Public Utility
 8 Commission for an order allocating such territory to *[it]* **the person providing the utility**
 9 **service.** The application may include any adjacent area *[that]* **when** it is more economical and fea-
 10 sible to serve **the adjacent area** by an extension of the applicant's existing facilities than by an
 11 extension of the facilities of another person. **An application must include a copy of the notice**
 12 **of the filing to be given to all customers of record, and the applicant shall, within 30 days**
 13 **after filing an application under this section, give notice of the filing in the manner provided**
 14 **by subsection (4) of this section.**

15 **(2) Within 30 days after the filing of an application under this section, the commission**
 16 **shall give notice of the filing to all providers of similar utility services in the areas adjacent**
 17 **to the area covered by the application.**

18 *[(2)] (3) [The commission shall within 30 days after the filing of such application give notice of the*
 19 *filing.]* If the commission chooses, or if a customer requests a hearing on the matter within 30 days
 20 of the notice, the commission shall hold a hearing by telephone, **video conference or other elec-**
 21 **tronic means of communication** or in person. The commission shall give notice of the hearing **in**
 22 **the manner provided by subsection (4) of this section** within 30 days of the request *[which].* **The**
 23 notice shall set the date and place of hearing. The hearing shall be held at a place within or con-
 24 veniently accessible to the territory covered by the application. *[Notice of the filing shall be by*
 25 *publication in a newspaper or newspapers of general circulation in the territory covered by the appli-*
 26 *cation and shall be published at least once weekly for two successive weeks. Written notice of the filing*
 27 *shall be given to providers of similar utility service in adjacent territory.]*

28 **(4)(a) A notice given pursuant to this subsection shall be given:**

29 **(A) By mail or electronic mail to all customers of record in the area covered by the ap-**
 30 **plication;**

31 **(B) By press release to news media local to the area covered by the application; and**

32 **(C) By publication in one or more newspapers of general circulation in the area covered**
 33 **by the application at least once weekly for two successive weeks.**

34 **(b) The notice must include a description of the area covered by the application and the**
 35 **general rate impact to existing customers.**

36 *[(3)] (5)* Territory within the limits of a city, as fixed on May 31, 1961, shall not be deemed to
 37 be served exclusively by any person, if such city is, on such date, served by more than one person
 38 having necessary municipal or franchise authority to serve within the entire city.