

**A-Engrossed**  
**Senate Bill 845**

Ordered by the Senate April 7  
Including Senate Amendments dated April 7

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Tina Kotek for Public Utility Commission)

**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. The statement includes a measure digest written in compliance with applicable readability standards.

**Digest: Allows the PUC to order the sale of a water utility that is not able to provide service. (Flesch Readability Score: 61.6).**

*[Digest: Allows the PUC to order a water utility that is not able to provide service to be bought. (Flesch Readability Score: 61.6).]*

Authorizes the Public Utility Commission to order the *[acquisition]* **sale** of an incumbent water utility *[by]* **to** another water utility or entity when the incumbent water utility is not able to provide *[safe, adequate, efficient and reasonable]* **safe and adequate service. Requires the commission to provide the incumbent water utility reasonable opportunity to take alternative actions to the sale.**

**Increases, from \$5,000 to \$100,000, the amount of fees that the commission may use to make emergency repairs to public utility plants that provide water service. Authorizes the commission to order a public utility that provides water service to make emergency repairs.**

**A BILL FOR AN ACT**

1  
2 Relating to water utilities regulated by the Public Utility Commission; creating new provisions; and  
3 amending ORS 757.068.

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

5 **SECTION 1. (1) As used in this section:**

6 (a) **"Incumbent water utility" means an existing water utility that may be sold to another**  
7 **water utility or other entity.**

8 (b) **"Safe and adequate service" includes the ability of a water utility or other entity to**  
9 **provide to its customers potable water at sufficient volume and pressure.**

10 (c) **"Water utility" means a public utility, as defined in ORS 757.005, that provides water**  
11 **service.**

12 (2) **The Public Utility Commission may order the sale of an incumbent water utility if the**  
13 **commission determines, following notice and a contested case under ORS chapter 183, that:**

14 (a) **The incumbent water utility is in violation of statutory or regulatory standards and**  
15 **the violation affects the safety and adequacy of the service provided by the incumbent water**  
16 **utility;**

17 (b) **The incumbent water utility has failed to comply, within a reasonable period of time,**  
18 **with an order from the commission concerning the safety and adequacy of the service pro-**  
19 **vided by the incumbent water utility;**

20 (c) **The incumbent water utility cannot reasonably be expected to furnish and maintain**  
21 **safe and adequate service;**

**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 (d) Continued operation of service or the water system by the incumbent water utility  
2 may create an unreasonable risk to public health or safety by reason of contamination,  
3 dilapidated structures, improper or insufficient water or sanitary facilities or any combina-  
4 tion of these factors; and

5 (e) Alternative actions to a sale as described under subsection (5) of this section have  
6 been considered and the alternative actions are impractical or economically infeasible.

7 (3) If the commission orders the sale of an incumbent water utility under this section,  
8 the commission shall establish a process for the sale of the incumbent water utility. The  
9 price of the sale shall be determined by agreement between the incumbent water utility and  
10 acquiring entity.

11 (4) Prior to opening a contested case to determine whether to order the sale of an  
12 incumbent water utility, the commission shall provide a written notice to the incumbent  
13 water utility. The notice must:

14 (a) Specify the commission's intent to open a contested case;

15 (b) Identify the specific reasons and basis for the commission's intent to open the con-  
16 tested case; and

17 (c) Provide the incumbent water utility reasonable opportunity to take alternative  
18 actions to the sale, as described under subsection (5) of this section, that the commission  
19 finds acceptable.

20 (5) Alternative actions to a sale that may be taken include:

21 (a) The repair, replacement or remedy of all conditions identified as the reasons or basis  
22 for the commission's intent to open a contested case in the notice provided under subsection  
23 (4) of this section;

24 (b) Reorganization of the incumbent water utility under new management;

25 (c) Entering into a contract with another water utility or a management or service  
26 company to operate the incumbent water utility;

27 (d) Appointment of an independent administrator to oversee and ensure the provision of  
28 safe and adequate service by the incumbent water utility;

29 (e) A merger of the incumbent water utility with one or more other water utilities; or

30 (f) Acquisition of the incumbent water utility by a municipality, municipal utility, coop-  
31 erative association or people's utility district.

32 (6)(a) If an incumbent water utility receives a notice under subsection (4) of this section  
33 and files an application under ORS 757.480 for the sale, lease, assignment, mortgage, dispo-  
34 sition, encumbrance, merger or consolidation of property of the incumbent water utility, the  
35 commission shall set the incumbent water utility's rate base at no lower than the net book  
36 value of the incumbent water utility and no higher than the acquiring entity's offered pur-  
37 chased price of the incumbent water utility. To determine the value of the incumbent water  
38 utility's rate base, the commission shall consider the merits of the acquiring entity's appli-  
39 cation filed under ORS 757.480 based on the benefit to the incumbent water utility's cus-  
40 tomers and the public interest.

41 (b) For the purposes of later recovery in rates, an acquiring entity's transaction costs  
42 associated with the acquisition of an incumbent water utility shall be deferred at the  
43 incumbent water utility's weighted average cost of capital. Transaction costs include envi-  
44 ronmental, engineering and financial due diligence costs, legal costs, financing costs and  
45 other costs associated with regulatory approval of the transaction.

1           **(7) When carrying out the provisions of this section, the commission may appoint an in-**  
2 **dependent administrator to represent or protect the interests of the customers of an**  
3 **incumbent water utility. An order appointing an independent administrator must specify the**  
4 **duties and responsibilities of the independent administrator.**

5           **SECTION 2.** ORS 757.068 is amended to read:

6           757.068. (1) In each biennium the Public Utility Commission may use not more than [~~\$5,000~~]  
7 **\$100,000** of the fees collected under ORS 756.310 to make emergency repairs to the plants of public  
8 utilities providing water service. The commission may expend moneys under the provisions of this  
9 section only if the commission determines that:

10           (a) Customers of the utility are without service and are likely to remain without service for an  
11 unreasonable period of time;

12           (b) The utility is unwilling or unable to make emergency repairs, or cannot be found after rea-  
13 sonable effort; and

14           (c) Restoration of the service is necessary for the health and safety of the customers of the  
15 utility.

16           (2) The commission shall attempt to recover fees used under this section from the utility pro-  
17 viding water service. The commission may also recover a penalty as provided in ORS 756.350 from  
18 the time the fees are expended.

19           **(3) In addition to or in lieu of expending moneys to make emergency repairs, the com-**  
20 **mission may order the utility providing water service to make the emergency repairs.**

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