

# Senate Bill 671

Sponsored by Senator METSGER

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes standards that Public Utility Commission must find are met in order for persons seeking to acquire control over public utilities to obtain commission approval for acquisition. Authorizes commission to seek, and circuit court to issue, injunction preventing persons from acquiring or exercising control over public utility without obtaining commission approval. Permits revocation of approval or other enforcement action under certain conditions.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to the acquisition of interests in public utilities; creating new provisions; amending ORS  
3 756.180, 756.515, 757.506 and 757.511; and declaring an emergency.

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

5 **SECTION 1.** ORS 757.506 is amended to read:

6 757.506. (1) The Legislative Assembly finds and declares that:

7 (a) The protection of customers of public utilities [*which*] **that** provide heat, light or power is  
8 a matter of fundamental statewide concern;

9 (b) Existing legislation requires the Public Utility Commission's approval of one public utility's  
10 acquisition of another public utility's stocks, bonds and certain property used for utility purposes,  
11 but does not require the commission's approval of such acquisitions by persons not engaged in the  
12 public utility business in Oregon; and

13 (c) An attempt by a person not engaged in the public utility business in Oregon to acquire the  
14 power to exercise any substantial influence over the policies and actions of an Oregon public utility  
15 [*which*] **that** provides heat, light or power could result in harm to [*such*] **the** utility's customers,  
16 including but not limited to the degradation of utility service, higher rates, weakened financial  
17 structure **of the utility** and diminution of utility assets.

18 (2) It is, therefore, the policy of the State of Oregon to regulate acquisitions by persons not  
19 engaged in the public utility business in Oregon of the power to exercise any substantial influence  
20 over the policies and actions of an Oregon public utility [*which*] **that** provides heat, light or power  
21 in the manner set forth in this section and ORS 757.511 [*in order to prevent unnecessary and un-*  
22 *warranted harm to such utilities' customers*].

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

24 757.511. (1) [*No person, directly or indirectly, shall*] **A person may not directly or indirectly**  
25 acquire the power to exercise any substantial influence over the policies and actions of a public  
26 utility [*which*] **that** provides heat, light or power, **or acquire the ability to exercise direct or**  
27 **indirect control over decisions made by the public utility or the board of directors of the**  
28 **public utility**, without first securing from the Public Utility Commission, upon application, an order  
29 authorizing [*such*] **the** acquisition [*if such person is, or by such acquisition would become, an affiliated*

**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 *interest with such public utility as defined in ORS 757.015 (1), (2) or (3)] of that power or ability.*

2 **(2) A proposed acquisition need not result in a person becoming an affiliated interest**  
 3 **under ORS 757.015 in order for the person to be subject to the requirements of this section.**

4 [(2)] (3) The application required by subsection (1) of this section shall set forth detailed infor-  
 5 mation regarding:

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

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

8 (c) The source and amounts of funds or other consideration to be used in the acquisition;

9 (d) The applicant's compliance with federal law in carrying out the acquisition;

10 (e) Whether the applicant or the key personnel associated with the applicant have violated any  
 11 state or federal statutes regulating the activities of public utilities;

12 (f) All documents relating to the transaction giving rise to the application;

13 (g) The applicant's experience in operating public utilities providing heat, light or power;

14 (h) The applicant's plan for operating the public utility;

15 (i) How the acquisition will serve the public utility's customers in the public interest; *[and]*

16 **(j) The anticipated profits of the applicant following the acquisition and the anticipated**  
 17 **benefits and liabilities to be borne by the public utility's customers following the acquisition;**  
 18 **and**

19 *[(j)]* **(k) [Such] Any** other information *[as]* **that** the commission may require by rule.

20 [(3)] (4) The commission promptly shall examine and investigate each application received pur-  
 21 suant to this section and shall issue an order disposing of the application within 19 business days  
 22 of its receipt. *[If the commission determines that approval of the application will serve the public*  
 23 *utility's customers in the public interest, the commission shall issue an order granting the*  
 24 *application.] In addition to any other factors the commission considers relevant to making a*  
 25 **determination under this section, the commission is authorized to consider the reasonable-**  
 26 **ness of the anticipated profits of the applicant following the acquisition in relation to the**  
 27 **anticipated benefits and liabilities to be borne by the public utility's customers following the**  
 28 **acquisition. The commission shall issue an order approving the application if the commission**  
 29 **determines that the acquisition:**

30 **(a) Will constitute a net benefit to the customers of the public utility; and**

31 **(b) Will do no harm to the interests of the public in general.**

32 (5) The commission may condition an order **approving the application and** authorizing the  
 33 acquisition upon the applicant's satisfactory performance or adherence to specific requirements.

34 (6) The commission *[otherwise]* shall issue an order denying the application **if the commission**  
 35 **is unable to make the determination described in subsection (4) of this section.** The applicant  
 36 shall bear the burden of showing that *[granting the application is in the public interest]* **the re-**  
 37 **quirements of subsection (4) of this section will be satisfied by the applicant.**

38 [(4)] (7) Nothing in this section shall prohibit dissemination by any party of information con-  
 39 cerning the acquisition so long as such dissemination is not otherwise in conflict with state or fed-  
 40 eral law.

41 **SECTION 3. The amendments to ORS 757.506 and 757.511 by sections 1 and 2 of this 2005**  
 42 **Act apply to applications for Public Utility Commission approval under ORS 757.511 for which**  
 43 **the commission issues an order disposing of the application on or after the effective date of**  
 44 **this 2005 Act.**

45 **SECTION 4. ORS 756.180 is amended to read:**

1 756.180. (1) Whenever it appears to the Public Utility Commission that any public utility or  
 2 telecommunications utility or any other person subject to the jurisdiction of the commission is en-  
 3 gaged or about to engage in any acts or practices [*which*] **that** constitute a violation of any statute  
 4 administered by the commission, or any rule, regulation, requirement, order, term or condition is-  
 5 sued thereunder, the commission may apply to any circuit court of the state where [*such*] **the** public  
 6 utility or telecommunications utility or other person subject to the jurisdiction of the commission  
 7 operates for the enforcement of [*such*] **the** statute, rule, regulation, requirement, order, term or  
 8 condition.

9 (2) [*Such*] **The circuit** court, without bond, has jurisdiction to:

10 (a) Enforce obedience thereto by injunction, or by other processes, mandatory or otherwise,  
 11 restraining [*such*] **the** public utility or telecommunications utility or any other person subject to the  
 12 jurisdiction of the commission, or its officers, agents, employees and representatives from further  
 13 violations of such statute, rule, regulation, requirement, order, term or condition, and enjoining upon  
 14 them obedience thereto[.]; **or**

15 (b) **In the case of a public utility, upon the request of the commission, issue an injunction**  
 16 **preventing any person that is exercising control, or is about to exercise control, over a public**  
 17 **utility, including but not limited to a person that is otherwise not subject to the jurisdiction**  
 18 **of the commission, from exercising control over the public utility without obtaining the ap-**  
 19 **proval of the commission described in ORS 757.511.**

20 (3) The provisions of this section are in addition to and not in lieu of any other enforcement  
 21 provisions contained in any statute administered by the commission.

22 **SECTION 5.** ORS 756.515 is amended to read:

23 756.515. (1) Whenever the Public Utility Commission believes that any rate may be unreasonable  
 24 or unjustly discriminatory, or that any service is unsafe or inadequate, or is not afforded, or that  
 25 an investigation of any matter relating to any public utility or telecommunications utility or other  
 26 person should be made, or relating to any person to determine if [*such*] **the** person is subject to the  
 27 commission's regulatory jurisdiction, the commission may on motion summarily investigate [*any*  
 28 *such*] **the** matter, with or without notice.

29 (2) If after making [*such*] **an** investigation the commission is satisfied that sufficient grounds  
 30 exist to warrant a hearing being ordered upon any [*such*] matter **being investigated**, the commission  
 31 shall furnish any public utility or telecommunications utility or other person interested a statement  
 32 notifying it of the matters under investigation[, *which*]. **The** statement shall be accompanied by a  
 33 notice fixing the time and place for hearing upon [*such*] **the** matters in the manner provided in ORS  
 34 756.512 for notice of complaint.

35 (3) Thereafter proceedings shall be had and conducted in reference to the matters investigated  
 36 in like manner as though complaint had been filed with the commission relative thereto, and the  
 37 same orders may be made in reference thereto as if such investigation had been made on complaint.

38 (4)(a) The commission may, after making an investigation on the commission's motion, but  
 39 without notice or hearing, make [*such*] findings and orders [*as*] **that** the commission deems justified  
 40 or required by the results of [*such*] **the** investigation. Except as provided in subsections (5) and (6)  
 41 of this section [*such*] **the** findings and orders have the same legal force and effect as any other  
 42 finding or order of the commission.

43 (b) **If the commission determines that any person has violated any condition required**  
 44 **under the grant of approval for an acquisition under ORS 757.511, including determining that**  
 45 **the person has failed to act in the public interest with respect to any public utility over**

1 **which the commission has jurisdiction, the commission may:**

2 **(A) Request an injunction from the circuit court that requires the person to cease and**  
3 **desist from taking action with respect to the public utility that is not in the public interest;**  
4 **or**

5 **(B) Revoke the approval granted to the person under ORS 757.511.**

6 **(c) The commission shall recover from a person described in paragraph (b) of this sub-**  
7 **section the costs incurred by the commission in undertaking the investigation and consid-**  
8 **eration of the actions taken by the person, including the costs of any hearing.**

9 (5) In addition to any other remedy provided by law, any party aggrieved by an order entered  
10 pursuant to subsection (4) of this section may request the commission to hold a hearing to determine  
11 whether the order should continue in effect. Any such request for hearing shall be submitted to the  
12 commission not later than 15 days after the date of service of the order, and the commission shall  
13 hold the hearing not later than 60 days after receipt of such a request for hearing.

14 (6) If the commission receives a request for hearing pursuant to subsection (5) of this section,  
15 the order is suspended pending the outcome of the hearing unless the commission finds that the  
16 order is necessary for the public health or safety or to prevent the dissipation of assets of a business  
17 or activity subject to the commission's regulatory jurisdiction.

18 **SECTION 6. This 2005 Act being necessary for the immediate preservation of the public**  
19 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**  
20 **on its passage.**

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