

SENATE AMENDMENTS TO SENATE BILL 845

By COMMITTEE ON NATURAL RESOURCES AND WILDFIRE

April 7

1 On page 1 of the printed bill, line 2, after “Commission” insert “; creating new provisions; and
2 amending ORS 757.068”.

3 Delete lines 4 through 28 and delete page 2 and insert:

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

5 **“(a) ‘Incumbent water utility’ means an existing water utility that may be sold to an-**
6 **other water utility or other entity.**

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

9 **“(c) ‘Water utility’ means a public utility, as defined in ORS 757.005, that provides water**
10 **service.**

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

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

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

28 **“(3) If the commission orders the sale of an incumbent water utility under this section,**
29 **the commission shall establish a process for the sale of the incumbent water utility. The**
30 **price of the sale shall be determined by agreement between the incumbent water utility and**
31 **acquiring entity.**

32 **“(4) Prior to opening a contested case to determine whether to order the sale of an**
33 **incumbent water utility, the commission shall provide a written notice to the incumbent**
34 **water utility. The notice must:**

35 **“(a) Specify the commission’s intent to open a contested case;**

1 “(b) Identify the specific reasons and basis for the commission’s intent to open the con-
2 tested case; and

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

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

7 “(a) The repair, replacement or remedy of all conditions identified as the reasons or basis
8 for the commission’s intent to open a contested case in the notice provided under subsection
9 (4) of this section;

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

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

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

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

16 “(f) Acquisition of the incumbent water utility by a municipality, municipal utility, co-
17 operative association or people’s utility district.

18 “(6)(a) If an incumbent water utility receives a notice under subsection (4) of this section
19 and files an application under ORS 757.480 for the sale, lease, assignment, mortgage, dispo-
20 sition, encumbrance, merger or consolidation of property of the incumbent water utility, the
21 commission shall set the incumbent water utility’s rate base at no lower than the net book
22 value of the incumbent water utility and no higher than the acquiring entity’s offered pur-
23 chased price of the incumbent water utility. To determine the value of the incumbent water
24 utility’s rate base, the commission shall consider the merits of the acquiring entity’s appli-
25 cation filed under ORS 757.480 based on the benefit to the incumbent water utility’s cus-
26 tomers and the public interest.

27 “(b) For the purposes of later recovery in rates, an acquiring entity’s transaction costs
28 associated with the acquisition of an incumbent water utility shall be deferred at the
29 incumbent water utility’s weighted average cost of capital. Transaction costs include envi-
30 ronmental, engineering and financial due diligence costs, legal costs, financing costs and
31 other costs associated with regulatory approval of the transaction.

32 “(7) When carrying out the provisions of this section, the commission may appoint an
33 independent administrator to represent or protect the interests of the customers of an
34 incumbent water utility. An order appointing an independent administrator must specify the
35 duties and responsibilities of the independent administrator.

36 “**SECTION 2.** ORS 757.068 is amended to read:

37 “757.068. (1) In each biennium the Public Utility Commission may use not more than [\$5,000]
38 \$100,000 of the fees collected under ORS 756.310 to make emergency repairs to the plants of public
39 utilities providing water service. The commission may expend moneys under the provisions of this
40 section only if the commission determines that:

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

43 “(b) The utility is unwilling or unable to make emergency repairs, or cannot be found after
44 reasonable effort; and

45 “(c) Restoration of the service is necessary for the health and safety of the customers of the

1 utility.

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

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

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