ORDER NO. 26-324

ENTERED Sep 03 2026

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 673

In the Matter of Rulemaking to Implement 2025 Senate Bill 845 by Establishing Oregon Administrative Rule (OAR) Chapter 860, Division 225 and Amending OAR Chapter 860, Division 36, Regarding the Sale of Water Utilities.	ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on September 3, 2026, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:

Alison Lackey
Chief Administrative Law Judge

ITEM NO. RM1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: September 3, 2026

RULEMAKING X **CONSENT** ____ **EFFECTIVE DATE** N/A

DATE: August 18, 2026

TO: Public Utility Commission

FROM: Steph Yamada

THROUGH: Nolan Moser and Russ Beitzel **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. AR 673)
Request to open a formal rulemaking to implement SB 845.

STAFF RECOMMENDATION:

Staff recommends that the Oregon Public Utility Commission (Commission) issue a notice of proposed rulemaking to implement SB 845 by establishing Oregon Administrative Rule (OAR) Chapter 860, Division 225 and amending OAR Chapter 860, Division 36.

DISCUSSION:

Issue

Whether the Commission should issue a notice of proposed rulemaking (NOPR) to establish OAR Chapter 860, Division 225, and to amend OAR Chapter 830, Division 36.

Applicable Law

ORS 756.060 authorizes the Commission to adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the Commission.

ORS 757.066 authorizes the Commission to order the sale of a regulated water utility that fails to provide safe and adequate service.

Under ORS 757.068 and OAR 860-036-1710, the Commission may expend moneys for emergency water utility repairs.

Analysis

Background and Context

Enacted during the 2025 legislative session, SB 845 primarily authorizes the Commission to order the sale of a water utility that is unable to provide safe and adequate service. The text of SB 845 is included as Attachment D. The testimony of PUC Executive Director Nolan Moser to the Senate Committee on Natural Resources and Wildfire, included as Attachment C, contains more details regarding the circumstances that led to this bill.

An ordered sale under SB 845 is intended to serve as a last-resort tool to protect customers' access to potable water. Before such a sale could occur, a PUC-regulated water utility would need to fail to provide safe and adequate service, fail to correct those deficiencies after receiving a Commission order, and fail to pursue the alternative remedies available under the law to avoid a sale. The issues at stake would inherently involve conditions that compromise the safety or adequacy of potable water service and may pose unreasonable risk to health or safety. Consequently, the circumstances giving rise to a PUC-ordered sale are expected to be both serious and rare.

Summary of SB 845

Under the new law, the Commission must first provide written notice to a violating utility along with opportunities to take alternative actions to a sale.

Alternative actions may include:

- Repair, replacement, or remedy of the violating conditions,
- Reorganization under new management,
- Contracting with another utility or management service to operate the utility,
- Appointment of an independent administrator to oversee and ensure the provision of safe and adequate service,
- Merger with one or more other water utilities, or
- Acquisition of the utility by a municipality, municipal utility, co-op, or people's utility district.

If the utility fails to take appropriate alternative actions, the Commission could then open a contested case to investigate the utility's ability to provide safe and adequate service. The Commission could compel a sale only if the contested case results in a determination that all of the following are true:

- The utility is in violation of statutory/regulatory standards affecting safety and adequacy of service,

- The utility has failed to comply, within a reasonable period of time, with a PUC order concerning the safety/adequacy of service,
- The utility cannot reasonably be expected to furnish and maintain safe and adequate service,
- Continued operation by the utility may create unreasonable risk to public health or safety, and
- Alternative actions to a sale have been considered and are impractical or economically infeasible.

A summary flowchart of this process is provided in Attachment B.

If the Commission orders the sale of a water utility, it must establish a process for the sale. The sales price will be determined by agreement between the incumbent water utility and the acquiring entity. If the incumbent utility files a sale application under ORS 757.480, the Commission will set rate base between the net book value and the purchase price in consideration of the benefit to customers and the public interest.

Transaction costs, including environmental, engineering and financial due diligence costs, legal costs, financing costs and other costs associated with regulatory approval of the transaction, are to be deferred for later recovery in rates.

The law also enables the Commission to appoint independent administrators to oversee the provision of safe and adequate service by the water utility or to represent the interests of customers.

Finally, SB 845 increases the amount the Commission can use toward emergency water repairs under ORS 757.068 from the current $5,000 to $100,000 per biennium.

Informal Phase
The informal phase of this docket was opened on August 12, 2025. Staff filed a docket announcement on November 6, 2025, along with a request for any interested stakeholders to take Staff's informal online survey by January 5, 2026. The survey requested information regarding topics of interest, concerns, and communication preferences. Five responses were received.

Several stakeholders participated in the informal phase, including representatives from NW Natural Water Company (NWN Water), California Water Service Group (Cal Water), Avion Water Company, and Sunriver Water. Workshops were held on March 26, 2026 and May 7, 2026. NWN Water and Cal Water also submitted written comments in the docket. Staff considered feedback received from stakeholders in drafting its proposed rules, included as Attachment A.

Identified Concerns

Issues raised during the informal phase and their handing in Staff's proposed rules are discussed below.

1. *Rate Base*

The potential inclusion of acquisition adjustments in rate base was a main concern expressed by stakeholders. An acquisition adjustment (also known as "goodwill") refers to the difference between the utility's net book value and the purchase price. Currently, under OAR 860-036-2130, the Commission may consider including some or all of an acquisition adjustment based on the benefit to customers and the public interest. However, the approval of such inclusions is not common. Furthermore, the included amount would typically be determined during the first rate case following the acquisition—a process that may take approximately nine months to complete.

Stakeholders in this docket argued that establishing clear criteria for approving acquisition adjustments and pre-approving specific amounts would give potential buyers greater certainty and increase the likelihood of attracting a qualified purchaser. Stakeholders also noted that initial capital investments will likely be required to bring the system into timely compliance, and that a buyer would be more willing to undertake those investments if it had advance assurance that the related costs would be recoverable.

Staff's proposed OAR 860-225-0040 requires the Commission to open a proceeding to determine the utility's rate base after receiving an application for approval of a sale under ORS 757.480. Under the proposed rule, the Commission would also consider requests to include an acquisition adjustment in rate base.

Again, the Commission's existing rules allow for the inclusion of acquisition adjustments "based on the benefit to the customers being acquired and the public interest on a case-by-case basis." This language allows flexibility to address any situation that may arise, and Staff does not find it necessary to define more specific criteria for the purposes of this rulemaking. However, Staff notes that, due to the potentially dire circumstances surrounding an ordered sale situation, the benefits of allowing an acquisition adjustment may be greater in such a case than in a typical water utility transfer.

2. *Rates and Timeliness*

An ordered sale would need to be handled efficiently so the underlying safety and adequacy of service problems could be corrected quickly. Stakeholders suggested the use of certain mechanisms that could enable swift rate recovery prior to a rate case. Such mechanisms may provide assurances that could attract potential buyers.

Mechanisms suggested by stakeholders include:

- Interim Rates: Under ORS 757.215, the Commission may allow a temporary rate increase while a rate case is underway. If the rate case reveals that a portion of the interim rate was not justified, that portion would be subject to refund.
- Line Item/Tariff Rider: The Commission could authorize the recovery of a specific amount outside of the rate case process. This amount could be recovered as a standalone line item on customer bills rather than being incorporated into regular rates.
- Rate Consolidation: If a purchaser already operates PUC regulated water utilities, the Commission could allow the purchaser to combine the acquired utility under an existing PUC-approved rate schedule.
- Automatic Adjustment Clause: Under ORS 757.210, the Commission may authorize rate changes for specific costs outside of the rate case process. These mechanisms are subject to Commission review at least once every two years.

It may be appropriate to enact such mechanisms to enable the timely restoration of service to customers. Mechanisms such as interim rates could also provide a purchaser some relief in cases where the acquired utility's rates are outdated, or where the acquired utility is not already rate-regulated by the Commission at the time of the sale.

Staff's proposed OAR 860-225-0040 explicitly allows the Commission to consider whether the public interest supports the use of special cost recovery mechanisms such as those shown above. Similarly to acquisition adjustments, the Commission already possesses the ability to allow a variety of cost recovery mechanisms, but the potential benefits of allowing their use may be heightened in an ordered sale situation.

3. *Penalties and Purchaser Obligations*

Cal Water noted that a buyer in a PUC-ordered sale would be inheriting a distressed system with known violations, and that the new owner should not be assessed penalties associated with non-compliant issues that are present at the time of acquisition.

Stakeholders also noted that a violating water utility may have penalties or fines imposed by governmental authorities other than the PUC. While the Commission is unable to waive such fines, stakeholders urged the Commission to consider allowing rate recovery of any such amounts inherited by a purchaser.

Staff's proposed OAR 860-225-0050 specifies that an acquiring entity will not be liable for Commission-imposed violations that occurred under prior ownership, and that any associated penalties will be postponed or waived. The acquiring entity would be allowed reasonable time to correct past violations prior to the application of new penalties.

Staff's proposed rule would also allow for rate recovery of non-PUC imposed penalties upon a demonstration of benefit to customers and the public interest. Typically, penalties associated with utility violations are excluded from rates. However, in the serious case of an ordered utility sale, some departures from normal ratemaking may be needed to attract a buyer who can restore service quickly.

4. Other Agencies
Stakeholders noted that a water utility found to be in violation of "safe and adequate" service standards may also be out of compliance with governmental authorities other than the PUC, such as the Oregon Health Authority or the Environmental Protection Agency. Stakeholders suggested coordination between the PUC and such entities, including notifying other affected agencies when an ordered sale process begins.

Staff's proposed OAR 860-225-0020 would require the Commission to provide a copy of its notice of intent to open a contested case to other relevant governmental authorities at the same time that such notice is provided to the violating utility.

5. Flexibility
In developing its proposed rules, Staff considered the need for specificity versus flexibility. Ultimately, it is impossible to predict the specific circumstances that could lead to a Commission-ordered sale, and therefore impossible to design a highly specific "one-size-fits-all" roadmap for such a situation. Consequently, Staff's proposed rules seek to provide direction while allowing flexibility for the Commission to adequately address any varied, unpredictable situation that may arise.

6. Other Concerns
The below items were raised and considered by Staff, but may not fully addressed in the proposed rules due to being outside the Commission's purview or otherwise not needed.

- No Willing Buyers: Staff and stakeholders share concern regarding the potential that no buyer will purchase a distressed system. A water utility subject to a Commission-ordered sale would likely be experiencing significant operational or infrastructure deficiencies that may require substantial and timely investment to correct. Such a system may also be small, limiting the customer base from which these costs could be recovered. Consequently, a utility facing an ordered sale may not be an attractive acquisition for potential buyers. While the Commission could potentially allow certain cost recovery mechanisms that might make a sale more attractive for a potential buyer, ultimately, it cannot compel an acquisition.

- Ownership Dispute: A Commission-ordered sale situation could arise when a water utility owner passes away or otherwise becomes incapacitated. In such situations, inheritance-related ownership disputes may arise, further complicating an already difficult situation. However, the Commission does not possess the authority to decide such matters, and any adopted OARs would be unable to resolve such a situation. The Commission would need to utilize its existing authority—such as the ability to appoint a regent or fund emergency repairs—to protect customers as thoroughly as possible in the interim.
- Wildfire Resilience: Wildfire concerns have increasingly affected water customers in recent years. Such concerns relate to both the quantity of available water and the electricity needed for pumping during power outages. The Commission does not currently require water utilities to maintain the ability to combat wildfires, and such a requirement would generally be untenable for a typical community water system. Staff would not consider a water utility to be in violation of "safe and adequate service" standards solely based on the utility's wildfire resiliency status.
- Funding: Cal Water stated that the Commission should approve or encourage the use of State Revolving Funds or grant funding, which an investor-owned utility may typically be ineligible for. While the Commission is generally unlikely to deny the recovery of low-cost funding for necessary investments, it has no authority to require outside entities to extend such funding.
- Asset vs. Stock Sale: NW Natural suggested language to clarify that a sale under ORS 757.480 and OAR 860-036-2110 may be structured as an asset sale rather than a stock sale. This distinction could impact potential buyers, who may prefer to acquire only a utility's assets without any liabilities that may be attached to the business entity. This is already allowed under ORS 757.480, and the Commission has previously approved the sale of water utilities via the transfer of assets rather than equity interests. The specific terms of an ordered sale transaction would be determined by agreement between the buyer and the seller.
- Non-PUC Imposed Penalties and Violations: NW Natural suggested language clarifying that the Commission cannot waive penalties outside its enforcement jurisdiction. This is true and does not need to be explicitly stated in the rules.

<u>Conclusion</u>

Staff finds that the proposed new and amended rules adequately implement the requirements of SB 845 while appropriately addressing concerns raised by stakeholders.

PROPOSED COMMISSION MOTION:

Approve Staff's request to issue a NOPR establish OAR Chapter 860, Division 225, and to amend OAR Chapter 80, Division 36, as provided in Attachment A.

RM1 - AR 673

Staff's Draft Rules

860-225-0000 Scope and Applicability of Rules

The rules in this division prescribe the rules and procedures applicable to a Commission-ordered sale of a water utility pursuant to ORS 757.066.

860-225-0010

Definitions for OAR 860-225-0000 to OAR 860-225-0050

(1) "Alternative actions" means actions a water utility may take to avoid a Commission-ordered sale as provided in ORS 757.066(5).

(2) "Acquiring entity" means a person or company taking ownership of a water utility subject to a Commission-ordered sale.

(3) "Acquisition adjustment" means some or all of the difference between the net book value and the purchase price, as provided in OAR 860-036-2130.

(4) "Initial response" means the water utility's response to a notice of intent issued by the Commission.

(5) "Notice of intent" means notice provided to a water utility specifying the Commission's intent to open a contested case as provided in ORS 757.066(4).

(6) "Ordered sale" means a sale of a water utility directed by the Commission under ORS 757.066 following a contested case.

(7) "Water utility" is defined as provided in OAR 860-036-1010.

860-225-0020

Commission Notice of Intent to Open Contested Case

(1) If a water utility is found to be in violation of statutory or regulatory standards affecting the safety and adequacy of potable water service, the Commission will issue written notice to the utility prior to opening a contested case to determine whether to order the sale of the water utility. The notice must include the following information:

a. Specific violations committed by the utility;

b. Conditions impairing the safety and adequacy of service, if relevant;

c. Alternative actions the Commission finds acceptable;

d. Instructions and timeline for filing an initial response; and

e. The Commission's intent to open a contested case.

(2) The water utility must provide an initial response to the Commission within the timeline specified in the notice of intent. The initial response must identify alternative action(s), if any, the water utility intends to take to remedy the condition or violation.

(3) If the initial response indicates that the water utility will pursue alternative action(s), it must provide a detailed plan for taking such action(s), which include:

a. A description of the anticipated timeline to implement the alternative action(s) with milestones;

b. The known or estimated cost of completing the chosen action(s), including how the necessary funds will be secured; and

c. A description of any interim efforts the water utility will take to ensure safety and adequacy of service while the alternative action(s) are pursued.

(4) If the water utility fails to provide its initial response within the timeframe specified in the notice of intent, the Commission may immediately open a contested case to consider whether to order the sale of the water utility.

(5) At the same that the Commission provides its notice of intent to the violating water utility, it will also provide a copy of the notice to the Oregon Health Authority and any other relevant government agency.

860-225-0030

Contested Case Hearing and Ordered Sale

(1) If after a hearing the Commission orders the sale of a water utility, the order must include:

a. Process for sale of the water utility;

b. Required timelines, if any, for an acquiring entity to resolve safety and adequacy conditions or violations;

c. Any interim action(s) necessary to protect customer health or safety.

(2) In establishing a sale process, the Commission may consider:

a. Type and severity of the water utility’s conditions or violations;

b. Anticipated amount of time needed to correct conditions or violations;

c. Utility size and complexity;

d. Potential impacts to customers;

e. Financial condition of the water utility; and

f. Any other information deemed relevant by the Commission.

860-225-0040

Transactions under this Division

(1) Applications for sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation under ORS 757.480 must meet the requirements of OAR 860-036-2110.

a. The terms of any transaction, including cost, will be determined by negotiation between the water utility and an acquiring entity.

b. The Commission will consider any requests for an acquisition adjustment.

(2) After receiving an application for approval of an ORS 757.480 transaction, the Commission must open a proceeding to adjust the water utility's rate base.

a. The Commission may require the water utility to obtain professional appraisal of system value from an independent third party.

b. The Commission may consider whether the public interest supports use of special cost recovery mechanisms.

860-225-0050

Liability for Penalties and Violations

(1) When ownership of a water utility is transferred under this division, the acquiring entity will not be liable for violations which occurred prior to acquisition of the water utility. The Commission may postpone or waive any penalties that were imposed on the utility due to violations committed by prior ownership.

(2) The acquiring entity will be allowed a reasonable time to correct violations originating from prior ownership prior to the application of penalties.

(3) The Commission may allow the rate recovery of applicable penalties imposed by other governmental authorities under prior ownership upon a demonstration that such an inclusion would benefit customers and the public interest.

Proposed Amendments to Existing OARs

860-036-1710

Expenditure of Charges Collected Under ORS 756.310 to Make Emergency Repairs

~~(1)~~ The Commission may use up to **$100,000** per biennium of the charges collected under ORS 756.310 to make emergency repairs for water utilities **under the conditions set forth in ORS 757.068**. ~~The Commission may expend monies under the provisions of this rule if the Commission determines that repairs to the water system are necessary for the health and safety of the customers or the water utility.~~

(2) The Commission will seek recovery of charges used under this rule from the water utility providing service. Interest will not accrue on the outstanding balance.

~~(3) The Commission may also recover penalties as provided in ORS 756.350 from the time the charges are expended.~~

Statutory/Other Authority: ORS 183, 756 & 757

Statutes/Other Implemented: ORS 756.040, 757.068 & 757.310

Apparent **utility violation** affecting **safety** and **adequacy** of service

PUC provides **written notice** to utility, including:

a) Intent to open contested case,
b) Reasons/basis for intent to open contested case,
c) Reasonable opportunity for the utility to take **alternative actions** to a sale

Utility takes **alternative action**, which may include:

a. Repair, replacement, or **remedy** of the violating conditions;
b. Reorganization under **new management**;
c. Contracting with **another utility** or management service to operate the utility;
d. Appointment of an **independent administrator** to oversee and ensure the provision of safe and adequate service;
e. **Merger** with one or more other water utilities; OR
f. **Acquisition** of the utility by a municipality, municipal utility, co-op, or PUD.

No PUC-ordered sale

Utility **does not take** alternative action

PUC opens **Contested Case**

If contested case determines:

a) The utility is **in violation** of statutory/regulatory standards affecting safety and adequacy of service (e.g., sufficient volume and pressure),
b) The utility has **failed to comply**, within a reasonable period of time, with a PUC order concerning the safety/adequacy of service,
c) The utility **cannot reasonably be expected to furnish** and maintain safe and adequate service;
d) Continued operation by the utility may create **unreasonable risk** to public health or safety; AND
e) Alternative actions to a sale have been considered and are **impractical or economically infeasible**.

PUC may order sale of water utility

Oregon
Tina Kotek, Governor

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503-373-7394

2/18/2025

Senate Bill 845 – Regulated Water Company Purchase Legislation
Testimony From Nolan Moser, Executive Director

Senate Committee on Natural Resources and Wildfire
Chair Sollman, Vice Chair Nash, Members of the Committee.

For the record, my name is Nolan Moser, and I am executive director of the Oregon Public Utility Commission. I am before your today to support your consideration of SB 845, a bill that was requested by our agency, intended to address challenges we have faced and will likely face again with struggling small, regulated water companies.

Before I briefly discuss what this bill does, I will provide background on how we regulate some water companies in the state of Oregon, and will discuss the reasons for our requested legislation. What I want to spend my time before you today on is describing the problem we are needing legislative help to solve, in the interests of regulated water customers across the state.

Water is provided to most Oregonians in two ways, with two different forms of regulation. First, municipal or government water providers serve Oregon communities. The majority of Oregonians are served by such water providers. Our bill does not impact municipal water providers. The rates, terms and conditions of service from such providers are ultimately determined by officials appointed by or accountable to local elected representatives. In this way, customers ensure effective oversight of this service and supply.

A smaller, but still significant portion of Oregonians are served by for-profit or non-governmental associations. Rates, terms and conditions of service for these companies are regulated by our agency. The Commission has authority to approve tariffs, rates, and other service terms and must exercise that authority to ensure that customers of these companies have safe, reliable and reasonably priced service.

The Commission provides this regulation through investigations, rate proceedings, and, ultimately, orders. The Commission can, after notice and opportunity to be heard, order that specific rates be set for specific services. If a Company chooses not to comply with a Commission order, the Commission may impose fines.

We have recently encountered an important gap in our authority that has prevented us, despite the best efforts of Commission Staff and the customers of the water company in question, from ensuring that customers at one company have safe and reliable services.

An owner and operator of a water company in the Bend area had a history of mismanagement, resulting in customers losing water service. This owner also refused, despite Commission orders and fines, to file a rate filings and tariffs as directed by the Commission. The Commission attempted to address this situation another way, by appointing a "regent" to run the water company, under Commission regulations, while the owner retains ownership. But this too failed because no company agreed to run this water provider as long as the current owner is involved.

In the meantime, service became inadequate, parts of the system were failing, and customers went hours or even days without water. Our staff collaborated with the Oregon Health Authority and county officials to try to resolve the mismanagement through any means, including encouraging the sale of the company. Our Staff knew that ultimately, the long-term solution in this case is for this company to be sold to a competent water provider who can manage the infrastructure. But, under current legal authority Commission cannot compel an owner of a company to sell.

This case was so extreme that our Staff authorized and paid for – out of agency funds – emergency repairs to the system to keep it operational for customers while a longer-term solution was developed. After some time and effort, and after coordination with local health and tax authorities, the owner was persuaded to sell, and the system is now owned by a professional and competent operator that can make the investments necessary to ensure safe and healthy water supply for customers in this area. Through this process, it was clear there are significant gaps in the regulatory system. For example, though the water company owed substantial back taxes, the county was reluctant to take legal action to compel a sale – given the legal expense with such an approach. Similarly, health authorities have some power in this area, but no funding, and no history of forcing changes in ownership, and hence are reluctant to take action.

In other states, regulators of water providers do have the authority, if all other avenues of ensuring safe and adequate service fail, to compel a sale. The states of Illinois, Virginia, and Pennsylvania all in one form or another have legislation in place that allow their respective utility commissions to take action to force sale of a water company consistently failing to serve customers. We determined, that in order to address the type of problems we have recently experienced with companies that do not respond to rate-regulation orders to improve service, that this additional power is necessary to ensure that the customers of such providers receive safe, adequate, and reasonably priced service.

Accordingly, through SB 845 we propose to create additional authority for the Commission to order the transfer, sale, or regency of a struggling water company after notice, opportunity for the presentation of evidence, and following specific findings from the Commission. Proposed legislation would also clarify the circumstances under which the Commission could appoint a regent to manage a struggling water company, which is already authority the Commission exercises in rules. Legislation also provides for Commission review of acquisition costs and pricing, review of the capacity of the purchasing utility to make necessary repairs, etc., and provides for the use of eminent domain, as a last resort, if an agreement to sell the subject utility is not reached.

In closing, I note that we are in discussions with water company stakeholders about this legislation, and will likely – in conjunction with them, be pursing changes to our bill. For that reason, in this initial conversation, I had not planned on going through all the details of our proposal with you, because they are likely going to change. That said, I'm happy to answer questions, and thank you for the opportunity to speak to you today.

Nolan Moser

Executive Director
Oregon Public Utility Commission

83rd OREGON LEGISLATIVE ASSEMBLY--2025 Regular Session

Enrolled
Senate Bill 845

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

CHAPTER ....

AN ACT

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

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

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

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

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

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

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

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

(b) The incumbent water utility has failed to comply, within a reasonable period of time, with an order from the commission concerning the safety and adequacy of the service provided by the incumbent water utility;

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

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

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

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

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

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

(b) Identify the specific reasons and basis for the commission's intent to open the contested case; and

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

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

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

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

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

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

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

(f) Acquisition of the incumbent water utility by a municipality, municipal utility, cooperative association or people's utility district.

(6)(a) If an incumbent water utility receives a notice under subsection (4) of this section and files an application under ORS 757.480 for the sale, lease, assignment, mortgage, disposition, encumbrance, merger or consolidation of property of the incumbent water utility, the commission shall set the incumbent water utility's rate base at no lower than the net book value of the incumbent water utility and no higher than the acquiring entity's offered purchased price of the incumbent water utility. To determine the value of the incumbent water utility's rate base, the commission shall consider the merits of the acquiring entity's application filed under ORS 757.480 based on the benefit to the incumbent water utility's customers and the public interest.

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

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

SECTION 2. ORS 757.068 is amended to read:

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

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

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

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

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

(3) In addition to or in lieu of expending moneys to make emergency repairs, the commission may order the utility providing water service to make the emergency repairs.

Passed by Senate April 10, 2025

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Obadiah Rutledge, Secretary of Senate

....
Rob Wagner, President of Senate

Passed by House May 20, 2025

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Julie Fahey, Speaker of House

Received by Governor:

........................M.,..., 2025

Approved:

........................M.,..., 2025

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Tina Kotek, Governor

Filed in Office of Secretary of State:

........................M.,..., 2025

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Tobias Read, Secretary of State