

Enrolled
Senate Bill 600

Sponsored by Senator NELSON

CHAPTER

AN ACT

Relating to telecommunications; creating new provisions; amending ORS 192.501, 759.005, 759.040, 759.050, 759.175, 759.180, 759.195, 759.210, 759.215, 759.255, 759.385, 759.390, 759.410, 759.500, 759.535, 759.560, 759.565 and 759.570; and repealing ORS 759.010, 759.030, 759.100, 759.110, 759.115, 759.505, 759.510, 759.515, 759.520, 759.525, 759.530, 759.540, 759.545, 759.550 and 759.555.

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

GENERAL PROVISIONS

SECTION 1. ORS 759.005 is amended to read:

759.005. (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection, “telecommunications utility” means:

(A) Any corporation, company, individual, association of individuals, or its lessees, trustees or receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state for the provision of telecommunications service, directly or indirectly to or for the public, whether or not [*such*] **the** plant or equipment, or [*part thereof*] **any portion of the plant or equipment**, is wholly within any town or city.

(B) Any corporation, company, individual or association of individuals[, *which*] **that** is party to an oral or written agreement for the payment by a telecommunications utility, for service, managerial construction, engineering or financing fees, and having an affiliated interest with the telecommunications utility.

(b) As used in this chapter, “telecommunications utility” does not include:

(A) Any plant owned or operated by a municipality.

(B) Any corporation not providing intrastate telecommunications service to the public in this state, whether or not [*such*] **the** corporation has an office in this state or has an affiliated interest with a telecommunications utility as defined in this chapter.

(C) Any person acting only as a competitive telecommunications provider.

(D) Any corporation, company, individual or association of individuals providing only telephone customer premises equipment to the public.

(2) As used in this chapter:

(a) “Competitive telecommunications provider” means a telecommunications services provider [*which*] **that** has been classified as [*such*] **a competitive telecommunications provider** by the Public Utility Commission pursuant to ORS 759.020.

(b) “Intrastate telecommunications service” means any telecommunications service in which the information transmitted originates and terminates within the boundaries of the State of Oregon.

(c) "Local exchange telecommunications service" means telecommunications service provided within the boundaries of exchange maps filed with and approved by the commission.

(d) "Private telecommunications network" means a system **for the provision of telecommunications service or any portion of telecommunications service**, including the construction, maintenance or operation [*thereof, for the provision of telecommunications service or any portion of such service*] **of the system**, by a person for the exclusive use of that person and not for resale, directly or indirectly.

(e) "Radio common carrier" means any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers and any town making available facilities to provide radio communications service, radio paging or cellular communications service for hire.

(f) "Shared telecommunications service" means the provision of telecommunications and information management services and equipment to a user group located in discrete premises in building complexes, campuses or high-rise buildings, by a commercial shared services provider or by a users' association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to local exchange telecommunications service.

(g) "Telecommunications service" means two-way switched access and transport of voice communications but does not include:

(A) Services provided by radio common carrier.

(B) One-way transmission of television signals.

(C) Surveying.

(D) Private telecommunications networks.

(E) Communications of the customer [*which*] **that** take place on the customer side of on-premises equipment.

(h) "Toll" means **switched** telecommunications between exchanges carried on the public switched network [*for which charges are made on a per-unit basis*]. "Toll" does not include services [*which*] **that** are an option to flat rate local or extended area service, even though [*such*] **the** options may include charges on a per-unit basis.

SECTION 2. ORS 759.010 is repealed.

SECTION 3. Sections 4, 5 and 7 to 11 of this 2005 Act are added to and made a part of ORS chapter 759.

SECTION 4. (1) A telecommunications utility may not use revenues earned from, or allocate expenses to, that portion of the utility's business that is regulated under this chapter in order to subsidize activities that are not regulated by this chapter.

(2) The Public Utility Commission may not require revenues or expenses from an activity that is not regulated under this chapter to be attributed to the regulated activities of a telecommunications utility.

(3) The commission may approve a telecommunications utility rate proposal for basic local service rates that utilizes revenues from other regulated services to partially cover the costs of providing basic local service.

SECTION 5. If the Public Utility Commission finds upon notice and investigation that customers of shared telecommunications services have no alternative access to local exchange telecommunications services, the commission may require the shared telecommunications service provider to make alternative facilities or conduit space available on reasonable terms and conditions and at reasonable prices.

EXTENT AND FORM OF REGULATION

SECTION 6. ORS 759.030 is repealed.

SECTION 7. Except as otherwise provided by law, the Public Utility Commission shall have authority to determine the manner and extent of the regulation of telecommunications services within the State of Oregon.

SECTION 8. (1)(a) Upon petition by any interested party and following notice and investigation, the Public Utility Commission may exempt in whole or in part from regulation those telecommunications services for which the commission finds that:

- (A) Price or service competition exists;
- (B) Telecommunications services can be demonstrated by the petitioner or the commission to be subject to competition; or
- (C) The public interest no longer requires full regulation of the telecommunications services.

(b) The commission may attach reasonable conditions to an exemption made under paragraph (a) of this subsection and may amend or revoke any order as provided in ORS 756.568.

(2) Upon petition by a telecommunications utility, and after notice and hearing, the commission shall exempt a telecommunications service from regulation if the commission finds that price and service competition exists.

(3) Prior to making the findings required by subsection (1) or (2) of this section, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates and under comparable terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission.

(4) A service that is deregulated under subsection (2) of this section may be reregulated, after notice and hearing, if the commission determines an essential finding on which the deregulation was based no longer prevails, and reregulation is necessary to protect the public interest.

SECTION 9. (1) If the Public Utility Commission determines that a product or service offered by a telecommunications utility as part of local exchange telecommunications services can be demonstrated by the utility to be subject to competition, or that a product or service is not an essential product or service, the commission may authorize the utility to file a price list with the commission.

(2) The price list shall contain the description, terms, conditions and prices of the service or product described in subsection (1) of this section. No other schedule for price listed services need be filed with the commission. The price list or any revision of the price list is not subject to the provisions of ORS 759.180 to 759.190 and shall become effective immediately upon filing with the commission unless a later date is specified.

(3) In determining whether a product or service is subject to competition, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates or under comparable terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission.

SECTION 10. (1) If the Public Utility Commission determines that a product or service offered by a telecommunications utility as part of interexchange telecommunications services can be demonstrated by the utility to be subject to competition, the commission, under conditions that the commission determines are reasonable, may authorize the utility to file a price list with the commission.

(2) The price list shall contain the description, terms, conditions and prices of the service or product described in subsection (1) of this section. No other schedule for price listed services need be filed with the commission. The price list or any revision of the price list is not subject to the provisions of ORS 759.180 to 759.190 and shall become effective immediately on filing with the commission unless a later date is specified.

(3) In determining whether a product or service is subject to competition, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates or under comparable terms and conditions.

(c) Existing economic or regulatory barriers to entry.

(d) Any other factors deemed relevant by the commission.

SECTION 11. Within 60 days of a filing under section 8, 9 or 10 of this 2005 Act, the Public Utility Commission shall either determine the appropriateness of the filing or determine that further investigation is necessary. If the commission determines that further investigation is necessary, the commission may suspend operation of the filing for a period not longer than five months from the end of the initial 60-day period. Upon a showing of good cause, any party may request extension of the suspension period for an additional three months.

SECTION 12. ORS 759.040 is amended to read:

759.040. (1) Subject to subsection (6) of this section, ORS 759.180 to 759.190 do not apply to new or revised tariff schedules filed with the Public Utility Commission by telecommunications utilities or affiliated groups of telecommunications utilities serving fewer than 50,000 access lines in Oregon and not affiliated or under common control with any other kind of public utility providing service in Oregon.

(2) Subject to subsection (6) of this section, ORS 759.375 to 759.393 do not apply to telecommunications utilities or affiliated groups of telecommunications utilities serving fewer than 50,000 access lines in Oregon and not affiliated or under common control with any other kind of public utility providing service in Oregon.

(3) Subject to subsection (6) of this section, ORS [759.100 to 759.115 and] 759.300 to 759.360 do not apply to telecommunications utilities or affiliated groups of telecommunications utilities serving fewer than 50,000 access lines in Oregon and not affiliated or under common control with any other kind of public utility providing service in Oregon.

(4) Upon petition by any telecommunications utility serving fewer than 50,000 access lines in Oregon and affiliated or under common control with another public utility providing service in Oregon, and a finding that such action is consistent with the public interest, the commission by order may exempt such telecommunications utility from:

(a) ORS 759.180 to 759.190.

(b) ORS 759.375 to 759.393.

(c) ORS [759.100 to 759.115 and] 759.300 to 759.360.

(5) Upon petition by any telecommunications utility serving fewer than 50,000 access lines in Oregon, and finding that such action is consistent with the public interest, the commission by order may exempt such telecommunications utility from ORS 759.175 and 759.205 to 759.215.

(6) Upon petition by the telecommunications utility or upon petition by 10 percent of the then current access line subscribers, or 500 subscribers, whichever is the lesser, of any telecommunications utility:

(a) Filed with the commission not less than 10 days prior to the proposed effective date of new or revised tariff schedules, the commission may impose **all or part of** the procedures of ORS 759.180 to 759.190 [or any part thereof,] to any [such] **of the** schedules of a telecommunications utility exempted from ORS 759.180 to 759.190 pursuant to this section.

(b) After notice and hearing and a finding that *[such]* **the** action is required by the public interest, the commission may revoke any exemption granted pursuant to this section[, or any part thereof,] or impose reasonable conditions upon the continued exercise *[thereof]* **of the exemption**.

(7) Any telecommunications utility for which an exemption from the application of ORS 759.180 to 759.190 is provided pursuant to this section shall notify its affected customers of any price increase for intrastate telecommunications services at least 45 days prior to the proposed effective date of the increase.

(8) Any telecommunications utility for which an exemption from the application of any statute is provided pursuant to this section shall file with the commission an annual report that includes copies of the income statement and balance sheet the telecommunications utility files with the Federal Communications Commission. Each *[such]* telecommunications utility **described in this subsection** shall notify customers that the income statement and balance sheet are on file with the commission.

SECTION 13. ORS 759.050 is amended to read:

759.050. (1) As used in this section:

(a) “Competitive zone” means a telecommunications service area within all or part of a local exchange, described both by service and territory, that has been designated a competitive zone by the Public Utility Commission under subsection (2) or (4) of this section.

(b) “Competitive zone service” means a local exchange telecommunications service that the commission has authorized to be provided within a competitive zone.

(c) “Essential function” means a functional component of a competitive zone service necessary to the provision of the service by a telecommunications provider for which there is no adequate alternative in terms of quality, quantity and price to the incumbent telecommunications utility.

(d) “Telecommunications utility” and “competitive provider” mean those entities that are classified as such by the commission under ORS 759.020. “Telecommunications provider” includes both telecommunications utilities and competitive providers.

(2)(a) Notwithstanding the provisions of ORS 759.020 (3), the commission may certify one or more persons, including another telecommunications utility, to provide local exchange telecommunications service within the local exchange telecommunications service area of a certificated telecommunications utility if the commission determines that *[such]* **the** authorization would be in the public interest. For the purpose of determining whether *[such]* **the** authorization would be in the public interest, the commission shall consider:

(A) The effect on rates for local exchange telecommunications service customers both within and outside the competitive zone.

(B) The effect on competition in the local exchange telecommunications service area.

(C) The effect on access by customers to high quality, innovative telecommunications service in the local exchange telecommunications service area.

(D) Any other facts the commission considers relevant.

(b) Upon certification of a telecommunications provider under paragraph (a) of this subsection, the commission shall establish a competitive zone defined by the services to be provided by the telecommunications provider and the geographic area to be served by the telecommunications provider. Price and service competition within the meaning of *[ORS 759.030 shall]* **section 8 of this 2005 Act may** not be deemed to exist by virtue of the establishment of a competitive zone.

(c) At the time of certification of a telecommunications provider, or thereafter, the commission may impose reasonable conditions upon the authority of the telecommunications provider to provide competitive zone service within the competitive zone. **Reasonable conditions include** *[including]*, but **are** not limited to, conditions:

(A) Designed to promote fair competition, such as interconnection[,]; and

(B) **Requiring** contributions of the type required of a telecommunications utility on account of the provision of local exchange service, including those to the Residential Service Protection Fund or the Telecommunication Devices Access Program.

(3) Upon demand, a competitive provider of competitive zone services shall make available to the commission any information relating to competitive zone services that the commission requests. Information provided to the commission by a competitive provider under this subsection shall be confidential and [shall] **may** not be disclosed by the commission, except for regulatory purposes in the context of a proceeding before the commission.

(4) Upon application by a telecommunications utility and a showing of competition within its local exchange, whether or not from certificated providers, the commission may designate all or part of the local exchange a competitive zone.

(5)(a) Except with respect to telecommunications utilities that are exempt from the provisions of ORS 759.180 to 759.190, unless the commission determines that it is not in the public interest at the time a competitive zone is created, upon designation of a competitive zone, price changes, service variations and modifications of competitive zone services offered by a telecommunications utility in the zone [shall not be] **are not** subject to ORS 759.180 to 759.190 and, at the telecommunication utility's discretion, may be made effective upon filing with the commission.

(b) The price and terms of service offered by a telecommunications utility for a competitive zone service within a competitive zone may differ from that outside of the zone. However, the price for a competitive zone service within the zone may not be lower than the total service long run incremental cost, for nonessential functions, of providing the service within the zone and the charges for essential functions used in providing the service, but the commission may establish rates for residential local exchange telecommunications service at any level necessary to achieve the commission's universal service objectives. Within the zone, the price of a competitive zone service, or any essential function used in providing the competitive zone service, may not be higher than those prices in effect when the competitive zone was established, unless authorized by the commission.

(c) The commission may revoke the exemption of a telecommunications utility from ORS 759.180 to 759.190 if the commission finds that the utility has violated statutes, rules or conditions of the commission applicable to competitive zone services or that there has been a substantial change in the circumstances that prevailed at the time the competitive zone was first established.

(d) On the motion of a telecommunications provider or on its own motion, the commission may order a telecommunications utility to disaggregate and offer essential functions of the telecommunications utility's local exchange network.

(6) A decision of the commission, with respect to the terms and conditions under which competitive zone services may be offered within a competitive zone by a telecommunications utility, to authorize a competitor to provide service within the local exchange service area of a telecommunications utility or to otherwise designate a competitive zone shall be subject to judicial review, but [shall] **may** not be stayed other than by order of the commission, except upon a showing by clear and convincing evidence that failure to stay the decision will result in irreparable harm to the aggrieved party.

(7) The exclusive remedy of a telecommunications provider aggrieved by the prices, terms of service or practices of another provider with respect to competitive zone services within a competitive zone [shall be a complaint filed] **is to file a complaint** with the commission under ORS 756.500. The commission, either upon complaint or its own motion, may permanently suspend a filing made by a provider with respect to a competitive zone service or take such other action as the commission deems appropriate, except an award for damages. A claim for damages arising from a commission decision in favor of the provider on a matter alleged in the complaint shall be brought as a separate action at law.

(8) Nothing in this section shall serve to shield any telecommunications provider of local exchange telecommunications service from state or federal antitrust laws.

(9) The commission shall report annually to the Legislative Assembly:

(a) The number of competitive zones created under ORS 759.020 and 759.050;

(b) The number of competitive providers authorized under ORS 759.020 and 759.050;

(c) The number and types of competitive services made available to consumers; and

(d) Consumer comments on competitive telecommunications services.

SECTION 13a. ORS 759.195 is amended to read:

759.195. (1) Except as provided in subsection (6) of this section, upon petition of a telecommunications utility [*which*] **that** provides local exchange service directly, or is affiliated with a utility [*which*] **that** provides local exchange service, and after notice and hearing, the Public Utility Commission may authorize the utility to set rates for toll and other telecommunications services by filing a price list containing the price and terms for the service. The price list or any [*revisions thereof, shall not be*] **revision of the price list is not** subject to the provisions of ORS 759.180 to 759.190 and shall become effective as determined by the commission. The commission may prescribe conditions on an authorization to establish rates by price list, including conditions relating to the sharing of revenues received by the utility [*which*] **that** are in excess of allowances provided for in the order of authorization.

(2) Telecommunications utilities [*which*] **that** provide telecommunications services only between exchanges and are not affiliated with a utility [*which*] **that** provides local exchange service[, *may price list services*] **may establish rates by price list** without special authorization [*of*] **from** the commission.

(3) Prior to granting a petition to set rates by price list under this section, the commission shall find that pricing flexibility:

(a) Is reasonably necessary to enable the utility to respond to current and future competitive conditions for any or all telecommunications services;

(b) Will maintain the appropriate balance between the need for price flexibility and the protection of consumers;

(c) Is likely to benefit the consumers of fixed rate services; and

(d) Is unlikely to cause any undue harm to any customer class.

(4) A rate set for a service by a utility [*shall*] **may** not be lower than the long run incremental cost of providing the service.

(5) Upon its own motion the commission may fix maximum rate levels and terms of service for price listed services and for toll services on noncompetitive routes. Upon request of any affected person, the commission shall fix maximum rate levels and terms of service for price listed services not subject to competition and for toll services on noncompetitive routes.

(6) By rule, the commission shall designate local exchange services [*which*] **that** it deems essential, and rates for such services shall be prescribed under ORS 759.180 to 759.190. [*Rates for essential services need not be designed to recover the cost of service of such services, but may be supported by revenues from other regulated telecommunication services of the utility or its affiliates. Such support is in addition to any subsidy which may be provided under ORS 759.030 (9).*] The commission also may authorize automatic adjustment clauses which reflect increases, decreases, or both, in particular costs incurred by the utility. For the purposes of this subsection, “essential services” need not be essential for all classes of customers.

(7) The commission may, at any time, order a telecommunications utility to appear and establish that any[, *or all,*] of its price listed rates are just and reasonable and in conformity with the requirements of this section and the authorization to price list issued by the commission. [*Such*] **Price listed** rates shall also be subject to complaint under ORS 756.500.

SECTION 13b. ORS 759.255 is amended to read:

759.255. (1) In addition to powers vested in the Public Utility Commission under ORS 759.195, and subject to the limitations contained in subsections (2) to (4) of this section, upon petition of a telecommunications utility that provides local exchange service directly, or is affiliated with a utility that provides local exchange service, the commission, after notice and hearing, may approve a plan under which the commission regulates prices charged by the utility, without regard to the return on investment of the utility. Prices approved under the plan [*shall not be*] **are not** subject to the provisions of ORS 759.180 to 759.190 and shall become effective as stated in the plan.

(2) Prior to granting a petition to approve a plan under subsection (1) of this section, the commission must find that the plan is in the public interest. In making its determination the commission shall consider, among other matters, whether the plan:

- (a) Ensures prices for telecommunications services that are just and reasonable;
- (b) Ensures high quality of existing telecommunications services and makes new services available;
- (c) Maintains the appropriate balance between the need for regulation and competition; and
- (d) Simplifies regulation.

(3) If the commission approves a plan under subsection (1) of this section, *[it]* **the commission** shall establish objectives of the plan and conditions for review of the plan during *[its]* **the operation of the plan**. The commission *[shall]* **may** not consider return on investment of the utility when *[it]* **the commission** establishes objectives of the plan and conditions for review of the plan during *[its]* **the operation of the plan**.

(4) A rate for any service in the plan authorized under subsection (1) of this section may not be lower than the total service long run incremental cost, for nonessential functions, of providing the service and the charges of essential functions used in providing the service. However, the commission may allow a telecommunications utility to establish rates for residential local exchange service at any level necessary to achieve the commission's universal service objectives.

(5) If the commission approves a plan under subsection (1) of this section, the commission may waive, in whole or in part, compliance by the telecommunications utility with ORS *[759.100, 759.110 to] 759.120, 759.125, 759.130, 759.135, 759.180 to 759.205, 759.215, 759.220, 759.285 and 759.300 to 759.393*.

ACCOUNTS AND RECORDS

SECTION 14. ORS 759.100, 759.110 and 759.115 are repealed.

RATE REGULATION AND PROCEDURES

SECTION 15. ORS 759.175 is amended to read:

759.175. (1) Every telecommunications utility shall file with the Public Utility Commission, within a time to be fixed by the commission, schedules *[which shall be open to public inspection,]* showing all rates, tolls and charges *[which it]* **that the utility** has established and *[which]* **that** are in force at the time for any service performed by *[it]* **the utility** within the state, or for any service in connection *[therewith]* **with** or performed by any *[telecommunications]* utility controlled or operated by *[it]* **the utility**. **Schedules filed with the commission shall be open to public inspection.**

(2) Every telecommunications utility shall file, with and as part of every *[such]* schedule **filed under subsection (1) of this section**, all rules and regulations that in any manner affect the rates charged or to be charged for any service. *[Every telecommunications utility shall also file with the commission copies of interstate rate schedules and rules and regulations issued by it or to which it is a party.]*

(3) Where a schedule of joint rates or charges is or may be in force between two or more telecommunications utilities, *[such schedules]* **the schedule** shall in like manner be printed and filed with the commission.

SECTION 16. ORS 759.180 is amended to read:

759.180. (1)(a) Except as provided in ORS *[759.030 and] 759.195 and 759.410 and section 8, 9 or 10 of this 2005 Act*, whenever any telecommunications utility files with the Public Utility Commission any rate or schedule of rates stating or establishing a new rate or schedule of rates or increasing an existing rate or schedule of rates, the commission may, either upon written complaint or upon the commission's own initiative, after reasonable notice, conduct a hearing to determine the propriety and reasonableness of *[such]* **the** rate or schedule. The commission shall conduct *[such a]* **the** hearing upon written complaint filed by the telecommunications utility, its customer or customers, or any other proper party within 60 days of the telecommunications utility's filing; *provided that no*. **A** hearing need **not** be held if the particular rate change is the result of an automatic adjustment clause. At *[such]* **the** hearing the telecommunications utility shall bear the burden of

showing that the rate or schedule of rates proposed to be established or increased or changed is just and reasonable.

(b) As used in this subsection, [*The term*] “automatic adjustment clause” means a provision of a rate schedule, authorized pursuant to ORS 759.195 (6), [*which*] **that** provides for rate increases, [*or*] decreases or both, without prior hearing, reflecting increases, decreases or both in costs incurred by a telecommunications utility and [*which*] **that** is subject to review by the commission at least once every two years.

(2) The commission and staff may consult at any time with, and provide technical assistance to, telecommunications utilities, their customers, and other interested parties on matters relevant to utility rates and charges. If a hearing is held with respect to a rate change, the [*commission’s*] decisions **of the commission** shall be based on the record made at the hearing.

NOTE: Section 17 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 18. ORS 759.210 is amended to read:

759.210. (1) The Public Utility Commission shall provide for a comprehensive classification of service for each telecommunications utility [*and such*]. **The** classification may take into account the quantity used, the time when used, the purpose for which used, the existence of price competition or a service alternative, the services being provided, the conditions of service and any other reasonable consideration. Based on [*such*] **these** considerations the commission may authorize classifications or schedules of rates applicable to individual customers or groups of customers. [*The service classifications and schedule forms shall be designed consistently with the requirements of ORS 469.010.*] Each telecommunications utility is required to conform its schedules of rates to such classification. If the commission determines that a tariff filing under ORS 759.175 results in a rate classification primarily related to price competition or a service alternative, the commission, at a minimum, shall consider the following:

(a) Whether the rate generates revenues at least sufficient to cover relevant short and long run costs of the utility during the term of the rates; and

(b) Whether the rate generates revenues sufficient to insure that just and reasonable rates are established for remaining customers of the telecommunications utility.

(2) The commission may prescribe [*such*] **any** changes in the form in which the schedules are issued by any telecommunications utility as [*may be found*] **the commission finds** to be expedient. The commission shall adopt rules [*which*] **that** allow any person who requests notice of tariff filings described under subsection (1) of this section to receive such notice.

SECTION 19. ORS 759.215 is amended to read:

759.215. (1) A copy of so much of all schedules, including schedules of joint rates and charges, as the Public Utility Commission deems necessary for the use of the public, shall be [*printed in plain type and kept on file in every business office of such telecommunications utility, open to the public, and in such form and place as to be readily accessible to the public for convenient inspection*] **made available to the public.**

(2) **Except as provided in ORS 759.410 (8),** copies of all new schedules shall be [*filed in every business office of such telecommunications utility*] **made readily accessible to the public as required by the commission** 30 days prior to the time the schedules are to take effect, unless the commission prescribes a shorter time.

NOTE: Section 20 was deleted by amendment. Subsequent sections were not renumbered.

TRANSACTIONS OF UTILITIES

SECTION 21. ORS 759.385 is amended to read:

759.385. (1) When any telecommunications utility doing business in this state, **except a telecommunications carrier that has elected to be subject to ORS 759.405 and 759.410,** enters into a contract with another corporation with relation to the construction, operation, maintenance or use of the property of [*said*] **the** telecommunications utility in Oregon, or the use of the property of the other contracting party, or any part [*thereof*] **of the property,** or for service, advice, engi-

neering, financing, rentals, leasing or for any construction or management charges [*in respect of any such*] **with respect to any of the** property, or for the purchase of property, materials or supplies, the proposed contract shall be filed with the Public Utility Commission for the investigation and approval when the telecommunications utility owns a majority of or controls directly or indirectly the voting stock of the other contracting corporations.

(2) Any [*such*] proposed contract **described in subsection (1) of this section** shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier. The commission shall promptly investigate and act upon the contract in accordance with ORS 759.390 [(3) and (6)] **(4) and (7)**.

(3) In making [*such*] **an investigation of the contract**, the commission and accountants, examiners and agents, appointed by the commission for the purpose, shall be given free access to all books, books of account, documents, data and records of the telecommunications utility, as well as of the corporation with which it is proposing to contract, [*which*] **that** the commission may deem material to the investigation. The failure or refusal of either of the parties to the proposed contract to comply with this subsection is prima facie evidence that [*such*] **the** contract is unfair, unreasonable and contrary to public interest, and is sufficient to justify a determination and finding of the commission to that effect[, *which*]. **A determination and finding by the commission under this subsection** has the same force and effect as any other determination or order of the commission.

(4) This section applies only to transactions in which the telecommunications utility's Oregon intrastate expenditure to the affiliate is more than \$100,000.

SECTION 22. ORS 759.390 is amended to read:

759.390. (1) **As used in this section, "affiliated interest" with a telecommunications utility means:**

(a) **Every person owning or holding directly or indirectly five percent or more of the voting securities of the telecommunications utility.**

(b) **Every person in any chain of successive ownership of five percent or more of the voting securities of the telecommunications utility.**

(c) **Every corporation five percent or more of whose voting securities are owned by any person owning five percent or more of the voting securities of the telecommunications utility or by any person in any chain of successive ownership of five percent or more of the voting securities of the telecommunications utility.**

(d) **Every individual who is an officer or director of the telecommunications utility or of any person in any chain of successive ownership of five percent or more of the voting securities of the telecommunications utility.**

(e) **Every corporation that has two or more officers or two or more directors in common with the telecommunications utility.**

(f) **Every entity, five percent or more of which is directly or indirectly owned by a telecommunications utility.**

(g) **Every person that the Public Utility Commission determines as a matter of fact, after investigation and hearing, actually is exercising any substantial influence over the policies and actions of the telecommunications utility, even though the influence is not based upon stockholdings, stockholders, directors or officers to the extent specified in this section.**

(h) **Every person that the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of the telecommunications utility in conjunction with one or more other persons with whom they are related by ownership or blood or by action in concert that together they are affiliated with the telecommunications utility within the meaning of this section even though no one of them alone is so affiliated.**

[(1)] (2) When any telecommunications utility doing business in this state, **except a telecommunications carrier that has elected to be subject to ORS 759.405 and 759.410**, enters into any contract to make any payment, directly or indirectly, to any person [*or corporation*] having an af-

filiated interest, for service, advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, legal or other services, or *[enter]* **enters** any *[charges therefor on its books, which shall]* **charge on the books of the utility, and the contract is to** be recognized as an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the *[Public Utility]* commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

[(2)] (3) When any telecommunications utility doing business in this state *[shall enter]* **enters** into any contract, oral or written, with any person *[or corporation]* having an affiliated interest relating to the construction, operation, maintenance, leasing or use of the property of *[such]* **the** telecommunications utility in Oregon, or the purchase of property, materials or supplies, *[which shall]* **that is to** be recognized as the basis of an operating expense or capital expenditure in any rate valuation or any other hearing or proceeding, the contract shall be filed with the commission within 90 days of execution of the contract. The contract shall be deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

[(3)] (4) *[When any such contract has been submitted to the commission,]* The commission promptly shall examine and investigate *[it]* **any contract submitted to the commission under subsection (2) or (3) of this section.** If, after *[such]* **the** investigation, the commission determines that it is fair and reasonable and not contrary to the public interest, the commission shall enter findings and order *[to this effect]* **approving the contract** and serve a copy *[thereof]* **of the findings and order** upon the telecommunications utility. *[, whereupon]* **Following the commission's determination of fairness and reasonableness,** any expenses and capital expenditures incurred by the telecommunications utility under the contract may be recognized in any rate valuation or other hearing or proceeding. If, after *[such]* **the** investigation, the commission determines that the contract is not fair and reasonable in all its terms and is contrary to the public interest, the commission shall enter findings and order *[accordingly]* **disapproving the contract** and serve a copy *[thereof]* **of the findings and order** upon the telecommunications utility *[, and,]*. Except as provided in subsection *[(4)] (5)* of this section, it *[shall be]* **is** unlawful to recognize *[the]* **a disapproved** contract for the purposes specified in this section.

[(4)] (5) When any *[such]* contract **described in subsection (2) or (3) of this section** has been filed with the commission within 90 days of execution and the commission has not entered an order disapproving the contract under subsection *[(3)] (4)* of this section, the commission *[shall]* **may** not base its refusal to recognize any expenses or capital expenditures incurred under the contract in any rate valuation or other hearing or proceeding solely on the basis that *[such]* **the** contract has not been approved under subsection *[(3)] (4)* of this section.

[(5)] (6) *[No telecommunications utility shall]* **A telecommunications utility may not** issue notes or loan its funds or give credit on its books or otherwise to any person *[or corporation]* having an affiliated interest, either directly or indirectly, without the approval of the commission.

[(6)] (7) The action of the commission with respect to all the matters described in this section *[when submitted to the commission,]* shall be by findings and order to be entered within 90 days after the matter has been submitted to the commission for consideration *[, and]*. The findings and order of the commission with respect to any *[of such matters]* **matter described in this section** shall *[be and]* remain in full force and effect *[, unless and]* until set aside *[by suit brought and prosecuted, as provided in]* **in a suit under** ORS 756.580 to 756.610 *[, and]*. The telecommunications utility, or any other person *[or corporation]* affected by *[any such]* **a findings and order by the commission under this section,** may bring *[and prosecute such suit]* **a suit against the commission contesting the findings and order under ORS 756.580 to 756.610.**

[(7)] (8) This section applies only to transactions in which the telecommunications utility's Oregon intrastate expenditure to the affiliate is more than \$100,000.

ALTERNATIVE PRICE CAP REGULATION

SECTION 23. ORS 759.410 is amended to read:

759.410. (1) It is the intent of the Legislative Assembly that:

(a) The State of Oregon cease regulation of telecommunications carriers on a rate of return basis;

(b) Telecommunications carriers subject to rate of return regulation have the ability to opt out of rate of return regulation;

(c) A telecommunications carrier that opts out of rate of return regulation under this section and ORS 759.405 shall be subject to price cap regulation and the carrier under price cap regulation shall continue to meet service quality requirements; and

(d) Telecommunications carriers that opt out of rate of return regulation under this section and ORS 759.405 shall make payments to the state to support the use of advanced telecommunications services and to support deployment of advanced telecommunications services.

(2) A telecommunications carrier that elects to be subject to this section and ORS 759.405 shall be subject to price regulation as provided in this section and shall not be subject to any other retail rate regulation, including but not limited to any form of earnings-based, rate-based or rate of return regulation.

(3) The price a telecommunications utility that elects to be subject to this section and ORS 759.405 may charge for basic telephone service shall be established by the Public Utility Commission under ORS 759.425. Subject to ORS 759.415, the regular tariff rate of intrastate switched access and retail telecommunications services regulated by the commission, other than basic telephone service, in effect on the date the carrier elects to be subject to this section and ORS 759.405 shall be the maximum price the telecommunications carrier may charge for that service.

(4) A telecommunications carrier that elects to be subject to this section and ORS 759.405 may adjust the price for intrastate switched access or a regulated retail telecommunications service between the maximum price established under this section and a price floor equal to the sum of the total service long run incremental cost of providing the service for the nonessential functions of the service and the price that is charged to other telecommunications carriers for the essential functions. Basic telephone service shall not be subject to a price floor.

(5) The price for a new regulated retail telecommunications service introduced by a telecommunications carrier within four years after the date the carrier elects to be subject to this section and ORS 759.405 shall be subject to a price floor test by the commission to ensure that the service is not priced below the sum of the total service long run incremental cost of providing the service for the nonessential functions of the service and the price that is charged to other telecommunications carriers for the essential functions. Beginning on the date four years after September 1, 1999, the price of a new telecommunications service shall be subject to a price floor test by the commission to ensure that the service is not priced below the total service long run incremental cost of providing the service, without regard to whether the service is considered essential or non-essential.

(6) A telecommunications carrier that elects to be subject to this section and ORS 759.405 may package and offer any of its retail telecommunications services with any other service at any price, provided the following conditions apply:

(a) Any regulated telecommunications service may be purchased separately at or below the maximum price.

(b) The price of the package is not less than the sum of the price floors of each regulated retail telecommunications service included in the package.

(c) The price of a package that is comprised entirely of regulated retail telecommunications services does not exceed the sum of the maximum prices for each of the services.

(d) The price of a package comprised of regulated and unregulated retail telecommunications services does not exceed the sum of the maximum prices established under this section for regulated services and the retail price charged by the carrier for the individual unregulated services in the package. A telecommunications carrier subject to regulation under this section shall provide notice

to the commission within 30 days of a change in the price of an unregulated telecommunications service contained in the package.

(7) Nothing in this section or ORS 759.405 is intended to limit the ability of a telecommunications carrier to seek deregulation of telecommunications services under [ORS 759.030] **section 8 of this 2005 Act.**

(8)(a) Notice of a price change authorized under subsection (4) of this section, of the introduction of a new regulated telecommunications service or of the packaging of services, must be given to the commission within 30 days following the effective date of the price change, new service or packaged service. Notice of a new regulated telecommunications service shall indicate the retail price charged by the carrier for the service.

(b) The commission may investigate any price change authorized under subsection (4) of this section, the price of a new regulated telecommunications service or the price of a package of services to determine that the price complies with the provisions of this section and any other applicable law. If the commission determines that the price of the service or package of services does not comply with the provisions of this section or other applicable law, the commission may order the telecommunications carrier to take such action as the commission determines necessary to bring the price into compliance with this section or other applicable law.

(9) Nothing in this section affects the authority of a city or municipality to manage the public rights of way or to require fair and reasonable compensation from a telecommunications carrier, on a competitively neutral and nondiscriminatory basis, under ORS 221.420, 221.450, 221.510 and 221.515.

(10) Notwithstanding any other provision of this section, the commission shall establish prices for extended area service in a manner that allows a telecommunications carrier that elects to be subject to this section and ORS 759.405 to recover all costs and lost net revenues attributable to implementing new extended area service routes. The provisions of this subsection apply to telecommunications service provided on a flat or measured basis between exchanges defined by exchange maps filed with and approved by the commission.

ALLOCATION OF TERRITORIES

SECTION 24. ORS 759.500 is amended to read:

759.500. As used in ORS 759.500 to 579.570, unless the context requires otherwise:

(1) "Allocated territory" means *[an area with boundaries established by a contract between persons furnishing a similar utility service and approved by the Public Utility Commission or established by an order of the commission approving an application for the allocation of territory]* **a geographic area for which the Public Utility Commission has allocated to no more than one person the authority to provide local exchange telecommunications service, the boundaries of which are set forth on an exchange map filed with and approved by the commission.**

(2) "Person" includes:

(a) *[individuals, firms, partnerships, corporations, associations, cooperatives and municipalities, or]* **An individual, firm, partnership, corporation, association, cooperative or municipality;** or

(b) **The** *[their]* agent, lessee, trustee or referee **of an individual or entity listed in paragraph (a) of this subsection.**

(3) "**Local exchange** telecommunications *[utility]* service" *[means service provided by any equipment, plant or facility for the provision of local exchange telecommunications service as defined]* **has the meaning given that term in ORS 759.005 (2)(c)[.], except that "local exchange** telecommunications *[utility]* service" does not include service provided through or by the use of any equipment, plant or facilities:

(a) For the provision of telecommunications *[service, which]* **services that** pass through or over but are not used to provide service in or do not terminate in an area allocated to another person providing a similar *[utility]* **telecommunications** service;

(b) For the provision of local exchange telecommunications service, as defined in ORS 759.005 (2)(c), commonly known as “private lines” or “farmer lines”; *[nor]* **or**

(c) For the provision of shared telecommunications service *[as defined in ORS 759.005 (2)(f)]*.

SECTION 25. Sections 26 and 27 of this 2005 Act are added to and made a part of ORS 759.500 to 759.570.

SECTION 26. (1) The purpose of establishing allocated territories under ORS 759.500 to 759.570 is to ensure that telecommunications utilities, cooperative corporations and municipalities certified by the Public Utility Commission to provide local exchange telecommunications service:

(a) Provide adequate and safe service to the customers of this state; and

(b) Serve all customers in an adequate and nondiscriminatory manner.

(2) The obligations described in this section may be referenced as carrier of last resort obligations.

SECTION 27. As of January 1, 2006, the Public Utility Commission shall:

(1) Reallocate every allocated local exchange telecommunications service territory to a telecommunications utility, cooperative corporation or municipality to whom the commission had previously allocated local exchange telecommunications service territory. Allocations granted by the commission pursuant to this subsection shall replace all allocations to telecommunications utilities, cooperative corporations or municipalities granted by the commission prior to January 1, 2006. An allocation made pursuant to this subsection is not subject to ORS 759.535 or 759.560. The commission has authority under ORS 756.500 to 756.610 to resolve a dispute arising from a reallocation made under this subsection.

(2) Upon request, allocate every local exchange telecommunications service territory that is shown on a map approved by the commission and that is unallocated as of December 31, 2005, to the telecommunications utility, cooperative corporation or municipality that filed the map. An allocation made pursuant to this subsection is not subject to ORS 759.535 or 759.560. The commission has authority under ORS 756.500 to 756.610 to resolve a dispute arising from an allocation made under this subsection.

SECTION 28. ORS 759.535 is amended to read:

759.535. (1) *[Any person providing a telecommunications utility]* **A telecommunications utility, cooperative corporation or municipality that desires to provide local exchange telecommunications** service in a territory that is not served by another person providing a similar **local exchange** telecommunications *[utility]* service may *[make application]* **apply** to the Public Utility Commission for an order allocating *[such]* **the** territory to *[it]* **the applicant**. The application *[may include any adjacent area that it is more economical and feasible to serve by an extension of the applicant's existing facilities than by an extension of the facilities of another person]* **shall include an exchange map that shows the unserved territory that the applicant is requesting to serve.**

(2) The commission shall within 30 days after the filing of *[such]* **the** application give notice of the filing. If the commission chooses, or if a customer requests a hearing on the matter within 30 days of the notice, the commission shall hold a hearing by telephone or in person. The commission shall give notice of the hearing within 30 days of the request *[which]*. **The** notice shall set the date and place of hearing. The hearing shall be held at a place within or conveniently accessible to the territory covered by the application. Notice of the filing shall be by publication in a newspaper or newspapers of general circulation in the territory covered by the application and shall be published at least once weekly for two successive weeks. Written notice of the filing shall be given to providers of similar **local exchange** telecommunications *[utility]* service in adjacent territory.

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

SECTION 29. ORS 759.560 is amended to read:

759.560. (1) The rights acquired by an allocation of territory may only be assigned or transferred with the approval of the Public Utility Commission after a finding that *[such]* **the** assignment or

transfer is not contrary to the public interest. *[However, no hearing is required if all affected customers agree to the proposed assignment or transfer.]*

(2) The commission may approve a transfer of territory previously allocated only upon receipt of an application for allocation that is jointly filed by the transferor and the transferee. The application shall include exchange maps that show how the applicants want the commission to allocate the territory. The commission shall enter an order either approving or disapproving the application as filed, or as amended, together with findings of fact supporting the order.

[(2)] (3)(a) [No approved contract or] An order approving an allocation of territory [shall] may not be construed to confer any property right[; providing, however,].

(b) Notwithstanding paragraph (a) of this subsection, upon the death of an individual [who is a party to an approved contract] to whom territory was allocated or [the] who was an applicant under an approved order, the executor or administrator of the estate of the individual shall continue the operation of local exchange telecommunications service [thereunder] for the purpose of transferring [such] territorial allocation rights. The executor or administrator shall continue the operation for a period [of] not to exceed two years from the date of death.

[(3)] (4) In the event the property of a person serving an allocated territory is condemned, no value shall be claimed or awarded by reason of the contract or order making [such] the allocation.

(5) The commission may by rule establish requirements for notice to affected persons of the assignment or transfer of allocated territory.

SECTION 30. ORS 759.565 is amended to read:

759.565. [In the event a contract approved by the Public Utility Commission is breached or] In the event an allocated territory is served by a person that is not authorized by [such contract or order of] the Public Utility Commission to provide local exchange telecommunications service in the territory, [the] an aggrieved person or the commission may file an action in the circuit court for any county in which is located some or all of the allocated territory allegedly involved in [said breach or invasion] the unauthorized provision of service, for an injunction against [said alleged breach or invasion] the alleged unauthorized provision of service. The trial of [such] the action shall proceed as in an action not triable by right to a jury. Any party may appeal to the Court of Appeals from the circuit court's judgment, as in other equity cases. The remedy provided in this section shall be in addition to any other remedy provided by law.

SECTION 31. ORS 759.570 is amended to read:

759.570. (1) ORS 759.500 to 759.570 [shall] may not be construed or applied to restrict the powers granted to cities to issue franchises or to restrict the exercise of the power of condemnation by a municipality[; and when]. If a municipality [has condemned or otherwise acquired another person's] condemns or otherwise acquires equipment, plant or facilities from another person for rendering local exchange telecommunications [utility] service, [it shall acquire] the municipality acquires all of the rights of the person whose property is condemned to serve the territory served by the acquired properties.

(2) ORS 759.500 to 759.570 [shall] may not be construed to restrict the right of a municipality to provide local exchange telecommunications [utility] service for street lights, fire alarm systems, airports, buildings and other municipal installations regardless of their location.

(3) ORS 759.500 to 759.570 [shall] may not be construed to confer upon the Public Utility Commission any regulatory authority over rates, service or financing of cooperatives or municipalities.

SECTION 32. ORS 759.505, 759.510, 759.515, 759.520, 759.525, 759.530, 759.540, 759.545, 759.550 and 759.555 are repealed.

CONFORMING CHANGES

SECTION 33. ORS 192.501 is amended to read:

192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:

(1) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(3) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(b) The offense with which the arrested person is charged;

(c) The conditions of release pursuant to ORS 135.230 to 135.290;

(d) The identity of and biographical information concerning both complaining party and victim;

(e) The identity of the investigating and arresting agency and the length of the investigation;

(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice;

(4) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected;

(5) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

(6) Information relating to the appraisal of real estate prior to its acquisition;

(7) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under ORS 659A.850;

(9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180;

(10) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services under ORS 697.732;

(11) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and

the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction;

(12) A personnel discipline action, or materials or documents supporting that action;

(13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species;

(14) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented;

(15) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(a) The original data, including but not limited to numbers, text, voice, graphics and images;

(b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually;

(16) Data and information provided by participants to mediation under ORS 36.256;

(17) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation;

(18) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity;

(19)(a) Audits or audit reports required of a telecommunications carrier. As used in this paragraph, "audit or audit report" means any external or internal audit or audit report pertaining to a telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an affiliated interest, as defined in ORS [759.010] **759.390**, with a telecommunications carrier that is intended to make the operations of the entity more efficient, accurate or compliant with applicable rules, procedures or standards, that may include self-criticism and that has been filed by the telecommunications carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an audit of a cost study that would be discoverable in a contested case proceeding and that is not subject to a protective order; and

(b) Financial statements. As used in this paragraph, "financial statement" means a financial statement of a nonregulated corporation having an affiliated interest, as defined in ORS [759.010] **759.390**, with a telecommunications carrier, as defined in ORS 133.721;

(20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS 247.967;

(21) The following records, communications and information submitted to a housing authority as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants for and recipients of loans, grants and tax credits:

(a) Personal and corporate financial statements and information, including tax returns;

(b) Credit reports;

(c) Project appraisals;

(d) Market studies and analyses;

(e) Articles of incorporation, partnership agreements and operating agreements;

(f) Commitment letters;

(g) Project pro forma statements;

(h) Project cost certifications and cost data;

- (i) Audits;
- (j) Project tenant correspondence requested to be confidential;
- (k) Tenant files relating to certification; and
- (L) Housing assistance payment requests;
- (22) Records or information that, if disclosed, would allow a person to:
 - (a) Gain unauthorized access to buildings or other property;
 - (b) Identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or
 - (c) Disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body;
- (23) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:
 - (a) An individual;
 - (b) Buildings or other property;
 - (c) Information processing, communication or telecommunication systems, including the information contained in the systems; or
 - (d) Those operations of the Oregon State Lottery the security of which are subject to study and evaluation under ORS 461.180 (6);
- (24) Writings prepared by or under the direction of officials of Oregon Health and Science University about a person and the person's potential interest in donating money or property to the university or about the person's actual donation unless disclosure is authorized by the person;
- (25) Personal information held by or under the direction of officials of the Oregon University System about a person who has or who is interested in donating money or property to the system or to a state institution of higher education, if the information is related to the family of the person, personal assets of the person or is incidental information not related to the donation;
- (26) The home address, professional address and telephone number of a person who has or who is interested in donating money or property to the Oregon University System;
- (27) Records of the name and address of a person who files a report with or pays an assessment to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030;
- (28) Information provided to, obtained by or used by a public body to authorize, originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number;
- (29) Social Security numbers as provided in ORS 107.840;
- (30) The electronic mail address of a student who attends a state institution of higher education listed in ORS 352.002 or Oregon Health and Science University; and
- (31) The name, home address, professional address or location of a person that is engaged in, or that provides goods or services for, medical research at Oregon Health and Science University that is conducted using animals other than rodents.

SECTION 34. ORS 192.501, as amended by section 3, chapter 807, Oregon Laws 2003, is amended to read:

192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest requires disclosure in the particular instance:

- (1) Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(3) Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:

(a) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(b) The offense with which the arrested person is charged;

(c) The conditions of release pursuant to ORS 135.230 to 135.290;

(d) The identity of and biographical information concerning both complaining party and victim;

(e) The identity of the investigating and arresting agency and the length of the investigation;

(f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

(g) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice;

(4) Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected;

(5) Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. This exemption does not include records submitted by long term care facilities as defined in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for patient care. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceeding;

(6) Information relating to the appraisal of real estate prior to its acquisition;

(7) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under ORS 659A.850;

(9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and 663.180;

(10) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services under ORS 697.732;

(11) Information concerning the location of archaeological sites or objects as those terms are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist facility or attraction;

(12) A personnel discipline action, or materials or documents supporting that action;

(13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and 564.100, regarding the habitat, location or population of any threatened species or endangered species;

(14) Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented;

(15) Computer programs developed or purchased by or for any public body for its own use. As used in this subsection, "computer program" means a series of instructions or statements which permit the functioning of a computer system in a manner designed to provide storage, retrieval and manipulation of data from such computer system, and any associated documentation and source material that explain how to operate the computer program. "Computer program" does not include:

(a) The original data, including but not limited to numbers, text, voice, graphics and images;

(b) Analyses, compilations and other manipulated forms of the original data produced by use of the program; or

(c) The mathematical and statistical formulas which would be used if the manipulated forms of the original data were to be produced manually;

(16) Data and information provided by participants to mediation under ORS 36.256;

(17) Investigatory information relating to any complaint or charge filed under ORS chapter 654, until a final administrative determination is made or, if a citation is issued, until an employer receives notice of any citation;

(18) Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity;

(19)(a) Audits or audit reports required of a telecommunications carrier. As used in this paragraph, "audit or audit report" means any external or internal audit or audit report pertaining to a telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an affiliated interest, as defined in ORS [759.010] **759.390**, with a telecommunications carrier that is intended to make the operations of the entity more efficient, accurate or compliant with applicable rules, procedures or standards, that may include self-criticism and that has been filed by the telecommunications carrier or affiliate under compulsion of state law. "Audit or audit report" does not mean an audit of a cost study that would be discoverable in a contested case proceeding and that is not subject to a protective order; and

(b) Financial statements. As used in this paragraph, "financial statement" means a financial statement of a nonregulated corporation having an affiliated interest, as defined in ORS [759.010] **759.390**, with a telecommunications carrier, as defined in ORS 133.721;

(20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS 247.967;

(21) The following records, communications and information submitted to a housing authority as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants for and recipients of loans, grants and tax credits:

(a) Personal and corporate financial statements and information, including tax returns;

(b) Credit reports;

(c) Project appraisals;

(d) Market studies and analyses;

(e) Articles of incorporation, partnership agreements and operating agreements;

(f) Commitment letters;

(g) Project pro forma statements;

(h) Project cost certifications and cost data;

(i) Audits;

(j) Project tenant correspondence requested to be confidential;

(k) Tenant files relating to certification; and

(L) Housing assistance payment requests;

- (22) Records or information that, if disclosed, would allow a person to:
- (a) Gain unauthorized access to buildings or other property;
 - (b) Identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or
 - (c) Disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body;
- (23) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:
- (a) An individual;
 - (b) Buildings or other property;
 - (c) Information processing, communication or telecommunication systems, including the information contained in the systems; or
 - (d) Those operations of the Oregon State Lottery the security of which are subject to study and evaluation under ORS 461.180 (6);
- (24) Writings prepared by or under the direction of officials of Oregon Health and Science University about a person and the person's potential interest in donating money or property to the university or about the person's actual donation unless disclosure is authorized by the person;
- (25) Personal information held by or under the direction of officials of the Oregon University System about a person who has or who is interested in donating money or property to the system or to a state institution of higher education, if the information is related to the family of the person, personal assets of the person or is incidental information not related to the donation;
- (26) The home address, professional address and telephone number of a person who has or who is interested in donating money or property to the Oregon University System;
- (27) Records of the name and address of a person who files a report with or pays an assessment to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030;
- (28) Information provided to, obtained by or used by a public body to authorize, originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number;
- (29) Social Security numbers as provided in ORS 107.840; and
- (30) The electronic mail address of a student who attends a state institution of higher education listed in ORS 352.002 or Oregon Health and Science University.

CAPTIONS

SECTION 35. The unit captions used in this 2005 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2005 Act.

Passed by Senate March 22, 2005

Repassed by Senate May 31, 2005

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Secretary of Senate

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President of Senate

Passed by House May 26, 2005

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Speaker of House

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State