

**A-Engrossed**  
**Senate Bill 671**

Ordered by the Senate June 29  
Including Senate Amendments dated June 29

Sponsored by Senator METSGER; Senators BATES, BEYER, BROWN, CARTER, DEVLIN, FERRIOLI, GEORGE, KRUSE, MORRISSETTE, MORSE, NELSON, B STARR, C STARR, WALKER, WESTLUND, WHITSETT, WINTERS

**SUMMARY**

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

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

**Authorizes Public Utility Commission to issue qualified rate order requiring utility to collect charges from customers, revenues of which are used to fund utility acquisition costs. Prohibits modification of qualified rate order or impairment of value of intangible acquisition property.**

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to the acquisition of interests in public utilities; creating new provisions; amending ORS  
3 756.040, 757.005, 757.417 and 757.511; and declaring an emergency.

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

5 **SECTION 1.** ORS 757.417 is amended to read:

6 757.417. (1) ORS 757.415 does not apply to the issuance, renewal or assumption of liability on  
7 any evidence of indebtedness when such issuance, renewal or assumption is for the purpose of ac-  
8 quiring specific real or personal property, if the aggregate principal amount thereof, together with  
9 all other then outstanding evidences of indebtedness issued, renewed or assumed under this section,  
10 does not exceed whichever is the greater of the following amounts:

11 [(1)] (a) The amount of \$75,000.

12 [(2)] (b) The amount of one-half of one percent of the sum of:

13 [(a)] (A) The total principal amount of all bonds or other securities representing secured  
14 indebtedness of the public utility issued or assumed and then outstanding; and

15 [(b)] (B) The capital and surplus as then stated on the books of account of the public utility.

16 (2) **ORS 757.415 does not apply to the issuance of acquisition bonds. The issuance of ac-**  
17 **quisition bonds shall be governed by sections 3 to 11 of this 2005 Act.**

18 **SECTION 2.** Sections 3 to 11 of this 2005 Act are added to and made a part of ORS  
19 **chapter 757.**

20 **SECTION 3.** As used in sections 3 to 11 of this 2005 Act:

21 (1) **"Acquisition bonds" means the following, if secured by or payable from intangible**  
22 **acquisition property, and issued by or on behalf of an issuing utility pursuant to a qualified**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **rate order:**

2 (a) **Bonds;**

3 (b) **Debentures;**

4 (c) **Notes;**

5 (d) **Certificates of participation;**

6 (e) **Certificates of beneficial interest; or**

7 (f) **Other evidences of indebtedness, evidences of ownership or securities.**

8 (2) **“Assignee” means any corporation, partnership, limited liability company, association,**  
9 **public authority, trust, financing vehicle or other entity to which a utility assigns, sells or**  
10 **transfers, other than as security, all or a portion of its interest in or right to intangible ac-**  
11 **quisition property or to which a direct assignee or any subsequent assignee of an issuing**  
12 **utility assigns, sells or transfers, other than as security, all or a portion of its interest in**  
13 **or right to intangible acquisition property.**

14 (3) **“Customer” means a retail electric customer.**

15 (4) **“Financing party” means a holder of acquisition bonds, including a trustee, collateral**  
16 **agent, escrow agent or other entity acting for the benefit of a holder of acquisition bonds.**

17 (5) **“Intangible acquisition charges” means amounts authorized by a qualified rate order**  
18 **to be imposed on all customer bills and collected through nonbypassable rates by the issuing**  
19 **utility, or by any other entity that provides electric service to a person that was a retail**  
20 **electric customer of the issuing utility on or after the effective date of this 2005 Act and that**  
21 **continues to receive electric service in territory that was the service territory of the issuing**  
22 **utility on the effective date of this 2005 Act. “Intangible acquisition charges” includes**  
23 **charges to recover federal and state taxes, if the charges to recover federal and state taxes**  
24 **are approved in a qualified rate order.**

25 (6) **“Intangible acquisition property” means the property right that is described in section**  
26 **7 of this 2005 Act.**

27 (7) **“Issuing utility” means the Portland General Electric Company or the assignees,**  
28 **successors or subsequent assignees or successors of the Portland General Electric Company.**

29 (8) **“Nonbypassable rates” means separately stated charges that are imposed on the is-**  
30 **ssuing utility’s customer bills, that are payable by customers as a condition of service and**  
31 **that recover the issuing utility’s qualified acquisition costs.**

32 (9) **“Qualified acquisition costs” means:**

33 (a) **Intangible acquisition costs and other costs of an issuing utility that are approved by**  
34 **the Public Utility Commission in a qualified rate order for recovery through intangible ac-**  
35 **quisition charges pursuant to a qualified rate order issued by the commission under section**  
36 **5 of this 2005 Act;**

37 (b) **Costs of refinancing, acquiring or retiring existing debt or equity capital of the issuing**  
38 **utility or its holding company parent, including accrued interest and acquisition or redemp-**  
39 **tion premiums, if any, costs of defeasance, associated federal and state tax liabilities,**  
40 **transaction costs and other related fees, costs and charges incurred as a result of the issu-**  
41 **ance of acquisition bonds or the assignment, sale or other transfer of intangible acquisition**  
42 **property;**

43 (c) **Costs incurred to issue, service or refinance the acquisition bonds, including accrued**  
44 **interest and acquisition or redemption premiums, if any, and other related fees, costs and**  
45 **charges, or costs incurred to assign, sell or otherwise transfer intangible acquisition prop-**

1 erty; and

2 (d) Development and transaction costs incurred by or on behalf of the issuing utility as  
3 requested in the issuing utility's application for a qualified rate order and as approved in the  
4 qualified rate order.

5 (10) "Qualified rate order" means an order issued by the commission under section 5 of  
6 this 2005 Act that authorizes the imposition and collection of intangible acquisition charges.

7 (11) "Retail electric customer" means a direct purchaser of electricity from an issuing  
8 utility, but does not include a purchaser for resale.

9 **SECTION 4.** (1) An issuing utility may apply to the Public Utility Commission for a  
10 qualified rate order to recover or finance some or all of the qualified acquisition costs of the  
11 issuing utility. If the commission issues a qualified rate order and acquisition bonds are is-  
12 sued pursuant to the qualified rate order, the issuing utility shall impose on the customer  
13 bills of the issuing utility and shall collect through nonbypassable rates the intangible ac-  
14 quisition charges approved in the qualified rate order.

15 (2) Acquisition bonds may not have a final maturity of longer than 30 years and may not  
16 constitute an obligation against the credit of the issuing utility or against any assets of the  
17 issuing utility, other than intangible acquisition property that is specified in the qualified  
18 rate order.

19 **SECTION 5.** (1) Notwithstanding any other provision of law, the Public Utility Commis-  
20 sion may issue qualified rate orders in accordance with the provisions of this section to fa-  
21 cilitate the recovery or financing of qualified acquisition costs of an issuing utility.

22 (2) The commission shall issue a qualified rate order only upon the application of an is-  
23 suing utility.

24 (3) Each application for a qualified rate order shall contain a complete accounting of the  
25 portion of the issuing utility's acquisition and other costs to be covered by the qualified rate  
26 order, a description of all additional costs to be included as qualified acquisition costs, de-  
27 tailed information regarding the issuing utility's proposal for the sale of intangible acqui-  
28 sition property or the issuance of acquisition bonds and information regarding the issuing  
29 utility's planned use of the proceeds from the sale or issuance. All information may be in-  
30 corporated by reference into any other filing with the commission in which the information  
31 is contained.

32 (4)(a) The commission shall review an application for a qualified rate order upon request  
33 of the issuing utility. The commission shall issue a qualified rate order that applies only to  
34 the portion of the intangible acquisition costs and other costs for which the issuing utility  
35 requests designation as qualified acquisition costs.

36 (b) The qualified rate order shall specify the amount of qualified acquisition costs that  
37 would be just and reasonable to recover from ratepayers and shall include findings that the  
38 issuance of acquisition bonds is a net benefit to present and future retail electric customers.  
39 Upon those determinations, the commission shall issue a qualified rate order:

40 (A) Approving the issuance of acquisition bonds for the amount of qualified acquisition  
41 costs that the commission finds would be just and reasonable to recover from ratepayers;

42 (B) Establishing the intangible acquisition charges with respect to the qualified acqui-  
43 sition costs;

44 (C) Setting the nonbypassable rates to recover the intangible acquisition charges; and

45 (D) Authorizing the assignment, sale or transfer of intangible acquisition property.

1 (c) The commission shall complete its review of the application and issue a qualified rate  
2 order within 120 days after the issuing utility files an application for a qualified rate order.

3 (d) Any portion of the issuing utility's acquisition and other costs not included as quali-  
4 fied acquisition costs in the qualified rate order shall be eligible for consideration in subse-  
5 quent applications by the issuing utility.

6 (5)(a) A qualified rate order shall expire four years after the date of issuance unless,  
7 within the four-year period, acquisition bonds are issued or intangible acquisition property  
8 is assigned, sold or otherwise transferred.

9 (b) The issuing utility may apply for an extension or renewal of a qualified rate order.

10 (6) After the issuance of a qualified rate order, the issuing utility shall retain sole dis-  
11 cretion regarding whether to assign, sell or otherwise transfer intangible acquisition prop-  
12 erty or whether to cause acquisition bonds to be issued, including but not limited to the  
13 discretion to defer or postpone the assignment, sale or transfer of the intangible acquisition  
14 property, or the issuance of the acquisition bonds.

15 (7) The qualified rate order shall afford flexibility in establishing the terms and conditions  
16 of the acquisition bonds, including but not limited to repayment schedules, interest rates and  
17 other financing costs. The qualified rate order shall specify that amounts collected from  
18 customers in partial payment of customer bills will be allocated first to intangible acquisition  
19 charges and then to other charges.

20 (8)(a) Notwithstanding any other provision of law and subject to any conditions that the  
21 commission may require in a qualified rate order, all or a portion of the interest of an issuing  
22 utility in intangible acquisition property may be assigned, sold or otherwise transferred to  
23 one or more assignees and may be pledged or assigned as security by an issuing utility or  
24 assignee to or for the benefit of a financing party.

25 (b) To the extent that any interest in intangible acquisition property is assigned, sold or  
26 transferred or is pledged or assigned as security, the commission shall authorize the issuing  
27 utility to impose and collect the intangible acquisition charges for the benefit and account  
28 of the assignee or financing party and to account for and remit the intangible acquisition  
29 charges to or for the account of the assignee or financing party.

30 (c) If the qualified rate order so provides:

31 (A) The obligations of the issuing utility shall be binding upon the issuing utility, its  
32 successors and assigns; and

33 (B) Obligations described in subparagraph (A) of this paragraph shall be undertaken and  
34 performed by the issuing utility and any other entity that provides electric service to a per-  
35 son that was a retail electric customer of the issuing utility on or after the effective date  
36 of this 2005 Act and that continues to receive electric service in territory that was the ser-  
37 vice territory of the issuing utility on the effective date of this 2005 Act.

38 (9) The commission shall include in a qualified rate order a procedure for the expeditious  
39 approval by the commission of periodic adjustments to the intangible acquisition charges  
40 that are the subject of the qualified rate order. Adjustments made pursuant to this proce-  
41 dure shall be for the purpose of ensuring the recovery of revenues sufficient to provide for  
42 the payment of all principal, interest, acquisition or redemption premiums, if any, and other  
43 fees, costs and charges related to acquisition bonds approved by the commission as part of  
44 or in conjunction with a qualified rate order. The commission shall determine whether the  
45 adjustments are required and, if required, approve the adjustments within 60 days of each

1 anniversary of the intervals provided for in the qualified rate order or in the application of  
2 the issuing utility for the determination.

3 (10) A qualified rate order shall include a provision that states the effect, if any, of any  
4 subsequent refinancing of acquisition bonds on the rates authorized in the qualified rate or-  
5 der.

6 **SECTION 6.** (1) Notwithstanding any other provision of law, the qualified rate order and  
7 the intangible acquisition charges authorized to be imposed and collected under the qualified  
8 rate order shall be irrevocable, and the Public Utility Commission may not, by rescinding,  
9 altering or amending the qualified rate order or in any other manner:

10 (a) Revalue or revise for ratemaking purposes the qualified acquisition costs or the costs  
11 of providing, recovering, financing or refinancing the qualified acquisition costs;

12 (b) Determine that the intangible acquisition charges or rates are unjust or unreason-  
13 able; or

14 (c) Reduce or impair in any way the value of intangible acquisition property either di-  
15 rectly or indirectly by taking intangible acquisition charges into account when setting other  
16 rates for the issuing utility. The amount of revenue arising with respect to the rates of the  
17 issuing utility may not be subject to reduction, impairment, postponement or termination  
18 by any subsequent action of the commission.

19 (2) Notwithstanding any other provision of law, the State of Oregon pledges to and agrees  
20 with the holders of any acquisition bonds and with any assignee or financing party who may  
21 enter into contracts with an issuing utility under sections 3 to 11 of this 2005 Act, that the  
22 State of Oregon may not limit, alter or in any way impair or reduce the value of intangible  
23 acquisition property or intangible acquisition charges approved by a qualified rate order un-  
24 til:

25 (a) The acquisition bonds together with the interest on the acquisition bonds are fully  
26 paid and discharged; or

27 (b) The contracts described in this subsection are fully performed on the part of the is-  
28 suing utility.

29 (3) Notwithstanding subsection (2) of this section and subject to other requirements of  
30 law, nothing contained in this section shall preclude a limitation or alteration otherwise  
31 prohibited by subsection (2) of this section if adequate compensation is made by law for the  
32 full protection of:

33 (a) Acquisition bondholders;

34 (b) Any assignee or financing party that contracts with the issuing utility in a contract  
35 described in subsection (2) of this section; and

36 (c) The authority to collect intangible acquisition charges as provided in a qualified rate  
37 order.

38 (4) The State of Oregon hereby authorizes the inclusion of the pledge and agreement de-  
39 scribed in subsections (2) and (3) of this section as a legend on acquisition bonds issued  
40 pursuant to sections 3 to 11 of this 2005 Act.

41 **SECTION 7.** (1) A property right that constitutes intangible acquisition property exists  
42 if an issuing utility or assignee has qualified acquisition costs for which a qualified rate order  
43 authorizes the imposition and collection of intangible acquisition charges.

44 (2) The property right that constitutes intangible acquisition property consists of the  
45 irrevocable right of the issuing utility or an assignee to receive through intangible acqui-

1 tion charges amounts sufficient to recover all of the issuing utility's qualified acquisition  
2 costs, including but not limited to all rights, titles and interest of the issuing utility or  
3 assignee in the qualified rate order and in all revenues collected or collectible, collections,  
4 claims, payments, moneys or proceeds of or arising from intangible acquisition charges im-  
5 posed pursuant to a qualified rate order.

6 **SECTION 8.** (1) The granting, perfection and enforcement of security interests in intan-  
7 gible acquisition property to secure acquisition bonds is governed by sections 3 to 11 of this  
8 2005 Act and is not subject to ORS chapter 79.

9 (2)(a) For purposes of the Uniform Commercial Code, intangible acquisition property or  
10 any right, title or interest of an issuing utility or assignee described in section 7 of this 2005  
11 Act, whether before or after the issuance of the qualified rate order, does not constitute  
12 accounts or general intangibles.

13 (b) Any right, title or interest that pertains to a qualified rate order and that is described  
14 in paragraph (a) of this subsection, including the associated intangible acquisition property  
15 and any revenues collected or collectible, collections, claims, payments, moneys or proceeds  
16 of or arising from intangible acquisition charges pursuant to a qualified rate order, may not  
17 be deemed proceeds of any right or interest other than in a qualified rate order and in the  
18 intangible acquisition property that exists as a result of the qualified rate order.

19 (3) A valid and enforceable security interest in intangible acquisition property attaches  
20 automatically from the time of the issuance of acquisition bonds issued to finance qualified  
21 acquisition costs, as specified in a qualified rate order, to which the intangible acquisition  
22 property relates. The security interest shall be deemed a valid and enforceable security in-  
23 terest in the intangible acquisition property securing the acquisition bonds and shall be  
24 continuously perfected if, within 10 days after the date of issuance, a filing of a Uniform  
25 Commercial Code Article I financing statement has been made by or on behalf of the fi-  
26 nancing party with the Secretary of State. The financing statement shall show the issuing  
27 utility, or the assignee by or on whose behalf the acquisition bonds are issued, as the debtor.  
28 The financing statement shall identify the intangible acquisition property. Any description  
29 of the intangible acquisition property shall be sufficient if the description refers to the ap-  
30 plicable qualified rate order. Any filing in respect of acquisition bonds takes precedence over  
31 any other filing.

32 (4) A security interest perfected as provided in this section is enforceable against the  
33 issuing utility or assignee and all third parties, including judicial lien creditors. A security  
34 interest perfected as provided in this section is subject only to the rights of any third parties  
35 holding security interests in the intangible acquisition property previously perfected in the  
36 manner described in this section, if value has been given by the purchasers of associated  
37 acquisition bonds. A perfected lien in intangible acquisition property is a continuously per-  
38 fected security interest in all revenues and proceeds arising with respect to the associated  
39 intangible acquisition property, whether or not any revenues have accrued. Intangible ac-  
40 quisition property constitutes property for the purposes of securing acquisition bonds  
41 whether or not revenues related to intangible acquisition property have accrued. The lien  
42 created under this section ranks prior to any other lien, including any judicial lien, that  
43 subsequently attaches to the intangible acquisition property, the intangible acquisition  
44 charges, the qualified rate order or any rights created thereby or any proceeds thereof.

45 (5) The relative priority of a security interest created under this section is not defeated

1 or adversely affected by changes to the qualified rate order or to the intangible acquisition  
2 charges payable by any customer or by the commingling of revenues arising with respect to  
3 intangible acquisition property with other funds of the issuing utility or the assignee.

4 (6) If a default occurs under approved acquisition bonds, the holders of the bonds or their  
5 authorized representatives, as secured parties, may foreclose or otherwise enforce the lien  
6 in the intangible acquisition property securing the acquisition bonds, subject to the rights  
7 of any third parties holding prior security interests in the intangible acquisition property  
8 perfected in the manner provided in this section. Upon application by the holders or their  
9 representatives, without limiting their other remedies, the Public Utility Commission shall  
10 order the sequestration and payment to the holders or their representatives of revenues  
11 arising with respect to the intangible acquisition property pledged to the holders. Any com-  
12 mission order shall remain in full force and effect notwithstanding any bankruptcy, reor-  
13 ganization or other insolvency proceedings with respect to the issuing utility or assignee.

14 **SECTION 9.** (1) Unless otherwise expressly provided in the documentation governing the  
15 transfer of intangible acquisition property, the documentation governing a transfer of in-  
16 tangible acquisition property by an issuing utility to an assignee shall expressly state that  
17 the transfer constitutes a sale or other absolute transfer of all of the transferor's rights,  
18 title and interest, as in a true sale, and not as a pledge or other financing of the intangible  
19 acquisition property, other than for federal and state income tax purposes.

20 (2) A grant to holders of acquisition bonds of a preferred right to the intangible acquisi-  
21 tion property, or the provision by the issuing utility of any credit enhancement with respect  
22 to acquisition bonds, may not impair or negate the characterization of any transfer as a true  
23 sale or other absolute transfer, other than for federal and state income tax purposes.

24 (3) A transfer of intangible acquisition property shall be deemed perfected as against  
25 third persons, including any judicial lien creditors, when:

26 (a) The Public Utility Commission has issued the qualified rate order creating intangible  
27 acquisition property; and

28 (b) A sale or transfer of the intangible acquisition property in writing has been executed  
29 and delivered to the assignee.

30 **SECTION 10.** (1) Nothing in sections 3 to 11 of this 2005 Act entitles any person to bring  
31 an action against a customer for nonpayment of intangible acquisition charges, other than  
32 the issuing utility, its successor or any other entity that provides electric service to a person  
33 that was a retail electric customer of the issuing utility on or after the effective date of this  
34 2005 Act and that continues to receive electric service in territory that was the service ter-  
35 ritory of the issuing utility on the effective date of this 2005 Act.

36 (2) The Public Utility Commission has exclusive jurisdiction over any dispute arising out  
37 of the obligations of an issuing utility, its successor or any other entity that provides electric  
38 service to a customer to impose and collect intangible acquisition charges.

39 **SECTION 11.** Any successor to the issuing utility, whether pursuant to any bankruptcy,  
40 reorganization or other insolvency proceeding or pursuant to any merger, sale or transfer,  
41 by operation of law or otherwise, shall perform and satisfy all obligations of the issuing  
42 utility pursuant to this section in the same manner and to the same extent as the issuing  
43 utility, including but not limited to collecting and paying to the assignee or pledgee, as the  
44 case may be, revenue arising with respect to the intangible acquisition property assigned,  
45 sold, transferred or pledged to secure acquisition bonds.

1        **SECTION 12.** ORS 756.040 is amended to read:

2        756.040. (1) In addition to the powers and duties now or hereafter transferred to or vested in the  
3 Public Utility Commission, the commission shall represent the customers of any public utility or  
4 telecommunications utility and the public generally in all controversies respecting rates, valuations,  
5 service and all matters of which the commission has jurisdiction. In respect thereof the commission  
6 shall make use of the jurisdiction and powers of the office to protect such customers, and the public  
7 generally, from unjust and unreasonable exactions and practices and to obtain for them adequate  
8 service at fair and reasonable rates. The commission shall balance the interests of the utility in-  
9 vestor and the consumer in establishing fair and reasonable rates. Rates are fair and reasonable for  
10 the purposes of this subsection if the rates provide adequate revenue both for operating expenses  
11 of the public utility or telecommunications utility and for capital costs of the utility, with a return  
12 to the equity holder that is:

13        (a) Commensurate with the return on investments in other enterprises having corresponding  
14 risks; and

15        (b) Sufficient to ensure confidence in the financial integrity of the utility, allowing the utility  
16 to maintain its credit and attract capital.

17        (2) The commission is vested with power and jurisdiction to supervise and regulate every public  
18 utility and telecommunications utility in this state, and to do all things necessary and convenient  
19 in the exercise of such power and jurisdiction.

20        (3) The commission may participate in any proceeding before any public officer, commission or  
21 body of the United States or any state for the purpose of representing the public generally and the  
22 customers of the services of any public utility or telecommunications utility operating or providing  
23 service to or within this state.

24        (4) The commission may make joint investigations, hold joint hearings within or without this  
25 state and issue concurrent orders in conjunction or concurrence with any official, board, commission  
26 or agency of any state or of the United States.

27        **(5) The commission may take any action or undertake any task necessary or convenient**  
28 **to ensure reasonable rates and conditions of ownership for equity holders of a public utility**  
29 **that is a mutual benefit corporation formed under ORS chapter 65.**

30        **SECTION 13.** ORS 757.005 is amended to read:

31        757.005. (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection,  
32 “public utility” means:

33        (A) Any corporation, company, individual, association of individuals, or its lessees, trustees or  
34 receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this  
35 state for the production, transmission, delivery or furnishing of heat, light, water or power, directly  
36 or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly  
37 within any town or city.

38        (B) Any corporation, company, individual or association of individuals, which is party to an oral  
39 or written agreement for the payment by a public utility, for service, managerial construction, en-  
40 gineering or financing fees, and having an affiliated interest with the public utility.

41        **(C) Any mutual benefit corporation formed under ORS chapter 65 whose customers own**  
42 **all of the equity of the corporation and that owns, operates, manages or controls all or a part**  
43 **of any plant or equipment in this state for the production, transmission, delivery or fur-**  
44 **nishing of heat, light, water or power, directly or indirectly to or for the public.**

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



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

2 (B) Any railroad, as defined in ORS 824.020, or any industrial concern by reason of the fact that  
3 it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality  
4 where there is no municipal or public utility plant to furnish the same.

5 (C) Any corporation, company, individual or association of individuals providing heat, light or  
6 power:

7 (i) From any energy resource to fewer than 20 customers, if it began providing service to a  
8 customer prior to July 14, 1985;

9 (ii) From any energy resource to fewer than 20 residential customers so long as the corporation,  
10 company, individual or association of individuals serves only residential customers;

11 (iii) From solar or wind resources to any number of customers; or

12 (iv) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any  
13 number of customers.

14 (D) A qualifying facility on account of sales made under the provisions of ORS 758.505 to  
15 758.555.

16 (E) Any person furnishing heat, but not delivering electricity or natural gas to its customers,  
17 except:

18 (i) As provided in ORS 757.007 and 757.009; or

19 (ii) With respect to heat furnished in municipalities which on January 1, 1989, had a municipally  
20 owned system that was furnishing steam or other thermal forms of heat to its customers.

21 (F) Notwithstanding subparagraph (E) of this paragraph, any corporation, company, partnership,  
22 individual or association of individuals furnishing heat to a single thermal end user from an electric  
23 generating facility, plant or equipment that is physically interconnected with the single thermal end  
24 user.

25 (G) Any corporation, company, partnership, individual or association of individuals that fur-  
26 nishes natural gas, electricity, ethanol, methanol, methane, biodiesel or other alternative fuel to any  
27 number of customers for use in motor vehicles and does not furnish any utility service described in  
28 paragraph (a) of this subsection.

29 (H) An electricity service supplier, as defined in ORS 757.600.

30 (2) Nothing in subsection (1)(b)(C) of this section shall prohibit third party financing of acquisi-  
31 tion or development by a utility customer of energy resources to meet the heat, light or power re-  
32 quirements of that customer.

33 **SECTION 14.** ORS 757.511 is amended to read:

34 757.511. (1) No person, directly or indirectly, shall acquire the power to exercise any substantial  
35 influence over the policies and actions of a public utility *[which]* **that** provides heat, light or power  
36 without first securing from the Public Utility Commission, upon application, an order authorizing  
37 *[such]* **the** acquisition if *[such]* **the** person is **a mutual benefit corporation formed under ORS**  
38 **chapter 65 or is**, or by *[such]* **the** acquisition would become, an affiliated interest with *[such]* **the**  
39 public utility as defined in ORS 757.015 (1), (2) or (3).

40 (2) The application required by subsection (1) of this section shall set forth detailed information  
41 regarding:

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

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

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

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

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

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

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

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

6 (i) How the acquisition will serve the public utility's customers in the public interest; and

7 (j) Such other information as the commission may require by rule.

8 (3) The commission promptly shall examine and investigate each application received pursuant  
9 to this section and shall issue an order disposing of the application within 19 business days of its  
10 receipt. If the commission determines that approval of the application will serve the public utility's  
11 customers in the public interest, the commission shall issue an order granting the application. The  
12 commission may condition an order authorizing the acquisition upon the applicant's satisfactory  
13 performance or adherence to specific requirements.

14 **(4)(a) As a condition of an order granting approval of an application by a mutual benefit**  
15 **corporation as defined in ORS 65.001 to acquire the power to exercise any substantial influ-**  
16 **ence over the policies and actions of a public utility that provides heat, light or power, the**  
17 **commission may require the mutual benefit corporation to amend the articles of incorpo-**  
18 **ration and bylaws of the mutual benefit corporation as needed to ensure that the acquisition**  
19 **will serve the customers of the public utility and will be in the interests of the public.**

20 **(b)(A) A mutual benefit corporation that acquires the power to exercise any substantial**  
21 **influence over the policies and actions of a public utility that provides heat, light or power**  
22 **may not amend the articles of incorporation or bylaws of the mutual benefit corporation**  
23 **without the approval of the commission.**

24 **(B) Subparagraph (A) of this paragraph applies to any amendment to articles of incor-**  
25 **poration or bylaws that is proposed during a period in which acquisition bonds are issued by**  
26 **the mutual benefit corporation and are not retired.**

27 **(c) In order for an application of a mutual benefit corporation to be approved under this**  
28 **section, the articles of incorporation of the mutual benefit corporation must set forth the**  
29 **information described in ORS 65.047 (2).**

30 (5) The commission [*otherwise*] shall issue an order denying the application **if the commission**  
31 **is unable to determine that the approval of the application will serve the public utility's**  
32 **customers in the public interest.** The applicant shall bear the burden of showing that granting the  
33 application is in the public interest.

34 [(4)] (6) Nothing in this section shall prohibit dissemination by any party of information con-  
35 cerning the acquisition so long as such dissemination is not otherwise in conflict with state or fed-  
36 eral law.

37 **SECTION 15. A mutual benefit corporation as defined in ORS 65.001 that acquires the**  
38 **power to exercise any substantial influence over the policies and actions of a public utility**  
39 **that provides heat, light or power may not receive compensation for forming the mutual**  
40 **benefit corporation or for acquiring any substantial influence over the policies and actions**  
41 **of the public utility without the approval of the Public Utility Commission.**

42 **SECTION 16. This 2005 Act being necessary for the immediate preservation of the public**  
43 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**  
44 **on its passage.**