TITLE 57

UTILITIES; RAILROADS AND OTHER CARRIERS

Chapter 756. Public Utility Commissioner
757. Utility Regulation Generally
758. Special Provisions Applicable to Telephone, Telegraph and Electric Companies
760. Railroad Regulation Generally
761. Railroad Equipment, Buildings and Tracks
763. Railroad Crossings
764. Railroad Employes
767. Motor Carriers
768. Logging Road Companies
770. Carriage of Livestock
771. Liability of Carriers
772. Rights of Way for Public Uses

Chapter 756

1965 REPLACEMENT PART

Public Utility Commissioner

DEFINITIONS

756.010 Definitions

RIGHTS, POWERS AND DUTIES OF COMMISSIONER GENERALLY

756.020 Creation of office; official designation; qualifications; term; removal; seal
756.030 Commissioner's outside activities restricted; oath; bond
756.040 General powers and duties
756.050 Office, office supplies, sessions and traveling expenses of commissioner
756.060 Authority to adopt rules and regulations governing investigations and hearings
756.070 Investigating management of utilities and railroads; conferring with other commissioners
756.080 Inspection of utility or railroad records and examination of its officers and employes
756.090 Requiring production of out-of-state records of utilities
756.120 Commissioner's power to employ assistants
756.130 Annual report of commissioner concerning railroads
756.140 Annual report of commissioner concerning utilities
756.150 Employing legal counsel
756.160 Enforcement of statutes and ordinances relating to utilities
756.170 Penalty for violation of any statute administered by commissioner or any order of the commissioner or court decree; disposition of sums collected
756.180 Enjoining violation of utility laws
756.190 Commissioner, secretary and employes riding on trains

FUNDS AND FEES

756.305 Public Utility Commissioner Account
756.310 Annual fees payable to commissioner by railroads and public utilities
756.320 Statements accompanying fees; audit and refunding by commissioner
756.330 Filing fees; fees for copies and transcripts
756.340 Fees payable when securities issued

756.350 Penalty for neglect to pay fees; action to collect unpaid fees and penalties
756.360 Disposal and use of fees and penalties collected

PROCEDURE FOR HEARINGS BEFORE COMMISSIONER

756.505 "Person" defined for ORS 756.510 to 756.600
756.510 Application to all hearings, orders and judicial review; procedural regulations of commissioner
756.520 Complaint; persons entitled to file; contents; amendments
756.530 Notice of complaint to defendant; answer by defendant; setting cause for hearing
756.540 Intervention
756.550 Rules governing hearings; findings; orders
756.560 Place of hearings; adjournment
756.570 Rehearings
756.580 Suits to set aside findings and order of commissioner
756.590 Suspending order during suit to set aside order
756.600 Procedure when new evidence introduced in suit to set aside order
756.610 Appeal to the Supreme Court

CROSS REFERENCES

Administrative orders of state agencies, 183.010 to 183.060
Conformance with state water resources policy required, 536.300 to 536.400
Penalties, fines, forfeitures and other sums collected under this chapter, disposition of, 756.170
State agencies generally, Ch. 182

756.020

Salary of commissioner, 292.775

756.040

Condemnation of utilities' property, necessity of commissioner's approval for, 492.100
Conditions affecting health of employes of common carriers, inspections by State Board of Health, 654.105
Inspection of motor carrier records, 767.463
Interstate bridges, control of commissioner over, 381.435
Interstate rates of railroads or utilities, investigation of by commissioner, 760.505
Logging roads, jurisdiction of commissioner over, 376.540
Private road crossings, assent of commissioner required for, 374.205
Rate fixing for municipal utilities, 221.420
Right of way controversies, hearings on, 772.070
Vehicle lighting equipment, specifications for, power of commissioner to establish, 483.442

756.050

Office space, leasing of, 276.418 to 276.428

756.070

Auditing of accounts of utility, 757.135
Examination of books before permitting issuance of securities, 757.420

756.120

Appointment of examiners, 757.550

756.130

Coordination of research on transportation, 184.170

756.140

Coordination of research on power, 184.170

756.150

Attorney General's control over hiring of attorneys, 180.140, 180.230

756.305

Money collected to be deposited in account, 757.690
Petty cash fund, 1961 c.106 §1

756.510

Hearing procedure, orders and judicial review on complaints concerning:
Public utilities, 757.505 to 757.595
Railroads, 760.510 to 760.605

DEFINITIONS

756.010 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Commissioner" means the Public Utility Commissioner of Oregon.

(2) "Public utility" has the meaning given that term in ORS 757.005.

(3) "Railroad" has the meaning given that term in ORS 760.005 and 760.010.

RIGHTS, POWERS AND DUTIES OF COMMISSIONER GENERALLY

756.020 Creation of office; official designation; qualifications; term; removal; seal. (1) The office of Public Utility Commissioner of Oregon hereby is created. The official designation of the person appointed to said office shall be Public Utility Commissioner of Oregon, and in that name he may sue and be sued.

(2) The Governor shall appoint to such office for a term of four years some suitable and competent person who is a citizen of the United States and a resident of Oregon.

(3) The Governor may at any time remove the commissioner for any cause deemed by him sufficient. Before such removal he shall give the commissioner a copy of the charges against him, and shall fix a time when he can be heard in his own defense, which shall not be less than 10 days thereafter. The hearing shall be open to the public. If the commissioner is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the commissioner, and his findings thereon with a record of the proceedings. Such power of removal is absolute, and there is no right of review of the same in any court.

(4) The commissioner shall have a seal with the words "Public Utility Commissioner of Oregon" and such other design as the commissioner may prescribe engraved thereon, by which the proceedings of the commissioner shall be authenticated and of which the courts shall take judicial notice.

756.030 Commissioner's outside activities restricted; oath; bond. (1) The commissioner shall not be pecuniarily interested in any railroad, common carrier, public utility or business or activity which is regulated or subject to regulation by him, either in this state or elsewhere. If he is or does become interested, his office shall ipso facto become vacant.

(2) The commissioner shall not hold any other office or position of profit, or pursue any other business or vocation, or serve on or under any committee of any political party, but shall devote his entire time to the duties of his office.

(3) Before entering on the duties of his office, the commissioner shall take and subscribe to an oath or affirmation:

(a) To support the Constitution of the United States and of this state, and to faithfully and honestly discharge the duties of such office;

(b) That he is not pecuniarily interested in any railroad in this state or elsewhere, or in any common carrier, or in any business or activity which is regulated or subject to regulation by such commissioner, or in any corporation, company or association of individuals owning, operating, managing or controlling any plant or equipment in this state or elsewhere for the conveyance of telegraph or telephone messages, with or without wires, or for the transportation of persons or property by street railroad, or for the production, transmission, delivery or furnishing of heat, light, water or power, nor in the stock, bonds, securities, earnings or contracts of any thereof; and

(c) That he holds no other office of profit, nor any position under any political committee or party.

(4) This oath or affirmation shall be filed in the office of the Secretary of State.

(5) The commissioner shall also, before entering upon the duties of his office, execute a bond, payable to the State of Oregon, in the penal sum of $10,000 with sureties to be approved by the Governor, for the faithful discharge of his duties and office. The bond, when so executed and approved, shall be filed in the office of the Secretary of State.

756.040 General powers and duties. (1) In addition to the powers and duties now or hereafter transferred to or vested in the commissioner, he shall represent the patrons and users of the service and consumers of the product of any public utility, and the public generally in all controversies respecting rates, charges, valuations, service and all matters of which he has jurisdiction. In respect thereof he shall make use of the jurisdiction and powers of his office to protect such patrons, users and consumers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and

reasonable rates. As used in this subsection, the words "charge," "rate" and "service" have the meanings given them in ORS 760.005.

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

(3) The commissioner may participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the public generally and the patrons, users and consumers of the services or products of any public utility, railroad, water, air or motor carrier operating or providing service to or within this state.

[Amended by 1961 c.467 §1]

756.050 Office, office supplies, sessions and traveling expenses of commissioner. (1) The commissioner shall keep his office at the capitol and shall be provided by the Secretary of State with suitable rooms, necessary office furniture, supplies, stationery, books, periodicals, maps, and all necessary expenses therefor shall be audited and paid as other state expenses are audited and paid.

(2) The commissioner may hold sessions and maintain offices at places other than the capitol for the more convenient and efficient performance of the duties imposed upon him by law, and shall upon request be provided by the county court or board of county commissioners of any county in the state with suitable rooms for offices and hearings.

(3) The commissioner, and any secretary, clerk, stenographer or other employe traveling upon the direction of the commissioner, is entitled to receive from the state his actual necessary expenses while traveling on the business of the commissioner. Such expenditures shall be sworn to by the person who incurred the expense and approved by the commissioner.

756.060 Authority to adopt rules and regulations governing investigations and hearings. The commissioner may adopt and amend reasonable and proper rules and regulations relative to all inspections, tests, audits and investigations and may adopt and publish reasonable and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of public utilities, railroads and other parties before it. Any person may appear before the commissioner and be heard, or may appear by attorney. All hearings shall be open to the public.

756.070 Investigating management of utilities and railroads; conferring with other commissioners. (1) The commissioner may inquire into the management of the business of all public utilities and railroads, and shall keep informed as to the manner and method in which they are conducted and has the right to obtain from any public utility or railroad all necessary information to enable him to perform his duties.

(2) The commissioner may confer by correspondence, by attending conventions or otherwise, with public utility and railroad commissioners of other states or the United States on any matter relating to public utilities or railroads.

756.080 Inspection of utility or railroad records and examination of its officers and employes. The commissioner, or any person employed by him for that purpose, shall, upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any public utility or railroad and to examine, under oath, any officer, agent or employe of such public utility or railroad in relation to its business and affairs. Any person other than the commissioner, who makes such demand of a public utility, shall produce a certificate under the seal of the commissioner showing his authority to make such inspection, and any such person making such a demand of a railroad shall produce his authority under the hand of the commissioner or his secretary, and under seal of the commissioner.

756.090 Requiring production of out-of-state records of utilities. The commissioner may require, by order or subpena to be served on any public utility in the same manner that a summons is served in a civil action in the circuit court, the production within this state at such time and place as he may designate, of any books, accounts, papers or records kept by such public utility in any office or place without this state, or verified copies in lieu thereof, if the commissioner so orders, in order that an examination thereof may be made by the commissioner or under his direction. Any public utility failing or refusing to comply with any such order or subpena shall, for each

day it so fails or refuses, forfeit and pay into the State Treasury a sum of not less than $50 nor more than $500.

756.100 [Repealed by 1953 c.25 §2]

756.110 [Repealed by 1953 c.25 §2]

756.120 Commissioner's power to employ assistants. Subject to the State Civil Service Law, the commissioner is authorized to employ such engineers, examiners, experts, clerks, accountants, inspectors and other assistants as he deems necessary, at such rates of compensation as he may determine.

756.130 Annual report of commissioner concerning railroads. (1) The commissioner shall report to the Governor annually on or before June 30, and at any other times required by him, his doings for the preceding year, and such facts, statements and explanations as will show the actual workings of the system of railroad transportations of the state, its bearings on the business and prosperity of the people, and such suggestions relative thereto as he deems proper. He shall also recommend to the Governor any amendment of the railroad laws which he deems advisable, and, when directed by the Governor, shall investigate any matter subject to his supervision and report thereon. All such reports shall be transmitted to the Legislative Assembly by the Governor as soon as practicable.

(2) The commissioner's annual report shall also contain:

(a) As nearly as practicable, the amount of money expended in the construction and equipment of every railroad, the amount of money expended to procure the right of way, the amount of money it would require to secure the right of way, reconstruct the roadbed, track, depots and other facilities for transportation, and to replace all the physical properties belonging to the railroad.

(b) The outstanding bonds, debentures and indebtedness and the amounts respectively thereof, the date when issued, to whom issued, to whom sold, the price paid in cash, property or labor therefor, what disposition was made of the proceeds, by whom the indebtedness is held, so far as ascertainable, the amount purporting to be due thereon, and the floating indebtedness of the railroad.

(c) The credits due the railroad, other property on hand belonging to it, the judicial or other sales of the road, its property or franchises, and the amounts purporting to have been paid and in what manner paid therefor.

(d) The gross and net income of the railroad from all sources in detail, the amount paid for salaries to the officers of the road, the wages paid to its employes and the maximum hours of continuous service required of each class.

(3) In making investigations required by subsection (2) of this section the commissioner may avail himself of any information in possession of any state board or officer.

756.140 Annual report of commissioner concerning utilities. The annual report of the commissioner to the Governor shall show his proceedings under ORS chapter 757 and shall also show the details per unit as provided in ORS 757.150 for all the public utilities of each kind in this state, together with such other facts and suggestions relative thereto as the commissioner deems advisable. The commissioner shall also publish in his annual reports, the value of all property actually used and useful for the convenience of the public, of every public utility as to whose rates, charges, service or regulations any hearing has been held by the commissioner, or the value of whose property has been ascertained by him under ORS 757.055.

756.150 Employing legal counsel. The commissioner may employ such attorneys as he finds necessary for proper legal aid and service of the commissioner or his staff in the conduct of their work, or for proper representation of the public interest in investigations made by him, or cases or proceedings pending before him, either upon complaint or upon his own instance without complaint, or to appear for and represent the commissioner in any case in court.

756.160 Enforcement of statutes and ordinances relating to utilities. (1) The commissioner shall inquire into any neglect or violation of any law of this state or any law or ordinance of any municipality thereof by any public utility corporation doing business therein, its officers, agents or employes, or by any person operating a public utility, and shall enforce all laws relating to public utilities and report all violations thereof to the Attorney General.

(2) Upon the request of the commissioner, the Attorney General or the prosecuting attorney of the proper county shall aid in any investigation, hearing or trial had under ORS chapter 757, and shall institute and prosecute all necessary suits, actions or proceedings for the enforcement of ORS chapter 757, the recovery of penalties payable to the state or the enforcement of any law of this state or any law or ordinance of any municipality thereof relating to public utilities, and for the punishment of all violations thereof.

(3) Any forfeiture or penalty provided for in ORS 756.170 and ORS chapter 757 shall be recovered by an action brought thereon in the name of the State of Oregon in any court of appropriate jurisdiction.

(4) The commissioner may employ counsel and fix their duties and compensation.

756.170 Penalty for violation of any statute administered by commissioner or any order of the commissioner or court decree; disposition of sums collected. (1) Any public utility which violates any statute administered by the commissioner, or does any act prohibited, or fails to perform any duty enjoined upon it, for which a penalty has not been provided, or fails to obey any lawful requirement or order made by the commissioner, or any judgment or decree made by any court upon the application of the commissioner, shall forfeit and pay into the State Treasury a sum of not less than $100 nor more than $10,000 for each such offense.

(2) In construing and enforcing this section, the act, omission or failure of any officer, agent or other person acting for or employed by any public utility acting within the scope of his employment shall in every case be deemed to be the act, omission or failure of such public utility. With respect to any violation of any statute administered by the commissioner, any penalty provision applying to such a violation by a public utility shall apply to such a violation by any other person.

(3) All penalties, fines or forfeitures or other sums collected or paid under the provisions of this section or ORS 756.160 or ORS chapter 757 shall be paid into the General Fund except where it is provided that the same shall be paid to the aggrieved party.

756.180 Enjoining violation of utility laws. (1) Whenever it appears to the commissioner that any public utility is engaged or about to engage in any acts or practices which constitute a violation of any statute administered by the commissioner, or any rule, regulation, requirement, order, term or condition issued thereunder, he may apply to any circuit court of the state where such public utility operates for the enforcement of such statute, rule, regulation, requirement, order, term or condition.

(2) Such court, without bond, has jurisdiction to enforce obedience thereto by injunction, or by other processes, mandatory or otherwise, restraining such public utility, or its officers, agents, employes and representatives from further violation of such statute, rule, regulation, requirement, order, term or condition, and enjoining upon them obedience thereto.

(3) The provisions of this section are in addition to and not in substitution for any other enforcement provisions contained in any statute administered by the commissioner.

756.190 Commissioner, secretary and employes riding on trains. The commissioner and his secretary, stenographer and employes may, in the performance of their official duties, ride in and upon any engine, car or train of any railroad within this state, upon payment to such railroad of the lawful passenger fare. Such railroad shall not thereby be deemed a common carrier of passengers other than on passenger trains, nor be guilty of discrimination.

756.200 to 756.300 [Reserved for expansion]

FUNDS AND FEES

756.305 Public Utility Commissioner Account. (1) There hereby is established in the General Fund an account to be known as the Public Utility Commissioner Account. All moneys, without regard to their sources, credited to the Public Utility Commissioner Account hereby are appropriated continuously to the Public Utility Commissioner for the payment of any and all of the expenses of the Public Utility Commissioner.

(2) The Public Utility Commissioner shall keep a record of all moneys deposited in the Public Utility Commissioner Account. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged.

[1957 c.459 §1]

756.310 Annual fees payable to commissioner by railroads and public utilities. (1) Subject to the provisions of subsection (3) of this section, each railroad and public utility shall pay to the commissioner in each year, such fee as the commissioner finds and determines to be necessary, with the amount of all other fees paid or payable to the commissioner by such railroads and public utilities in the current calendar year, to defray the costs of performing the duties imposed by law upon the commissioner in respect to such railroads and public utilities, respectively.

(2) In each calendar year the percentage rate of the fee required to be paid shall be determined by orders entered by the commissioner on or after March 1 of each year, and notice thereof shall be given to each railroad and public utility. Such railroad and public utility shall pay to the commissioner the fee or portion thereof so computed upon the date specified in such notice, which date shall be at least 15 days after the date of mailing such notice.

(3) The fee payable under subsection (1) of this section shall not exceed:

(a) In the case of a railroad, seven-tenths of one percent of such railroad's gross operating revenues derived from within this state from intrastate business in the preceding calendar year or portion thereof.

(b) In the case of a public utility, twenty-five hundredths of one percent of such public utility's gross operating revenues derived within this state in the preceding calendar year or portion thereof, but in no case shall such fee be less than $2.

[Amended by 1953 c.10 §2; 1957 c.464 §1; 1959 c.355 §1; 1961 c.109 §1; 1963 c.89 §1]

756.320 Statements accompanying fees; audit and refunding by commissioner. Payment of each fee or portion thereof provided for in ORS 756.310 shall be accompanied by a statement verified by the railroad or public utility involved, showing its gross operating revenues upon which such fee or portion thereof is computed. This statement shall be in such form and detail as the commissioner shall prescribe and shall be subject to audit by the commissioner. The commissioner may refund any overpayment of any such fee in the same manner as other claims and expenses of the commissioner are payable as provided by law.

756.330 Filing fees; fees for copies and transcripts. (1) The commissioner is required to receive fees before filing any application, complaint, motion or answer, tariff, schedule and supplement thereto, or issuing a certificate authorizing an issue of securities by a public utility, and shall receive fees for all copies of orders, documents, uniform systems of accounts, blank forms, publications, maps and other instruments prepared by him or on file in his office, except as otherwise provided by law to be furnished free of charge, in accordance with the following schedule:

Filing tariffs, contracts, time schedules and supplements thereto, each	$ 3.00
Filing application	10.00
Filing motion or answer	5.00
Filing complaint	1.00
For making transcripts per page 8½ x 11, double spaced,	.50
For making copies of documents, per folio, each	.15
For certifying to copies of documents prepared by the commissioner or furnished to him, for each certification	1.00
Blank forms of annual reports for public utilities and railroads	Cost
Copies of uniform system of accounts	Cost
Publications and maps	Cost
Preparation of statistical data	Cost
Photostatic copies of documents	Cost

(2) No fee shall be charged or collected for copies of documents furnished to public officers for use in their official capacity, or for annual reports of the commissioner in the ordinary course of distribution. Nothing in this section authorizes the commissioner to collect any fee for the filing of tariffs, schedules and supplements thereof which relate solely to interstate commerce.

[Amended by 1965 c.288 §1]

756.340 Fees payable when securities issued. (1) The fees payable to the commissioner for a certificate authorizing an issue of securities under ORS 757.415 shall be: $1 for each $1,000 of the face or stated value thereof, up to $1,000,000; 50 cents for each $1,000 over $1,000,000, and up to $10,000,000; and 10 cents for each $1,000 over $10,000,000, with a minimum fee in any case of $10; provided, that only 25 percent of such fees shall be payable on such portion of any such issue as may be used to

guarantee, take over, refund, discharge, replace or retire any security on which a fee has heretofore been paid to the commissioner.

(2) If the commissioner modifies the amount of the issue requested in any case and the applicant thereupon elects not to avail itself of the commissioner's authorization, no fee other than the fee for filing the application shall be payable.

(3) If the property of the public utility proposing to issue such securities is located in part in this state and in part in some other state, the fees payable under this section shall be computed only on such amount of such securities as bears the same proportion to the total amount so authorized, as the book value of such property located within this state bears to the total book value of the property of the public utility proposing to issue such securities. The book value shall be as of the close of the preceding calendar year.

756.350 Penalty for neglect to pay fees; action to collect unpaid fees and penalties. Every person who fails to pay any fees provided for in ORS 756.310 to 756.340 after they are due and payable shall, in addition to such fees, pay a penalty of two percent of such fees for each and every month or fraction thereof that they remain unpaid. If, in the judgment of the commissioner, action is necessary to collect any unpaid fees or penalties, he shall bring such action or take such proceedings as may be necessary thereon in the name of the State of Oregon in any court of competent jurisdiction, and be entitled to recover all costs and disbursements incurred therein.

756.360 Disposal and use of fees and penalties collected. All fees, fines, penalties and other moneys collected by the commissioner under ORS 756.310 to 756.350 shall be paid by the commissioner into the State Treasury within 30 days after the collection thereof, and shall be placed by the State Treasurer to the credit of the Public Utility Commissioner Account and the fees, fines, penalties and other moneys collected from:

(1) Railroads shall be used only for the purpose of paying the expenses of the commissioner in performing the duties imposed by law upon the commissioner in respect to railroads.

(2) Utilities shall be used only for the purpose of paying the expenses of the commissioner in performing the duties imposed by law upon the commissioner in respect to utilities.

[Amended by 1957 c.459 §7]

756.370 to 756.500 [Reserved for expansion]

PROCEDURE FOR HEARINGS BEFORE COMMISSIONER

756.505 "Person" defined for ORS 756.510 to 756.600. As used in ORS 756.510 to 756.600, "person" includes any person, copartnership, corporation, association, municipal organization or other entity.

756.510 Application to all hearings, orders and judicial review; procedural regulations of commissioner. The provisions of ORS 756.510 to 756.610 apply to and govern all hearings upon any matter or issue coming before the commissioner under any statute administered by him, whether instituted on the application, petition or complaint of others or initiated by the commissioner, together with his orders therein and the review thereof in the courts. The commissioner may prescribe reasonable rules and regulations relating to procedural matters.

756.520 Complaint; persons entitled to file; contents; amendments. (1) Any person may file a complaint before the commissioner, or the commissioner may, on his own initiative, file such complaint. The complaint shall be against any person whose business or activities are regulated by some one or more of the statutes, jurisdiction for the enforcement or regulation of which is conferred upon the commissioner. The person filing the complaint shall be known as the complainant and the person against whom the complaint is filed shall be known as the defendant.

(2) It is not necessary that a complainant have a pecuniary interest in the matter in controversy or in the matter complained of, but the commissioner shall not grant any order of reparation to any person not a party to the proceedings in which such reparation order is made.

(3) The complaint shall state all grounds of complaint on which the complainant seeks relief or the violation of any law claimed to have been committed by the defendant, and the prayer of the complaint shall pray for the relief which the complainant claims he is entitled to.

(4) The complaint may, at any time before the completion of taking of evidence, be permitted to be amended by order of the commissioner. However, if a charge not contained in the original complaint or a prior amended complaint is sought to be made by any such amendment, the defendant shall be given a reasonable time to investigate the new charge and answer the amended complaint. The final hearing shall, if necessary, be continued until some date after the defendant has had a reasonable time to investigate and be prepared to meet the amended complaint.

756.530 Notice of complaint to defendant; answer by defendant; setting cause for hearing. The commissioner shall give the defendant at least 10 days' notice of the complaint before hearing, unless the commissioner, for good reason stated in the notice, fixes a shorter time. Within the time so fixed, or such further time as the commissioner shall fix, the defendant shall file his answer to the complaint, taking issue on such parts of the complaint as he desires and setting forth such additional matter as shall be pertinent to the matter in controversy. Such additional matter shall be deemed denied without the filing of any other pleading by the complainant. After the filing of the answer the commissioner shall set the matter for hearing. Amendment of any answer may be permitted by order of the commissioner.

756.540 Intervention. The commissioner may, by proper order, permit any person to become a party complainant or defendant by intervention who might, on the institution of the proceedings, have been such a party, if the intervention, either by the party complainant or defendant, is made before the final taking of evidence in the proceeding.

756.550 Rules governing hearings; findings; orders. (1) The hearing may be had before the commissioner, an examiner or any other person authorized by the laws of this state to hold such hearing. The commissioner may adopt rules and regulations for the orderly hearing of any such proceeding, or, if no such rules or regulations are adopted, the person who conducts such hearing may provide by order during the hearing, or otherwise, the procedure to be followed in the proceeding so as to permit and secure a full, fair and orderly hearing and permit all relevant evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing.

(2) At the conclusion of the taking of evidence, the commissioner, or the person conducting the hearing, shall declare the taking of evidence concluded. Thereafter no additional evidence shall be received except upon the order of the commissioner and a reasonable opportunity of the opposing party to cross-examine any witnesses with reference to the additional evidence and otherwise rebut and meet such additional evidence.

(3) After the completion of the taking of evidence, and within a reasonable time, the commissioner shall prepare and enter findings of fact and conclusions of law upon the evidence received in the matter and shall make and enter his order thereon; provided that at any time prior to the completion of the taking of evidence the commissioner may segregate the issues involved and after a full hearing on any of such issues make and enter an interim order or orders with respect thereto, but any such interim order shall be subject to judicial review in the manner set forth in ORS 756.580 to 756.610 without waiting determination of any of the other issues involved in the proceedings. The findings of fact and conclusions of law may be embodied in the same instrument with the order or may be embodied in a separate instrument. The findings of fact, conclusions of law and order thereon shall be signed by the commissioner. The order shall state the date it becomes effective. A copy of the findings of fact and conclusions of law and a copy of the order shall, forthwith upon the entry of the same, be mailed to each of the parties to the proceeding.
[Amended by 1957 c.599 §1]

756.560 Place of hearings; adjournment. The hearing may be held at any place designated by the commissioner within this state, or different parts of the hearing may be held at different places in this state, as shall be designated by the commissioner. The hearing may be adjourned and continued from time to time and place to place as ordered and fixed by the commissioner.

756.570 Rehearings. (1) After a decision, order or requirement has been made by the commissioner in any proceeding, any party thereto, at any time, may apply for

rehearing of the same or any matter determined therein. The commissioner may grant such a rehearing if sufficient reason therefor is made to appear. Applications for rehearing shall be governed by such general rules as the commissioner may establish.

(2) No such application shall excuse any party against whom a decision, order or requirement has been made by the commissioner from complying therewith or from obeying the same, nor operate in any manner to stay or postpone the enforcement thereof without the special order of the commissioner.

(3) If a rehearing is granted, the proceedings thereupon shall conform as nearly as possible to the proceedings in an original hearing, except as the commissioner otherwise may direct. If in the judgment of the commissioner, after such rehearing and the consideration of all facts, including those arising since the former hearing, the original decision, order or requirement is in any respect unjust or unwarranted, he may reverse, change or modify the same accordingly. Any decision, order or requirement made after such rehearing, reversing, changing or modifying the original determination is subject to the same provisions as an original order.

756.580 Suits to set aside findings and order of commissioner. (1) Parties to any proceedings before the commissioner may, when aggrieved by any findings of fact, conclusions of law or order, including the dismissal of any complaint or application by the commissioner, prosecute a suit or proceedings against the commissioner to modify, vacate or set aside such findings of fact, conclusions of law or order.

(2) Such suit may be commenced by any party so aggrieved in the Circuit Court for Marion County, in the circuit court for the county in which any hearing is held in the proceedings in which the order was made, or in the circuit court for the county in which is located the principal office of any defendant in any such proceedings before the commissioner, and jurisdiction of any such suit hereby is conferred upon the circuit court for any of such counties to hear and determine such suit.

(3) In such suit, a copy of the complaint shall be served with the summons. The commissioner shall serve and file his answer to such complaint within 10 days after the service thereof, whereupon the suit shall be at issue and stand ready for trial upon 10 days' notice by either party. All suits brought under this section shall have precedence over any civil cause of a different nature pending in the court, and the circuit court always shall be open for the trial thereof. Any such suit shall only be commenced within 90 days after the filing of the order in the proceeding before the commissioner.

756.590 Suspending order during suit to set aside order. After the commencement of a suit under ORS 756.580, the circuit court may, for cause shown, upon application to the circuit court or presiding judge thereof, and upon notice to the commissioner and hearing, suspend or stay the operation of the order of the commissioner complained of until the final disposition of such suit, upon the giving of such bond or other security, or upon such conditions as the court may require. Such bond shall be executed in favor of the commissioner for the benefit of whom it may concern and may be enforceable by the commissioner, or any person interested, in an appropriate proceeding.

756.600 Procedure when new evidence introduced in suit to set aside order. (1) If, upon the trial of a suit, evidence is introduced which is found by the court to be different from that offered upon the hearing before the commissioner or additional thereto, the court shall, before proceeding to render judgment, unless the parties to such suit stipulate in writing to the contrary, transmit a copy of such evidence to the commissioner and shall stay further proceedings in the suit for 15 days from the date of such transmission.

(2) Upon the receipt of such evidence the commissioner shall consider it and may alter, modify, amend or rescind his order in the proceeding or the findings of fact and conclusions of law with reference thereto. The commissioner shall report his action on such additional evidence to such court within 10 days from receipt of such evidence.

(3) If the commissioner rescinds his order complained of, the suit shall be dismissed. If he alters, modifies or amends his order, findings of fact or conclusions of law, such altered, modified or amended order, findings of fact or conclusions of law shall take the place of the original, and the judgment or decree shall be rendered in the suit as though the order, findings of fact or

conclusions of law as so changed had been made in the first instance. If the original order, findings of fact or conclusions of law are not rescinded or changed by the commissioner, judgment or decree shall be rendered upon the original order, findings of fact or conclusions of law.

756.610 Appeal to the Supreme Court. Any party to a suit brought under ORS 756.580, within 60 days after the entry of the judgment or decree of the circuit court, may appeal to the Supreme Court. Where an appeal is taken the cause shall, on the return of the papers to the Supreme Court, immediately be placed on the calendar of the then pending term and shall be assigned and brought to a hearing in the same manner as other causes on the calendar, but shall have precedence over civil causes of a different nature pending in the Supreme Court.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 15, 1965.

Sam R. Haley
Legislative Counsel