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UTILITIES; RAILROADS AND OTHER CARRIERS

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Chapter 756

1979 REPLACEMENT PART

Public Utility Commissioner

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DEFINITIONS

756.010 Definitions. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764, 767 and 773, except as otherwise specifically provided or unless the context requires otherwise:

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

(2) "Customer" includes the patrons, passengers, shippers, subscribers, users of the service and consumers of the product of a railroad, motor carrier or public utility.

(3) "Motor carrier" has the meaning given that term in ORS 767.005.

(4) "Municipality" means any city, municipal corporation or quasi-municipal corporation.

(5) "Person" includes individuals, joint ventures, partnerships, corporations and associations or their officers, employes, agents, lessees, assignees, trustees or receivers.

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

(7) "Railroad" has the meaning given that term in ORS 760.005.

(8) "Air carrier" means any person owning, controlling or operating aircraft engaged in air commerce.

(9) "Air commerce" means all transportation by aircraft of persons or property for compensation between points in this state. However, the term does not include:

(a) Transportation of U.S. mail, or

(b) Transportation performed as an integral part of:

(A) Instruction in the operation of aircraft;

(B) Aerial application of agricultural chemicals;

(C) Air ambulance services;

(D) Aerial fire-fighting services;

(E) Air taxi or charter services; or

(F) Aerial logging operations.

(10) "Rate" means any fare, charge, joint rate, schedule or groups of rates or other remuneration or compensation for service.

(11) "Service" is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served. [Amended by 1971 c.655 §2; 1973 c.776 §14; 1977 c.337 §1]

RIGHTS, POWERS AND DUTIES OF COMMISSIONER GENERALLY

756.020 Creation of office; official designation; qualifications; confirmation; 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) Subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570, 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. [Amended by 1973 c.792 §48]

756.022 Oath of office. Before entering upon the duties of his office, the commissioner shall take and subscribe to an oath or affirmation to support the Constitution of the United States and of this state, and to faithfully and honestly discharge the duties of his office. The oath shall be filed with the Secretary of State. [1971 c.655 §3]

756.026 Prohibited interests of commissioner and employes. (1) The commissioner shall not:

(a) Hold any other office of profit;

(b) Hold any office or position under any political committee or party;

(c) Hold any pecuniary interest in any business entity conducting operations which if conducted in this state would be subject to the commissioner's regulatory jurisdiction; or

(d) Hold any pecuniary interest in, have any contract of employment with, or have any substantial voluntary transactions with any business or activity subject to the commissioner's regulatory jurisdiction.

(2) The prohibitions of paragraphs (c) and (d) of subsection (1) of this section apply to the spouse and minor children of the commissioner.

(3) If the Governor determines that the commissioner has done any act prohibited by subsection (1) of this section, or that the commissioner's spouse or a minor child has done any act prohibited by subsection (2) of this section, the Governor shall remove the commissioner in the manner provided in subsection (3) of ORS 756.020.

(4) Subsection (3) of this section does not apply to the commissioner if he or his spouse or a minor child acquires any pecuniary interest prohibited by subsection (1) or (2) of this section, advises the Governor of such acquisition, and causes divestiture of such interest within the time specified by the Governor. [1971 c.655 §4]

756.028 Employe statements regarding prohibited interests. Each employe of the commissioner shall file with the commissioner a statement regarding his holdings and the holdings of his spouse and minor children of any pecuniary interest in any business or activity subject to the commissioner's regulatory jurisdiction. Supplementary statements shall be filed as such pecuniary interests are acquired or divested. The statements shall be in such form as the commissioner prescribes. If the commissioner determines that an employe or his spouse or minor child holds any such pecuniary interest that may interfere with the impartial discharge of the employe's duties, the commissioner shall order divestiture of the interest. [1971 c.655 §5]

756.030 [Repealed by 1971 c.655 §250]

756.032 Employe dismissal for retention of prohibited interests or failure to file statements. (1) The commissioner shall dismiss an employe:

(a) Employed on January 1, 1972, who fails to file the statement required by ORS 756.028 before January 12, 1972.

(b) Employed after January 1, 1972, who fails to file the statement required by ORS 756.028 before the 11th day after the date of employment.

(c) Who fails to file the supplementary statement required by ORS 756.028 before the 11th day after the acquisition of a pecuniary interest.

(d) Who fails to cause divestiture of a pecuniary interest within the time specified in an order issued pursuant to ORS 756.028.

(2) Dismissal of an employe under subsection (1) of this section is subject to the procedure and appeal provided in ORS 240.555 and 240.560. An employe so dismissed is eligible for reemployment. [1971 c.655 §6; 1979 c.468 §34]

756.034 Intent of prohibited interest provisions. Nothing in ORS 756.022 to 756.032 is intended to authorize any act otherwise prohibited by law. [1971 c.655 §7]

756.036 Public Utility Commissioner organization and operation. The commissioner may:

(1) Organize and reorganize the office of Public Utility Commissioner in the manner that he considers necessary to properly discharge the responsibilities of the Public Utility Commissioner.

(2) Appoint and employ all subordinate officers and employes, including, but not limited to, deputies, assistants, engineers, examiners, accountants, auditors, inspectors and clerical personnel and prescribe their duties and fix their compensation, subject to the State Merit System Law. Subject to any applicable law regulating travel and other expenses of state officers and employes, the officers and employes of the commissioner shall be reimbursed for such reasonable and necessary travel and other expenses incurred in the performance of their official duties.

(3) Contract for or procure on a fee or part-time basis, or both, such experts, technical or other professional services as he may require for the discharge of his duties.

(4) Obtain such other services as he considers necessary or desirable.

(5) Participate in organizations of regional and national utility commissioners.

(6) Appoint advisory committees. A member of an advisory committee so appointed shall receive no compensation for his services as a member; but, subject to any applicable law regulating travel and other expenses of

state officers and employes, he shall receive his actual and necessary travel and other expenses incurred in the performance of his official duties. [1971 c.655 §8]

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 customers of any public utility, railroad, air carrier or motor carrier, and the public generally in all controversies respecting rates, 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 customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.

(2) The commissioner is vested with power and jurisdiction to supervise and regulate every public utility, railroad, air carrier and motor carrier 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 customers of the services of any public utility, railroad, water, air carrier or motor carrier operating or providing service to or within this state.

(4) The commissioner may make joint investigations, hold joint hearings within or without this state and issue concurrent orders in conjunction or concurrence with any official, board, commission or agency of any state or of the United States. [Amended by 1961 c.467 §1; 1971 c.655 §9; 1973 c.776 §15]

756.045 Employing legal counsel. Upon request by the commissioner, the Attorney General shall furnish to the commissioner such attorneys as the commissioner finds necessary. [Formerly 756.150]

756.050 Office, office supplies and sessions of commissioner. (1) The commissioner shall keep his office at the capital and shall be provided with suitable office quarters under ORS 276.004. Necessary office furniture, supplies, stationery, books, periodicals and maps shall be furnished, 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 capital 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. [Amended by 1969 c.706 §64g; 1971 c.655 §11]

756.055 Delegation of commissioner's authority. (1) Except as provided in subsection (2) of this section, the commissioner may designate by order or rule any named employe or category of employes who shall have authority to exercise any of the duties and powers imposed upon the commissioner by law. The official act of any employe so exercising any such duties or powers is considered to be an official act of the commissioner.

(2) The commissioner may not:

(a) Delegate the authority to sign an interim or final order after hearing;

(b) Delegate the authority to sign any order upon any investigation the commissioner causes to be initiated;

(c) Delegate the authority to sign an order that makes effective a rule;

(d) Delegate the authority to enter orders on reconsideration or following rehearing; or

(e) Delegate the authority to grant immunity from prosecution, forfeiture or penalty. [1971 c.655 §12]

756.060 Authority to adopt rules and regulations. The commissioner may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by him and may adopt and publish reasonable and proper rules to govern his proceedings and to regulate the mode and manner of all investigations and hearings of public utilities, railroads, air carriers, motor carriers and other parties before him. [Amended by 1971 c.655 §13; 1973 c.776 §16]

756.062 Compliance with utility and carrier laws effectuates orders; construction of laws generally. (1) A substantial compliance with the requirements of the laws administered by the commissioner is sufficient to give effect to all the rules, orders, acts and regulations of the commissioner and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

(2) The provisions of such laws shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between customers and public utilities, railroads, air carriers and motor carriers. [Formerly 757.025; 1973 c.776 §17]

756.064 [1971 c.655 §15; 1973 c.776 §18; repealed by 1975 c.605 §33]

756.068 Service of notice, other legal process. The service or delivery of any notice, order, form or other document or legal process required to be made by the commissioner may be made by mail. If by mail, service or delivery is made when the required material is deposited in the post office, in a sealed envelope with postage paid, addressed to the person on whom it is to be served or delivered, at his address as it last appears in the records of the commissioner. [1971 c.655 §16]

INVESTIGATORY POWERS

756.070 Investigating managment of utilities and carriers. The commissioner may inquire into the management of the business of all public utilities, air carriers, motor carriers 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, air carrier, motor carrier or railroad all necessary information to enable him to perform his duties. [Amended by 1971 c.655 §17; 1973 c.776 §19]

756.075 Right of entry for examination of equipment, records, employes; use of findings. (1) The commissioner or his authorized representatives may enter upon any premises, or any equipment, rolling stock or facilities operated or occupied by any public utility, railroad, air carrier or motor carrier for the purpose of making any inspection, examination or test reasonably required in the administration of ORS chapter 756, 757, 758, 760, 761, 763, 764, 767 or 773 and to set up and use on such premises equipment, rolling stock or facilities any apparatus and appliances and occupy reasonable space therefor.

(2) The commissioner or his authorized representatives shall, upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any public utility, railroad, air carrier or motor carrier and to examine under oath any officer, agent or employe of such public utility, railroad, air carrier or motor carrier in relation to its business and affairs.

(3) Any person who on behalf of the commissioner makes demand of a public utility, railroad, air carrier or motor carrier for an examination, inspection or test shall, upon request therefor, produce a certificate under the seal of the commissioner showing his authority to make such examination, inspection or test.

(4) Nothing in this section authorizes the commissioner to use any information developed thereunder for any purpose inconsistent with any statute administered by him or to make a disclosure thereof for other than regulatory purposes. [Formerly 757.260; 1973 c.776 §20]

756.080 [Repealed by 1971 c.655 §250]

756.090 Maintaining records; expenses of examining out-of-state records. (1) The commissioner may require by rule, or by order or subpena to be served on any public utility, railroad, air carrier or motor carrier, the maintaining within this state or 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, railroad, air carrier or motor carrier in any office or place within or 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.

(2) When a public utility, railroad, air carrier or motor carrier keeps and maintains its books, accounts, papers or records outside the state, the commissioner may examine such documents and shall be reimbursed by the public utility, railroad, air carrier or motor carrier for all expenses incurred in making such out-of-state examination. [Amended by 1971 c.655 §19; 1973 c.776 §21]

756.100 [Repealed by 1953 c.25 §2]

756.105 Duty to furnish information to commissioner. (1) Every public utility, railroad, air carrier and motor carrier shall furnish to the commissioner all information required by him to carry into effect the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, 767 and 773, and shall make specific answers to all questions submitted by the commissioner.

(2) If a public utility, railroad, air carrier or motor carrier is unable to furnish any information required under subsection (1) of this section for any reason beyond its control, it is a good and sufficient reason for such failure. The answer or information shall be

verified under oath and returned to the commissioner at his office within the period fixed by the commissioner. [Formerly 757.115; 1973 c.776 §22]

756.110 [Repealed by 1953 c.25 §2]

756.115 Failure to furnish requested information. No officer, agent or employe of any public utility, railroad, air carrier or motor carrier shall:

(1) Fail or refuse to fill out and return any forms required by the commissioner;

(2) Fail or refuse to answer any question therein propounded;

(3) Knowingly or wilfully give a false answer to any such question or evade the answer to any such question where the fact inquired of is within his knowledge;

(4) Upon proper demand, fail or refuse to exhibit to the commissioner or any person authorized to examine the same, any book, paper, account, record or memorandum of such public utility, railroad, air carrier or motor carrier which is in his possession or under his control;

(5) Fail to properly use and keep his system of accounting or any part thereof, as prescribed by the commissioner; or

(6) Refuse to do any act or thing in connection with such system of accounting when so directed by the commissioner or his authorized representative. [Formerly 757.180; 1973 c.776 §23]

756.120 [Repealed by 1971 c.655 §250]

756.125 Interference with commissioner's equipment. No person shall destroy, injure or interfere with any apparatus or appliance owned or operated by or in charge of the commissioner, or any apparatus or appliance sealed by him. [Formerly 757.340]

756.130 [Repealed by 1971 c.655 §250]

756.140 [Repealed by 1971 c.655 §250]

756.150 [Amended by 1971 c.655 §10; renumbered 756.045]

ENFORCEMENT AND REMEDIES

756.160 Enforcement of statutes and ordinances relating to utilities and carriers. (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 relating to public utilities, railroads, air carriers or motor carriers by any public utility, railroad, air carrier or motor carrier doing business therein, its officers, agents or employes and shall enforce all laws of this state relating to public utilities, railroads, air carriers and motor carriers and may enforce all such laws and ordinances of a municipality. The commissioner shall report all violations of any such laws or ordinances to the Attorney General.

(2) The Attorney General, district attorney of each county, and all state, county and city police officers shall assist the commissioner in the administration and enforcement of all laws administered by the commissioner, and they, as well as his assistants and employes, shall inform against and diligently prosecute all persons whom they have reasonable cause to believe guilty of violation of any such laws or of the rules, regulations, orders, decisions or requirements of the commissioner made pursuant thereto.

(3) Upon the request of the commissioner, the Attorney General or the district attorney of the proper county shall aid in any investigation, hearing or trial, and shall institute and prosecute all necessary suits, actions or proceedings for the enforcement of those laws and ordinances referred to in subsection (1) of this section.

(4) Any forfeiture or penalty provided for in any law administered by the commissioner shall be recovered by an action brought thereon in the name of the State of Oregon in any court of appropriate jurisdiction. [Amended by 1971 c.655 §23; 1973 c.776 §24]

756.170 [Repealed by 1971 c.655 §250]

756.180 Enjoining violation of utility laws. (1) Whenever it appears to the commissioner that any public utility, railroad, air carrier, motor carrier or any other person subject to the jurisdiction of the commissioner 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, railroad, air carrier, motor carrier or any other person subject to the jurisdiction of the commissioner 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,

railroad, air carrier, motor carrier or any other person subject to the jurisdiction of the commissioner, or its officers, agents, employes and representatives from further violations 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 lieu of any other enforcement provisions contained in any statute administered by the commissioner. [Amended by 1971 c.655 §24; 1973 c.232 §5; 1973 c.776 §25]

756.185 Right of patron to recover treble damages for wrongs and omissions. (1) Any public utility, railroad, air carrier or motor carrier which does, or causes or permits to be done, any matter, act or thing prohibited by ORS chapter 756, 757, 758, 760, 761, 763, 764, 767 or 773 or omits to do any act, matter or thing required to be done by such statutes, is liable to the person injured thereby in treble the amount of damages sustained in consequence of such violation together with a reasonable counsel's or attorney fees, to be fixed by the court in every case of recovery. Such attorney fees shall be taxed and collected as part of the costs in the case.

(2) Any recovery under this section does not affect recovery by the state of the penalty, forfeiture or fine prescribed for such violation.

(3) This section does not apply with respect to the liability of any public utility, railroad, air carrier or motor carrier for personal injury or property damage. [Formerly 757.335; 1973 c.776 §26]

756.190 [Repealed by 1971 c.655 §250]

756.200 Effect of utility and carrier laws on common law and other statutory rights of action, duties and liabilities. (1) The remedies and enforcement procedures provided in ORS chapters 756, 757, 758, 760, 761, 763, 764, 767 and 773 do not release or waive any right of action by the state or by any person for any right, penalty or forfeiture which may arise under any law of this state or under an ordinance of any municipality thereof.

(2) All penalties and forfeiture accruing under said statutes and ordinances are cumulative and a suit for and recovery of one, shall not be a bar to the recovery of any other penalty.

(3) The duties and liabilities of the public utilities, railroads, air carriers and motor carriers shall be the same as are prescribed by the common law, and the remedies against them the same, except where otherwise provided by the Constitution or statutes of this state, and the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, 767 and 773 are cumulative thereto. [Formerly 760.045; 1973 c.776 §27]

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. Except as limited by ORS 756.360 and 767.640, 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; 1971 c.655 §27]

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, twenty-five hundreths of one percent of such railroad's gross operating revenues derived within this state in the preceding calendar year.

(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 $10. [Amended by 1953 c.10 §2; 1957 c.464 §1, 1959 c 355 §1; 1961 c.109 §1; 1963 c.89 §1; 1971 c.132 §1; 1973 c.170 §1; 1975 c.127 §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.

756.325 Distribution of information filed with commissioner. (1) The commissioner may by rule prescribe for the free distribution for public information or educational purposes or applicable charge for any blank forms, transcript, document, order, statistical data or publication prepared by and on file in his office. In no event shall the fee exceed the cost of preparing, reproducing and distributing such blank forms, transcript, document, order, statistical data or publication.

(2) In the ordinary course of distribution, no fee shall be charged or collected for copies of published documents furnished to public officers for use in their official capacity, or for annual reports of the commissioner. [1971 c.655 §28]

756.330 [Amended by 1965 c.288 §1; repealed by 1971 c.655 §250]

756.340 [Repealed by 1971 c.655 §250]

756.350 Penalty for failure to pay fees; action to collect unpaid fees and penalties. Every person who fails to pay any fees provided for in ORS 756.310 or 756.320 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. [Amended by 1971 c.655 §29]

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, 756.320, 756.350, 758.015, 758.400 to 758.475 and 773.060 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, and for the purpose of paying the expenses of the Office of the Governor for its responsibilities in administering energy conservation and allocation programs.

(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, and for the purpose of paying the expenses of the Office of the Governor for its responsibilities in administering energy conservation and allocation programs.

(3) Air carriers 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 air carriers, and for the purpose of paying the expenses of the Office of the Governor for its responsibilities in administering energy conservation and allocation programs. [Amended by 1957 c.459 §7; 1967 c.164 §3; 1971 c.655 §30; 1973 c.776 §28; 1974 s.s. c.59 §1]

TRANSPORTATION COMPANY REGULATIONS

756.370 Foreign express companies to deposit securities or invest in Oregon real estate before doing business in this state. (1) Except as provided in subsection (5) of this section, every foreign corporation or company

before engaging in the express business shall deposit with the State Treasurer the sum of $5,000 in:

(a) Interest-bearing bonds of the United States;

(b) The bonds of the State of Oregon;

(c) Any municipal, school district, irrigation district, port or county bonds issued by authority of law in this state, the market value of which is at or above par;

(d) Bonds or notes secured by a first mortgage upon unencumbered real estate within this state of the value of double the amount loaned thereon; or

(e) Money of the United States.

(2) The deposit shall be safely kept for the benefit and security of persons transacting business with such corporation, and shall be held and considered specially pledged for such security for claims and demands arising out of such business.

(3) Any corporation may change the character of its deposit at any time by depositing other securities of the kinds and description in this section authorized to be deposited.

(4) All interest accruing from the United States or otherwise on such securities shall be paid, as it accrues, to the corporation or association to whom the securities belong, and the State of Oregon shall be held responsible for the safety of all deposits made under this section.

(5) In lieu of the deposit required in subsection (1) of this section, any such foreign corporation or company may make an investment in real estate within this state of the value of not less than $10,000, if such investment is approved by the State Treasurer. The title to such real estate shall remain in the express company and be unimpaired during all the times that the company is taking advantage of this section. The corporation shall pay taxes upon such real estate in the county where it is situated, in the same manner and to the same extent as an individual, and the real estate is liable therefor. Real estate held by any corporation or association pursuant to this subsection may be sold at any time if the corporation or association substitutes other real estate of the value prescribed in this subsection. [Formerly 757.065]

756.375 Withdrawal of deposit or sale of real estate on cessation of business. When any corporation or association having made a deposit or investment in real estate under ORS 756.370 desires to cease business in this state and withdraw its capital, it may do so by first giving six months' public notice of such intention by continuous publication in three weekly newspapers published in and of general circulation in the state, and if no claims are filed against such corporation or association within the six months, the deposits may be withdrawn and the real property may be sold. [Formerly 757.070]

756.380 Definitions for ORS 756.385 and 756.390. As used in ORS 756.385 and 756.390, the following terms have the following meanings:

(1) "Agency" means any place provided by a common carrier for the accommodation of the public in the receipt, delivery, billing or routing of freight, or in the loading or discharge of passengers, at which an agent is provided to serve the public.

(2) "Agent" means the person in charge of the transaction of business with the public at any station or agency.

(3) "Common carrier" means any railroad as defined in ORS 760.005, and any common carrier by motor vehicle as defined in ORS 767.005. [Formerly 757.080]

756.385 Common carrier not to abandon agencies or withdraw agent without approval of commissioner. No common carrier shall abandon any of its agencies, or withdraw the agent therefrom, without the prior written authority of the Public Utility Commissioner. If the primary business of the agent or agency is not that of a common carrier, the loss of the use of such agent or agency without the fault of the carrier shall not be considered a violation of this section; provided that the carrier shall give to the commissioner notice of such loss immediately upon being informed thereof and secure another agent or agency within a reasonable period of time. [Formerly 757.085]

756.390 Petitioning commissioner for authority to abandon agency or withdraw agent. Any common carrier may petition the Public Utility Commissioner for authority to abandon any agency or to withdraw the agent therefrom. Thereupon the Public Utility Commissioner shall fix a time and place for a hearing on such petition. Such hearing shall be held within 60 days from the filing of such petition and shall be held at some convenient place in the county in which such agency is located. Where a common carrier seeks to

move the location of its agent or agency from one point within a city to another point within such city the commissioner may approve such move without a hearing. [Formerly 757.090]

RULEMAKING PROCEDURE

756.400 "Rule" defined. As used in ORS 756.400 to 756.450, "rule" means any directive, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the organization, procedure or practice requirements of the commissioner. The term includes the amendment or repeal of a prior rule, but does not include:

(1) Statements concerning only internal agency management and not affecting private rights or procedures available to the public;

(2) Declaratory rulings issued pursuant to ORS 756.450; or

(3) Intra-agency memoranda that are not intended as policy guidelines. [1971 c.655 §31]

756.410 Procedure prior to adoption or change in rule. (1) Prior to the adoption, amendment or repeal of any rule, the commissioner shall:

(a) Give notice of intended action not less than 20 days prior thereto by publication in the bulletin referred to in ORS 183.360 and by such further notice as the commissioner determines appropriate. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time, place and manner in which interested persons may present their views thereon; and

(b) Hold a hearing and afford all interested persons reasonable opportunity to submit data, views or arguments, either orally or in writing. The commissioner shall consider fully any such written or oral submission.

(2) If the commissioner finds that failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and states in the order the grounds for emergency action, the commissioner may proceed without prior notice or hearing or upon any abbreviated notice and hearing that the commissioner finds practicable, to adopt an emergency rule. An emergency rule may be effective for a period of not longer than 120 days, but the adoption of an identical rule under subsection (1) of this section is not precluded.

(3) No rule adopted after January 1, 1972, is valid unless adopted in substantial compliance with this section. [1971 c.655 §32; 1977 c.253 §1]

756.420 Special rules required. In addition to other rulemaking requirements imposed by law, the commissioner shall:

(1) Adopt, as a rule, a description of the commissioner's organization, stating the general course and method of the commissioner's operations and the methods whereby the public may obtain information or make submissions or requests; and

(2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the commissioner. [1971 c.655 §33]

756.430 Filing, amendment, effective date of rules. (1) The commissioner shall file in the office of the Secretary of State a certified copy of each rule adopted, including all rules in effect on January 1, 1972, and not previously filed as provided by law. The Secretary of State shall keep a permanent register of the rules open to public inspection.

(2) Each rule adopted after January 1, 1972, is effective upon publication in the bulletin provided in ORS 183.360, except that:

(a) If a later effective date is required by statute or specified in the rule, the later date is the effective date.

(b) Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing with the Secretary of State, or at such time as may be prescribed in the order. The commissioner shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

(3) When a rule is amended or vacated, rescinded or otherwise repealed by the commissioner, the commissioner shall forthwith certify that fact to the Secretary of State, who shall enter that fact on the certified copy of the rule.

(4) Except for an emergency rule, no rule, of which a certified copy is required to be filed, and no rule of which a duplicate original or authenticated copy before January 1, 1972, was required to be filed shall be valid or effective against any person or party, nor may it be invoked by the commissioner for any purpose, unless a duplicate original or authenticated

copy was filed or until a certified copy is filed in accordance with this section.

(5) If the commissioner in issuing an order in any particular proceeding announces in the order the adoption of a general policy applicable to that case and to subsequent cases of like nature, the commissioner may rely upon the order in applying such general policy to later cases if a copy of the order is filed as provided in subsection (1) of this section and published in the bulletin referred to in ORS 183.360. [1971 c.655 §34]

756.440 Determining validity of rules. (1) The validity of any rule may be determined upon a petition for a declaratory judgment thereon filed as provided by ORS chapter 28 if the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the rights or privileges of the petitioner. The commissioner shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the commissioner to pass upon the validity of the rule in question.

(2) The validity of any rule may also be determined:

(a) By a court, upon review of an order in any manner provided by law; or

(b) Pursuant to ORS 756.580; or

(c) Upon attempted enforcement of such rule or order in the manner provided by law.

(3) The court shall declare the rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the commissioner or was adopted without compliance with statutory rulemaking procedures. [1971 c.655 §35]

756.450 Declaratory rulings. On petition of any interested person, the commissioner may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the commissioner. A declaratory ruling is binding between the commissioner and the petitioner on the state of facts alleged, unless it is modified, vacated or set aside by a court. However, the commissioner may review the ruling and modify, vacate or set it aside if requested by the petitioner or other party to the proceeding. Binding rulings provided by this section are subject to review in the circuit court in the manner provided in ORS 756.580 for the review of orders. [1971 c.655 §36]

COMPLAINT AND INVESTIGATION PROCEDURE

756.500 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 to which the complainant claims he is entitled.

(4) The complaint may, at any time before the completion of taking of evidence, 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.

(5) Notwithstanding subsection (1) of this section, any public utility, railroad or motor carrier may make complaint as to any matter affecting its own rates or service with like effect as though made by any other person, by filing an application, petition or complaint with the commissioner. [Formerly 756.520]

756.505 [Repealed by 1971 c.655 §250]

756.510 [Amended by 1971 c.655 §40; renumbered 756.518]

756.512 Notice of complaint to defendant; responsive pleadings; setting cause for hearing. (1) The commissioner shall serve a copy of the complaint upon the defendant, and shall give the defendant at least 10 days within which to respond to the complaint. 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, giving the defendant at least 10 days' written notice of the time and place of the hearing, unless the commissioner for good reason stated in the notice, fixes a shorter time. Amendment of any answer may be permitted by order of the commissioner.

(2) If the defendant fails to file a responsive pleading or otherwise appear within the time prescribed in subsection (1) of this section, or if the responsive pleading filed raises no issue of law or fact, the commissioner may act on the complaint without a hearing. [Formerly 756.530]

756.515 Investigations and hearings on commissioner's own motion; hearings for aggrieved persons. (1) Whenever the commissioner believes that any rate may be unreasonable or unjustly discriminatory, or that any service is unsafe or inadequate, or is not afforded, or that an investigation of any matter relating to any public utility, railroad, air carrier, motor carrier or other person should be made, or relating to any person to determine if such person is subject to the commissioner's regulatory jurisdiction, he may on his own motion summarily investigate any such matter, with or without notice.

(2) If after making such investigation he is satisfied that sufficient grounds exist to warrant a hearing being ordered upon any such matter, he shall furnish any public utility, railroad, air carrier, motor carrier or other person interested a statement notifying it of the matters under investigation, which statement shall be accompanied by a notice fixing the time and place for hearing upon such matters in the manner provided in ORS 756.512 for notice of complaint.

(3) Thereafter proceedings shall be had and conducted in reference to the matters investigated in like manner as though complaint had been filed with the commissioner relative thereto, and the same orders may be made in reference thereto as if such investigation had been made on complaint.

(4) Except as provided in ORS 761.120, the commissioner may, after he has made an investigation on his motion, but without notice or hearing, make such findings and orders as he deems justified or required by the results of such investigation. Except as provided in subsections (5) and (6) of this section such findings and orders have the same legal force and effect as any other finding or order of the commissioner.

(5) In addition to any other remedy provided by law, any party aggrieved by an order entered pursuant to subsection (4) of this section may request the commissioner to hold a hearing to determine whether the order should continue in effect. Any such request for hearing shall be submitted to the commissioner not later than 15 days after the date of service of the order, and the commissioner shall hold the hearing not later than 60 days after receipt of such a request for hearing.

(6) If the commissioner receives a request for hearing pursuant to subsection (5) of this section, the order is suspended pending the outcome of the hearing unless the commissioner finds that the order is necessary for the public health or safety or to prevent the dissipation of assets of a business or activity subject to the commissioner's regulatory jurisdiction. [Formerly 757.515; 1973 c.776 §29; 1975 c.318 §1]

HEARING PROCEDURE

756.518 Application to all hearings, orders and judicial review. Except as otherwise provided the provisions of ORS 756.500 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. [Formerly 756.510]

756.519 Representation by nonattorneys in transportation matters. (1) Notwithstanding ORS 9.320, an individual who is not an attorney may represent himself or other persons who consent to such representation at any proceeding before the commission-

er involving the regulation of transportation matters pursuant to ORS chapter 767.

(2) Any compromises, agreements, admissions, stipulations, statements of fact or other such action taken by the representative at any such proceeding is binding on those represented to the same extent as if done by an attorney. A person so represented may not thereafter claim that any such proceeding was legally defective because he was not represented by an attorney.

(3) As used in this section, "attorney" has the meaning for that term provided in ORS 9.005. [1977 c.424 §2]

756.520 [Amended by 1971 c.655 §37; renumbered 756.500]

756.521 Public hearings; record required; furnishing transcripts. All hearings shall be open to the public and may be had before the commissioner, an examiner or any other person authorized to hold such hearing. A full record thereof shall be kept. However, it shall not be necessary to transcribe testimony unless requested. For purposes of rehearing, reconsideration or court review, a transcription shall be made at the commissioner's expense, and copies of such transcription shall be supplied to the parties, at cost. A copy of the transcript shall be supplied to a party without cost upon the filing with the commissioner of a satisfactory affidavit of indigency. [1971 c.655 §41]

756.525 Parties to proceedings. (1) The commissioner may permit any person to become a party who might, on the institution of the proceeding, have been such a party, if application therefor is made before the final taking of evidence in the proceeding.

(2) At any time before the final taking of evidence in a proceeding, any person may apply to the commissioner for permission to appear and participate in the proceeding. The commissioner shall determine the interest of the applicant in the proceeding and shall grant the application, subject to appropriate conditions, if he determines that such appearance and participation will not unreasonably broaden the issues or burden the record, and otherwise may deny the application.

(3) This section does not apply to any person who might have been an original party in a proceeding before the commissioner if that person is required by statute to file a pleading or other response in the proceeding within a specified time. [1971 c.655 §42]

756.528 Segregation of issues; interim orders. At any time before the conclusion of the taking of evidence in a proceeding, the commissioner may segregate the issues involved and order separate hearings thereon at such times and places as he may prescribe. The commissioner may issue interim orders on any such issues, but any such interim order is subject to judicial review in the manner prescribed in ORS 756.580 to 756.610 without awaiting determination of any of the other issues involved in the proceeding. Failure to seek judicial review of an interim order does not waive the right to seek such review following final order. [1971 c.655 §43]

756.530 [Amended by 1971 c.655 §38; renumbered 756.512]

756.534 Place of hearings; continuation. Except as provided in subsection (4) of ORS 756.040, 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 continued from time to time and place to place as ordered and fixed by the commissioner. [Formerly 756.560]

756.538 Taking, use of depositions. (1) In any investigation, the commissioner may take the testimony of any person by deposition upon oral examination or written interrogatories for the purpose of discovery or for use in the investigation.

(2) In any proceeding requiring a hearing, the commissioner or any party to the proceeding may take the testimony of any person by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the proceeding, or for both purposes.

(3) Depositions may be taken within or without the State of Oregon by the commissioner, or any other person authorized to administer oaths, in accordance with procedures prescribed by the rules of the commissioner.

(4) The commissioner shall promulgate rules concerning the manner of applying for and taking depositions and the use thereof. Such rules shall provide reasonable provisions against abuse of such procedure and for protection of the rights of all persons affected. [1971 c.655 §45]

756.540 [Repealed by 1971 c 655 §250]

756.543 Issuance of subpenas; failure to comply. (1) The commissioner shall issue subpenas to any party to a proceeding before the commissioner upon request and shall issue subpenas duces tecum upon request and proper showing of the general relevance and reasonable scope of the documentary or physical evidence sought. Witnesses appearing pursuant to subpena, other than the parties or their officers or employes, or employes of the commissioner, shall receive fees and mileage as prescribed by law for witnesses in civil actions. If the commissioner certifies that the testimony of a witness was relevant and material, any person who paid fees and mileage to that witness shall be reimbursed by the commissioner and from moneys referred to in ORS 756.360 and 767.630, subject to the limitations provided in those sections and in ORS 767.640.

(2) If any person fails to comply with any subpena so issued or any party or witness refuses to testify on any matters on which he may be lawfully interrogated, the judge of the circuit court of any county, on the application of the commissioner, or of the party requesting the issuance of the subpena, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify therein. [1971 c.655 §46]

756.549 Self-incrimination of witnesses in commissioner's proceedings. (1) No person shall be excused from testifying or from producing evidence in any proceeding held by the commissioner on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to prosecution, penalty or forfeiture if:

(a) The person has been directed by the commissioner to testify or produce evidence under oath;

(b) The person claims, at the time he is directed by the commissioner to testify or produce evidence, that the testimony or evidence required of him may tend to incriminate him or subject him to prosecution, penalty or forfeiture; and

(c) The commissioner specifically grants the person immunity from prosecution, penalty or forfeiture regarding those matters about which he testifies or produces evidence as directed.

(2) Except for prosecution and punishment for perjury, no person who testifies or produces evidence in accordance with subsection (1) of this section shall be prosecuted or subjected to any penalty or forfeiture concerning any matter about which he so testified or produced evidence. [1971 c.655 §47]

756.550 [Amended by 1957 c 599 §1; 1971 c 655 §50; renumbered 756.558]

756.552 Self-incrimination of witnesses in court proceedings. No person shall be excused from testifying or from producing books and papers in any court proceeding based upon or growing out of any violation of the statutes listed in ORS 756.185 on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may have testified or produced any documentary evidence. However, no person shall be exempted from prosecution or punishment for perjury while so testifying. The immunity conferred by this section shall extend only to a natural person who, in obedience to a subpena, gives testimony under oath or produces evidence, documentary or otherwise, under oath. [Formerly 757.590]

756.555 Powers of commissioner at hearings. The commissioner may administer oaths, certify to official acts, issue notices in the name of the commissioner, issue subpenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony, and take and receive testimony, conduct hearings and investigations, whether upon complaint or upon the commissioner's own motion. [Formerly 757 555]

756.558 Taking of evidence; findings; issuance of orders; providing copies of orders. (1) At the conclusion of the taking of evidence, the commissioner 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 parties to examine any witnesses with reference to the additional evidence and otherwise rebut and meet such additional evidence.

(2) 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. 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 served upon each of the parties to the proceeding.

(3) Upon application of any person, the commissioner shall furnish certified copies, under his seal of any order made by him. [Formerly 756.550]

756.560 [Amended by 1971 c.655 §44; renumbered 756.534]

756.561 Rehearing; reconsideration. (1) After an order has been made by the commissioner in any proceeding, any party thereto may apply for rehearing or reconsideration thereof within 60 days from the date of service of such order. The commissioner may grant such a rehearing or reconsideration if sufficient reason therefor is made to appear.

(2) No such application shall excuse any party against whom an order has been made by the commissioner from complying therewith, 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 order is in any respect unjust or unwarranted, he may reverse, change or modify the same accordingly. Any order made after such rehearing, reversing, changing or modifying the original determination is subject to the same provisions as an original order. [Formerly 756.570]

756.565 Prima facie effect of commissioner's actions. All rates, tariffs, classifications, regulations, practices and service fixed, approved or prescribed by the commissioner and any order made or entered upon any matter within his jurisdiction shall be in force and shall be prima facie lawful and reasonable, until found otherwise in a proceeding brought for that purpose under ORS 756.580 to 756.610. [Formerly 760.575]

756.568 Rescission, suspension and amendment of orders. The commissioner may at any time, upon notice to the public utility, railroad, air carrier or motor carrier and after opportunity to be heard as provided in ORS 756.500 to 756.610, rescind, suspend or amend any order made by him. Copies of the same shall be served and take effect as provided in ORS 756.558 for original orders. [Formerly 757.540; 1973 c.776 §30]

756.570 [Amended by 1971 c.655 §51; renumbered 756.561]

756.572 Orders binding on successors in interest. (1) An order of the commissioner issued in accordance with the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, 767 and 773 is binding upon the successors in interest of each person affected thereby, until set aside, rescinded, suspended or modified as provided by law.

(2) Any investigation, hearing or other proceeding involving the issuance of an order of the commissioner that has not been finally determined when a transfer of any interests of a person is effected may be continued and finally determined, notwithstanding any such transfer of interest. Any order issued in such investigation, hearing or other proceeding is binding upon the successors in interest. [1971 c.655 §54; 1973 c.776 §31]

756.575 Notice of acceptance of terms of orders. The commissioner may provide by rule that any public utility, railroad, air carrier or motor carrier affected by any order shall within a time to be fixed by the commissioner, notify the commissioner whether the terms of the order are accepted and will be obeyed. [1971 c.655 §55; 1973 c 776 §32]

756.580 Suits to set aside findings and order of commissioner. (1) A party to any proceeding before the commissioner, when aggrieved by any findings of fact, conclusions of law or order, including the dismissal of any complaint or application by the commissioner, may prosecute a suit 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 has been held in the proceeding 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 proceeding before the commission-

er, 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.

(4) Unless application is made for rehearing or reconsideration of the order, any such suit must be commenced within 60 days after the date of service of the order in the proceeding before the commissioner. If application for rehearing or reconsideration is made, such suit must be commenced within 60 days after the date of service of the order denying rehearing or reconsideration or the date of service of the new order if rehearing or reconsideration is granted. If an order granting or denying an application for rehearing or reconsideration has not been made by the 60th day after the filing of the application, an order denying the application shall be considered served on the 61st day after such filing.

(5) Application for rehearing or reconsideration need not be made as a condition of judicial review. [Amended by 1971 c.655 §56]

756.585 Transmittal of record; shortening of record; costs. Whenever any complaint is served upon the commissioner under ORS 756.580, the commissioner, within 30 days after service of the complaint, or within such further time as the court may allow, shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, but by stipulation of all parties to the review proceeding, less than the full record may be transmitted. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this section, the cost of the record shall not be taxed to the complainant or any intervening party. [1971 c.655 §57]

756.590 Suspending order until disposition of suit. 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 enforced by the commissioner, or any person interested, in an appropriate proceeding.

[Amended by 1971 c.655 §58]

756.594 Burden of proof. In any suit referred to in ORS 756.580, the burden of proof is upon the party seeking to modify, vacate or set aside findings of fact, conclusions of law or the order to show by clear and satisfactory evidence that the order is unreasonable or unlawful. [1971 c.655 §59]

756.598 Scope of court review of order. (1) Court review of any findings of fact, conclusions of law or order referred to in ORS 756.580, shall be conducted by the court without a jury, but the court shall not substitute its judgment for that of the commissioner as to any finding of fact supported by substantial evidence. The review shall be confined to the record and no additional evidence shall be received except as provided in ORS 756.600 or except to show alleged irregularities in procedure before the commissioner not shown in the record. The court may affirm, modify, reverse or remand the order.

(2) Errors in procedure shall not be cause for reversal or remand unless the court finds that substantial rights of the plaintiff were prejudiced thereby. In the case of a modification or reversal the court shall make special findings of fact based upon evidence in the record and conclusions of law indicating clearly all respects in which the commissioner's order is erroneous. [1971 c.655 §60; 1979 c.284 §197]

756.600 Procedure when new evidence introduced in suit to set aside order. (1) If, upon the trial of a suit, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good and substantial reasons for failure to present it in the proceeding before the commissioner, the court may order that the additional evi-

dence be taken by the commissioner and shall stay further proceedings in the suit for such time as the court considers appropriate.

(2) Upon taking 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 such time as the court may provide and with such report shall transmit the evidence so taken, unless the commissioner has rescinded his order.

(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. [Amended by 1971 c.655 §61]

756.610 Appeal to Court of Appeals. (1) Any party to a suit brought under ORS 756.580, within 30 days after the entry of the judgment or decree of the circuit court, may appeal to the Court of Appeals. Where an appeal is taken the cause shall, on the return of the papers to the Court of Appeals, 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 Court of Appeals.

(2) A judgment or decree of the Court of Appeals may be reviewed in the manner provided in ORS 2.520.

[Amended by 1971 c.655 §62]

PENALTIES, FINES AND FORFEITURES

756.990 Penalties, fines and forfeitures. (1) Any public utility, railroad, air carrier or motor carrier that fails to comply with an order or subpena issued pursuant to ORS 756.090 shall forfeit, for each day it so fails, a sum of not less than $50 nor more than $500.

(2) Except where a penalty is otherwise provided by law, any public utility, railroad, air carrier, motor carrier or any other person subject to the jurisdiction of the commissioner shall forfeit a sum of not less than $100 nor more than $10,000 for each time that the person:

(a) Violates any statute administered by the commissioner;

(b) Does any act prohibited, or fails to perform any duty enjoined upon the person;

(c) Fails to obey any lawful requirement or order made by the commissioner; or

(d) Fails to obey any judgment or decree made by any court upon the application of the commissioner.

(3) Violation of ORS 756.115 is punishable, upon conviction, by a fine of not less than $1,000 for each offense. A penalty of not less than $500 nor more than $1,000 shall be recovered from the public utility, railroad, air carrier or motor carrier for each such offense when such officer, agent or employe acted in obedience to the direction, instruction or request of the public utility, railroad, air carrier or motor carrier, or any general officer thereof.

(4) Violation of ORS 756.125 is punishable, upon conviction, by a fine of not more than $100 or imprisonment for not more than 30 days, or both. Any public utility, railroad, air carrier or motor carrier that knowingly permits the violation of ORS 756.125 shall forfeit, upon conviction, not more than $1,000 for each offense.

(5) Violation of subsection (1) of ORS 756.543 is punishable, upon conviction, by a fine of not less than $100 nor more than $1,000, or by imprisonment in the county jail for not more than one year, or both.

(6) 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, railroad, air carrier, motor carrier or any other person subject to the jurisdiction of the commissioner acting within the scope of the other person's employment shall in every case be deemed to be the act, omission or failure of such public utility, railroad, air carrier, motor carrier or any other person subject to the jurisdiction of the commissioner. With respect to any violation of any statute administered by the commission-

er, any penalty provision applying to such a violation by a public utility, railroad, air carrier or motor carrier shall apply to such a violation by any other person.

(7) Except when provided by law that a penalty, fine, forfeiture or other sum be paid to the aggrieved party:

(a) All penalties, fines or forfeitures collected from persons subject to the regulatory authority of ORS chapter 767 shall be paid into the General Fund and credited to the Motor Carrier Account.

(b) All penalties, fines or forfeitures or other sums collected or paid under the provisions of any law administered by the commissioner, other than ORS chapter 767, shall be paid into the General Fund and credited to the Public Utility Commissioner Account. [1971 c.655 §63; 1973 c.232 §4; 1973 c.776 §33; 1977 c.105 §1; 1979 c.415 §1]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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,
October 1, 1979.

Thomas G. Clifford
Legislative Counsel