

Enrolled
Senate Bill 240

Sponsored by Senators NEWBRY, J. BURNS

CHAPTER.....

AN ACT

Relating to regulation of air commerce; creating new provisions; amending ORS 756.010, 756.040, 756.060, 756.062, 756.064, 756.070, 756.075, 756.090, 756.105, 756.115, 756.160, 756.180, 756.185, 756.200, 756.360, 756.515, 756.568, 756.572, 756.575 and 756.990; appropriating money; providing penalties; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 13 of this Act, unless the context requires otherwise:

(1) "Aircraft" means any contrivance used or designed for navigation of or flight in the air.

(2) "Air commerce" means all transportation by aircraft of persons or property for compensation between points in this state. However, "air commerce" does not include transportation performed solely in connection with:

- (a) Transportation of U.S. mail,
- (b) Instruction in the operation of aircraft,
- (c) Aerial application of agricultural chemicals,
- (d) Air ambulance services,
- (e) Aerial fire-fighting services,
- (f) Air taxi or charter services,
- (g) Aerial logging operations, or
- (h) Transportation authorized by a certificate of public convenience and necessity issued prior to January 1, 1973, pursuant to section 401 of the Federal Aviation Act of 1958 as amended.

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

SECTION 2. The purpose of sections 1 to 13 of this Act is to provide regulation of air commerce in order that an orderly, efficient, economical and healthy network of air transportation may be established to the benefit of the people of this state.

SECTION 3. Within the limits of powers reserved to the state for the regulation of air carriers and air commerce, the commissioner may:

- (1) Fix reasonable rates and routes of air carriers;
- (2) Require any air carrier to procure and maintain insurance and performance bonds in any amount; and
- (3) Authorize such through routes, joint rates and divisions of revenue for persons engaged in air commerce as he determines to be in the public interest.

SECTION 4. (1) No person shall perform any act which constitutes air commerce, unless that act is authorized by a valid and effective certificate of public convenience and necessity issued by the commissioner or the act is otherwise authorized by the commissioner's rule or order.

(2) Each separate act in violation of this section is a separate violation, whether the prohibited acts occur within the same or different days or relate to the same or different aircraft.

SECTION 5. A person who desires to obtain a certificate of public convenience and necessity to perform an act of air commerce shall make application therefor in such form as the commissioner prescribes. The application shall contain such information as the commissioner may require.

SECTION 6. Every person applying for a certificate of public convenience and necessity to perform an act of air commerce shall pay to the commissioner with his application a fee of \$150. A like fee shall accompany an application for transfer of such certificates. The fees collected under this section are not refundable.

SECTION 7. Notwithstanding any other provision of sections 1 to 13 of this Act, the commissioner shall issue a certificate of public convenience and necessity to any air carrier for the points in this state between which it was actually operating in good faith and doing business as of January 1, 1973, and continuously thereafter, if application therefor has been filed with the commissioner on or before January 1, 1974. The air carrier may continue such operation until its application is either granted or denied by the commissioner.

SECTION 8. The commissioner may exempt any air carrier from the certificate requirements of section 4 of this Act if he finds that such requirements are contrary to the public interest or would impose an undue burden upon the carrier or a community or area because of the immediate need for service. Such need may include, but is not limited to, conditions of national emergency, national disaster or cessation of existing service by another carrier, except for cessation of service caused by a labor dispute. Exemptions issued pursuant to this section may be issued for a maximum period of 90 days and may be renewed for the same or for a lesser period.

SECTION 9. The commissioner shall award certificates of public convenience and necessity whenever the public convenience and necessity require, taking into consideration the business experience of the applicant, the applicant's financial ability and insurance coverage, the type of aircraft the applicant would employ, the proposed routes and minimum schedules to be established, whether the carrier could economically and adequately serve the communities involved, the need for service and any other factors which may affect the public interest. Such certificates may be awarded subject to whatever terms and conditions the commissioner prescribes.

SECTION 10. The commissioner may suspend or revoke any of the rights conferred by a certificate of public convenience and necessity after notice and opportunity for hearing only upon a finding that the holder:

- (1) Has abandoned such rights,
- (2) Is no longer willing or able to perform all or part of the certificated services,
- (3) Has violated any provision of section 4, 11 or 12 of this Act or any rule, regulation or order of the commissioner, or
- (4) Has violated any federal or state aircraft or air commerce safety law or regulation.

SECTION 11. (1) It is unlawful, unless authorized by order of the commissioner as provided in this section:

- (a) For two or more air carriers, or for any air carrier and any other common carrier to consolidate or merge their properties or any part thereof into one person for the ownership, management or operation of the properties theretofore in separate ownerships,
- (b) For any air carrier or any person controlling an air carrier or any

other common carrier to purchase, lease, or contract to operate the properties, or a substantial part thereof, of any air carrier, or

(c) For any air carrier or any person controlling an air carrier or any other common carrier to acquire control of any air carrier in any manner whatsoever.

(2) The commissioner may by order authorize such consolidation, merger, purchase, lease, operating control or acquisition of control upon such terms and conditions as he shall deem to be in the public interest.

SECTION 12. No air carrier shall discontinue any certificated service without authority of the commissioner, unless such service is unprofitable. Except as otherwise may be provided in the certificate awarded by the commissioner, unprofitable services may be discontinued 90 days after the carrier gives notice to the commissioner, and to such other persons as the commissioner may require, unless within such 90-day period the commissioner finds that such services are not unprofitable and orders their continuance.

SECTION 13. Violation of any provision of section 4, 11 or 12 of this Act is punishable, upon conviction, by a fine of not more than \$1,000 for each such violation.

Section 14. ORS 756.010 is amended to read:

756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764, [and] 767 and sections 1 to 13 of this 1973 Act, 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) "Rate" means any fare, charge, joint rate, schedule or groups of rates or other remuneration or compensation for service.
- (9) "Service" is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served.
- (10) "Air carrier" has the meaning given that term in section 1 of this 1973 Act.

Section 14a. If Senate Bill 324 (1973) becomes law, on the effective date of chapter —, Oregon Laws 1973 (Enrolled Senate Bill 324), section 14 of this Act is repealed and ORS 756.010, as amended by section 5, chapter —, Oregon Laws 1973 (Enrolled Senate Bill 324), is amended to read:

756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764 and 767 and sections 1 to 13 of this 1973 Act, except as otherwise specifically provided or unless the context requires otherwise:

- (1) "Commission" means the Public Service Commission of Oregon.
- (2) "Commissioner" means a member of the Public Service Commission of Oregon.
- (3) "Customer" includes the patrons, passengers, shippers, subscribers, users of the service and consumers of the product of a railroad, motor carrier or public utility.
- (4) "Motor carrier" has the meaning given that term in ORS 767.005.

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

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

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

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

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

(10) "Service" is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served.

(11) "Air carrier" has the meaning given that term in section 1 of this 1973 Act.

Section 15. ORS 756.040 is amended to read:

756.040. (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.

Section 16. ORS 756.060 is amended to read:

756.060. 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.

Section 17. ORS 756.062 is amended to read:

756.062. (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.

Section 18. ORS 756.064 is amended to read:

756.064. (1) The commissioner shall report to the Governor annually on the administration of the office of the commissioner during the preceding year relating to the operation of the public utility, railroad, air

carrier and motor carrier systems within this state. The commissioner shall make such additional reports as the Governor or the Legislative Assembly may direct.

(2) The reports required by subsection (1) of this section shall be in such form and contain such information and recommendations as the commissioner determines appropriate, and shall contain such other information as the Governor and the Legislative Assembly may require.

Section 19. ORS 756.070 is amended to read:

756.070. 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.

Section 20. ORS 756.075 is amended to read:

756.075. (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 chapters 756, 757, 758, 760, 761, 763, 764, [or] 767 or sections 1 to 13 of this 1973 Act 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.

Section 21. ORS 756.090 is amended to read:

756.090. (1) The commissioner may require by rule, or by order or subpoena 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.

Section 22. ORS 756.105 is amended to read:

756.105. (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, [and] 767 and sections 1 to 13 of this 1973 Act, 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.

Section 23. ORS 756.115 is amended to read:

756.115. 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.

Section 24. ORS 756.160 is amended to read:

756.160. (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, [railroad] 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.

Section 25. ORS 756.180, as amended by section 5, chapter —, Oregon Laws 1973 (Enrolled House Bill 2128), is amended to read:

756.180. (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.

Section 26. ORS 756.185 is amended to read:

756.185. (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, [or] 767 or sections 1 to 13 of this 1973 Act 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's fee, to be fixed by the court in every case of recovery. Such attorney's fee 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.

Section 27. ORS 756.200 is amended to read:

756.200. (1) The remedies and enforcement procedures provided in ORS chapters 756, 757, 758, 760, 761, 763, 764, [and] 767 and sections 1 to 13 of this 1973 Act 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, [and] 767 and sections 1 to 13 of this 1973 Act are cumulative thereto.

Section 28. ORS 756.360 is amended to read:

756.360. All fees, fines, penalties and other moneys collected by the commissioner under ORS 756.310, 756.320, 756.350, 758.015 and 758.400 to 758.475 and section 6 of this 1973 Act 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.

(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.

Section 29. ORS 756.515 is amended to read:

756.515. (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) However, 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.

Section 30. ORS 756.568 is amended to read:

756.568. 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.

Section 31. ORS 756.572 is amended to read:

756.572. (1) An order of the commissioner issued in accordance with the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, [and] 767 and sections 1 to 13 of this 1973 Act 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.

Section 32. ORS 756.575 is amended to read:

756.575. 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.

Section 33. ORS 756.990, as amended by section 4, chapter —, Oregon Laws 1973 (Enrolled House Bill 2128), is amended to read:

756.990. (1) Any public utility, railroad, air carrier or motor carrier that fails to comply with an order or subpoena 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) Any public utility, railroad, air carrier, motor carrier or any other person subject to the jurisdiction of the commissioner that 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 a sum of not less than \$100 nor more than \$10,000 for each such offense.

(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 his 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 commissioner, 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) All penalties, fines or forfeitures or other sums collected or paid under the provisions of any law administered by the commissioner shall be paid into the General Fund except where it is provided that the same shall be paid to the aggrieved party.

SECTION 34. In addition to and not in lieu of any other appropriations or moneys made available by law or from other sources, there is appropriated to the Public Utility Commissioner, for the biennium beginning July 1, 1973, out of the General Fund, the sum of \$50,000. Such

moneys may be used only for paying the expenses of the Public Utility Commissioner in carrying out the duties, functions and powers imposed upon him by law regarding the regulation of air carriers and air commerce.

SECTION 35. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect on its passage.



ENROLLED
ENG. RE-ENGROSSED

Senate Bill 240

~~Ordered by the House June 23.~~
~~(Including Amendments by Senate March 14 and April 9 and~~
~~by House Committee on State and Federal Affairs June 15)~~

Sponsored by Senators NEWBRY, J. BURNS ~~(at the~~
~~request of the Public Utility Commissioner of Oregon)~~

CHAPTER

SUMMARY

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

Confers [*jurisdiction*] **authority** on Public Utility Commissioner to regulate intrastate air commerce. Requires certificates of public convenience and necessity to engage in intrastate air commerce. **Provides for certain exemptions.** Specifies application and transfer fees for such certificates and provides that such fees are not refundable. Permits Public Utility Commissioner to establish rates and routes for air carriers **and to require air carriers to procure and maintain insurance and performance bonds.** Prohibits certain acts by air carriers. Provides penalties. **Makes other provisions.**

Appropriates \$50,000 from General Fund to Public Utility Commissioner, for biennium beginning July 1, 1973, to finance administration of this Act.

Declares emergency.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION.**

~~A BILL FOR AN ACT~~

2 Relating to regulation of air commerce; creating new provisions; amend-
3 ing ORS 756.010, 756.040, 756.060, 756.062, 756.064, 756.070, 756.075,
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9 requires otherwise:

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14 commerce" does not include transportation performed solely in connection
15 with:

- 16 (a) Transportation of U.S. mail,
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- 21 (f) Air taxi or charter services,
- 22 (g) Aerial logging operations, or
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25 Federal Aviation Act of 1958 as amended.

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30 and healthy network of air transportation may be established to the bene-
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- 2 (2) Require any air carrier to procure and maintain insurance and
3 performance bonds in any amount; and
- 4 (3) Authorize such through routes, joint rates and divisions of revenue
5 for persons engaged in air commerce as he determines to be in the public
6 interest.

7 **SECTION 4.** (1) No person shall perform any act which constitutes
8 air commerce, unless that act is authorized by a valid and effective cer-
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10 or the act is otherwise authorized by the commissioner's rule or order.

11 (2) Each separate act in violation of this section is a separate violation,
12 whether the prohibited acts occur within the same or different days or
13 relate to the same or different aircraft.

14 **SECTION 5.** A person who desires to obtain a certificate of public
15 convenience and necessity to perform an act of air commerce shall make
16 application therefor in such form as the commissioner prescribes. The
17 application shall contain such information as the commissioner may
18 require.

19 **SECTION 6.** Every person applying for a certificate of public con-
20 venience and necessity to perform an act of air commerce shall pay to
21 the commissioner with his application a fee of \$150. A like fee shall
22 accompany an application for transfer of such certificates. The fees col-
23 lected under this section are not refundable.

24 **SECTION 7.** Notwithstanding any other provision of sections 1 to 13
25 of this Act, the commissioner shall issue a certificate of public con-
26 venience and necessity to any air carrier for the points in this state be-
27 tween which it was actually operating in good faith and doing business as
28 of January 1, 1973, and continuously thereafter, if application therefor
29 has been filed with the commissioner on or before January 1, 1974. The
30 air carrier may continue such operation until its application is either
31 granted or denied by the commissioner.

32 **SECTION 8.** The commissioner may exempt any air carrier from the
33 certificate requirements of section 4 of this Act if he finds that such
34 requirements are contrary to the public interest or would impose an

1 undue burden upon the carrier or a community or area because of the
2 immediate need for service. Such need may include, but is not limited
3 to, conditions of national emergency, national disaster or cessation of
4 existing service by another carrier, except for cessation of service caused
5 by a labor dispute. Exemptions issued pursuant to this section may be issued
6 for a maximum period of 90 days and may be renewed for the same or
7 for a lesser period.

8 **SECTION 9.** The commissioner shall award certificates of public con-
9 venience and necessity whenever the public convenience and necessity
10 require, taking into consideration the business experience of the applicant,
11 the applicant's financial ability and insurance coverage, the type of aircraft
12 the applicant would employ, the proposed routes and minimum schedules
13 to be established, whether the carrier could economically and adequately
14 serve the communities involved, the need for service and any other fac-
15 tors which may affect the public interest. Such certificates may be award-
16 ed subject to whatever terms and conditions the commissioner prescribes.

17 **SECTION 10.** The commissioner may suspend or revoke any of the
18 rights conferred by a certificate of public convenience and necessity after
19 notice and opportunity for hearing only upon a finding that the holder:

- 20 (1) Has abandoned such rights,
- 21 (2) Is no longer willing or able to perform all or part of the certifi-
22 cated services,
- 23 (3) Has violated any provision of section 4, 11 or 12 of this Act or
24 any rule, regulation or order of the commissioner, or
- 25 (4) Has violated any federal or state aircraft or air commerce safety
26 law or regulation.

27 **SECTION 11.** (1) It is unlawful, unless authorized by order of the
28 commissioner as provided in this section:

- 29 (a) For two or more air carriers, or for any air carrier and any other
30 common carrier to consolidate or merge their properties or any part there-
31 of into one person for the ownership, management or operation of the
32 properties theretofore in separate ownerships,

1 (b) For any air carrier or any person controlling an air carrier or any
2 other common carrier to purchase, lease, or contract to operate the prop-
3 erties, or a substantial part thereof, of any air carrier, or

4 (c) For any air carrier or any person controlling an air carrier or any
5 other common carrier to acquire control of any air carrier in any manner
6 whatsoever.

7 (2) The commissioner may by order authorize such consolidation, mer-
8 ger, purchase, lease, operating control or acquisition of control upon such
9 terms and conditions as he shall deem to be in the public interest.

10 **SECTION 12.** No air carrier shall discontinue any certificated service
11 without authority of the commissioner, unless such service is unprofitable.
12 Except as otherwise may be provided in the certificate awarded by the
13 commissioner, unprofitable services may be discontinued 90 days after
14 the carrier gives notice to the commissioner, and to such other persons
15 as the commissioner may require, unless within such 90-day period the
16 commissioner finds that such services are not unprofitable and orders
17 their continuance.

18 **SECTION 13.** Violation of any provision of section 4, 11 or 12 of this
19 Act is punishable, upon conviction, by a fine of not more than \$1,000 for
20 each such violation.

21 Section 14. ORS 756.010 is amended to read:
22 756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764, [and]
23 767 and sections 1 to 13 of this 1973 Act, except as otherwise specifically
24 provided or unless the context requires otherwise:

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

26 (2) "Customer" includes the patrons, passengers, shippers, subscribers,
27 users of the service and consumers of the product of a railroad, motor car-
28 rier or public utility.

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

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

32 (5) "Person" includes individuals, joint ventures, partnerships, cor-
33 porations and associations or their officers, employes, agents, lessees, as-
34 signees, trustees or receivers.

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

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

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

5 (9) "Service" is used in its broadest and most inclusive sense and in-
6 cludes equipment and facilities related to providing the service or the
7 product served.

8 (10) "Air carrier" has the meaning given that term in section 1 of this
9 1973 Act.

10 Section 14a. If Senate Bill 324 (1973) becomes law, on the effective
11 date of chapter —, Oregon Laws 1973 (Enrolled Senate Bill 324), section
12 14 of this Act is repealed and ORS 756.010, as amended by section 5,
13 chapter —, Oregon Laws 1973 (Enrolled Senate Bill 324), is amended to
14 read:

15 756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764 and
16 767 and sections 1 to 13 of this 1973 Act, except as otherwise specifically
17 provided or unless the context requires otherwise:

18 (1) "Commission" means the Public Service Commission of Oregon.

19 (2) "Commissioner" means a member of the Public Service Commission
20 of Oregon.

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

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

25 (5) "Municipality" means any city, municipal corporation or quasi-
26 municipal corporation.

27 (6) "Person" includes individuals, joint ventures, partnerships, corpora-
28 tions and associations or their officers, employes, agents, lessees, assignees,
29 trustees or receivers.

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

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

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

34 (10) "Service" is used in its broadest and most inclusive sense and

1 includes equipment and facilities related to providing the service or the
2 product served.

3 (11) "Air carrier" has the meaning given that term in section 1 of
4 this 1973 Act.

5 Section 15. ORS 756.040 is amended to read:

6 756.040. (1) In addition to the powers and duties now or hereafter
7 transferred to or vested in the commissioner, he shall represent the custom-
8 ers of any public utility, railroad, air carrier or motor carrier, and the pub-
9 lic generally in all controversies respecting rates, valuations, service and all
10 matters of which he has jurisdiction. In respect thereof he shall make use of
11 the jurisdiction and powers of his office to protect such customers, and the
12 public generally, from unjust and unreasonable exactions and practices
13 and to obtain for them adequate service at fair and reasonable rates.

14 (2) The commissioner is vested with power and jurisdiction to super-
15 vise and regulate every public utility, railroad, air carrier and motor carrier
16 in this state, and to do all things necessary and convenient in the exercise of
17 such power and jurisdiction.

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

23 (4) The commissioner may make joint investigations, hold joint hear-
24 ings within or without this state and issue concurrent orders in conjunc-
25 tion or concurrence with any official, board, commission or agency of any
26 state or of the United States.

27 Section 16. ORS 756.060 is amended to read:

28 756.060. The commissioner ^{may} adopt and amend reasonable and proper
29 rules and regulations relative to all statutes administered by him and
30 may adopt and publish reasonable and proper rules to govern his pro-
31 ceedings and to regulate the mode and manner of all investigations and
32 hearings of public utilities, railroads, air carriers, motor carriers and other
33 parties before him.

1 Section 17. ORS 756.062 is amended to read:

2 756.062. (1) A substantial compliance with the requirements of the
3 laws administered by the commissioner is sufficient to give effect to all
4 the rules, orders, acts and regulations of the commissioner and they shall
5 not be declared inoperative, illegal or void for any omission of a technical
6 nature in respect thereto.

7 (2) The provisions of such laws shall be liberally construed with a
8 view to the public welfare, efficient facilities and substantial justice be-
9 tween customers and public utilities, railroads, air carriers and motor
10 carriers.

11 Section 18. ORS 756.064 is amended to read:

12 756.064. (1) The commissioner shall report to the Governor annually
13 on the administration of the office of the commissioner during the pre-
14 ceding year relating to the operation of the public utility, railroad, air
15 carrier and motor carrier systems within this state. The commissioner
16 shall make such additional reports as the Governor or the Legislative
17 Assembly may direct.

18 (2) The reports required by subsection (1) of this section shall be
19 in such form and contain such information and recommendations as the
20 commissioner determines appropriate, and shall contain such other informa-
21 tion as the Governor and the Legislative Assembly may require.

22 Section 19. ORS 756.070 is amended to read:

23 756.070. The commissioner may inquire into the management of the
24 business of all public utilities, air carriers, motor carriers and railroads, and
25 shall keep informed as to the manner and method in which they are con-
26 ducted and has the right to obtain from any public utility, air carrier, motor
27 carrier or railroad all necessary information to enable him to perform his
28 duties.

29 Section 20. ORS 756.075 is amended to read:

30 756.075. (1) The commissioner or his authorized representatives may
31 enter upon any premises, or any equipment, rolling stock or facilities op-
32 erated or occupied by any public utility, railroad, air carrier or motor
33 carrier for the purpose of making any inspection, examination or test
34 reasonably required in the administration of ORS chapters 756, 757, 758,

1 760, 761, 763, 764, [or] 767 or sections 1 to 13 of this 1973 Act and to set
2 up and use on such premises equipment, rolling stock or facilities any
3 apparatus and appliances and occupy reasonable space therefor.

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

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

14 (4) Nothing in this section authorizes the commissioner to use any in-
15 formation developed thereunder for any purpose inconsistent with any
16 statute administered by him or to make a disclosure thereof for other than
17 regulatory purposes.

18 Section 21. ORS 756.090 is amended to read:

19 756.090. (1) The commissioner may require by rule, or by order or sub-
20 pena to be served on any public utility, railroad, air carrier or motor
21 carrier, the maintaining within this state or the production within this state
22 at such time and place as he may designate, of any books, accounts, papers
23 or records kept by such public utility, railroad, air carrier or motor carrier
24 in any office or place within or without this state, or verified copies in lieu
25 thereof, if the commissioner so orders, in order that an examination there-
26 of may be made by the commissioner or under his direction.

27 (2) When a public utility, railroad, air carrier or motor carrier keeps
28 and maintains its books, accounts, papers or records outside the state, the
29 commissioner may examine such documents and shall be reimbursed by the
30 public utility, railroad, air carrier or motor carrier for all expenses in-
31 curred in making such out-of-state examination.

32 Section 22. ORS 756.105 is amended to read:

33 756.105. (1) Every public utility, railroad, air carrier and motor carrier
34 shall furnish to the commissioner all information required by him to carry

1 into effect the ~~provision~~ of ORS chapters 756, 757, 758, 760, 761, 763, 764,
2 [and] 767 and sections 1 to 13 of this 1973 Act, and shall make specific
3 answers to all questions submitted by the commissioner.

4 (2) If a public utility, railroad, air carrier or motor carrier is unable to
5 furnish any information required under subsection (1) of this section for
6 any reason beyond its control, it is a good and sufficient reason for such
7 failure. The answer or information shall be verified under oath and returned
8 to the commissioner at his office within the period fixed by the commis-
9 sioner.

10 Section 23. ORS 756.115 is amended to read:

11 756.115. No officer, agent or employe of any public utility, railroad,
12 air carrier or motor carrier shall:

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

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

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

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

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

25 (6) Refuse to do any act or thing in connection with such system of
26 accounting when so directed by the commissioner or his authorized repre-
27 sentative.

28 Section 24. ORS 756.160 is amended to read:

29 756.160. (1) The commissioner shall inquire into any neglect or viola-
30 tion of any law of this state or any law or ordinance of any municipality
31 thereof relating to public utilities, [railroad] railroads, air carriers or
32 motor carriers by any public utility, railroad, air carrier or motor carrier
33 doing business therein, its officers, agents or employes, and shall enforce
34 all laws of this state relating to public utilities, railroads, air carriers and

1 motor carriers and may enforce all such laws and ordinances of a municipal-
2 ity. The commissioner shall report all violations of any such laws or
3 ordinances to the Attorney General.

4 (2) The Attorney General, district attorney of each county, and all
5 state, county and city police officers shall assist the commissioner in the
6 administration and enforcement of all laws administered by the commis-
7 sioner, and they, as well as his assistants and employes, shall inform
8 against and diligently prosecute all persons whom they have reasonable
9 cause to believe guilty of violation of any such laws or of the rules, regu-
10 lations, orders, decisions or requirements of the commissioner made pur-
11 suant thereto.

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

17 (4) Any forfeiture or penalty provided for in any law administered
18 by the commissioner shall be recovered by an action brought thereon in
19 the name of the State of Oregon in any court of appropriate jurisdiction.

20 Section 25. ORS 756.180, as amended by section 5, chapter —, Oregon
21 Laws 1973 (Enrolled House Bill 2128), is amended to read:

22 756.180. (1) Whenever it appears to the commissioner that any public
23 utility, railroad, **air carrier**, motor carrier or any other person subject to
24 the jurisdiction of the commissioner is engaged or about to engage in
25 any acts or practices which constitute a violation of any statute admin-
26 istered by the commissioner, or any rule, regulation, requirement, order,
27 term or condition issued thereunder, he may apply to any circuit court of
28 the state where such public utility, railroad, **air carrier**, motor carrier or
29 any other person subject to the jurisdiction of the commissioner operates
30 for the enforcement of such statute, rule, regulation, requirement, order,
31 term or condition.

32 (2) Such court, without bond, has jurisdiction to enforce obedience
33 thereto by injunction, or by other processes, mandatory or otherwise, re-
34 straining such public utility, railroad, **air carrier**, motor carrier or any

1 other person subject to the jurisdiction of the commissioner, or its officers,
2 agents, employes and representatives from further violations of such statute,
3 rule, regulation, requirement, order, term or condition, and enjoining upon
4 them obedience thereto.

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

8 Section 26. ORS 756.185 is amended to read:

9 756.185. (1) Any public utility, railroad, air carrier or motor carrier,
10 does, or causes or permits to be done, any matter, act or thing prohibited
11 ~~which does, or causes or permits to be done, any matter, act or thing pro-~~
12 ~~hibited~~ by ORS chapter 756, 757, 758, 760, 761, 763, 764, [or] 767 or sections
13 1 to 13 of this 1973 Act or omits to do any act, matter or thing required to be
14 done by such statutes, is liable to the person injured thereby in treble the
15 amount of damages sustained in consequence of such violation together
16 with a reasonable counsel's or attorney's fee, to be fixed by the court in
17 every case of recovery. Such attorney's fee shall be taxed and collected
18 as part of the costs in the case.

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

21 (3) This section does not apply with respect to the liability of any
22 public utility, railroad, air carrier or motor carrier for personal injury or
23 property damage.

24 Section 27. ORS 756.200 is amended to read:

25 756.200. (1) The remedies and enforcement procedures provided in
26 ORS chapters 756, 757, 758, 760, 761, 763, 764, [and] 767 and sections 1 to 13
27 of this 1973 Act do not release or waive any right of action by the state or
28 by any person for any right, penalty or forfeiture which may arise under
29 any law of this state or under an ~~ordinance~~ ordinance of any municipality thereof.

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

33 (3) The duties and liabilities of the public utilities, railroads, air car-
34 riers and motor carriers shall be the same as are prescribed by the common

1 law, and the remedies against them the same, except where otherwise pro-
2 vided by the Constitution or statutes of this state, and the provisions of
3 ORS chapters 756, 757, 758, 760, 761, 763, 764, [and] 767 and sections 1 to 13
4 of this 1973 Act are cumulative thereto.

5 Section 28. ORS 756.360 is amended to read:

6 756.360. All fees, fines, penalties and other moneys collected by the
7 commissioner under ORS 756.310, 756.320, 756.350, 758.015 and 758.400 to
8 758.475 and section 6 of this 1973 Act shall be paid by the commissioner
9 into the State Treasury within 30 days after the collection thereof, and shall
10 be placed by the State Treasurer to the credit of the Public Utility Commis-
11 sioner Account and the fees, fines, penalties and other moneys collected
12 from:
13

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

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

20 (3) Air carriers shall be used only for the purpose of paying the ex-
21 penses of the commissioner in performing the duties imposed by law upon
22 the commissioner in respect to air carriers.

23 Section 29. ORS 756.515 is amended to read:

24 756.515. (1) Whenever the commissioner believes that any rate may
25 be unreasonable or unjustly discriminatory, or that any service is unsafe
26 or inadequate, or is not afforded, or that an investigation of any matter
27 son should be made, or relating to any person to determine if such person is
28 relating to any public utility, railroad, air carrier, motor carrier or other per-
29 subject to the commissioner's regulatory jurisdiction, he may on his own
30 motion summarily investigate any such matter, with or without notice.

31 (2) If after making such investigation he is satisfied that sufficient
32 grounds exist to warrant a hearing being ordered upon any such matter,
33 he shall furnish any public utility, railroad, air carrier, motor carrier or
34 other person interested a statement notifying it of the matters under inves-
tigation, which statement shall be accompanied by a notice fixing the time

1 and place for hearing upon such matters in the manner provided in ORS
2 756.512 for notice of complaint.

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

8 (4) However, the commissioner may, after he has made an investiga-
9 tion on his motion, but without notice or hearing, make such findings and
10 orders as he deems justified or required by the results of such investiga-
11 tion. Except as provided in subsections (5) and (6) of this section such
12 findings and orders have the same legal force and effect as any other
13 finding or order of the commissioner.

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

21 (6) If the commissioner receives a request for hearing pursuant to
22 subsection (5) of this section, the order is suspended pending the outcome
23 of the hearing unless the commissioner finds that the order is necessary
24 for the public health or safety or to prevent the dissipation of assets of a
25 business or activity subject to the commissioner's regulatory jurisdiction.

26 Section 30. ORS 756.568 is amended to read:
27 756.568. The commissioner may at any time, upon notice to the public
28 utility, railroad, air carrier or motor carrier and after opportunity to be
29 heard as provided in ORS 756.500 to 756.610, rescind, suspend or amend
30 any order made by him. Copies of the same shall be served and take
31 effect as provided in ORS 756.558 for original orders.

32 Section 31. ORS 756.572 is amended to read:
33 756.572. (1) An order of the commissioner issued in accordance with
34 the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, [and] 767

1 and sections 1 to 13 of this 1973 Act is binding upon the successors in
2 interest of each person affected thereby, until set aside, rescinded, sus-
3 pended or modified as provided by law.

4 (2) Any investigation, hearing or other proceeding involving the issu-
5 ance of an order of the commissioner that has not been finally determined
6 when a transfer of any interests of a person is effected may be continued
7 and finally determined, notwithstanding any such transfer of interest.
8 Any order issued in such investigation, hearing or other proceeding is bind-
9 ing upon the successors in interest.

10 Section 32. ORS 756.575 is amended to read:

11 756.575. The commissioner may provide by rule that any public utility,
12 railroad, air carrier or motor carrier affected by any order shall within a
13 time to be fixed by the commissioner, notify the commissioner whether
14 the terms of the order are accepted and will be obeyed.

15 Section 33. ORS 756.990, as amended by section 4, chapter —, Oregon
16 Laws 1973 (Enrolled House Bill 2128), is amended to read:

17 756.990. (1) Any public utility, railroad, air carrier or motor carrier that
18 fails to comply with an order or subpoena issued pursuant to ORS 756.090
19 shall forfeit, for each day it so fails, a sum of not less than \$50 nor more
20 than \$500.

21 (2) Any public utility, railroad, air carrier, motor carrier or any other
22 person subject to the jurisdiction of the commissioner that violates any
23 statute administered by the commissioner, or does any act prohibited, or
24 fails to perform any duty enjoined upon it, for which a penalty has not
25 been provided, or fails to obey any lawful requirement or order made by
26 the commissioner, or any judgment or decree made by any court upon
27 the application of the commissioner, shall forfeit a sum of not less than
28 \$100 nor more than \$10,000 for each such offense.

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

PROV. 1973
AUG 25
AG
W. J. Burns

RE-ENGROSSED

Senate Bill 240

Ordered by the Senate April 9
(Including Amendments by Senate March 14 and April 9)

House June 23
Committee on Public Utilities (June 23)

Sponsored by Senators NEWBRY, J. BURNS (at the request of the Public Utility Commissioner of Oregon)

SUMMARY

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

Review

Confers jurisdiction on Public Utility Commissioner to regulate intrastate air commerce. Requires certificate of public convenience and necessity to engage in intrastate air commerce. **Specifies application and transfer fees for such certificates and provides that such fees are not refundable.** Permits Public Utility Commissioner to establish rates and routes for air carriers. Prohibits certain acts by air carriers. Provides penalties.

certificates

Appropriates [*\$92,000*] **\$50,000** from General Fund to Public Utility Commissioner, for biennium beginning July 1, 1973, to finance administration of this Act.

Declares emergency. [*Takes effect July 1, 1973.*]

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with SECTION.

1 A BILL FOR AN ACT

2 Relating to regulation of air commerce; creating new provisions; amend-
3 ing ORS 756.010, 756.040, ^{756.060, 756.062, 756.064,} 756.070, 756.075, 756.090, 756.105, 756.115,
4 756.160, 756.180, 756.185, 756.200, ^{756.360, 756.528,} 756.515, ^{756.575} 756.572 and 756.990; appropriat-
5 ing money; providing penalties; and declaring an emergency.

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

7 ~~SECTION 1. Unless the context otherwise requires, the definitions in~~
8 ~~this section and ORS 756.010 shall govern the construction of this Act.~~
Section 1. AS used in sections 1 to 13 of this Act, unless the context requires otherwise:

9 (1) "Aircraft" means any contrivance ~~now or hereafter invented~~ used
10 or designed for navigation of or flight in the air.

11 (2) "Air commerce" means all transportation by aircraft of persons or
12 property for compensation between points in this state, ^{However,} but "air commerce"
13 does not include transportation performed solely in connection with:

- 14 (a) Transportation of U.S. mail,
- 15 (b) Instruction, ^{in the operation of aircraft}
- 16 (c) Aerial application of agricultural chemicals,
- 17 (d) Air ambulance services,
- 18 (e) Aerial fire-fighting services,
- 19 (f) Air taxi or charter services,
- 20 (g) Aerial logging operations, or
- 21 (h) Transportation authorized by a certificate of public convenience
22 and necessity issued prior to January 1, 1973, pursuant to section 401 of the
23 Federal Aviation Act of 1958 as amended.

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

26 **SECTION 2.** The purpose of ~~this chapter~~ ^{sections 1 to 13 of this Act} is to provide regulation of
27 air commerce in order that an orderly, efficient, economical and healthy
28 network of air transportation may be established to the benefit of the
29 people of this state, ~~its communities, and the state itself.~~

30 ~~SECTION 3. The commissioner is vested with authority and respon-~~
31 ~~sibility to regulate air commerce and air carriers. He shall administer this~~
32 ~~chapter in accordance with its stated purposes.~~

33 ~~SECTION 4. The State of Oregon recognizes the powers of the Federal~~

~~Section 3.~~

1 ~~Government over air carriers and air commerce.~~ Within the limits of
2 powers reserved to the state:

for the regulation of air carriers and air commerce, the commissioner may

3 (1) ~~The commissioner shall~~ fix reasonable rates and routes of air car-
4 riers;

5 ~~(2) The commissioner may:~~

6 (a) ⁽²⁾ Require any air carrier to procure and maintain insurance and per-
7 formance bonds in any amount; and

8 (b) ⁽²⁾ Authorize such through routes, joint rates and divisions of revenue
9 for persons engaged in air commerce as he determines to be in the public
10 interest; and

11 ~~(c) Exercise any power expressly or impliedly conferred by this Act~~
12 ~~and ORS chapter 756.~~

Change to #

13 Section 4. (1) No person shall perform any act which
14 constitutes air commerce, unless that act is authorized by a
15 valid and effective certificate of public convenience and
16 necessity issued by the commissioner or the act is otherwise

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① Section 4. (1) No person shall perform any act which constitutes air commerce, unless that act is authorized by a valid and effective certificate of public convenience and necessity issued by the commissioner or the act is otherwise authorized by the commissioner's rule or order.

② (2) Each separate act in violation of this section is a separate violation, whether the prohibited acts occur within the same or different days or relate to the same or different aircraft.

② Section 5. A person who desires to obtain a certificate of public convenience and necessity to perform an act of air commerce shall make application therefor in such form as the commissioner prescribes. The application shall contain such information as the commissioner may require.

② Section 6. Every person applying for a certificate of public convenience and necessity to perform an act of air commerce shall pay to the commissioner with his application a fee of \$150. A like fee shall accompany an application for transfer of such certificates. The fees collected under this section are not refundable.

② Section 7. Notwithstanding any other provision of sections 1 to 13 of this Act, the commissioner shall issue a certificate of public convenience and necessity to any air carrier for the points in this state between which it was actually operating in good faith and doing business as of January 1, 1973, and continuously thereafter, if application therefor has been filed with the commissioner on or before January 1, 1974. The air carrier may continue such operation until its application is either granted or denied by the commissioner.

② Section 8. The commissioner may exempt any air carrier from the certificate requirements of section 4 of this Act if he finds that such requirements are contrary to the public interest or would impose an undue burden upon the carrier or a community or area because of the immediate need for service. Such need may include, but is not limited to, conditions of national emergency, national disaster or cessation of existing service by another carrier, except for cessation of service caused by a labor dispute. Exemptions issued pursuant to this section may be issued for a maximum period of 90 days and may be renewed for the same or for a lesser period.

Delete

1 ~~(2) Each separate act in violation of this section is a separate viola-~~
2 ~~tion, whether the prohibited acts occur within the same or different days~~
3 ~~or relate to the same or different aircraft.~~

4 **SECTION 8.** (1) It is unlawful, unless authorized by order of the
5 commissioner as provided in this section:

6 (a) For two or more air carriers, or for any air carrier and any other
7 common carrier to consolidate or merge their properties or any part there-
8 of into one person for the ownership, management or operation of the
9 properties theretofore in separate ownerships,

10 (b) For any air carrier or any person controlling an air carrier or any
11 other common carrier to purchase, lease, or contract to operate the prop-
12 erties, or a substantial part thereof, of any air carrier, or

13 (c) For any air carrier or any person controlling an air carrier or any
14 other common carrier to acquire control of any air carrier in any manner
15 whatsoever.

16 (2) The commissioner may by order authorize such consolidation, mer-
17 ger, purchase, lease, operating control or acquisition of control upon such
18 terms and conditions as he shall deem to be in the public interest. ~~The~~
19 ~~commissioner shall determine whether a hearing is required under this~~
20 ~~section.~~

21 **SECTION 9.** No air carrier shall discontinue any certificated service
22 without authority of the commissioner, unless such service is unprofitable,
23 *except as otherwise may be provided in the certificate issued by the commissioner,*
24 ~~unprofitable services may be discontinued upon 90 days~~ notice to the
25 commissioner, and to such other persons as the commissioner may require,
26 unless within such 90-day period the commissioner finds that such serv-
27 ices are not unprofitable and orders their continuance.

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27 ~~**SECTION 10.** The commissioner may, following a determination of~~
28 ~~necessity, exempt any air carrier from the certificate provisions of this~~
29 ~~Act upon a finding that such provisions impose an undue burden upon~~
30 ~~the carrier, a community or area because of the immediate need for serv-~~
31 ~~ice including, but not limited to, conditions of national emergency, na-~~
32 ~~tional disaster or cessation of existing service by another carrier, except~~
33 ~~the cessation of existing service caused by a labor dispute, and that enforce-~~
34 ~~ment of such provisions would be contrary to the public interest. Exemp-~~

~~tions issued pursuant to this section may be issued for a maximum of 90~~
2 days and may be renewed for the same or a lesser period.

3 **SECTION 11.** (1) To the extent necessary to prevent overlap or con-
4 flict between provisions of this Act and those of any other statute, the
5 provisions of this Act shall exclusively prevail unless subsection (2) of this
6 section applies.

7 (2) The commissioner may by rule exempt any activity from any or
8 all of the requirements of this Act if the commissioner is satisfied that
9 such exemption would not be contrary to the public interest.

10 **SECTION 11a.** Every person applying for a certificate under section 5
11 of this Act shall pay to the commissioner with his application a fee of
12 \$150. A like fee shall accompany an application for transfer of such cer-
13 tificates. The fees collected under this section are not refundable.

14 **SECTION 12.** (1) In addition to all other penalties provided by law,
15 every person who violates or who procures, aids or abets in the violation
16 of this Act or any order, rule, regulation or decision of the commissioner
17 relating to air commerce shall incur a penalty of \$1,000 for every such
18 violation.

19 (2) Each such violation shall be a separate offense and in case of a
20 continuing violation every day's continuance is a separate violation. Every
21 act of commission or omission which procures, aids or abets the violation
22 is a violation under this section and subject to the penalty provided in
23 this section.

24 (3) Such penalty shall not be imposed except by order following com-
25 plaint as provided in ORS 756.500 to 756.610. Such proceeding may only
26 be commenced within two years following the date of the violation.

27 (4) The commissioner may negotiate any settlement or mitigate any
28 penalty provided for in this section on such terms as he considers proper.

29 (5) If the amount of such penalty is not paid to the commissioner, the
30 Attorney General shall bring an action in the name of the State of Oregon
31 in the Circuit Court of Marion County to recover such penalty. The action
32 shall not be commenced until after the time has expired for an appeal
33 from the findings, conclusions and order of the commissioner. In all such

~~1 actions the procedure and rules of evidence shall be the same as an ordi-
2 nary civil action except as otherwise provided in this Act.~~

3 **SECTION 13.** (1) To finance the administration of this Act and sub-
4 section (3) of ORS 756.040 there is appropriated from the General Fund
5 \$50,000 to the Public Utility Commissioner for the biennium beginning
6 July 1, 1973.

7 (2) Funds generated under this section shall be used only in the ad-
8 ministration of this chapter and subsection (3) of ORS 756.040 as it re-
9 lates to matters affecting air transportation.

10 **SECTION 14.** Notwithstanding any other provision in this Act, the
11 commissioner shall issue a certificate of public convenience and necessity
12 to any air carrier as to the points in this state between which it was
13 actually operating in good faith and doing business as of January 1, 1973,
14 and continuously thereafter, with or without hearing, provided application
15 therefor shall have been filed with the commissioner on or before January
16 1, 1974. The air carrier may continue such operation until its application
17 ~~is either granted or denied by the commissioner.~~

18 ¹² ~~Section 13.~~ ¹⁴ Violation of any provision of section 4, 11
19 or 12 of this Act is punishable, upon conviction, by a fine
20 of not more than \$1,000 for each such violation.

21 context requires otherwise:

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

23 (2) "Customer" includes the patrons, passengers, shippers, subscribers,
24 users of the service and consumers of the product of a railroad, motor car-
25 rier or public utility.

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

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

29 (5) "Person" includes individuals, joint ventures, partnerships, cor-
30 porations and associations or their officers, employees, agents, lessees, as-
31 signees, trustees or receivers.

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

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

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

3 (9) "Service" is used in its broadest and most inclusive sense and in-
4 cludes equipment and facilities related to providing the service or the
5 product served.

6 (10) "Air carrier" has the meaning given that term in ^{section 1 of} this 1973 Act.

Insert 4
③ Section 14a. If Senate Bill 324 (1973) becomes law,
on the effective date of chapter ___, Oregon Laws 1973
(Enrolled Senate Bill 324), section 14 of this Act is
repealed and ORS 756.010, as amended by section 5, chapter
___, Oregon Laws 1973 (Enrolled Senate Bill 324), is amended
to read:

756.010. As used in ORS chapters 756, 757, 758, 760,
761, 763, 764 and 767 and sections 1 to 13 of this 1973 Act,
except as otherwise specifically provided or unless the con-
text requires otherwise:

✓(1) "Commission" means the Public Service Commission
of Oregon.

✓(2) "Commissioner" means a member of the Public Service
Commission of Oregon.

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

Insert 4
✓(4) "Motor carrier" has the meaning given that term in
ORS 767.005.

✓(5) "Municipality" means any city, municipal corpora-
tion or quasi-municipal corporation.

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

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

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

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

✓(10) "Service" is used in its broadest and most inclu-
sive sense and includes equipment and facilities related to
providing the service or the product served.

✓(11) "Air carrier" has the meaning given that term in
section 1 of this 1973 Act.

1 carrier or railroad all necessary information to enable him to perform his
2 duties.

3 Section ~~18~~²⁰ ORS 756.075 is amended to read:

4 756.075. (1) The commissioner or his authorized representatives may
5 enter upon any premises, or any equipment, rolling stock or facilities op-
6 erated or occupied by any public utility, railroad, ~~air~~^{carrier} or motor carrier for
7 the purpose of making any inspection, examination or test reasonably re-
8 quired in the administration of ORS chapters 756, 757, 758, 760, 761, 763,
9 764, ~~this 1973 Act~~^{or sections 1 to 13 of this 1973 Act} [or] 767 and to set up and use on such premises equip-
10 ment, rolling stock or facilities any apparatus and appliances and occupy
11 reasonable space therefor.

12 (2) The commissioner or his authorized representatives shall, upon
13 demand, have the right to inspect the books, accounts, papers, records and
14 memoranda of any public utility, railroad, ~~air~~^{carrier} or motor carrier and to ex-
15 amine under oath any officer, agent or employe of such public utility,
16 railroad, ~~air~~^{carrier} or motor carrier in relation to its business and affairs.

17 (3) Any person who on behalf of the commissioner makes demand of
18 a public utility, railroad, ~~air~~^{carrier} or motor carrier for an examination, inspec-
19 tion or test shall, upon request therefor, produce a certificate under the
20 seal of the commissioner showing his authority to make such examination,
21 inspection or test.

22 (4) Nothing in this section authorizes the commissioner to use any in-
23 formation developed thereunder for any purpose inconsistent with any
24 statute administered by him or to make a disclosure thereof for other than
25 regulatory purposes.

26 Section ~~19~~²¹ ORS 756.090 is amended to read:

27 756.090. (1) The commissioner may require by rule, or by order or sub-
28 pena to be served on any public utility, railroad, ~~air~~^{carrier} or motor carrier, the
29 maintaining within this state or the production within this state at such
30 time and place as he may designate, of any books, accounts, papers or
31 records kept by such public utility, railroad, ~~air~~^{carrier} or motor carrier in any
32 office or place within or without this state, or verified copies in lieu
33 thereof, if the commissioner so orders, in order that an examination there-
34 of may be made by the commissioner or under his direction.

1 (2) When a public utility, railroad, ~~air~~ or motor carrier keeps and
 2 maintains its books, accounts, papers or records outside the state, the com-
 3 missioner may examine such documents and shall be reimbursed by the
 4 public utility, railroad, ~~air~~ or motor carrier for all expenses incurred in
 5 making such out-of-state examination.

6 Section 20, ORS 756.105 is amended to read:

7 756.105. (1) Every public utility, railroad, ~~air~~ and motor carrier shall
 8 furnish to the commissioner all information required by him to carry into
 9 effect the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, ~~this~~
 10 ~~1973 Act~~ [and] ~~767~~, ~~and sections 1 to 13 of the 1973 Act~~ and shall make specific answers to all questions sub-
 11 mitted by the commissioner.

12 (2) If a public utility, railroad, ~~air~~ or motor carrier is unable to furnish
 13 any information required under subsection (1) of this section for any rea-
 14 son beyond its control, it is a good and sufficient reason for such failure.
 15 The answer or information shall be verified under oath and returned to
 16 the commissioner at his office within the period fixed by the commis-
 17 sioner.

18 Section 21, ORS 756.115 is amended to read:

19 756.115. No officer, agent or employe of any public utility, railroad, ~~air~~ ~~or~~
 20 or motor carrier shall:

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

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

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

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

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

33 (6) Refuse to do any act or thing in connection with such system of

1 accounting when so directed by the commissioner or his authorized repre-
2 sentative.

3 Section ²⁴~~22~~ ORS 756.160 is amended to read:

4 756.160. (1) The commissioner shall inquire into any neglect or viola-
5 tion of any law of this state or any law or ordinance of any municipality
6 thereof relating to public utilities, ^{railroad} ~~railroad~~ ^{air} ~~air~~ or motor carriers by any
7 public utility, railroad, ^{air} ~~air~~ or motor carrier doing business therein, its offi-
8 cers, agents or employes, and shall enforce all laws of this state relating
9 to public utilities, railroads, ^{air} ~~air~~ and motor carriers and may enforce all
10 such laws and ordinances of a municipality. The commissioner shall report
11 all violations of any such laws or ordinances to the Attorney General.

12 (2) The Attorney General, district attorney of each county, and all
13 state, county and city police officers shall assist the commissioner in the
14 administration and enforcement of all laws administered by the commis-
15 sioner, and they, as well as his assistants and employes, shall inform
16 against and diligently prosecute all persons whom they have reasonable
17 cause to believe guilty of violation of any such laws or of the rules, regu-
18 lations, orders, decisions or requirements of the commissioner made pur-
19 suant thereto.

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

25 (4) Any forfeiture or penalty provided for in any law administered
26 by the commissioner shall be recovered by an action brought thereon in
27 the name of the State of Oregon in any court of appropriate jurisdiction.

28 Section ²⁵~~23~~ ORS 756.180 is amended to read:

29 756.180. (1) Whenever it appears to the commissioner that any public
30 utility, railroad, ^{carrier} ~~air~~ or motor carrier ^{or any other person subject to the jurisdiction of the} is engaged or about to engage in any ^{commissioner}
31 acts or practices which constitute a violation of any statute administered by
32 the commissioner, or any rule, regulation, requirement, order, term or con-
33 dition issued thereunder, he may apply to any circuit court of the state
34 where such public utility, railroad, ^{carrier} ~~air~~ or motor carrier ^{or any other person subject to the jurisdiction} operates for the en- ^{of the commissioner}

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(Repealed House Bill 5128)

(Handwritten note)

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1 enforcement of such statute, rule, regulation, requirement, order, term or
2 condition.

3 (2) Such court, without bond, has jurisdiction to enforce obedience
4 thereto by injunction, or by other processes, mandatory or otherwise, re-
5 straining such public utility, railroad, ^{air} or motor carrier, or its officers, *or any other person subject to the*
6 agents, employes and representatives from further violations of such *jurisdiction of*
7 statute, rule, regulation, requirement, order, term or condition, and en- *the commission*
8 joining upon them obedience thereto.

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

12 Section ²⁴~~23~~ ORS 756.185 is amended to read:

13 756.185. (1) Any public utility, railroad, ^{air} or motor carrier which
14 does, or causes or permits to be done, any matter, act or thing prohibited
15 by ORS chapters 756, 757, 758, 760, 761, 763, 764, ~~this 1973 Act~~ *or sections 1 to 13 of this 1973 Act* or
16 omits to do any act, matter or thing required to be done by such statutes,
17 is liable to the person injured thereby in treble the amount of damages
18 sustained in consequence of such violation together with a reasonable
19 counsel's or attorney's fee, to be fixed by the court in every case of recov-
20 ery. Such attorney's fee shall be taxed and collected as part of the costs
21 in the case.

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

24 (3) This section does not apply with respect to the liability of any
25 public utility, railroad, ^{air} or motor carrier for personal injury or property
26 damage.

27 Section ²⁷~~26~~ ORS 756.200 is amended to read:

28 756.200. (1) The remedies and enforcement procedures provided in
29 ORS chapters 756, 757, 758, 760, 761, 763, 764, ~~this 1973 Act~~ *and sections 1 to 13 of this 1973 Act* [and] 767 do not
30 release or waive any right of action by the state or by any person for any
31 right, penalty or forfeiture which may arise under any law of this state
32 or under an ordinance of any municipality thereof.

33 (2) All penalties and forfeiture accruing under said statutes and ordi-

1 nances are cumulative and a suit for and recovery of one, shall not be a
2 bar to the recovery of any other penalty.

3 (3) The duties and liabilities of the public utilities, railroads, ^{air} and
4 motor carriers shall be the same as are prescribed by the common law,
5 and the remedies against them the same, except where otherwise pro-
6 vided by the Constitution or statutes of this state, and the provisions of
7 ORS chapters 756, 757, 758, 760, 761, 763, 764, ~~this 1973 Act~~ ^{and sections 1 to 13 of this 1973 Act} and 767 are
8 cumulative thereto.

*SECRET 75
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Section 28. ORS 756.360 is amended to read:

756.360. All fees, fines, penalties and other moneys collected by the commissioner under ORS 756.310, 756.320, 756.350, 758.015 and 758.400 to 758.475 and section 6 of this 1973 Act 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.

(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.

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

8 (6) If the commissioner receives a request for hearing pursuant to
 9 subsection (5) of this section, the order is suspended pending the outcome
 10 of the hearing unless the commissioner finds that the order is necessary
 11 for the public health or safety or to prevent the dissipation of assets of a
 12 business or activity subject to the commissioner's regulatory jurisdiction.

⑥ Section 30. ORS 756.568 is amended to read:

756.568. 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.

23 Any order issued in such investigation, hearing or other proceeding is bind-

24 ing upon the successors in interest.

⑦ Section 32. ORS 756.575 is amended to read:

756.575. 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.

25 fails to perform any duty enjoined upon it, for which a penalty has not
 26 been provided, or fails to obey any lawful requirement or order made by
 27 the commissioner, or any judgment or decree made by any court upon

as amended by section 4, chapter 1973

(2011 2123)

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 commission*

1 the application of the commissioner, shall forfeit a sum of not less than
2 \$100 nor more than \$10,000 for each such offense.

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

9 (4) Violation of ORS 756.125 is punishable, upon conviction, by a fine
10 of not more than \$100 or imprisonment for not more than 30 days, or both.
11 Any public utility, railroad, ~~air~~^{carrier} or motor carrier that knowingly permits
12 the violation of ORS 756.125 shall forfeit, upon conviction, not more than
13 \$1,000 for each offense.

14 (5) Violation of subsection (1) of ORS 756.543 is punishable, upon con-
15 viction, by a fine of not less than \$100 nor more than \$1,000, or by im-
16 prisonment in the county jail for not more than one year, or both.

17 (6) In construing and enforcing this section, the act, omission or fail-
18 ure of any officer, agent or other person acting for or employed by any
19 public utility, railroad, ~~air~~^{carrier} or motor carrier acting within the scope of his ^{jurisdiction}
20 employment shall in every case be deemed to be the act, omission or fail-
21 ure of such public utility, railroad, ~~air~~^{carrier} or motor carrier. With respect to ^{of the Commissioner}
22 any violation of any statute administered by the commissioner, any pen-
23 alty provision applying to such a violation by a public utility, railroad, ~~air~~^{carrier}
24 or motor carrier shall apply to such a violation by any other person.

25 (7) All penalties, fines or forfeitures or other sums collected or paid
26 under the provisions of any law administered by the commissioner shall
27 be paid into the General Fund except where it is provided that the same
28 shall be paid to the aggrieved party.

⑧ Section 34. In addition to and not in lieu of
any other appropriations or moneys made available by
law or from other sources, there is appropriated to the

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subject to the jurisdiction of the Commissioner
subject to the jurisdiction of the Commissioner

Committee Report Review - Legislative Counsel

Date June ²² ~~25~~, 1973

We have examined the report of the House Committee on State and Federal Affairs,
dated 6-15-73, on measure SB 240, and,
pursuant to House Rule 8.20(2), attest that the revised bill summary complies with the requirements of House
Rule 14.15(4) and that the identification of substantive changes in the report is accurate.

Robert W. Lundy
For Legislative Counsel

- MEASURE HAS NO REVISED SUMMARY.
- MEASURE HAS NO SUBSTANTIVE CHANGES.

Committee Report Review - Engrossed and Enrolled Bills Unit

Date 6-15-73

We have examined the report of the House Committee on State and Federal Affairs, dated 6-15-73, on measure SB 240, and, pursuant to House Rule 8.20(2), attest that the measure in the form reported out is accurate in form and style according to the **Form and Style Manual for Legislative Measures**.

Virginia Mack

For Engrossed and Enrolled Bills Unit

HCR 73-4

Engrossed-Re-Engrossed SB 240

confers [jurisdiction] authority on Public Utility Commission to regulate intrastate air commerce. Requires certificates of public convenience and necessity to engage in intrastate air commerce. Provides for certain exemptions. Specifies application and transfer fees for such certificates and provides that such fees are refundable. Permits Public Utility Commissioner to establish routes and routes for air carriers and to require air carriers to obtain and maintain insurance and performance bonds. Prohibits acts by air carriers. Provides penalties. Makes other provisions.

Appropriates \$50,000 from General Fund to Public Utility Commissioner, for biennium beginning July 1, 1973, to finance administration of this Act.

Declares emergency.

HOUSE COMMITTEE REPORT

SB 240

COMMITTEE ON STATE AND FEDERAL AFFAIRS

DATED 6-15-73

Mr. Speaker: The committee on STATE AND FEDERAL AFFAIRS to whom was referred SB 240, having had the same under consideration, respectfully reports it back with the recommendation:

- that the bill do pass.
- that the bill do pass as amended.
- that the bill be now referred to the Committee on _____

_____ (according to prior reference)

IDENTIFICATION OF SUBSTANTIVE AMENDMENTS BY THE COMMITTEE:

SEE ATTACHED.

EXPLANATION OF THE BILL:

SEE MEASURE SUMMARY.

ATTACHMENTS

- Engrossed bill
- Attested by E & E
- Attested by Leg. Counsel

Les AuCoin
Chairman Representative Les AuCoin

Date: 6-15-73

IDENTIFICATION OF SUBSTANTIVE AMENDMENTS BY THE COMMITTEE:

Changes requirement that Public Utility Commissioner fix rates and routes of air carriers to permissive authority for him to do so.

Authorizes exception, by provision in certificate, to notice requirement in event of discontinuance of service when service is unprofitable.

Specifies that "instruction" exempted from "air commerce" regulation is instruction "in the operation of aircraft."

Deletes commissioner's authority to wholly exempt activities from requirements of Act (but retains his authority to exempt from certificate requirements in certain circumstances).

Deletes specific provision for imposition of penalty of \$1,000 for any violation, and adds penalty (maximum \$1,000 fine) for particular violations.

Adds amendments of ORS sections relating to administration by commissioner, not previously included, to insert references to air carriers.

Adjusts for conflicting amendments of ORS sections in two other bills (SB 324 and HB 2128).

HOUSE AMENDMENTS

TO SB 240

COMMITTEE ON STATE AND FEDERAL AFFAIRS

Committee Report dated 6-15-73 Date(s) of Committee Action: 6-15-73

On page 2 of the printed re-engrossed bill, line 3, after "756.040," insert "756.060, 756.062, 756.064,".

In line 4, after "756.200," insert "756.360," and in the same line after "756.515," insert "756.568," and in the same line after "756.572" insert ", 756.575".

Delete lines 7 and 8 and insert:

"Section 1. As used in sections 1 to 13 of this Act, unless the context requires otherwise:".

In line 9, delete "now or hereafter invented,".

In line 12, delete "; but" and insert ". However,".

In line 15, after "Instruction." insert "in the operation of aircraft".

In line 26, delete "this chapter" and insert "sections 1 to 13 of this Act."

In line 29, delete the first comma and insert a period and delete the rest of the line.

Delete lines 30 through 33.

On page 3, line 1, delete "Government over air carriers and air commerce," and insert:

"Section 3."

Sue Wilson
Committee Clerk

In line 2, after "state" insert "for the regulation of air carriers and air commerce, the commissioner may".

In line 3, delete "The commissioner shall".

In line 4, delete the period and insert a semicolon.

Delete line 5.

In line 6, delete "(a)" and insert "(2)".

In line 7, after the semicolon insert "and".

In line 8, delete "(b)" and insert "(3)".

In line 10, delete "; and" and insert a period.

Delete lines 11 and 12 and insert:

"Section 4. (1) No person shall perform any act which constitutes air commerce, unless that act is authorized by a valid and effective certificate of public convenience and necessity issued by the commissioner or the act is otherwise authorized by the commissioner's rule or order.

"(2) Each separate act in violation of this section is a separate violation, whether the prohibited acts occur within the same or different days or relate to the same or different aircraft.

"Section 5. A person who desires to obtain a certificate of public convenience and necessity to perform an act of air commerce shall make application therefor in such form as the commissioner prescribes. The application shall contain such information as the commissioner may require.

"Section 6. Every person applying for a certificate of public convenience and necessity to perform an act of air commerce shall pay to the commissioner with his application a fee of \$150. A like fee shall accompany an application for transfer of such certificates. The fees collected under this section are not refundable.

"Section 7. Notwithstanding any other provision of sections 1 to 13 of this Act, the commissioner shall issue a certificate of public convenience and necessity to any air carrier for the points in this state between which it was actually operating in good faith and doing business as of January 1, 1973, and continuously thereafter, if application therefor has been filed with the commissioner on or before January 1, 1974. The air carrier may continue such operation until its application is either granted or denied by the commissioner.

"Section 8. The commissioner may exempt any air carrier from the certificate requirements of section 4 of this Act if he finds that such requirements are contrary to the public interest or would impose an undue burden upon the carrier or a community or area because of the immediate need for service. Such need may include, but is not limited to, conditions of

national emergency, national disaster or cessation of existing service by another carrier, except for cessation of service caused by a labor dispute. Exemptions issued pursuant to this section may be issued for a maximum period of 90 days and may be renewed for the same or for a lesser period."

In line 13, delete "5" and insert "9".

In line 14, delete the comma.

In line 22, delete "6" and insert "10".

In line 28, after "of" insert "section 4, 11 or 12 of".

In line 30, after "state" insert "aircraft or air commerce".

Delete lines 31 through 34.

On page 4, delete lines 1 through 3.

In line 4, delete "8" and insert "11".

In line 18, delete "The".

Delete lines 19 and 20.

In line 21, delete "9" and insert "12".

~~In line 22, delete the period and insert ", or unless the certificate provides otherwise."~~

In line 23, delete "Unprofitable" and insert "Except as otherwise may be provided in the certificate awarded by the commissioner, unprofitable" and in the same line delete "upon 90 days'" and insert "90 days after the carrier gives".

Delete lines 27 through 34.

Delete page 5.

On page 6, delete lines 1 through 17 and insert:

"Section 13. Violation of any provision of section 4, 11

or 12 of this Act is punishable, upon conviction, by a fine of not more than \$1,000 for each such violation."

In line 18, delete "15" and insert "14".

In line 19, delete "this".

In line 20, delete "1973 Act and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

On page 7, line 6, after "in" insert "section 1 of".

After line 6, insert:

"Section 14a. If Senate Bill 324 (1973) becomes law, on the effective date of chapter ____, Oregon Laws 1973 (Enrolled Senate Bill 324), section 14 of this Act is repealed and ORS 756.010, as amended by section 5, chapter ____, Oregon Laws 1973 (Enrolled Senate Bill 324), is amended to read:

"756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764 and 767 and sections 1 to 13 of this 1973 Act, except as otherwise specifically provided or unless the context requires otherwise:

"(1) 'Commission' means the Public Service Commission of Oregon.

"(2) 'Commissioner' means a member of the Public Service Commission of Oregon.

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

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

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

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

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

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

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

"(10) 'Service' is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served.

"(11) 'Air carrier' has the meaning given that term in section 1 of this 1973 Act."

In line 7, delete "16" and insert "15".

In line 10, after "air" insert "carrier".

In line 17, after "air" insert "carrier".

In line 23, after "air" insert "carrier".

After line 28 insert:

"Section 16. ORS 756.060 is amended to read:

"756.060. 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.

"Section 17. ORS 756.062 is amended to read:

"756.062. (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.

"Section 18. ORS 756.064 is amended to read:

"756.064. (1) The commissioner shall report to the Governor annually on the administration of the office of the commissioner during the preceding year relating to the operation of the public utility, railroad, air carrier and motor carrier systems within this state. The commissioner shall make such additional reports as the Governor or the Legislative Assembly may direct.

"(2) The reports required by subsection (1) of this section shall be in such form and contain such information and recommendations as the commissioner determines appropriate, and shall contain such other information as the Governor and the Legislative Assembly may require."

In line 29, delete "17" and insert "19".

In line 31, delete the first "and" and insert "carriers,".

In line 33, delete "or" and insert "carrier,".

On page 8, line 3, delete "18" and insert "20".

In line 6, after "air" insert "carrier".

In line 9, delete "this 1973 Act or" and in the same line after "767" insert "or sections 1 to 13 of this 1973 Act".

In line 14, after "air" insert "carrier".

In line 16, after "air" insert "carrier".

In line 18, after "air" insert "carrier".

In line 26, delete "19" and insert "21".

In line 28, after "air" insert "carrier".

In line 31, after "air" insert "carrier".

On page 9, line 1, after "air" insert "carrier".

In line 4, after "air" insert "carrier".

In line 6, delete "20" and insert "22".

In line 7, after "air" insert "carrier".

In line 9, delete "this".

In line 10, delete "1973 Act and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

In line 12, after "air" insert "carrier".

In line 18, delete "21" and insert "23".

In line 19, after "air" insert "carrier".

In line 29, after "air" insert "carrier".

On page 10, line 3, delete "22" and insert "24".

In line 6, delete "railroad" and insert "railroads" and in the same line after "air" insert "carriers".

In line 7, after "air" insert "carrier".

In line 9, after "air" insert "carriers".

In line 28, delete "23" and insert "25" and in the same line after "756.180" insert ", as amended by section 5, chapter ___, Oregon Laws 1973 (Enrolled House Bill 2128),".

In line 30, after "air" delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

In line 34, delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

On page 11, line 5, after "air" delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

In line 12, delete "24" and insert "26".

In line 13, after "air" insert "carrier".

In line 15, delete "this 1973 Act or" and in the same line after "767" insert "or sections 1 to 13 of this 1973 Act".

In line 25, after "air" insert "carrier".

In line 27, delete "25" and insert "27".

In line 29, delete "this 1973 Act and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

On page 12, line 3, after "air" insert "carriers".

In line 7, delete "this 1973 Act and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

After line 8 insert:

"Section 28. ORS 756.360 is amended to read:

"756.360. All fees, fines, penalties and other moneys collected by the commissioner under ORS 756.310, 756.320, 756.350, 758.015 and 758.400 to 758.475 and section 6 of this 1973 Act 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.

"(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."

In line 9, delete "26" and insert "29".

In line 13, after "air" delete "or" and insert "carrier,".

In line 19, after "air" delete "or" and insert "carrier,".

On page 13, after line 12 insert:

"Section 30. ORS 756.568 is amended to read:

"756.568. 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.".

In line 13, delete "27" and insert "31".

In line 15, delete "this 1973 Act".

In line 16, delete "and" and in the same line after "767" insert "and sections 1 to 13 of this 1973 Act".

After line 24 insert:

"Section 32. ORS 756.575 is amended to read:

"756.575. 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.".

In line 25, delete "28" and insert "33" and in the same line after "756.990" insert ", as amended by section 4, chapter ___, Oregon Laws 1973 (Enrolled House Bill 2128),".

In line 26, after "air" insert "carrier".

In line 30, delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

On page 14, line 5, after "air" insert "carrier".

In line 8, after "air" insert "carrier".

In line 11, after "air" insert "carrier".

In line 19, delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

In line 21, delete "or" and insert "carrier," and in the same line after "motor carrier" insert "or any other person subject to the jurisdiction of the commissioner".

In line 23, after "air" insert "carrier".

After line 28, insert:

"Section 34. In addition to and not in lieu of any other appropriations or moneys made available by law or from other sources, there is appropriated to the Public Utility Commissioner, for the biennium beginning

July 1, 1973, out of the General Fund, the sum of \$50,000. Such moneys may be used only for paying the expenses of the Public Utility Commissioner in carrying out the duties, functions and powers imposed upon him by law regarding the regulation of air carriers and air commerce."

In line 29, delete "29" and insert "35".

RE-ENGROSSED

Senate Bill 240

Ordered by the Senate April 9
(Including Amendments by Senate March 14 and April 9)

Sponsored by Senators NEWBRY, J. BURNS (at the
request of the Public Utility Commissioner of Oregon)

SUMMARY

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

Confers jurisdiction on Public Utility Commissioner to regulate intrastate air commerce. Requires certificate of public convenience and necessity to engage in intrastate air commerce. **Specifies application and transfer fees for such certificates and provides that such fees are not refundable.** Permits Public Utility Commissioner to establish rates and routes for air carriers. Prohibits certain acts by air carriers. Provides penalties.

Appropriates [\$92,000] **\$50,000** from General Fund to Public Utility Commissioner, for biennium beginning July 1, 1973, to finance administration of this Act.

Declares emergency. [*Takes effect July 1, 1973.*]

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION.**

1 A BILL FOR AN ACT

2 Relating to regulation of air commerce; creating new provisions; amend-
3 ing ORS 756.010, 756.040, 756.070, 756.075, 756.090, 756.105, 756.115,
4 756.160, 756.180, 756.185, 756.200, 756.515, 756.572 and 756.990; appropriat-
5 ing money; providing penalties; and declaring an emergency.

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

7 **SECTION 1.** Unless the context otherwise requires, the definitions in
8 this section and ORS 756.010 shall govern the construction of this Act.

9 (1) "Aircraft" means any contrivance now or hereafter invented, used
10 or designed for navigation of or flight in the air.

11 (2) "Air commerce" means all transportation by aircraft of persons or
12 property for compensation between points in this state; but "air commerce"
13 does not include transportation performed solely in connection with:

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

15 (b) Instruction,

16 (c) Aerial application of agricultural chemicals,

17 (d) Air ambulance services,

18 (e) Aerial fire-fighting services,

19 (f) Air taxi or charter services,

20 (g) Aerial logging operations, or

21 (h) Transportation authorized by a certificate of public convenience
22 and necessity issued prior to January 1, 1973, pursuant to section 401 of the
23 Federal Aviation Act of 1958 as amended.

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

26 **SECTION 2.** The purpose of this chapter is to provide regulation of
27 air commerce in order that an orderly, efficient, economical and healthy
28 network of air transportation may be established to the benefit of the
29 people of this state, its communities, and the state itself.

30 **SECTION 3.** The commissioner is vested with authority and respon-
31 sibility to regulate air commerce and air carriers. He shall administer this
32 chapter in accordance with its stated purposes.

33 **SECTION 4.** The State of Oregon recognizes the powers of the Federal

1 Government over air carriers and air commerce. Within the limits of
2 powers reserved to the state:

3 (1) The commissioner shall fix reasonable rates and routes of air car-
4 riers.

5 (2) The commissioner may:

6 (a) Require any air carrier to procure and maintain insurance and per-
7 formance bonds in any amount;

8 (b) Authorize such through routes, joint rates and divisions of revenue
9 for persons engaged in air commerce as he determines to be in the public
10 interest; and

11 (c) Exercise any power expressly or impliedly conferred by this Act
12 and ORS chapter 756.

13 **SECTION 5.** The commissioner shall award certificates of public con-
14 venience and necessity, whenever the public convenience and necessity
15 require, taking into consideration the business experience of the applicant,
16 the applicant's financial ability and insurance coverage, the type of aircraft
17 the applicant would employ, the proposed routes and minimum schedules
18 to be established, whether the carrier could economically and adequately
19 serve the communities involved, the need for service and any other fac-
20 tors which may affect the public interest. Such certificates may be award-
21 ed subject to whatever terms and conditions the commissioner prescribes.

22 **SECTION 6.** The commissioner may suspend or revoke any of the
23 rights conferred by a certificate of public convenience and necessity after
24 notice and opportunity for hearing only upon a finding that the holder:

25 (1) Has abandoned such rights,

26 (2) Is no longer willing or able to perform all or part of the certifi-
27 cated services,

28 (3) Has violated any provision of this Act or any rule, regulation or
29 order of the commissioner, or

30 (4) Has violated any federal or state safety law or regulation.

31 **SECTION 7.** (1) No person shall perform any act which constitutes
32 air commerce, unless that act is authorized by a valid and effective cer-
33 tificate of public convenience and necessity issued by the commissioner or
34 otherwise by the commissioner's rule or order.

1 (2) Each separate act in violation of this section is a separate viola-
2 tion, whether the prohibited acts occur within the same or different days
3 or relate to the same or different aircraft.

4 **SECTION 8.** (1) It is unlawful, unless authorized by order of the
5 commissioner as provided in this section:

6 (a) For two or more air carriers, or for any air carrier and any other
7 common carrier to consolidate or merge their properties or any part there-
8 of into one person for the ownership, management or operation of the
9 properties theretofore in separate ownerships,

10 (b) For any air carrier or any person controlling an air carrier or any
11 other common carrier to purchase, lease, or contract to operate the prop-
12 erties, or a substantial part thereof, of any air carrier, or

13 (c) For any air carrier or any person controlling an air carrier or any
14 other common carrier to acquire control of any air carrier in any manner
15 whatsoever.

16 (2) The commissioner may by order authorize such consolidation, mer-
17 ger, purchase, lease, operating control or acquisition of control upon such
18 terms and conditions as he shall deem to be in the public interest. The
19 commissioner shall determine whether a hearing is required under this
20 section.

21 **SECTION 9.** No air carrier shall discontinue any certificated service
22 without authority of the commissioner, unless such service is unprofitable.
23 Unprofitable services may be discontinued upon 90 days' notice to the
24 commissioner, and to such other persons as the commissioner may require,
25 unless within such 90-day period the commissioner finds that such serv-
26 ices are not unprofitable and orders their continuance.

27 **SECTION 10.** The commissioner may, following a determination of
28 necessity, exempt any air carrier from the certificate provisions of this
29 Act upon a finding that such provisions impose an undue burden upon
30 the carrier, a community or area because of the immediate need for serv-
31 ice including, but not limited to, conditions of national emergency, na-
32 tional disaster or cessation of existing service by another carrier, except
33 the cessation of existing service caused by a labor dispute, and that enforce-
34 ment of such provisions would be contrary to the public interest. Exemp-

1 tions issued pursuant to this section may be issued for a maximum of 90
2 days and may be renewed for the same or a lesser period.

3 **SECTION 11.** (1) To the extent necessary to prevent overlap or con-
4 flict between provisions of this Act and those of any other statute, the
5 provisions of this Act shall exclusively prevail unless subsection (2) of this
6 section applies.

7 (2) The commissioner may by rule exempt any activity from any or
8 all of the requirements of this Act if the commissioner is satisfied that
9 such exemption would not be contrary to the public interest.

10 **SECTION 11a.** Every person applying for a certificate under section 5
11 of this Act shall pay to the commissioner with his application a fee of
12 \$150. A like fee shall accompany an application for transfer of such cer-
13 tificates. The fees collected under this section are not refundable.

14 **SECTION 12.** (1) In addition to all other penalties provided by law,
15 every person who violates or who procures, aids or abets in the violation
16 of this Act or any order, rule, regulation or decision of the commissioner
17 relating to air commerce shall incur a penalty of \$1,000 for every such
18 violation.

19 (2) Each such violation shall be a separate offense and in case of a
20 continuing violation every day's continuance is a separate violation. Every
21 act of commission or omission which procures, aids or abets the violation
22 is a violation under this section and subject to the penalty provided in
23 this section.

24 (3) Such penalty shall not be imposed except by order following com-
25 plaint as provided in ORS 756.500 to 756.610. Such proceeding may only
26 be commenced within two years following the date of the violation.

27 (4) The commissioner may negotiate any settlement or mitigate any
28 penalty provided for in this section on such terms as he considers proper.

29 (5) If the amount of such penalty is not paid to the commissioner, the
30 Attorney General shall bring an action in the name of the State of Oregon
31 in the Circuit Court of Marion County to recover such penalty. The action
32 shall not be commenced until after the time has expired for an appeal
33 from the findings, conclusions and order of the commissioner. In all such

1 actions the procedure and rules of evidence shall be the same as an ordi-
2 nary civil action except as otherwise provided in this Act.

3 **SECTION 13.** (1) To finance the administration of this Act and sub-
4 section (3) of ORS 756.040 there is appropriated from the General Fund
5 \$50,000 to the Public Utility Commissioner for the biennium beginning
6 July 1, 1973.

7 (2) Funds generated under this section shall be used only in the ad-
8 ministration of this chapter and subsection (3) of ORS 756.040 as it re-
9 lates to matters affecting air transportation.

10 **SECTION 14.** Notwithstanding any other provision in this Act, the
11 commissioner shall issue a certificate of public convenience and necessity
12 to any air carrier as to the points in this state between which it was
13 actually operating in good faith and doing business as of January 1, 1973,
14 and continuously thereafter, with or without hearing, provided application
15 therefor shall have been filed with the commissioner on or before January
16 1, 1974. The air carrier may continue such operation until its application
17 is either granted or denied by the commissioner.

18 Section 15. ORS 756.010 is amended to read:

19 756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764, this
20 1973 Act and 767, except as otherwise specifically provided or unless the
21 context requires otherwise:

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

23 (2) "Customer" includes the patrons, passengers, shippers, subscribers,
24 users of the service and consumers of the product of a railroad, motor car-
25 rier or public utility.

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

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

29 (5) "Person" includes individuals, joint ventures, partnerships, cor-
30 porations and associations or their officers, employes, agents, lessees, as-
31 signees, trustees or receivers.

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

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

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

3 (9) "Service" is used in its broadest and most inclusive sense and in-
4 cludes equipment and facilities related to providing the service or the
5 product served.

6 (10) "Air carrier" has the meaning given that term in this 1973 Act.

7 Section 16. ORS 756.040 is amended to read:

8 756.040. (1) In addition to the powers and duties now or hereafter
9 transferred to or vested in the commissioner, he shall represent the custom-
10 ers of any public utility, railroad, air or motor carrier, and the public gen-
11 erally in all controversies respecting rates, valuations, service and all mat-
12 ters of which he has jurisdiction. In respect thereof he shall make use of the
13 jurisdiction and powers of his office to protect such customers, and the
14 public generally, from unjust and unreasonable exactions and practices
15 and to obtain for them adequate service at fair and reasonable rates.

16 (2) The commissioner is vested with power and jurisdiction to super-
17 vise and regulate every public utility, railroad, air and motor carrier in
18 this state, and to do all things necessary and convenient in the exercise of
19 such power and jurisdiction.

20 (3) The commissioner may participate in any proceeding before any
21 public officer, commission or body of the United States or any state for
22 the purpose of representing the public generally and the customers of the
23 services of any public utility, railroad, water, air or motor carrier operat-
24 ing or providing service to or within this state.

25 (4) The commissioner may make joint investigations, hold joint hear-
26 ings within or without this state and issue concurrent orders in conjunc-
27 tion or concurrence with any official, board, commission or agency of any
28 state or of the United States.

29 Section 17. ORS 756.070 is amended to read:

30 756.070. The commissioner may inquire into the management of the
31 business of all public utilities, air and motor carriers and railroads, and
32 shall keep informed as to the manner and method in which they are con-
33 ducted and has the right to obtain from any public utility, air or motor

1 carrier or railroad all necessary information to enable him to perform his
2 duties.

3 Section 18. ORS 756.075 is amended to read:

4 756.075. (1) The commissioner or his authorized representatives may
5 enter upon any premises, or any equipment, rolling stock or facilities op-
6 erated or occupied by any public utility, railroad, air or motor carrier for
7 the purpose of making any inspection, examination or test reasonably re-
8 quired in the administration of ORS chapters 756, 757, 758, 760, 761, 763,
9 764, this 1973 Act or 767 and to set up and use on such premises equip-
10 ment, rolling stock or facilities any apparatus and appliances and occupy
11 reasonable space therefor.

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

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

22 (4) Nothing in this section authorizes the commissioner to use any in-
23 formation developed thereunder for any purpose inconsistent with any
24 statute administered by him or to make a disclosure thereof for other than
25 regulatory purposes.

26 Section 19. ORS 756.090 is amended to read:

27 756.090. (1) The commissioner may require by rule, or by order or sub-
28 pena to be served on any public utility, railroad, air or motor carrier, the
29 maintaining within this state or the production within this state at such
30 time and place as he may designate, of any books, accounts, papers or
31 records kept by such public utility, railroad, air or motor carrier in any
32 office or place within or without this state, or verified copies in lieu
33 thereof, if the commissioner so orders, in order that an examination there-
34 of may be made by the commissioner or under his direction.

1 (2) When a public utility, railroad, air or motor carrier keeps and
2 maintains its books, accounts, papers or records outside the state, the com-
3 missioner may examine such documents and shall be reimbursed by the
4 public utility, railroad, air or motor carrier for all expenses incurred in
5 making such out-of-state examination.

6 Section 20. ORS 756.105 is amended to read:

7 756.105. (1) Every public utility, railroad, air and motor carrier shall
8 furnish to the commissioner all information required by him to carry into
9 effect the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, this
10 1973 Act and 767, and shall make specific answers to all questions sub-
11 mitted by the commissioner.

12 (2) If a public utility, railroad, air or motor carrier is unable to furnish
13 any information required under subsection (1) of this section for any rea-
14 son beyond its control, it is a good and sufficient reason for such failure.
15 The answer or information shall be verified under oath and returned to
16 the commissioner at his office within the period fixed by the commis-
17 sioner.

18 Section 21. ORS 756.115 is amended to read:

19 756.115. No officer, agent or employe of any public utility, railroad, air
20 or motor carrier shall:

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

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

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

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

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

33 (6) Refuse to do any act or thing in connection with such system of

1 accounting when so directed by the commissioner or his authorized repre-
2 sentative.

3 Section 22. ORS 756.160 is amended to read:

4 756.160. (1) The commissioner shall inquire into any neglect or viola-
5 tion of any law of this state or any law or ordinance of any municipality
6 thereof relating to public utilities, railroad, air or motor carriers by any
7 public utility, railroad, air or motor carrier doing business therein, its offi-
8 cers, agents or employes, and shall enforce all laws of this state relating
9 to public utilities, railroads, air and motor carriers and may enforce all
10 such laws and ordinances of a municipality. The commissioner shall report
11 all violations of any such laws or ordinances to the Attorney General.

12 (2) The Attorney General, district attorney of each county, and all
13 state, county and city police officers shall assist the commissioner in the
14 administration and enforcement of all laws administered by the commis-
15 sioner, and they, as well as his assistants and employes, shall inform
16 against and diligently prosecute all persons whom they have reasonable
17 cause to believe guilty of violation of any such laws or of the rules, regu-
18 lations, orders, decisions or requirements of the commissioner made pur-
19 suant thereto.

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

25 (4) Any forfeiture or penalty provided for in any law administered
26 by the commissioner shall be recovered by an action brought thereon in
27 the name of the State of Oregon in any court of appropriate jurisdiction.

28 Section 23. ORS 756.180 is amended to read:

29 756.180. (1) Whenever it appears to the commissioner that any public
30 utility, railroad, air or motor carrier is engaged or about to engage in any
31 acts or practices which constitute a violation of any statute administered by
32 the commissioner, or any rule, regulation, requirement, order, term or con-
33 dition issued thereunder, he may apply to any circuit court of the state
34 where such public utility, railroad, air or motor carrier operates for the en-

1 enforcement of such statute, rule, regulation, requirement, order, term or
2 condition.

3 (2) Such court, without bond, has jurisdiction to enforce obedience
4 thereto by injunction, or by other processes, mandatory or otherwise, re-
5 straining such public utility, railroad, air or motor carrier, or its officers,
6 agents, employes and representatives from further violations of such
7 statute, rule, regulation, requirement, order, term or condition, and en-
8 joining upon them obedience thereto.

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

12 Section 24. ORS 756.185 is amended to read:

13 756.185. (1) Any public utility, railroad, air or motor carrier which
14 does, or causes or permits to be done, any matter, act or thing prohibited
15 by ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act or 767 or
16 omits to do any act, matter or thing required to be done by such statutes,
17 is liable to the person injured thereby in treble the amount of damages
18 sustained in consequence of such violation together with a reasonable
19 counsel's or attorney's fee, to be fixed by the court in every case of recov-
20 ery. Such attorney's fee shall be taxed and collected as part of the costs
21 in the case.

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

24 (3) This section does not apply with respect to the liability of any
25 public utility, railroad, air or motor carrier for personal injury or property
26 damage.

27 Section 25. ORS 756.200 is amended to read:

28 756.200. (1) The remedies and enforcement procedures provided in
29 ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act and 767 do not
30 release or waive any right of action by the state or by any person for any
31 right, penalty or forfeiture which may arise under any law of this state
32 or under an ordinance of any municipality thereof.

33 (2) All penalties and forfeiture accruing under said statutes and ordi-

1 nances are cumulative and a suit for and recovery of one, shall not be a
2 bar to the recovery of any other penalty.

3 (3) The duties and liabilities of the public utilities, railroads, air and
4 motor carriers shall be the same as are prescribed by the common law,
5 and the remedies against them the same, except where otherwise pro-
6 vided by the Constitution or statutes of this state, and the provisions of
7 ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act and 767 are
8 cumulative thereto.

9 Section 26. ORS 756.515 is amended to read:

10 756.515. (1) Whenever the commissioner believes that any rate may
11 be unreasonable or unjustly discriminatory, or that any service is unsafe
12 or inadequate, or is not afforded, or that an investigation of any matter
13 relating to any public utility, railroad, air or motor carrier or other per-
14 son should be made, or relating to any person to determine if such person is
15 subject to the commissioner's regulatory jurisdiction, he may on his own
16 motion summarily investigate any such matter, with or without notice.

17 (2) If after making such investigation he is satisfied that sufficient
18 grounds exist to warrant a hearing being ordered upon any such matter,
19 he shall furnish any public utility, railroad, air or motor carrier or other
20 person interested a statement notifying it of the matters under investiga-
21 tion, which statement shall be accompanied by a notice fixing the time
22 and place for hearing upon such matters in the manner provided in ORS
23 756.512 for notice of complaint.

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

29 (4) However, the commissioner may, after he has made an investiga-
30 tion on his motion, but without notice or hearing, make such findings and
31 orders as he deems justified or required by the results of such investiga-
32 tion. Except as provided in subsections (5) and (6) of this section such
33 findings and orders have the same legal force and effect as any other
34 finding or order of the commissioner.

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

8 (6) If the commissioner receives a request for hearing pursuant to
9 subsection (5) of this section, the order is suspended pending the outcome
10 of the hearing unless the commissioner finds that the order is necessary
11 for the public health or safety or to prevent the dissipation of assets of a
12 business or activity subject to the commissioner's regulatory jurisdiction.

13 Section 27. ORS 756.572 is amended to read:

14 756.572. (1) An order of the commissioner issued in accordance with
15 the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, **this 1973 Act**
16 and 767 is binding upon the successors in interest of each person affected
17 thereby, until set aside, rescinded, suspended or modified as provided by
18 law.

19 (2) Any investigation, hearing or other proceeding involving the issu-
20 ance of an order of the commissioner that has not been finally determined
21 when a transfer of any interests of a person is effected may be continued
22 and finally determined, notwithstanding any such transfer of interest.
23 Any order issued in such investigation, hearing or other proceeding is bind-
24 ing upon the successors in interest.

25 Section 28. ORS 756.990 is amended to read:

26 756.990. (1) Any public utility, railroad, **air** or motor carrier that
27 fails to comply with an order or subpoena issued pursuant to ORS 756.090
28 shall forfeit, for each day it so fails, a sum of not less than \$50 nor more
29 than \$500.

30 (2) Any public utility, railroad, **air** or motor carrier that violates any
31 statute administered by the commissioner, or does any act prohibited, or
32 fails to perform any duty enjoined upon it, for which a penalty has not
33 been provided, or fails to obey any lawful requirement or order made by
34 the commissioner, or any judgment or decree made by any court upon

1 the application of the commissioner, shall forfeit a sum of not less than
2 \$100 nor more than \$10,000 for each such offense.

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

9 (4) Violation of ORS 756.125 is punishable, upon conviction, by a fine
10 of not more than \$100 or imprisonment for not more than 30 days, or both.
11 Any public utility, railroad, air or motor carrier that knowingly permits
12 the violation of ORS 756.125 shall forfeit, upon conviction, not more than
13 \$1,000 for each offense.

14 (5) Violation of subsection (1) of ORS 756.543 is punishable, upon con-
15 viction, by a fine of not less than \$100 nor more than \$1,000, or by im-
16 prisonment in the county jail for not more than one year, or both.

17 (6) In construing and enforcing this section, the act, omission or fail-
18 ure of any officer, agent or other person acting for or employed by any
19 public utility, railroad, air or motor carrier acting within the scope of his
20 employment shall in every case be deemed to be the act, omission or fail-
21 ure of such public utility, railroad, air or motor carrier. With respect to
22 any violation of any statute administered by the commissioner, any pen-
23 alty provision applying to such a violation by a public utility, railroad, air
24 or motor carrier shall apply to such a violation by any other person.

25 (7) All penalties, fines or forfeitures or other sums collected or paid
26 under the provisions of any law administered by the commissioner shall
27 be paid into the General Fund except where it is provided that the same
28 shall be paid to the aggrieved party.

29 **SECTION 29.** This Act being necessary for the immediate preservation
30 of the public peace, health and safety, an emergency is declared to exist,
31 and this Act takes effect on its passage.



Re - ENGROSSED

Senate Bill 240

Ordered by the Senate March 14^c
(Including Amendments by Senate March 14)

Sponsored by Senators NEWBRY, J. BURNS (at the
request of the Public Utility Commissioner of Oregon)

SUMMARY

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

Revised

Confers jurisdiction on Public Utility Commissioner to regulate intrastate air commerce. Requires certificates of public convenience and necessity to engage in intrastate air commerce. Permits Public Utility Commissioner to establish rates and routes for air carriers. [*Imposes tax on gross revenues derived from air commerce within this state for designated purpose.*] Prohibits certain acts by air carriers. Provides penalties.

Appropriates \$92,000 from General Fund to Public Utility Commissioner, for biennium beginning July 1, 1973, to finance administration of this Act.

Declares emergency. Takes effect July 1, 1973.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

A BILL FOR AN ACT

1
2 Relating to regulation of air commerce; creating new provisions; amend-
3 ing ORS 756.010, 756.040, 756.070, 756.075, 756.090, 756.105, 756.115,
4 756.160, 756.180, 756.185, 756.200, 756.515, 756.572 and 756.990; appropriat-
5 ing money; providing penalties; and declaring an emergency.

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

7 **SECTION 1.** Unless the context otherwise requires, the definitions in
8 this section and ORS 756.010 shall govern the construction of this Act.

9 (1) "Aircraft" means any contrivance now or hereafter invented, used
10 or designed for navigation of or flight in the air.

11 (2) "Air commerce" means all transportation by aircraft of persons or
12 property for compensation between points in this state; but "air commerce"
13 does not include transportation performed solely in connection with:

- 14 (a) Transportation of U.S. mail,
- 15 (b) Instruction,
- 16 (c) Aerial application of agricultural chemicals,
- 17 (d) Air ambulance services,
- 18 (e) Aerial fire-fighting services, ~~or~~
- 19 ~~(f) Transpo~~ ^① **(f) Air taxi or charter services,**
- 20 and necessity is
- 21 Federal Aviatc ^② **(g) Aerial logging operations, or**

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

24 **SECTION 2.** The purpose of this chapter is to provide regulation of
25 air commerce in order that an orderly, efficient, economical and healthy
26 network of air transportation may be established to the benefit of the
27 people of this state, its communities, and the state itself.

28 **SECTION 3.** The commissioner is vested with authority and respon-
29 sibility to regulate air commerce and air carriers. He shall administer this
30 chapter in accordance with its stated purposes.

31 **SECTION 4.** The State of Oregon recognizes the powers of the Federal

Insert D

1 Government over air carriers and air commerce. Within the limits of
2 powers reserved to the state:

3 (1) The commissioner shall fix reasonable rates and routes of air car-
4 riers.

5 (2) The commissioner may:

6 (a) Require any air carrier to procure and maintain insurance and per-
7 formance bonds in any amount;

8 (b) Authorize such through routes, joint rates and divisions of revenue
9 for persons engaged in air commerce as he determines to be in the public
10 interest; and

11 (c) Exercise any power expressly or impliedly conferred by this Act
12 and ORS chapter 756.

13 **SECTION 5.** The commissioner shall award certificates of public con-
14 venience and necessity, whenever the public convenience and necessity
15 require, taking into consideration the business experience of the applicant,
16 the applicant's financial ability and insurance coverage, the type of aircraft
17 the applicant would employ, the proposed routes and minimum schedules
18 to be established, whether the carrier could economically and adequately
19 serve the communities involved, the need for service and any other fac-
20 tors which may affect the public interest. Such certificates may be award-
21 ed subject to whatever terms and conditions the commissioner prescribes.

22 **SECTION 6.** The commissioner may suspend or revoke any of the
23 rights conferred by a certificate of public convenience and necessity after
24 notice and opportunity for hearing only upon a finding that the holder:

25 (1) Has abandoned such rights,

26 (2) Is no longer willing or able to perform all of part of the certifi-
27 cated services,

28 (3) Has violated any provision of this Act or any rule, regulation or
29 order of the commissioner, or

30 (4) Has violated any federal or state safety law or regulation.

31 **SECTION 7.** (1) No person shall perform any act which constitutes
32 air commerce, unless that act is authorized by a valid and effective cer-
33 tificate of public convenience and necessity issued by the commissioner or
34 otherwise by the commissioner's rule or order.

1 (2) Each separate act in violation of this section is a separate viola-
2 tion, whether the prohibited acts occur within the same or different days
3 or relate to the same or different aircraft.

4 **SECTION 8.** (1) It is unlawful, unless authorized by order of the
5 commissioner as provided in this section:

6 (a) For two or more air carriers, or for any air carrier and any other
7 common carrier to consolidate or merge their properties or any part there-
8 of into one person for the ownership, management or operation of the
9 properties theretofore in separate ownerships,

10 (b) For any air carrier or any person controlling an air carrier or any
11 other common carrier to purchase, lease, or contract to operate the prop-
12 erties, or a substantial part thereof, of any air carrier, or

13 (c) For any air carrier or any person controlling an air carrier or any
14 other common carrier to acquire control of any air carrier in any manner
15 whatsoever.

16 (2) The commissioner may by order authorize such consolidation, mer-
17 ger, purchase, lease, operating control or acquisition of control upon such
18 terms and conditions as he shall deem to be in the public interest. The
19 commissioner shall determine whether a hearing is required under this
20 section.

21 **SECTION 9.** No air carrier shall discontinue any certificated service
22 without authority of the commissioner, unless such service is unprofitable.
23 Unprofitable services may be discontinued upon 90 days' notice to the
24 commissioner, and to such other persons as the commissioner may require,
25 unless within such 90-day period the commissioner finds that such serv-
26 ices are not unprofitable and orders their continuance.

27 **SECTION 10.** The commissioner may, following a determination of
28 necessity, exempt any air carrier from the certificate provisions of this
29 Act upon a finding that such provisions impose an undue burden upon
30 the carrier, a community or area because of the immediate need for serv-
31 ice including, but not limited to, conditions of national emergency, na-
32 tional disaster or cessation of existing service by another carrier, except
33 the cessation of existing service caused by a labor dispute, and that enforce-
34 ment of such provisions would be contrary to the public interest. Exemp-

1 tions issued pursuant to this section may be issued for a maximum of 90
2 days and may be renewed for the same or a lesser period.

3 **SECTION 11.** (1) To the extent necessary to prevent overlap or con-
4 flict between provisions of this Act and those of any other statute, the
5 provisions of this Act shall exclusively prevail unless subsection (2) of this
6 section applies.

7 (2) The commissioner may by rule exempt any activity from any or
8 all of the requirements of this Act if the commissioner is satisfied that
9 such exemption would not be contrary to the public interest.

*Insert ②
9*

② *of* Section 11a. Every person applying for a certificate under
section 5 of this Act shall pay to the Commissioner with his application
a fee of \$150. A like fee shall accompany an application for transfer
of such certificates. The fees collected under this section are not
refundable.

17 act of commission or omission which procures, aids or abets the violation
18 is a violation under this section and subject to the penalty provided in
19 this section.

20 (3) Such penalty shall not be imposed except by order following com-
21 plaint as provided in ORS 756.500 to 756.610. Such proceeding may only
22 be commenced within two years following the date of the violation.

23 (4) The commissioner may negotiate any settlement or mitigate any
24 penalty provided for in this section on such terms as he considers proper.

25 (5) If the amount of such penalty is not paid to the commissioner, the
26 Attorney General shall bring an action in the name of the State of Oregon
27 in the Circuit Court of Marion County to recover such penalty. The action
28 shall not be commenced until after the time has expired for an appeal
29 from the findings, conclusions and order of the commissioner. In all such
30 actions the procedure and rules of evidence shall be the same as an ordi-
31 nary civil action except as otherwise provided in this Act.

32 **SECTION 13.** (1) To finance the administration of this Act and sub-
33 section (3) of ORS 756.040 there is appropriated from the General Fund

~~\$92,000~~
~~\$50,000~~
1 ~~\$92,000~~ to the Public Utility Commissioner for the biennium beginning
2 July 1, 1973.

3 (2) Funds generated under this section shall be used only in the ad-
4 ministration of this chapter and subsection (3) of ORS 756.040 as it re-
5 lates to matters affecting air transportation.

6 **SECTION 14.** Notwithstanding any other provision in this Act, the
7 commissioner shall issue a certificate of public convenience and necessity
8 to any air carrier as to the points in this state between which it was
9 actually operating in good faith and doing business as of January 1, 1973,
10 and continuously thereafter, with or without hearing, provided application
11 therefor shall have been filed with the commissioner on or before January
12 1, 1974. The air carrier may continue such operation until its application
13 is either granted or denied by the commissioner.

14 Section 15. ORS 756.010 is amended to read:

15 756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764, this
16 **1973 Act** and 767, except as otherwise specifically provided or unless the
17 context requires otherwise:

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

19 (2) "Customer" includes the patrons, passengers, shippers, subscribers,
20 users of the service and consumers of the product of a railroad, motor car-
21 rier or public utility.

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

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

25 (5) "Person" includes individuals, joint ventures, partnerships, cor-
26 porations and associations or their officers, employes, agents, lessees, as-
27 signees, trustees or receivers.

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

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

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

32 (9) "Service" is used in its broadest and most inclusive sense and in-
33 cludes equipment and facilities related to providing the service or the
34 product served.

1 (10) "Air carrier" has the meaning given that term in this 1973 Act.

2 Section 16. ORS 756.040 is amended to read:

3 756.040. (1) In addition to the powers and duties now or hereafter
4 transferred to or vested in the commissioner, he shall represent the custom-
5 ers of any public utility, railroad, air or motor carrier, and the public gen-
6 eral in all controversies respecting rates, valuations, service and all matters
7 of which he has jurisdiction. In respect thereof he shall make use of the
8 jurisdiction and powers of his office to protect such customers, and the
9 public generally, from unjust and unreasonable exactions and practices
10 and to obtain for them adequate service at fair and reasonable rates.

11 (2) The commissioner is vested with power and jurisdiction to super-
12 vise and regulate every public utility, railroad, air and motor carrier in
13 this state, and to do all things necessary and convenient in the exercise of
14 such power and jurisdiction.

15 (3) The commissioner may participate in any proceeding before any
16 public officer, commission or body of the United States or any state for
17 the purpose of representing the public generally and the customers of the
18 services of any public utility, railroad, water, air or motor carrier operat-
19 ing or providing service to or within this state.

20 (4) The commissioner may make joint investigations, hold joint hear-
21 ings within or without this state and issue concurrent orders in conjunc-
22 tion or concurrence with any official, board, commission or agency of any
23 state or of the United States.

24 Section 17. ORS 756.070 is amended to read:

25 756.070. The commissioner may inquire into the management of the
26 business of all public utilities, air and motor carriers and railroads, and
27 shall keep informed as to the manner and method in which they are con-
28 ducted and has the right to obtain from any public utility, air or motor
29 carrier or railroad all necessary information to enable him to perform his
30 duties.

31 Section 18. ORS 756.075 is amended to read:

32 756.075. (1) The commissioner or his authorized representatives may
33 enter upon any premises, or any equipment, rolling stock or facilities op-
34 erated or occupied by any public utility, railroad, air or motor carrier for

1 the purpose of making any inspection, examination or test reasonably re-
2 quired in the administration of ORS chapters 756, 757, 758, 760, 761, 763,
3 764, **this 1973 Act** or 767 and to set up and use on such premises equip-
4 ment, rolling stock or facilities any apparatus and appliances and occupy
5 reasonable space therefor.

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

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

16 (4) Nothing in this section authorizes the commissioner to use any in-
17 formation developed thereunder for any purpose inconsistent with any
18 statute administered by him or to make a disclosure thereof for other than
19 regulatory purposes.

20 Section 19. ORS 756.090 is amended to read:

21 756.090. (1) The commissioner may require by rule, or by order or sub-
22 pena to be served on any public utility, railroad, **air** or motor carrier, the
23 maintaining within this state or the production within this state at such
24 time and place as he may designate, of any books, accounts, papers or
25 records kept by such public utility, railroad, **air** or motor carrier in any
26 office or place within or without this state, or verified copies in lieu
27 thereof, if the commissioner so orders, in order that an examination there-
28 of may be made by the commissioner or under his direction.

29 (2) When a public utility, railroad, **air** or motor carrier keeps and
30 maintains its books, accounts, papers or records outside the state, the com-
31 missioner may examine such documents and shall be reimbursed by the
32 public utility, railroad, **air** or motor carrier for all expenses incurred in
33 making such out-of-state examination.

1 Section 20. ORS 756.105 is amended to read:

2 756.105. (1) Every public utility, railroad, air and motor carrier shall
3 furnish to the commissioner all information required by him to carry into
4 effect the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, this
5 1973 Act and 767, and shall make specific answers to all questions sub-
6 mitted by the commissioner.

7 (2) If a public utility, railroad, air or motor carrier is unable to furnish
8 any information required under subsection (1) of this section for any rea-
9 son beyond its control, it is a good and sufficient reason for such failure.
10 The answer or information shall be verified under oath and returned to
11 the commissioner at his office within the period fixed by the commis-
12 sioner.

13 Section 21. ORS 756.115 is amended to read:

14 756.115. No officer, agent or employe of any public utility, railroad, air
15 or motor carrier shall:

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

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

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

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

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

28 (6) Refuse to do any act or thing in connection with such system of
29 accounting when so directed by the commissioner or his authorized repre-
30 sentative.

31 Section 22. ORS 756.160 is amended to read:

32 756.160. (1) The commissioner shall inquire into any neglect or viola-
33 tion of any law of this state or any law or ordinance of any municipality
34 thereof relating to public utilities, railroad, air or motor carriers by any

1 public utility, railroad , air or motor carrier doing business therein, its offi-
2 cers, agents or employes, and shall enforce all laws of this state relating
3 to public utilities, railroads , air and motor carriers and may enforce all
4 such laws and ordinances of a municipality. The commissioner shall report
5 all violations of any such laws or ordinances to the Attorney General.

6 (2) The Attorney General, district attorney of each county, and all
7 state, county and city police officers shall assist the commissioner in the
8 administration and enforcement of all laws administered by the commis-
9 sioner, and they, as well as his assistants and employes, shall inform
10 against and diligently prosecute all persons whom they have reasonable
11 cause to believe guilty of violation of any such laws or of the rules, regu-
12 lations, orders, decisions or requirements of the commissioner made pur-
13 suant thereto.

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

19 (4) Any forfeiture or penalty provided for in any law administered
20 by the commissioner shall be recovered by an action brought thereon in
21 the name of the State of Oregon in any court of appropriate jurisdiction.

22 Section 23. ORS 756.180 is amended to read:

23 756.180. (1) Whenever it appears to the commissioner that any public
24 utility, railroad , air or motor carrier is engaged or about to engage in any
25 acts or practices which constitute a violation of any statute administered by
26 the commissioner, or any rule, regulation, requirement, order, term or con-
27 dition issued thereunder, he may apply to any circuit court of the state
28 where such public utility, railroad , air or motor carrier operates for the en-
29 forcement of such statute, rule, regulation, requirement, order, term or
30 condition.

31 (2) Such court, without bond, has jurisdiction to enforce obedience
32 thereto by injunction, or by other processes, mandatory or otherwise, re-
33 straining such public utility, railroad , air or motor carrier, or its officers,
34 agents, employes and representatives from further violations of such

1 statute, rule, regulation, requirement, order, term or condition, and en-
2 joining upon them obedience thereto.

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

6 Section 24. ORS 756.185 is amended to read:

7 756.185. (1) Any public utility, railroad, air or motor carrier which
8 does, or causes or permits to be done, any matter, act or thing prohibited
9 by ORS chapters 756, 757, 758, 760, 761, 763, 764, **this 1973 Act** or 767 or
10 omits to do any act, matter or thing required to be done by such statutes,
11 is liable to the person injured thereby in treble the amount of damages
12 sustained in consequence of such violation together with a reasonable
13 counsel's or attorney's fee, to be fixed by the court in every case of recov-
14 ery. Such attorney's fee shall be taxed and collected as part of the costs
15 in the case.

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

18 (3) This section does not apply with respect to the liability of any
19 public utility, railroad, air or motor carrier for personal injury or property
20 damage.

21 Section 25. ORS 756.200 is amended to read:

22 756.200. (1) The remedies and enforcement procedures provided in
23 ORS chapters 756, 757, 758, 760, 761, 763, 764, **this 1973 Act** and 767 do not
24 release or waive any right of action by the state or by any person for any
25 right, penalty or forfeiture which may arise under any law of this state
26 or under an ordinance of any municipality thereof.

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

30 (3) The duties and liabilities of the public utilities, railroads, air and
31 motor carriers shall be the same as are prescribed by the common law,
32 and the remedies against them the same, except where otherwise pro-
33 vided by the Constitution or statutes of this state, and the provisions of

1 ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act and 767 are
2 cumulative thereto.

3 Section 26. ORS 756.515 is amended to read:

4 756.515. (1) Whenever the commissioner believes that any rate may
5 be unreasonable or unjustly discriminatory, or that any service is unsafe
6 or inadequate, or is not afforded, or that an investigation of any matter
7 relating to any public utility, railroad, air or motor carrier or other per-
8 son should be made, or relating to any person to determine if such person is
9 subject to the commissioner's regulatory jurisdiction, he may on his own
10 motion summarily investigate any such matter, with or without notice.

11 (2) If after making such investigation he is satisfied that sufficient
12 grounds exist to warrant a hearing being ordered upon any such matter,
13 he shall furnish any public utility, railroad, air or motor carrier or other
14 person interested a statement notifying it of the matters under investiga-
15 tion, which statement shall be accompanied by a notice fixing the time
16 and place for hearing upon such matters in the manner provided in ORS
17 756.512 for notice of complaint.

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

23 (4) However, the commissioner may, after he has made an investiga-
24 tion on his motion, but without notice or hearing, make such findings and
25 orders as he deems justified or required by the results of such investiga-
26 tion. Except as provided in subsections (5) and (6) of this section such
27 findings and orders have the same legal force and effect as any other
28 finding or order of the commissioner.

29 (5) In addition to any other remedy provided by law, any party
30 aggrieved by an order entered pursuant to subsection (4) of this section
31 may request the commissioner to hold a hearing to determine whether the
32 order should continue in effect. Any such request for hearing shall be sub-
33 mitted to the commissioner not later than 15 days after the date of serv-
34 ice of the order, and the commissioner shall hold the hearing not later

1 than 60 days after receipt of such a request for hearing.

2 (6) If the commissioner receives a request for hearing pursuant to
3 subsection (5) of this section, the order is suspended pending the outcome
4 of the hearing unless the commissioner finds that the order is necessary
5 for the public health or safety or to prevent the dissipation of assets of a
6 business or activity subject to the commissioner's regulatory jurisdiction.

7 Section 27. ORS 756.572 is amended to read:

8 756.572. (1) An order of the commissioner issued in accordance with
9 the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, **this 1973 Act**
10 and 767 is binding upon the successors in interest of each person affected
11 thereby, until set aside, rescinded, suspended or modified as provided by
12 law.

13 (2) Any investigation, hearing or other proceeding involving the issu-
14 ance of an order of the commissioner that has not been finally determined
15 when a transfer of any interests of a person is effected may be continued
16 and finally determined, notwithstanding any such transfer of interest.
17 Any order issued in such investigation, hearing or other proceeding is bind-
18 ing upon the successors in interest.

19 Section 28. ORS 756.990 is amended to read:

20 756.990. (1) Any public utility, railroad, **air** or motor carrier that
21 fails to comply with an order or subpoena issued pursuant to ORS 756.090
22 shall forfeit, for each day it so fails, a sum of not less than \$50 nor more
23 than \$500.

24 (2) Any public utility, railroad, **air** or motor carrier that violates any
25 statute administered by the commissioner, or does any act prohibited, or
26 fails to perform any duty enjoined upon it, for which a penalty has not
27 been provided, or fails to obey any lawful requirement or order made by
28 the commissioner, or any judgment or decree made by any court upon
29 the application of the commissioner, shall forfeit a sum of not less than
30 \$100 nor more than \$10,000 for each such offense.

31 (3) Violation of ORS 756.115 is punishable, upon conviction, by a fine
32 of not less than \$1,000 for each offense. A penalty of not less than \$500 nor
33 more than \$1,000 shall be recovered from the public utility, railroad, **air** or
34 motor carrier for each such offense when such officer, agent or employe

1 acted in obedience to the direction, instruction or request of the public
2 utility, railroad, air or motor carrier, or any general officer thereof.

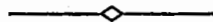
3 (4) Violation of ORS 756.125 is punishable, upon conviction, by a fine
4 of not more than \$100 or imprisonment for not more than 30 days, or both.
5 Any public utility, railroad, air or motor carrier that knowingly permits
6 the violation of ORS 756.125 shall forfeit, upon conviction, not more than
7 \$1,000 for each offense.

8 (5) Violation of subsection (1) of ORS 756.543 is punishable, upon con-
9 viction, by a fine of not less than \$100 nor more than \$1,000, or by im-
10 prisonment in the county jail for not more than one year, or both.

11 (6) In construing and enforcing this section, the act, omission or fail-
12 ure of any officer, agent or other person acting for or employed by any
13 public utility, railroad, air or motor carrier acting within the scope of his
14 employment shall in every case be deemed to be the act, omission or fail-
15 ure of such public utility, railroad, air or motor carrier. With respect to
16 any violation of any statute administered by the commissioner, any pen-
17 alty provision applying to such a violation by a public utility, railroad, air
18 or motor carrier shall apply to such a violation by any other person.

19 (7) All penalties, fines or forfeitures or other sums collected or paid
20 under the provisions of any law administered by the commissioner shall
21 be paid into the General Fund except where it is provided that the same
22 shall be paid to the aggrieved party.

23 **SECTION 29.** This Act being necessary for the immediate preservation
24 of the public peace, health and safety, an emergency is declared to exist,
25 and this Act takes effect ^{on its passage} July 1, 1979.



**SENATE AMENDMENTS TO
PRINTED ENGROSSED SENATE BILL 240**

By JOINT COMMITTEE ON WAYS AND MEANS

April 9

- 1 On page 2 of the printed engrossed bill, line 18, delete "or".
- 2 After line 18, insert:
- 3 "(f) Air taxi or charter services,
- 4 "(g) Aerial logging operations, or".
- 5 In line 19, delete "(f)" and insert "(h)".
- 6 On page 5, after line 9, insert:
- 7 "**SECTION 11a.** Every person applying for a certificate under section 5
- 8 of this Act shall pay to the commissioner with his application a fee of \$150.
- 9 A like fee shall accompany an application for transfer of such certificates.
- 10 The fees collected under this section are not refundable."
- 11 On page 6, line 1, delete "\$92,000" and insert "\$50,000".
- 12 On page 14, line 25, delete "July 1, 1973" and insert "on its passage".



Sen. Jean. Dew

S 240
3/13/73

#2

S 240

may conflict with

S 641

756.010 A 240, 641

SENATE COMMITTEE REPORT

Salem, Oregon 7-6-73

Mr. President:

Joint

Your **Committee** on Ways and Means to whom was referred

Engrossed Senate Bill 240

, having had the same under consideration, respectfully report it back with the recommendation that it:

- _____ Do pass: Do pass with amendments:
_____ Be adopted: _____ Be adopted with amendments:
_____ Do pass with amendments to the printed engrossed bill.
_____ (Referred to Committee on Ways and Means by prior reference)
_____ (Other—specify)

On page 2 of the printed engrossed bill, line 18, delete "or".

After line 18, insert:

"(f) Air taxi or charter services,

"(g) Aerial logging operations, or".

In line 19, delete "(f)" and insert "(h)".

On page 5, after line 9, insert:

lf
"Section 11a. Every person applying for a certificate under section 5 of this Act shall pay to the ~~Commissioner~~ Commissioner with his application a fee of \$150. A like fee shall accompany an application for transfer of such certificates. The fees collected under this section are not refundable."

On page 6, line 1, delete "\$92,000" and insert "\$50,000".

On page 14, line 25, delete "July 1, 1973" and insert "on its passage".


(Chairman) **W. H. Holmstrom**

Submit:
2 copies if no amdts.
4 copies if amdts.
5 copies if to be printed engrossed.

Sen. Newbry
will lead floor discussion.

ENGROSSED

Senate Bill 240

Ordered by the Senate March 14
(Including Amendments by Senate March 14)

Sponsored by Senators NEWBRY, J. BURNS (at the
request of the Public Utility Commissioner of Oregon)

SUMMARY

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

Confers jurisdiction on Public Utility Commissioner to regulate intrastate air commerce. Requires certificates of public convenience and necessity to engage in intrastate air commerce. Permits Public Utility Commissioner to establish rates and routes for air carriers. [*Imposes tax on gross revenues derived from air commerce within this state for designated purpose.*] Prohibits certain acts by air carriers. Provides penalties.

Appropriates \$92,000 from General Fund to Public Utility Commissioner, for biennium beginning July 1, 1973, to finance administration of this Act.

Declares emergency. Takes effect July 1, 1973.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

1 A BILL FOR AN ACT

2 Relating to regulation of air commerce; creating new provisions; amend-
3 ing ORS 756.010, 756.040, 756.070, 756.075, 756.090, 756.105, 756.115,
4 756.160, 756.180, 756.185, 756.200, 756.515, 756.572 and 756.990; appropriat-
5 ing money; providing penalties; and declaring an emergency.

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

7 **SECTION 1.** Unless the context otherwise requires, the definitions in
8 this section and ORS 756.010 shall govern the construction of this Act.

9 (1) "Aircraft" means any contrivance now or hereafter invented, used
10 or designed for navigation of or flight in the air.

11 (2) "Air commerce" means all transportation by aircraft of persons or
12 property for compensation between points in this state; but "air commerce"
13 does not include transportation performed solely in connection with:

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

15 (b) Instruction,

16 (c) Aerial application of agricultural chemicals,

17 (d) Air ambulance services,

18 (e) Aerial fire-fighting services, or

19 (f) Transportation authorized by a certificate of public convenience
20 and necessity issued prior to January 1, 1973, pursuant to section 401 of the
21 Federal Aviation Act of 1958 as amended.

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

24 **SECTION 2.** The purpose of this chapter is to provide regulation of
25 air commerce in order that an orderly, efficient, economical and healthy
26 network of air transportation may be established to the benefit of the
27 people of this state, its communities, and the state itself.

28 **SECTION 3.** The commissioner is vested with authority and respon-
29 sibility to regulate air commerce and air carriers. He shall administer this
30 chapter in accordance with its stated purposes.

31 **SECTION 4.** The State of Oregon recognizes the powers of the Federal

1 Government over air carriers and air commerce. Within the limits of
2 powers reserved to the state:

3 (1) The commissioner shall fix reasonable rates and routes of air car-
4 riers.

5 (2) The commissioner may:

6 (a) Require any air carrier to procure and maintain insurance and per-
7 formance bonds in any amount;

8 (b) Authorize such through routes, joint rates and divisions of revenue
9 for persons engaged in air commerce as he determines to be in the public
10 interest; and

11 (c) Exercise any power expressly or impliedly conferred by this Act
12 and ORS chapter 756.

13 **SECTION 5.** The commissioner shall award certificates of public con-
14 venience and necessity, whenever the public convenience and necessity
15 require, taking into consideration the business experience of the applicant,
16 the applicant's financial ability and insurance coverage, the type of aircraft
17 the applicant would employ, the proposed routes and minimum schedules
18 to be established, whether the carrier could economically and adequately
19 serve the communities involved, the need for service and any other fac-
20 tors which may affect the public interest. Such certificates may be award-
21 ed subject to whatever terms and conditions the commissioner prescribes.

22 **SECTION 6.** The commissioner may suspend or revoke any of the
23 rights conferred by a certificate of public convenience and necessity after
24 notice and opportunity for hearing only upon a finding that the holder:

25 (1) Has abandoned such rights,

26 (2) Is no longer willing or able to perform all of part of the certifi-
27 cated services,

28 (3) Has violated any provision of this Act or any rule, regulation or
29 order of the commissioner, or

30 (4) Has violated any federal or state safety law or regulation.

31 **SECTION 7.** (1) No person shall perform any act which constitutes
32 air commerce, unless that act is authorized by a valid and effective cer-
33 tificate of public convenience and necessity issued by the commissioner or
34 otherwise by the commissioner's rule or order.

1 (2) Each separate act in violation of this section is a separate viola-
2 tion, whether the prohibited acts occur within the same or different days
3 or relate to the same or different aircraft.

4 **SECTION 8.** (1) It is unlawful, unless authorized by order of the
5 commissioner as provided in this section:

6 (a) For two or more air carriers, or for any air carrier and any other
7 common carrier to consolidate or merge their properties or any part there-
8 of into one person for the ownership, management or operation of the
9 properties theretofore in separate ownerships,

10 (b) For any air carrier or any person controlling an air carrier or any
11 other common carrier to purchase, lease, or contract to operate the prop-
12 erties, or a substantial part thereof, of any air carrier, or

13 (c) For any air carrier or any person controlling an air carrier or any
14 other common carrier to acquire control of any air carrier in any manner
15 whatsoever.

16 (2) The commissioner may by order authorize such consolidation, mer-
17 ger, purchase, lease, operating control or acquisition of control upon such
18 terms and conditions as he shall deem to be in the public interest. The
19 commissioner shall determine whether a hearing is required under this
20 section.

21 **SECTION 9.** No air carrier shall discontinue any certificated service
22 without authority of the commissioner, unless such service is unprofitable.
23 Unprofitable services may be discontinued upon 90 days' notice to the
24 commissioner, and to such other persons as the commissioner may require,
25 unless within such 90-day period the commissioner finds that such serv-
26 ices are not unprofitable and orders their continuance.

27 **SECTION 10.** The commissioner may, following a determination of
28 necessity, exempt any air carrier from the certificate provisions of this
29 Act upon a finding that such provisions impose an undue burden upon
30 the carrier, a community or area because of the immediate need for serv-
31 ice including, but not limited to, conditions of national emergency, na-
32 tional disaster or cessation of existing service by another carrier, except
33 the cessation of existing service caused by a labor dispute, and that enforce-
34 ment of such provisions would be contrary to the public interest. Exemp-

1 tions issued pursuant to this section may be issued for a maximum of 90
2 days and may be renewed for the same or a lesser period.

3 **SECTION 11.** (1) To the extent necessary to prevent overlap or con-
4 flict between provisions of this Act and those of any other statute, the
5 provisions of this Act shall exclusively prevail unless subsection (2) of this
6 section applies.

7 (2) The commissioner may by rule exempt any activity from any or
8 all of the requirements of this Act if the commissioner is satisfied that
9 such exemption would not be contrary to the public interest.

10 **SECTION 12.** (1) In addition to all other penalties provided by law,
11 every person who violates or who procures, aids or abets in the violation
12 of this Act or any order, rule, regulation or decision of the commissioner
13 relating to air commerce shall incur a penalty of \$1,000 for every such
14 violation.

15 (2) Each such violation shall be a separate offense and in case of a
16 continuing violation every day's continuance is a separate violation. Every
17 act of commission or omission which procures, aids or abets the violation
18 is a violation under this section and subject to the penalty provided in
19 this section.

20 (3) Such penalty shall not be imposed except by order following com-
21 plaint as provided in ORS 756.500 to 756.610. Such proceeding may only
22 be commenced within two years following the date of the violation.

23 (4) The commissioner may negotiate any settlement or mitigate any
24 penalty provided for in this section on such terms as he considers proper.

25 (5) If the amount of such penalty is not paid to the commissioner, the
26 Attorney General shall bring an action in the name of the State of Oregon
27 in the Circuit Court of Marion County to recover such penalty. The action
28 shall not be commenced until after the time has expired for an appeal
29 from the findings, conclusions and order of the commissioner. In all such
30 actions the procedure and rules of evidence shall be the same as an ordi-
31 nary civil action except as otherwise provided in this Act.

32 **SECTION 13.** (1) To finance the administration of this Act and sub-
33 section (3) of ORS 756.040 there is appropriated from the General Fund

1 \$92,000 to the Public Utility Commissioner for the biennium beginning
2 July 1, 1973.

3 (2) Funds generated under this section shall be used only in the ad-
4 ministration of this chapter and subsection (3) of ORS 756.040 as it re-
5 lates to matters affecting air transportation.

6 **SECTION 14.** Notwithstanding any other provision in this Act, the
7 commissioner shall issue a certificate of public convenience and necessity
8 to any air carrier as to the points in this state between which it was
9 actually operating in good faith and doing business as of January 1, 1973,
10 and continuously thereafter, with or without hearing, provided application
11 therefor shall have been filed with the commissioner on or before January
12 1, 1974. The air carrier may continue such operation until its application
13 is either granted or denied by the commissioner.

14 Section 15. ORS 756.010 is amended to read:

15 756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764, **this**
16 **1973 Act** and 767, except as otherwise specifically provided or unless the
17 context requires otherwise:

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

19 (2) "Customer" includes the patrons, passengers, shippers, subscribers,
20 users of the service and consumers of the product of a railroad, motor car-
21 rier or public utility.

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

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

25 (5) "Person" includes individuals, joint ventures, partnerships, cor-
26 porations and associations or their officers, employees, agents, lessees, as-
27 signees, trustees or receivers.

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

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

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

32 (9) "Service" is used in its broadest and most inclusive sense and in-
33 cludes equipment and facilities related to providing the service or the
34 product served.

1 **(10) "Air carrier" has the meaning given that term in this 1973 Act.**

2 Section 16. ORS 756.040 is amended to read:

3 756.040. (1) In addition to the powers and duties now or hereafter
4 transferred to or vested in the commissioner, he shall represent the custom-
5 ers of any public utility, railroad, air or motor carrier, and the public gen-
6 eral in all controversies respecting rates, valuations, service and all matters
7 of which he has jurisdiction. In respect thereof he shall make use of the
8 jurisdiction and powers of his office to protect such customers, and the
9 public generally, from unjust and unreasonable exactions and practices
10 and to obtain for them adequate service at fair and reasonable rates.

11 (2) The commissioner is vested with power and jurisdiction to super-
12 vise and regulate every public utility, railroad, air and motor carrier in
13 this state, and to do all things necessary and convenient in the exercise of
14 such power and jurisdiction.

15 (3) The commissioner may participate in any proceeding before any
16 public officer, commission or body of the United States or any state for
17 the purpose of representing the public generally and the customers of the
18 services of any public utility, railroad, water, air or motor carrier operat-
19 ing or providing service to or within this state.

20 (4) The commissioner may make joint investigations, hold joint hear-
21 ings within or without this state and issue concurrent orders in conjunc-
22 tion or concurrence with any official, board, commission or agency of any
23 state or of the United States.

24 Section 17. ORS 756.070 is amended to read:

25 756.070. The commissioner may inquire into the management of the
26 business of all public utilities, air and motor carriers and railroads, and
27 shall keep informed as to the manner and method in which they are con-
28 ducted and has the right to obtain from any public utility, air or motor
29 carrier or railroad all necessary information to enable him to perform his
30 duties.

31 Section 18. ORS 756.075 is amended to read:

32 756.075. (1) The commissioner or his authorized representatives may
33 enter upon any premises, or any equipment, rolling stock or facilities op-
34 erated or occupied by any public utility, railroad, air or motor carrier for

1 the purpose of making any inspection, examination or test reasonably re-
2 quired in the administration of ORS chapters 756, 757, 758, 760, 761, 763,
3 764, **this 1973 Act** or 767 and to set up and use on such premises equip-
4 ment, rolling stock or facilities any apparatus and appliances and occupy
5 reasonable space therefor.

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

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

16 (4) Nothing in this section authorizes the commissioner to use any in-
17 formation developed thereunder for any purpose inconsistent with any
18 statute administered by him or to make a disclosure thereof for other than
19 regulatory purposes.

20 Section 19. ORS 756.090 is amended to read:

21 756.090. (1) The commissioner may require by rule, or by order or sub-
22 pena to be served on any public utility, railroad, **air** or motor carrier, the
23 maintaining within this state or the production within this state at such
24 time and place as he may designate, of any books, accounts, papers or
25 records kept by such public utility, railroad, **air** or motor carrier in any
26 office or place within or without this state, or verified copies in lieu
27 thereof, if the commissioner so orders, in order that an examination there-
28 of may be made by the commissioner or under his direction.

29 (2) When a public utility, railroad, **air** or motor carrier keeps and
30 maintains its books, accounts, papers or records outside the state, the com-
31 missioner may examine such documents and shall be reimbursed by the
32 public utility, railroad, **air** or motor carrier for all expenses incurred in
33 making such out-of-state examination.

1 Section 20. ORS 756.105 is amended to read:

2 756.105. (1) Every public utility, railroad, air and motor carrier shall
3 furnish to the commissioner all information required by him to carry into
4 effect the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, this
5 1973 Act and 767, and shall make specific answers to all questions sub-
6 mitted by the commissioner.

7 (2) If a public utility, railroad, air or motor carrier is unable to furnish
8 any information required under subsection (1) of this section for any rea-
9 son beyond its control, it is a good and sufficient reason for such failure.
10 The answer or information shall be verified under oath and returned to
11 the commissioner at his office within the period fixed by the commis-
12 sioner.

13 Section 21. ORS 756.115 is amended to read:

14 756.115. No officer, agent or employe of any public utility, railroad, air
15 or motor carrier shall:

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

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

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

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

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

28 (6) Refuse to do any act or thing in connection with such system of
29 accounting when so directed by the commissioner or his authorized repre-
30 sentative.

31 Section 22. ORS 756.160 is amended to read:

32 756.160. (1) The commissioner shall inquire into any neglect or viola-
33 tion of any law of this state or any law or ordinance of any municipality
34 thereof relating to public utilities, railroad, air or motor carriers by any

1 public utility, railroad, air or motor carrier doing business therein, its offi-
2 cers, agents or employes, and shall enforce all laws of this state relating
3 to public utilities, railroads, air and motor carriers and may enforce all
4 such laws and ordinances of a municipality. The commissioner shall report
5 all violations of any such laws or ordinances to the Attorney General.

6 (2) The Attorney General, district attorney of each county, and all
7 state, county and city police officers shall assist the commissioner in the
8 administration and enforcement of all laws administered by the commis-
9 sioner, and they, as well as his assistants and employes, shall inform
10 against and diligently prosecute all persons whom they have reasonable
11 cause to believe guilty of violation of any such laws or of the rules, regu-
12 lations, orders, decisions or requirements of the commissioner made pur-
13 suant thereto.

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

19 (4) Any forfeiture or penalty provided for in any law administered
20 by the commissioner shall be recovered by an action brought thereon in
21 the name of the State of Oregon in any court of appropriate jurisdiction.

22 Section 23. ORS 756.180 is amended to read:

23 756.180. (1) Whenever it appears to the commissioner that any public
24 utility, railroad, air or motor carrier is engaged or about to engage in any
25 acts or practices which constitute a violation of any statute administered by
26 the commissioner, or any rule, regulation, requirement, order, term or con-
27 dition issued thereunder, he may apply to any circuit court of the state
28 where such public utility, railroad, air or motor carrier operates for the en-
29 forcement of such statute, rule, regulation, requirement, order, term or
30 condition.

31 (2) Such court, without bond, has jurisdiction to enforce obedience
32 thereto by injunction, or by other processes, mandatory or otherwise, re-
33 straining such public utility, railroad, air or motor carrier, or its officers,
34 agents, employes and representatives from further violations of such

1 statute, rule, regulation, requirement, order, term or condition, and en-
2 joining upon them obedience thereto.

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

6 Section 24. ORS 756.185 is amended to read:

7 756.185. (1) Any public utility, railroad, air or motor carrier which
8 does, or causes or permits to be done, any matter, act or thing prohibited
9 by ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act or 767 or
10 omits to do any act, matter or thing required to be done by such statutes,
11 is liable to the person injured thereby in treble the amount of damages
12 sustained in consequence of such violation together with a reasonable
13 counsel's or attorney's fee, to be fixed by the court in every case of recov-
14 ery. Such attorney's fee shall be taxed and collected as part of the costs
15 in the case.

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

18 (3) This section does not apply with respect to the liability of any
19 public utility, railroad, air or motor carrier for personal injury or property
20 damage.

21 Section 25. ORS 756.200 is amended to read:

22 756.200. (1) The remedies and enforcement procedures provided in
23 ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act and 767 do not
24 release or waive any right of action by the state or by any person for any
25 right, penalty or forfeiture which may arise under any law of this state
26 or under an ordinance of any municipality thereof.

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

30 (3) The duties and liabilities of the public utilities, railroads, air and
31 motor carriers shall be the same as are prescribed by the common law,
32 and the remedies against them the same, except where otherwise pro-
33 vided by the Constitution or statutes of this state, and the provisions of

1 ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act and 767 are
2 cumulative thereto.

3 Section 26. ORS 756.515 is amended to read:

4 756.515. (1) Whenever the commissioner believes that any rate may
5 be unreasonable or unjustly discriminatory, or that any service is unsafe
6 or inadequate, or is not afforded, or that an investigation of any matter
7 relating to any public utility, railroad, air or motor carrier or other per-
8 son should be made, or relating to any person to determine if such person is
9 subject to the commissioner's regulatory jurisdiction, he may on his own
10 motion summarily investigate any such matter, with or without notice.

11 (2) If after making such investigation he is satisfied that sufficient
12 grounds exist to warrant a hearing being ordered upon any such matter,
13 he shall furnish any public utility, railroad, air or motor carrier or other
14 person interested a statement notifying it of the matters under investiga-
15 tion, which statement shall be accompanied by a notice fixing the time
16 and place for hearing upon such matters in the manner provided in ORS
17 756.512 for notice of complaint.

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

23 (4) However, the commissioner may, after he has made an investiga-
24 tion on his motion, but without notice or hearing, make such findings and
25 orders as he deems justified or required by the results of such investiga-
26 tion. Except as provided in subsections (5) and (6) of this section such
27 findings and orders have the same legal force and effect as any other
28 finding or order of the commissioner.

29 (5) In addition to any other remedy provided by law, any party
30 aggrieved by an order entered pursuant to subsection (4) of this section
31 may request the commissioner to hold a hearing to determine whether the
32 order should continue in effect. Any such request for hearing shall be sub-
33 mitted to the commissioner not later than 15 days after the date of serv-
34 ice of the order, and the commissioner shall hold the hearing not later

1 than 60 days after receipt of such a request for hearing.

2 (6) If the commissioner receives a request for hearing pursuant to
3 subsection (5) of this section, the order is suspended pending the outcome
4 of the hearing unless the commissioner finds that the order is necessary
5 for the public health or safety or to prevent the dissipation of assets of a
6 business or activity subject to the commissioner's regulatory jurisdiction.

7 Section 27. ORS 756.572 is amended to read:

8 756.572. (1) An order of the commissioner issued in accordance with
9 the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, **this 1973 Act**
10 and 767 is binding upon the successors in interest of each person affected
11 thereby, until set aside, rescinded, suspended or modified as provided by
12 law.

13 (2) Any investigation, hearing or other proceeding involving the issu-
14 ance of an order of the commissioner that has not been finally determined
15 when a transfer of any interests of a person is effected may be continued
16 and finally determined, notwithstanding any such transfer of interest.
17 Any order issued in such investigation, hearing or other proceeding is bind-
18 ing upon the successors in interest.

19 Section 28. ORS 756.990 is amended to read:

20 756.990. (1) Any public utility, railroad, air or motor carrier that
21 fails to comply with an order or subpoena issued pursuant to ORS 756.090
22 shall forfeit, for each day it so fails, a sum of not less than \$50 nor more
23 than \$500.

24 (2) Any public utility, railroad, air or motor carrier that violates any
25 statute administered by the commissioner, or does any act prohibited, or
26 fails to perform any duty enjoined upon it, for which a penalty has not
27 been provided, or fails to obey any lawful requirement or order made by
28 the commissioner, or any judgment or decree made by any court upon
29 the application of the commissioner, shall forfeit a sum of not less than
30 \$100 nor more than \$10,000 for each such offense.

31 (3) Violation of ORS 756.115 is punishable, upon conviction, by a fine
32 of not less than \$1,000 for each offense. A penalty of not less than \$500 nor
33 more than \$1,000 shall be recovered from the public utility, railroad, air or
34 motor carrier for each such offense when such officer, agent or employe

1 acted in obedience to the direction, instruction or request of the public
2 utility, railroad, air or motor carrier, or any general officer thereof.

3 (4) Violation of ORS 756.125 is punishable, upon conviction, by a fine
4 of not more than \$100 or imprisonment for not more than 30 days, or both.
5 Any public utility, railroad, air or motor carrier that knowingly permits
6 the violation of ORS 756.125 shall forfeit, upon conviction, not more than
7 \$1,000 for each offense.

8 (5) Violation of subsection (1) of ORS 756.543 is punishable, upon con-
9 viction, by a fine of not less than \$100 nor more than \$1,000, or by im-
10 prisonment in the county jail for not more than one year, or both.

11 (6) In construing and enforcing this section, the act, omission or fail-
12 ure of any officer, agent or other person acting for or employed by any
13 public utility, railroad, air or motor carrier acting within the scope of his
14 employment shall in every case be deemed to be the act, omission or fail-
15 ure of such public utility, railroad, air or motor carrier. With respect to
16 any violation of any statute administered by the commissioner, any pen-
17 alty provision applying to such a violation by a public utility, railroad, air
18 or motor carrier shall apply to such a violation by any other person.

19 (7) All penalties, fines or forfeitures or other sums collected or paid
20 under the provisions of any law administered by the commissioner shall
21 be paid into the General Fund except where it is provided that the same
22 shall be paid to the aggrieved party.

23 **SECTION 29.** This Act being necessary for the immediate preservation
24 of the public peace, health and safety, an emergency is declared to exist,
25 and this Act takes effect July 1, 1973.



*Eng 1/11/73
Eng 1/1/73*

Eng 1/11/73
Senate Bill 240

Sponsored by Senators NEWBRY, J. BURNS (at the request of the Public Utility Commissioner of Oregon)

*Amended by the Senate March 11
(Including Amendment by Senate March 11)*

SUMMARY

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

Confers jurisdiction on Public Utility Commissioner to regulate intrastate air commerce. Requires certificates of public convenience and necessity to engage in intrastate air commerce. Permits Public Utility Commissioner to establish rates and routes for air carriers. Imposes tax on gross revenues derived from air commerce within this state for designated purpose. Prohibits certain acts by air carriers. Provides penalties.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

A BILL FOR AN ACT

1
2 Relating to regulation of air commerce; creating new provisions; amend-
3 ing ORS 756.010, 756.040, 756.070, 756.075, 756.090, 756.105, 756.115,
4 756.160, 756.180, 756.185, 756.200, 756.515, 756.572 ^{appropriating money;} and 756.990; ^{and} pro-
5 viding penalties; ^{and declaring an emergency}

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

7 **SECTION 1.** Unless the context otherwise requires, the definitions in
8 this section and ORS 756.010 shall govern the construction of this Act.

9 (1) "Aircraft" means any contrivance now or hereafter invented, used
10 or designed for navigation of or flight in the air.

11 (2) "Air commerce" means all transportation by aircraft of persons or
12 property for compensation between points in this state ~~and all transporta-~~
13 ~~tion of persons or property for compensation by other modes incidental~~
14 ~~to or in conjunction with such carriage;~~ but "air commerce" does not include
15 transportation performed solely in connection with:

- 16 (a) Transportation of U.S. mail,
- 17 (b) Instruction,
- 18 (c) Aerial application of agricultural chemicals,
- 19 (d) Air ambulance services, ^{or}
- 20 ^{(e) Aerial fire-fighting services, or}
- 21 ^{(f) (g)} Transportation authorized by a certificate of public convenience
22 and necessity issued prior to January 1, 1973, pursuant to section 401 of the
23 Federal Aviation Act of 1958 as amended.

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

26 **SECTION 2.** The purpose of this chapter is to provide regulation of
27 air commerce in order that an orderly, efficient, economical and healthy
28 network of air transportation may be established to the benefit of the
29 people of this state, its communities, and the state itself.

30 **SECTION 3.** The commissioner is vested with authority and respon-
31 sibility to regulate air commerce and air carriers. He shall administer this
32 chapter in accordance with its stated purposes.

SECTION 4. The State of Oregon recognizes the powers of the Federal

1 Government over air carriers and air commerce. Within the limits of
2 powers reserved to the state:

3 (1) The commissioner shall fix reasonable rates and routes of air car-
4 riers.

5 (2) The commissioner may:

6 (a) Require any air carrier to procure and maintain insurance and per-
7 formance bonds in any amount;

8 (b) Authorize such through routes, joint rates and divisions of revenue
9 for persons engaged in air commerce as he determines to be in the public
10 interest; and

11 (c) Exercise any power expressly or impliedly conferred by this Act
12 and ORS chapter 756.

13 **SECTION 5.** The commissioner shall award certificates of public con-
14 venience and necessity, whenever the public convenience and necessity
15 require, taking into consideration the business experience of the applicant,
16 the applicant's financial ability and insurance coverage, the type of aircraft
17 the applicant would employ, the proposed routes and minimum schedules
18 to be established, whether the carrier could economically and adequately
19 serve the communities involved, the need for service and any other fac-
20 tors which may affect the public interest. Such certificates may be award-
21 ed subject to whatever terms and conditions the commissioner prescribes.

22 **SECTION 6.** The commissioner may suspend or revoke any of the
23 rights conferred by a certificate of public convenience and necessity after
24 notice and opportunity for hearing only upon a finding that the holder:

25 (1) Has abandoned such rights,

26 (2) Is no longer willing or able to perform all of part of the certifi-
27 cated services,

28 (3) Has violated any provision of this Act or any rule, regulation or
29 order of the commissioner, or

30 (4) Has violated any federal or state safety law or regulation.

31 **SECTION 7.** (1) No person shall perform any act which constitutes
32 air commerce, unless that act is authorized by a valid and effective cer-
33 tificate of public convenience and necessity issued by the commissioner or
34 otherwise by the commissioner's rule or order.

1 (2) Each separate act in violation of this section is a separate viola-
2 tion, whether the prohibited acts occur within the same or different days
3 or relate to the same or different aircraft.

4 **SECTION 8.** (1) It is unlawful, unless authorized by order of the
5 commissioner as provided in this section:

6 (a) For two or more air carriers, or for any air carrier and any other
7 common carrier to consolidate or merge their properties or any part there-
8 of into one person for the ownership, management or operation of the
9 properties theretofore in separate ownerships,

10 (b) For any air carrier or any person controlling an air carrier or any
11 other common carrier to purchase, lease, or contract to operate the prop-
12 erties, or a substantial part thereof, of any air carrier, or

13 (c) For any air carrier or any person controlling an air carrier or any
14 other common carrier to acquire control of any air carrier in any manner
15 whatsoever.

16 (2) The commissioner may by order authorize such consolidation, mer-
17 ger, purchase, lease, operating control or acquisition of control upon such
18 terms and conditions as he shall deem to be in the public interest. The
19 commissioner shall determine whether a hearing is required under this
20 section.

21 **SECTION 9.** No air carrier shall discontinue any certificated service
22 without authority of the commissioner, unless such service is unprofitable.
23 Unprofitable services may be discontinued upon 90 days' notice to the
24 commissioner, and to such other persons as the commissioner may require,
25 unless within such 90-day period the commissioner finds that such serv-
26 ices are not unprofitable and orders their continuance.

27 **SECTION 10.** The commissioner may, following a determination of
28 necessity, exempt any air carrier from the certificate provisions of this
29 Act upon a finding that such provisions impose an undue burden upon
30 the carrier, a community or area because of the immediate need for serv-
31 ice including, but not limited to, conditions of national emergency, na-
32 tional disaster or cessation of existing service by another carrier, except
33 the cessation of existing service caused by a labor dispute, and that enforce-

1 ment of such provisions would be contrary to the public interest. Exemp-
2 tions issued pursuant to this section may be issued for a maximum of 90
3 days and may be renewed for the same or a lesser period.

4 **SECTION 11.** (1) To the extent necessary to prevent overlap or con-
5 flict between provisions of this Act and those of any other statute, the
6 provisions of this Act shall exclusively prevail unless subsection (2) of this
7 section applies.

8 (2) The commissioner may by rule exempt any activity from any or
9 all of the requirements of this Act if the commissioner is satisfied that
10 such exemption would not be contrary to the public interest.

11 **SECTION 12.** (1) In addition to all other penalties provided by law,
12 every person who violates or who procures, aids or abets in the violation
13 of this Act or any order, rule, regulation or decision of the commissioner
14 relating to air commerce shall incur a penalty of \$1,000 for every such
15 violation.

16 (2) Each such violation shall be a separate offense and in case of a
17 continuing violation every day's continuance is a separate violation. Every
18 act of commission or omission which procures, aids or abets the violation
19 is a violation under this section and subject to the penalty provided in
20 this section.

21 (3) Such penalty shall not be imposed except by order following com-
22 plaint as provided in ORS 756.500 to 756.610. Such proceeding may only
23 be commenced within two years following the date of the violation.

24 (4) The commissioner may negotiate any settlement or mitigate any
25 penalty provided for in this section on such terms as he considers proper.

26 (5) If the amount of such penalty is not paid to the commissioner, the
27 Attorney General shall bring an action in the name of the State of Oregon
28 in the Circuit Court of Marion County to recover such penalty. The action
29 shall not be commenced until after the time has expired for an appeal
30 from the findings, conclusions and order of the commissioner. In all such
31 actions the procedure and rules of evidence shall be the same as an ordi-
32 nary civil action except as otherwise provided in this Act.

33 **SECTION 13.** (1) To finance the administration of this Act and sub-
34 section (3) of ORS 756.040 ~~there is hereby imposed a tax on gross revenues~~
there is appropriated from the

General Fund \$92,000 to the Public Utility
 1 ~~derived from air commerce. Such tax shall be computed at a straight per-~~
 2 ~~centage rate fixed by the commissioner, but shall not exceed the lesser of:~~
 3 *July 1, 1973.*
 3 ~~(a) The actual cost of administration,~~

4 ~~(b) $\frac{1}{100}$ tenths of one percent per annum.~~

5 (2) Funds generated under this section shall be used only in the ad-
 6 ministration of this chapter and subsection (3) of ORS 756.040 as it re-
 7 lates to matters affecting air transportation.

8 **SECTION 14.** Notwithstanding any other provision in this Act, the
 9 commissioner shall issue a certificate of public convenience and necessity
 10 to any air carrier as to the points in this state between which it was
 11 actually operating in good faith and doing business as of January 1, 1973,
 12 and continuously thereafter, with or without hearing, provided application
 13 therefor shall have been filed with the commissioner on or before January
 14 1, 1974. The air carrier may continue such operation until its application
 15 is either granted or denied by the commissioner.

16 Section 15. ORS 756.010 is amended to read:

17 756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764, this
 18 1973 Act and 767, except as otherwise specifically provided or unless the
 19 context requires otherwise:

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

21 (2) "Customer" includes the patrons, passengers, shippers, subscribers,
 22 users of the service and consumers of the product of a railroad, motor car-
 23 rier or public utility.

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

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

27 (5) "Person" includes individuals, joint ventures, partnerships, cor-
 28 porations and associations or their officers, employes, agents, lessees, as-
 29 signees, ~~trustee~~ *trustee* or receiver.

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

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

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

1 (9) "Service" is used in its broadest and most inclusive sense and in-
2 cludes equipment and facilities related to providing the service or the
3 product served.

4 (10) "Air carrier" has the meaning given that term in this 1973 Act.

5 Section 16. ORS 756.040 is amended to read:

6 756.040. (1) In addition to the powers and duties now or hereafter
7 transferred to or vested in the commissioner, he shall represent the custom-
8 ers of any public utility, railroad, air or motor carrier, and the public gen-
9 eral in all controversies respecting rates, valuations, service and all matters
10 of which he has jurisdiction. In respect thereof he shall make use of the
11 jurisdiction and powers of his office to protect such customers, and the
12 public generally, from unjust and unreasonable exactions and practices
13 and to obtain for them adequate service at fair and reasonable rates.

14 (2) The commissioner is vested with power and jurisdiction to super-
15 vise and regulate every public utility, railroad, air and motor carrier in
16 this state, and to do all things necessary and convenient in the exercise of
17 such power and jurisdiction.

18 (3) The commissioner may participate in any proceeding before any
19 public officer, commission or body of the United States or any state for
20 the purpose of representing the public generally and the customers of the
21 services of any public utility, railroad, water, air or motor carrier operat-
22 ing or providing service to or within this state.

23 (4) The commissioner may make joint investigations, hold joint hear-
24 ings within or without this state and issue concurrent orders in conjunc-
25 tion or concurrence with any official, board, commission or agency of any
26 state or of the United States.

27 Section 17. ORS 756.070 is amended to read:

28 756.070. The commissioner may inquire into the management of the
29 business of all public utilities, air and motor carriers and railroads, and
30 shall keep informed as to the manner and method in which they are con-
31 ducted and has the right to obtain from any public utility, air or motor
32 carrier or railroad all necessary information to enable him to perform his
33 duties.

1 Section 18. ORS 756.075 is amended to read:

2 756.075. (1) The commissioner or his authorized representatives may
3 enter upon any premises, or any equipment, rolling stock or facilities op-
4 erated or occupied by any public utility, railroad, air or motor carrier for
5 the purpose of making any inspection, examination or test reasonably re-
6 quired in the administration of ORS chapters 756, 757, 758, 760, 761, 763,
7 764, this 1973 Act or 767 and to set up and use on such premises equip-
8 ment, rolling stock or facilities any apparatus and appliances and occupy
9 reasonable space therefor.

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

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

20 (4) Nothing in this section authorizes the commissioner to use any in-
21 formation developed thereunder for any purpose inconsistent with any
22 statute administered by him or to make a disclosure thereof for other than
23 regulatory purposes.

24 Section 19. ORS 756.090 is amended to read:

25 756.090. (1) The commissioner may require by rule, or by order or sub-
26 pena to be served on any public utility, railroad, air or motor carrier, the
27 maintaining within this state or the production within this state at such
28 time and place as he may designate, of any books, accounts, papers or
29 records kept by such public utility, railroad, air or motor carrier in any
30 office or place within or without this state, or verified copies in lieu
31 thereof, if the commissioner so orders, in order that an examination there-
32 of may be made by the commissioner or under his direction.

33 (2) When a public utility, railroad, air or motor carrier keeps and
34 maintains its books, accounts, papers or records outside the state, the com-

1 missioner may examine such documents and shall be reimbursed by the
2 public utility, railroad, air or motor carrier for all expenses incurred in
3 making such out-of-state examination.

4 Section 20. ORS 756.105 is amended to read:

5 756.105. (1) Every public utility, railroad, air and motor carrier shall
6 furnish to the commissioner all information required by him to carry into
7 effect the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, this
8 1973 Act and 767, and shall make specific answers to all questions sub-
9 mitted by the commissioner.

10 (2) If a public utility, railroad, air or motor carrier is unable to furnish
11 any information required under subsection (1) of this section for any rea-
12 son beyond its control, it is a good and sufficient reason for such failure.
13 The answer or information shall be verified under oath and returned to
14 the commissioner at his office within the period fixed by the commis-
15 sioner.

16 Section 21. ORS 756.115 is amended to read:

17 756.115. No officer, agent or employe of any public utility, railroad, air
18 or motor carrier shall:

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

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

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

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

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

31 (6) Refuse to do any act or thing in connection with such system of
32 accounting when so directed by the commissioner or his authorized repre-
33 sentative.

1 Section 22. ORS 756.160 is amended to read:

2 756.160. (1) The commissioner shall inquire into any neglect or viola-
3 tion of any law of this state or any law or ordinance of any municipality
4 thereof relating to public utilities, railroad, air or motor carriers by any
5 public utility, railroad, air or motor carrier doing business therein, its offi-
6 cers, agents or employes, and shall enforce all laws of this state relating
7 to public utilities, railroad, air and motor carriers and may enforce all
8 such laws and ordinances of a municipality. The commissioner shall report
9 all violations of any such laws or ordinances to the Attorney General.

10 (2) The Attorney General, district attorney of each county, and all
11 state, county and city police officers shall assist the commissioner in the
12 administration and enforcement of all laws administered by the commis-
13 sioner, and they, as well as his assistants and employes, shall inform
14 against and diligently prosecute all persons whom they have reasonable
15 cause to believe guilty of violation of any such laws or of the rules, regu-
16 lations, orders, decisions or requirements of the commissioner made pur-
17 suant thereto.

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

23 (4) Any forfeiture or penalty provided for in any law administered
24 by the commissioner shall be recovered by an action brought thereon in
25 the name of the State of Oregon in any court of appropriate jurisdiction.

26 Section 23. ORS 756.180 is amended to read:

27 756.180. (1) Whenever it appears to the commissioner that any public
28 utility, railroad, air or motor carrier is engaged or about to engage in any
29 acts or practices which constitute a violation of any statute administered by
30 the commissioner, or any rule, regulation, requirement, order, term or con-
31 dition issued thereunder, he may apply to any circuit court of the state
32 where such public utility, railroad, air or motor carrier operates for the en-
33 forcement of such statute, rule, regulation, requirement, order, term or
34 condition.

1 (3) The duties and liabilities of the public utilities, railroads, air and
2 motor carriers shall be the same as are prescribed by the common law,
3 and the remedies against them the same, except where otherwise pro-
4 vided by the Constitution or statutes of this state, and the provisions of
5 ORS chapters 756, 757, 758, 760, 761, 763, 764, **this 1973 Act** and 767 are
6 cumulative thereto.

7 Section 26. ORS 756.515 is amended to read:

8 756.515. (1) Whenever the commissioner believes that any rate may
9 be unreasonable or unjustly discriminatory, or that any service is unsafe
10 or inadequate, or is not afforded, or that an investigation of any matter
11 relating to any public utility, railroad, **air or** motor carrier or other per-
12 son should be made, or relating to any person to determine if such person is
13 subject to the commissioner's regulatory jurisdiction, he may on his own
14 motion summarily investigate any such matter, with or without notice.

15 (2) If after making such investigation he is satisfied that sufficient
16 grounds exist to warrant a hearing being ordered upon any such matter,
17 he shall furnish any public utility, railroad, **air or** motor carrier or other
18 person interested a statement notifying it of the matters under investiga-
19 tion, which statement shall be accompanied by a notice fixing the time
20 and place for hearing upon such matters in the manner provided in ORS
21 756.512 for notice of complaint.

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

27 (4) However, the commissioner may, after he has made an investiga-
28 tion on his motion, but without notice or hearing, make such findings and
29 orders as he deems justified or required by the results of such investiga-
30 tion. Except as provided in subsections (5) and (6) of this section such
31 findings and orders have the same legal force and effect as any other
32 finding or order of the commissioner.

33 (5) In addition to any other remedy provided by law, any party
34 aggrieved by an order entered pursuant to subsection (4) of this section

1 may request the commissioner to hold a hearing to determine whether the
2 order should continue in effect. Any such request for hearing shall be sub-
3 mitted to the commissioner not later than 15 days after the date of serv-
4 ice of the order, and the commissioner shall hold the hearing not later
5 60 days after receipt of such a request for hearing.

6 (6) If the commissioner receives a request for hearing pursuant to
7 subsection (5) of this section, the order is suspended pending the outcome
8 of the hearing unless the commissioner finds that the order is necessary
9 for the public health or safety or to prevent the dissipation of assets of a
10 business or activity subject to the commissioner's regulatory jurisdiction.

11 Section 27. ORS 756.572 is amended to read:

12 756.572. (1) An order of the commissioner issued in accordance with
13 the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, **this 1973 Act**
14 and 767 is binding upon the successors in interest of each person affected
15 thereby, until set aside, rescinded, suspended or modified as provided by
16 law.

17 (2) Any investigation, hearing or other proceeding involving the issu-
18 ance of an order of the commissioner that has not been finally determined
19 when a transfer of any interests of a person is effected may be continued
20 and finally determined, notwithstanding any such transfer of interest.
21 Any order issued in such investigation, hearing or other proceeding is bind-
22 ing upon the successors in interest.

23 Section 28. ORS 756.990 is amended to read:

24 756.990. (1) Any public utility, railroad, air or motor carrier that
25 fails to comply with an order or subpoena issued pursuant to ORS 756.090
26 shall forfeit, for each day it so fails, a sum of not less than \$50 nor more
27 than \$500.

28 (2) Any public utility, railroad, air or motor carrier that violates any
29 statute administered by the commissioner, or does any act prohibited, or
30 fails to perform any duty enjoined upon it, for which a penalty has not
31 been provided, or fails to obey any lawful requirement or order made by
32 the commissioner, or any judgment or decree made by any court upon
33 the application of the commissioner, shall forfeit a sum of not less than
34 \$100 nor more than \$10,000 for each such offense.

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

7 (4) Violation of ORS 756.125 is punishable, upon conviction, by a fine
8 of not more than \$100 or imprisonment for not more than 30 days, or both.
9 Any public utility, railroad, air or motor carrier that knowingly permits
10 the violation of ORS 756.125 shall forfeit, upon conviction, not more than
11 \$1,000 for each offense.

12 (5) Violation of subsection (1) of ORS 756.543 is punishable, upon con-
13 viction, by a fine of not less than \$100 nor more than \$1,000, or by im-
14 prisonment in the county jail for not more than one year, or both.

15 (6) In construing and enforcing this section, the act, omission or fail-
16 ure of any officer, agent or other person acting for or employed by any
17 public utility, railroad, air/motor carrier acting within the scope of his
18 employment shall in every case be deemed to be the act, omission or fail-
19 ure of such public utility, railroad, air or motor carrier. With respect to
20 any violation of any statute administered by the commissioner, any pen-
21 alty provision applying to such a violation by a public utility, railroad, air
22 or motor carrier shall apply to such a violation by any other person.

23 (7) All penalties, fines or forfeitures or other sums collected or paid
24 under the provisions of any law administered by the commissioner shall
25 be paid into the General Fund except where it is provided that the same
26 shall be paid to the aggrieved party.

① **Section 19. This Act being necessary for the immediate
preservation of the public peace, health and safety, an
emergency is declared to exist, and this Act takes effect
July 1, 1973.**

**SENATE AMENDMENTS TO
SENATE BILL 240**

By COMMITTEE ON ECONOMIC DEVELOPMENT

March 14

- 1 On page 2 of the printed bill, line 4, delete the second "and" and insert
2 "appropriating money;".
- 3 In line 5, after "penalties" insert "; and declaring an emergency".
- 4 In line 12, after "state" delete the rest of the line and line 13.
- 5 In line 14, delete "to or in conjunction with such carriage".
- 6 In line 19, delete "or".
- 7 After line 19, insert:
- 8 "(e) Aerial fire-fighting services, or".
- 9 In line 20, delete "(e)" and insert "(f)".
- 10 On page 5, line 34, after "756.040" delete the rest of the line and insert
11 "there is appropriated from the General Fund \$92,000 to the Public Utility
12 Commissioner for the biennium beginning July 1, 1973."
- 13 On page 6, delete lines 1 through 4.
- 14 On page 14, after line 26, insert:
- 15 "**SECTION 29.** This Act being necessary for the immediate preser-
16 vation of the public peace, health and safety, an emergency is declared to
17 exist, and this Act takes effect July 1, 1973."



SEN. ECONOMIC DEVELOPMENT

S 240
2/19/73

Report #1

S 240

may conflict with

S 324 E

756.010 is amended by both bills.

JOHN D. BURNS
State Senator



909 American Bank Building
Portland, Oregon 97205

3-14-73

This authorizes E&E to add "appropriating money" to the title of SB 240 and Pat Corning to initial the copy for me.

J.B.

~~(Referred to Comm)~~

(Other—specify)

- On page 2 of the printed bill, line 4, delete ^{the word} "and" ^{and insert "appropriating money;"}.
- On page 2, line 5, after "penalties" insert "; and declaring an emergency".
- On page 2, line 12, after "state" delete the rest of the line and line 13.
- On page 2, line 14, delete "to or in conjunction with such carriage".
- On page 2, line 19, delete "or".
- On page 2, after line 19, insert:
"(e) Aerial fire-fighting services, or".
- On page 2, line 20, delete "(e)" and insert "(f)".
- On page 5, line 34, after "756.040" delete the rest of the line and insert "there is appropriated from the General Fund \$92,000 to the Public Utility Commissioner for the biennium beginning July 1, 1973.".

Submit:
2 copies if no amdts.
4 copies if amdts.
5 copies if to be printed engrossed.

(1973)

John D. Burns
(Chairman)

Sen. L.W. Newbry
will lead floor discussion.

On page 6, delete lines 1 through 4.

On page 14, after line 26, insert:

of "Section 29. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect July 1, 1973."

Senate Bill 240

Sponsored by Senators NEWBRY, J. BURNS (at the request of the Public Utility Commissioner of Oregon)

SUMMARY

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

Confers jurisdiction on Public Utility Commissioner to regulate intrastate air commerce. Requires certificates of public convenience and necessity to engage in intrastate air commerce. Permits Public Utility Commissioner to establish rates and routes for air carriers. Imposes tax on gross revenues derived from air commerce within this state for designated purpose. Prohibits certain acts by air carriers. Provides penalties.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

1 A BILL FOR AN ACT

2 Relating to regulation of air commerce; creating new provisions; amend-
3 ing ORS 756.010, 756.040, 756.070, 756.075, 756.090, 756.105, 756.115,
4 756.160, 756.180, 756.185, 756.200, 756.515, 756.572 and 756.990; and pro-
5 viding penalties.

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

7 **SECTION 1.** Unless the context otherwise requires, the definitions in
8 this section and ORS 756.010 shall govern the construction of this Act.

9 (1) "Aircraft" means any contrivance now or hereafter invented, used
10 or designed for navigation of or flight in the air.

11 (2) "Air commerce" means all transportation by aircraft of persons or
12 property for compensation between points in this state and all transporta-
13 tion of persons or property for compensation by other modes incidental
14 to or in conjunction with such carriage; but "air commerce" does not include
15 transportation performed solely in connection with:

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

17 (b) Instruction,

18 (c) Aerial application of agricultural chemicals,

19 (d) Air ambulance services, or

20 (e) Transportation authorized by a certificate of public convenience
21 and necessity issued prior to January 1, 1973, pursuant to section 401 of the
22 Federal Aviation Act of 1958 as amended.

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

25 **SECTION 2.** The purpose of this chapter is to provide regulation of
26 air commerce in order that an orderly, efficient, economical and healthy
27 network of air transportation may be established to the benefit of the
28 people of this state, its communities, and the state itself.

29 **SECTION 3.** The commissioner is vested with authority and respon-
30 sibility to regulate air commerce and air carriers. He shall administer this
31 chapter in accordance with its stated purposes.

32 **SECTION 4.** The State of Oregon recognizes the powers of the Federal

1 Government over air carriers and air commerce. Within the limits of
2 powers reserved to the state:

3 (1) The commissioner shall fix reasonable rates and routes of air car-
4 riers.

5 (2) The commissioner may:

6 (a) Require any air carrier to procure and maintain insurance and per-
7 formance bonds in any amount;

8 (b) Authorize such through routes, joint rates and divisions of revenue
9 for persons engaged in air commerce as he determines to be in the public
10 interest; and

11 (c) Exercise any power expressly or impliedly conferred by this Act
12 and ORS chapter 756.

13 **SECTION 5.** The commissioner shall award certificates of public con-
14 venience and necessity, whenever the public convenience and necessity
15 require, taking into consideration the business experience of the applicant,
16 the applicant's financial ability and insurance coverage, the type of aircraft
17 the applicant would employ, the proposed routes and minimum schedules
18 to be established, whether the carrier could economically and adequately
19 serve the communities involved, the need for service and any other fac-
20 tors which may affect the public interest. Such certificates may be award-
21 ed subject to whatever terms and conditions the commissioner prescribes.

22 **SECTION 6.** The commissioner may suspend or revoke any of the
23 rights conferred by a certificate of public convenience and necessity after
24 notice and opportunity for hearing only upon a finding that the holder:

25 (1) Has abandoned such rights,

26 (2) Is no longer willing or able to perform all of part of the certifi-
27 cated services,

28 (3) Has violated any provision of this Act or any rule, regulation or
29 order of the commissioner, or

30 (4) Has violated any federal or state safety law or regulation.

31 **SECTION 7.** (1) No person shall perform any act which constitutes
32 air commerce, unless that act is authorized by a valid and effective cer-
33 tificate of public convenience and necessity issued by the commissioner or
34 otherwise by the commissioner's rule or order.

1 (2) Each separate act in violation of this section is a separate viola-
2 tion, whether the prohibited acts occur within the same or different days
3 or relate to the same or different aircraft.

4 **SECTION 8.** (1) It is unlawful, unless authorized by order of the
5 commissioner as provided in this section:

6 (a) For two or more air carriers, or for any air carrier and any other
7 common carrier to consolidate or merge their properties or any part there-
8 of into one person for the ownership, management or operation of the
9 properties theretofore in separate ownerships,

10 (b) For any air carrier or any person controlling an air carrier or any
11 other common carrier to purchase, lease, or contract to operate the prop-
12 erties, or a substantial part thereof, of any air carrier, or

13 (c) For any air carrier or any person controlling an air carrier or any
14 other common carrier to acquire control of any air carrier in any manner
15 whatsoever.

16 (2) The commissioner may by order authorize such consolidation, mer-
17 ger, purchase, lease, operating control or acquisition of control upon such
18 terms and conditions as he shall deem to be in the public interest. The
19 commissioner shall determine whether a hearing is required under this
20 section.

21 **SECTION 9.** No air carrier shall discontinue any certificated service
22 without authority of the commissioner, unless such service is unprofitable.
23 Unprofitable services may be discontinued upon 90 days' notice to the
24 commissioner, and to such other persons as the commissioner may require,
25 unless within such 90-day period the commissioner finds that such serv-
26 ices are not unprofitable and orders their continuance.

27 **SECTION 10.** The commissioner may, following a determination of
28 necessity, exempt any air carrier from the certificate provisions of this
29 Act upon a finding that such provisions impose an undue burden upon
30 the carrier, a community or area because of the immediate need for serv-
31 ice including, but not limited to, conditions of national emergency, na-
32 tional disaster or cessation of existing service by another carrier, except
33 the cessation of existing service caused by a labor dispute, and that enforce-

1 ment of such provisions would be contrary to the public interest. Exemp-
2 tions issued pursuant to this section may be issued for a maximum of 90
3 days and may be renewed for the same or a lesser period.

4 **SECTION 11.** (1) To the extent necessary to prevent overlap or con-
5 flict between provisions of this Act and those of any other statute, the
6 provisions of this Act shall exclusively prevail unless subsection (2) of this
7 section applies.

8 (2) The commissioner may by rule exempt any activity from any or
9 all of the requirements of this Act if the commissioner is satisfied that
10 such exemption would not be contrary to the public interest.

11 **SECTION 12.** (1) In addition to all other penalties provided by law,
12 every person who violates or who procures, aids or abets in the violation
13 of this Act or any order, rule, regulation or decision of the commissioner
14 relating to air commerce shall incur a penalty of \$1,000 for every such
15 violation.

16 (2) Each such violation shall be a separate offense and in case of a
17 continuing violation every day's continuance is a separate violation. Every
18 act of commission or omission which procures, aids or abets the violation
19 is a violation under this section and subject to the penalty provided in
20 this section.

21 (3) Such penalty shall not be imposed except by order following com-
22 plaint as provided in ORS 756.500 to 756.610. Such proceeding may only
23 be commenced within two years following the date of the violation.

24 (4) The commissioner may negotiate any settlement or mitigate any
25 penalty provided for in this section on such terms as he considers proper.

26 (5) If the amount of such penalty is not paid to the commissioner, the
27 Attorney General shall bring an action in the name of the State of Oregon
28 in the Circuit Court of Marion County to recover such penalty. The action
29 shall not be commenced until after the time has expired for an appeal
30 from the findings, conclusions and order of the commissioner. In all such
31 actions the procedure and rules of evidence shall be the same as an ordi-
32 nary civil action except as otherwise provided in this Act.

33 **SECTION 13.** (1) To finance the administration of this Act and sub-
34 section (3) of ORS 756.040 there is hereby imposed a tax on gross revenues

1 derived from air commerce. Such tax shall be computed at a straight per-
2 centage rate fixed by the commissioner, but shall not exceed the lesser of:

- 3 (a) The actual cost of administration,
4 (b) ——— tenths of one percent per annum.

5 (2) Funds generated under this section shall be used only in the ad-
6 ministration of this chapter and subsection (3) of ORS 756.040 as it re-
7 lates to matters affecting air transportation.

8 **SECTION 14.** Notwithstanding any other provision in this Act, the
9 commissioner shall issue a certificate of public convenience and necessity
10 to any air carrier as to the points in this state between which it was
11 actually operating in good faith and doing business as of January 1, 1973,
12 and continuously thereafter, with or without hearing, provided application
13 therefor shall have been filed with the commissioner on or before January
14 1, 1974. The air carrier may continue such operation until its application
15 is either granted or denied by the commissioner.

16 Section 15. ORS 756.010 is amended to read:

17 756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764, this
18 **1973 Act** and 767, except as otherwise specifically provided or unless the
19 context requires otherwise:

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

21 (2) "Customer" includes the patrons, passengers, shippers, subscribers,
22 users of the service and consumers of the product of a railroad, motor car-
23 rier or public utility.

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

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

27 (5) "Person" includes individuals, joint ventures, partnerships, cor-
28 porations and associations or their officers, employes, agents, lessees, as-
29 signees, trustee or receiver.

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

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

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

1 (9) "Service" is used in its broadest and most inclusive sense and in-
2 cludes equipment and facilities related to providing the service or the
3 product served.

4 (10) "Air carrier" has the meaning given that term in this 1973 Act.

5 Section 16. ORS 756.040 is amended to read:

6 756.040. (1) In addition to the powers and duties now or hereafter
7 transferred to or vested in the commissioner, he shall represent the custom-
8 ers of any public utility, railroad, air or motor carrier, and the public gen-
9 eral in all controversies respecting rates, valuations, service and all matters
10 of which he has jurisdiction. In respect thereof he shall make use of the
11 jurisdiction and powers of his office to protect such customers, and the
12 public generally, from unjust and unreasonable exactions and practices
13 and to obtain for them adequate service at fair and reasonable rates.

14 (2) The commissioner is vested with power and jurisdiction to super-
15 vise and regulate every public utility, railroad, air and motor carrier in
16 this state, and to do all things necessary and convenient in the exercise of
17 such power and jurisdiction.

18 (3) The commissioner may participate in any proceeding before any
19 public officer, commission or body of the United States or any state for
20 the purpose of representing the public generally and the customers of the
21 services of any public utility, railroad, water, air or motor carrier operat-
22 ing or providing service to or within this state.

23 (4) The commissioner may make joint investigations, hold joint hear-
24 ings within or without this state and issue concurrent orders in conjunc-
25 tion or concurrence with any official, board, commission or agency of any
26 state or of the United States.

27 Section 17. ORS 756.070 is amended to read:

28 756.070. The commissioner may inquire into the management of the
29 business of all public utilities, air and motor carriers and railroads, and
30 shall keep informed as to the manner and method in which they are con-
31 ducted and has the right to obtain from any public utility, air or motor
32 carrier or railroad all necessary information to enable him to perform his
33 duties.

1 Section 18. ORS 756.075 is amended to read:

2 756.075. (1) The commissioner or his authorized representatives may
3 enter upon any premises, or any equipment, rolling stock or facilities op-
4 erated or occupied by any public utility, railroad, air or motor carrier for
5 the purpose of making any inspection, examination or test reasonably re-
6 quired in the administration of ORS chapters 756, 757, 758, 760, 761, 763,
7 764, this 1973 Act or 767 and to set up and use on such premises equip-
8 ment, rolling stock or facilities any apparatus and appliances and occupy
9 reasonable space therefor.

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

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

20 (4) Nothing in this section authorizes the commissioner to use any in-
21 formation developed thereunder for any purpose inconsistent with any
22 statute administered by him or to make a disclosure thereof for other than
23 regulatory purposes.

24 Section 19. ORS 756.090 is amended to read:

25 756.090. (1) The commissioner may require by rule, or by order or sub-
26 pena to be served on any public utility, railroad, air or motor carrier, the
27 maintaining within this state or the production within this state at such
28 time and place as he may designate, of any books, accounts, papers or
29 records kept by such public utility, railroad, air or motor carrier in any
30 office or place within or without this state, or verified copies in lieu
31 thereof, if the commissioner so orders, in order that an examination there-
32 of may be made by the commissioner or under his direction.

33 (2) When a public utility, railroad, air or motor carrier keeps and
34 maintains its books, accounts, papers or records outside the state, the com-

1 commissioner may examine such documents and shall be reimbursed by the
2 public utility, railroad, air or motor carrier for all expenses incurred in
3 making such out-of-state examination.

4 Section 20. ORS 756.105 is amended to read:

5 756.105. (1) Every public utility, railroad, air and motor carrier shall
6 furnish to the commissioner all information required by him to carry into
7 effect the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, this
8 1973 Act and 767, and shall make specific answers to all questions sub-
9 mitted by the commissioner.

10 (2) If a public utility, railroad, air or motor carrier is unable to furnish
11 any information required under subsection (1) of this section for any rea-
12 son beyond its control, it is a good and sufficient reason for such failure.
13 The answer or information shall be verified under oath and returned to
14 the commissioner at his office within the period fixed by the commis-
15 sioner.

16 Section 21. ORS 756.115 is amended to read:

17 756.115. No officer, agent or employe of any public utility, railroad, air
18 or motor carrier shall:

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

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

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

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

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

31 (6) Refuse to do any act or thing in connection with such system of
32 accounting when so directed by the commissioner or his authorized repre-
33 sentative.

1 Section 22. ORS 756.160 is amended to read:

2 756.160. (1) The commissioner shall inquire into any neglect or viola-
3 tion of any law of this state or any law or ordinance of any municipality
4 thereof relating to public utilities, railroad, air or motor carriers by any
5 public utility, railroad, air or motor carrier doing business therein, its offi-
6 cers, agents or employes, and shall enforce all laws of this state relating
7 to public utilities, railroad, air and motor carriers and may enforce all
8 such laws and ordinances of a municipality. The commissioner shall report
9 all violations of any such laws or ordinances to the Attorney General.

10 (2) The Attorney General, district attorney of each county, and all
11 state, county and city police officers shall assist the commissioner in the
12 administration and enforcement of all laws administered by the commis-
13 sioner, and they, as well as his assistants and employes, shall inform
14 against and diligently prosecute all persons whom they have reasonable
15 cause to believe guilty of violation of any such laws or of the rules, regu-
16 lations, orders, decisions or requirements of the commissioner made pur-
17 suant thereto.

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

23 (4) Any forfeiture or penalty provided for in any law administered
24 by the commissioner shall be recovered by an action brought thereon in
25 the name of the State of Oregon in any court of appropriate jurisdiction.

26 Section 23. ORS 756.180 is amended to read:

27 756.180. (1) Whenever it appears to the commissioner that any public
28 utility, railroad, air or motor carrier is engaged or about to engage in any
29 acts or practices which constitute a violation of any statute administered by
30 the commissioner, or any rule, regulation, requirement, order, term or con-
31 dition issued thereunder, he may apply to any circuit court of the state
32 where such public utility, railroad, air or motor carrier operates for the en-
33 forcement of such statute, rule, regulation, requirement, order, term or
34 condition.

1 (2) Such court, without bond, has jurisdiction to enforce obedience
2 thereto by injunction, or by other processes, mandatory or otherwise, re-
3 straining such public utility, railroad, **air** or motor carrier, or its officers,
4 agents, employes and representatives from further violations of such
5 statute, rule, regulation, requirement, order, term or condition, and en-
6 joining upon them obedience thereto.

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

10 Section 24. ORS 756.185 is amended to read:

11 756.185. (1) Any public utility, railroad, **air** or motor carrier which
12 does, or causes or permits to be done, any matter, act or thing prohibited
13 by ORS chapters 756, 757, 758, 760, 761, 763, 764, **this 1973 Act** or 767 or
14 omits to do any act, matter or thing required to be done by such statutes,
15 is liable to the person injured thereby in treble the amount of damages
16 sustained in consequence of such violation together with a reasonable
17 counsel's or attorney's fee, to be fixed by the court in every case of recov-
18 ery. Such attorney's fee shall be taxed and collected as part of the costs
19 in the case.

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

22 (3) This section does not apply with respect to the liability of any
23 public utility, railroad, **air** or motor carrier for personal injury or property
24 damage.

25 Section 25. ORS 756.200 is amended to read:

26 756.200. (1) The remedies and enforcement procedures provided in
27 ORS chapters 756, 757, 758, 760, 761, 763, 764, **this 1973 Act** and 767 do not
28 release or waive any right of action by the state or by any person for any
29 right, penalty or forfeiture which may arise under any law of this state
30 or under an ordinance of any municipality thereof.

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

1 (3) The duties and liabilities of the public utilities, railroads, air and
2 motor carriers shall be the same as are prescribed by the common law,
3 and the remedies against them the same, except where otherwise pro-
4 vided by the Constitution or statutes of this state, and the provisions of
5 ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act and 767 are
6 cumulative thereto.

7 Section 26. ORS 756.515 is amended to read:

8 756.515. (1) Whenever the commissioner believes that any rate may
9 be unreasonable or unjustly discriminatory, or that any service is unsafe
10 or inadequate, or is not afforded, or that an investigation of any matter
11 relating to any public utility, railroad, air or motor carrier or other per-
12 son should be made, or relating to any person to determine if such person is
13 subject to the commissioner's regulatory jurisdiction, he may on his own
14 motion summarily investigate any such matter, with or without notice.

15 (2) If after making such investigation he is satisfied that sufficient
16 grounds exist to warrant a hearing being ordered upon any such matter,
17 he shall furnish any public utility, railroad, air or motor carrier or other
18 person interested a statement notifying it of the matters under investiga-
19 tion, which statement shall be accompanied by a notice fixing the time
20 and place for hearing upon such matters in the manner provided in ORS
21 756.512 for notice of complaint.

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

27 (4) However, the commissioner may, after he has made an investiga-
28 tion on his motion, but without notice or hearing, make such findings and
29 orders as he deems justified or required by the results of such investiga-
30 tion. Except as provided in subsections (5) and (6) of this section such
31 findings and orders have the same legal force and effect as any other
32 finding or order of the commissioner.

33 (5) In addition to any other remedy provided by law, any party
34 aggrieved by an order entered pursuant to subsection (4) of this section

1 may request the commissioner to hold a hearing to determine whether the
2 order should continue in effect. Any such request for hearing shall be sub-
3 mitted to the commissioner not later than 15 days after the date of serv-
4 ice of the order, and the commissioner shall hold the hearing not later
5 60 days after receipt of such a request for hearing.

6 (6) If the commissioner receives a request for hearing pursuant to
7 subsection (5) of this section, the order is suspended pending the outcome
8 of the hearing unless the commissioner finds that the order is necessary
9 for the public health or safety or to prevent the dissipation of assets of a
10 business or activity subject to the commissioner's regulatory jurisdiction.

11 Section 27. ORS 756.572 is amended to read:

12 756.572. (1) An order of the commissioner issued in accordance with
13 the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, **this 1973 Act**
14 and 767 is binding upon the successors in interest of each person affected
15 thereby, until set aside, rescinded, suspended or modified as provided by
16 law.

17 (2) Any investigation, hearing or other proceeding involving the issu-
18 ance of an order of the commissioner that has not been finally determined
19 when a transfer of any interests of a person is effected may be continued
20 and finally determined, notwithstanding any such transfer of interest.
21 Any order issued in such investigation, hearing or other proceeding is bind-
22 ing upon the successors in interest.

23 Section 28. ORS 756.990 is amended to read:

24 756.990. (1) Any public utility, railroad, **air** or motor carrier that
25 fails to comply with an order or subpoena issued pursuant to ORS 756.090
26 shall forfeit, for each day it so fails, a sum of not less than \$50 nor more
27 than \$500.

28 (2) Any public utility, railroad, **air** or motor carrier that violates any
29 statute administered by the commissioner, or does any act prohibited, or
30 fails to perform any duty enjoined upon it, for which a penalty has not
31 been provided, or fails to obey any lawful requirement or order made by
32 the commissioner, or any judgment or decree made by any court upon
33 the application of the commissioner, shall forfeit a sum of not less than
34 \$100 nor more than \$10,000 for each such offense.

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

7 (4) Violation of ORS 756.125 is punishable, upon conviction, by a fine
8 of not more than \$100 or imprisonment for not more than 30 days, or both.
9 Any public utility, railroad, air or motor carrier that knowingly permits
10 the violation of ORS 756.125 shall forfeit, upon conviction, not more than
11 \$1,000 for each offense.

12 (5) Violation of subsection (1) of ORS 756.543 is punishable, upon con-
13 viction, by a fine of not less than \$100 nor more than \$1,000, or by im-
14 prisonment in the county jail for not more than one year, or both.

15 (6) In construing and enforcing this section, the act, omission or fail-
16 ure of any officer, agent or other person acting for or employed by any
17 public utility, railroad, air motor carrier acting within the scope of his
18 employment shall in every case be deemed to be the act, omission or fail-
19 ure of such public utility, railroad, air or motor carrier. With respect to
20 any violation of any statute administered by the commissioner, any pen-
21 alty provision applying to such a violation by a public utility, railroad, air
22 or motor carrier shall apply to such a violation by any other person.

23 (7) All penalties, fines or forfeitures or other sums collected or paid
24 under the provisions of any law administered by the commissioner shall
25 be paid into the General Fund except where it is provided that the same
26 shall be paid to the aggrieved party.



A BILL FOR

AN ACT

Relating to regulation of air commerce; creating new provisions;
~~providing penalties; and~~ amending ORS 756.010, 756.040,
756.070, 756.075, 756.090, 756.105, 756.115, 756.160,
756.180, 756.185, 756.200, 756.515, 756.572 and 756.990;
and providing penalties.

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

Section 1. Unless the context otherwise requires, the definitions in this section and ORS 756.010 shall govern the construction of this Act.

(1) "Aircraft" means any contrivance now or hereafter invented, used or designed for navigation of or flight in the air.

(2) "Air commerce" means all transportation by aircraft of persons or property for compensation between points in this state and all transportation of persons or property for compensation by other modes incidental to or in conjunction with such carriage; but "air commerce" does not include transportation performed solely in connection with:

- (a) Transportation of U.S. mail,
- (b) Instruction,
- (c) Aerial application of agricultural chemicals,
- (d) Air ambulance services, or
- (e) Transportation authorized by a certificate of public convenience and necessity issued prior to January 1, 1973, pursuant to section 401 of the Federal Aviation Act of 1958 as amended.

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

Section 2. The purpose of this chapter is to provide regulation of air commerce in order that an orderly, efficient, economical and healthy network of air transportation may be established to the benefit of the people of this state, its communities, and the state itself.

Section 3. The commissioner is vested with authority and responsibility to regulate air commerce and air carriers. He shall administer this chapter in accordance with its stated purposes.

Section 4. The State of Oregon recognizes the powers of the Federal Government over air carriers and air commerce. Within the limits of powers reserved to the state:

(1) (a) The commissioner shall fix reasonable rates and routes of air carriers.

(2) (b) The commissioner may:
(a) Require any air carrier to procure and maintain insurance and performance bonds in any amount;

(b) Authorize such through routes, joint rates and divisions of revenue for persons engaged in air commerce as he determines to be in the public interest; and

(c) (3) Exercise any power expressly or impliedly conferred by this ~~chapter~~ ^{Act ORS} and chapter 756.

Section 5. The commissioner shall award certificates of public convenience and necessity, whenever the public convenience and necessity require, taking into consideration

the business experience of the applicant, the applicant's financial ability and insurance coverage, the type of aircraft the applicant would employ, the proposed routes and minimum schedules to be established, whether the carrier could economically and adequately serve the communities involved, the need for service and any other factors which may affect the public interest. Such certificates may be awarded subject to whatever terms and conditions the commissioner prescribes.

Section 6. The commissioner may suspend or revoke any of the rights conferred by a certificate of public convenience and necessity after notice and opportunity for hearing only upon a finding that the holder:

- (1) (a) Has abandoned such rights,
- (2) (b) Is no longer willing or able to perform all or part of the certificated services,
- (3) (c) Has violated any provision of this ^{Act} chapter, or any rule, regulation or order of the commissioner, or
- (4) (d) Has violated any federal or state safety law or regulation.

Section 7. (1) No person shall perform any act which constitutes air commerce, unless that act is authorized by a valid and effective certificate of public convenience and necessity issued by the commissioner or otherwise by the commissioner's rule or order.

(2) Each separate act in violation of this section is a separate violation, whether the prohibited acts occur

within the same or different days or relate to the same or different aircraft.

Section 8. (1) It is unlawful, unless authorized by order of the commissioner as provided in this section:

(a) For two or more air carriers, or for any air carrier and any other common carrier to consolidate or merge their properties or any part thereof into one person for the ownership, management or operation of the properties theretofore in separate ownerships.)

(b) For any air carrier or any person controlling an air carrier or any other common carrier to purchase, lease, or contract to operate the properties, or a substantial part thereof, of any air carrier, ~~and~~ *at*

(c) For any air carrier or any person controlling an air carrier or any other common carrier to acquire control of any air carrier in any manner whatsoever.

(2) The commissioner may by order authorize such consolidation, merger, purchase, lease, operating control or acquisition of control upon such terms and conditions as he shall deem to be in the public interest. The commissioner shall determine whether a hearing is required under this section.

Section 9. No air carrier shall discontinue any certificated service without authority of the commissioner, unless such service is unprofitable. Unprofitable services may be discontinued upon 90 days[?] notice to the commissioner, and to such other persons as the commissioner may require,

unless within such 90-day period the commissioner finds that such services are not unprofitable and orders their continuance. =/

Section 10. The commissioner may, following a determination of necessity, exempt any air carrier from the certificate provisions of this ~~chapter~~^{Act} upon a finding that such provisions impose an undue burden upon the carrier, a community or area because of the immediate need for service including, but not limited to, conditions of national emergency, national disaster or cessation of existing service by another carrier, except the cessation of existing service caused by a labor dispute, and that enforcement of such provisions would be contrary to the public interest. Exemptions issued pursuant to this section may be issued for a maximum of 90 days and may be renewed for the same or a lesser period.

Section 11. (1) To the extent necessary to prevent overlap or conflict between provisions of this ~~chapter~~^{Act} and those of any other ~~chapter~~^{Statute}, the provisions of this ~~chapter~~^{Act} shall exclusively prevail unless ~~paragraph~~^{subsection} (2) of this section applies.


(2) The commissioner may by rule exempt any activity from any or all of the requirements of this ~~chapter~~^{Act} if the commissioner is satisfied that such exemption would not be contrary to the public interest.

Section 12. (1) In addition to all other penalties provided by law, every person who violates or who procures,

aids or abets in the violation of this Act or any order, rule, regulation or decision of the commissioner relating to air commerce shall incur a penalty of \$1,000 for every such violation.

(2) Each such violation shall be a separate offense and in case of a continuing violation every day's continuance is a separate violation. Every act of commission or omission which procures, aids or abets the violation is a violation under this section and subject to the penalty provided in this section.

(3) Such penalty shall not be imposed except by order following complaint as provided in ORS ~~756.518~~^{756.500} to 756.610. Such proceeding may only be commenced within two years following the date of the violation, ~~complained of~~



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(4) The commissioner may negotiate any settlement or mitigate any penalty provided for in this section on such terms as he considers proper.

(5) If the amount of such penalty is not paid to the commissioner, the Attorney General shall bring an action in the name of the State of Oregon in the Circuit Court of Marion County to recover such penalty. The action shall not be commenced until after the time has expired for an appeal from the findings, conclusions and order of the commissioner. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this Act.

Section 13. (1) To finance the administration of

subsection (3) of
this Act and ~~ORS 756.040(3)~~ there is hereby imposed a tax on gross revenues derived from air commerce. Such tax shall be computed at a straight percentage rate fixed by the commissioner, but shall not exceed the lesser of:

- (a) The actual cost of administration,
- (b) _____ tenths of one percent per annum.

(2) Funds generated under this section shall be used only in the administration of this chapter and *subsection (3) of* ~~ORS 756.040(3)~~ as it relates to matters affecting air transportation.

Section 14. Notwithstanding any other provision in ~~this chapter~~ *Act*, the commissioner shall issue a certificate of public convenience and necessity to any air carrier as to the points in this state between which it was actually operating in good faith and doing business as of January 1, 1973, and continuously thereafter, with or without hearing, provided application therefor shall have been filed with the commissioner on or before January 1, 1974. The air carrier may continue such operation until its application is either granted or denied by the commissioner.

Section 15. ORS 756.010 is amended to read:

756.010. As used in ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act and 767, 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} ~~assignes~~, trustees or receivers. A

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

(9) "Service" is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served.

(10) "Air carrier" has the meaning given that term in this 1973 Act.

Section 16. ORS 756.040 is amended to read:

756.040. (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 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 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 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.

Section 17. ORS 756.070 is amended to read:

756.070. The commissioner may inquire into the management of the business of all public utilities, air and 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 or motor carrier or railroad all necessary information to enable him to perform his duties.

Section 18. ORS 756.075 is amended to read:

756.075. (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 or motor carrier for the purpose of making any inspection, examination or test reasonably required in the administration of ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act or 767 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 or motor carrier and to examine under oath any officer, agent or employe of such public utility, railroad, air 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 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.

Section 19. ORS 756.090 is amended to read:

756.090. (1) The commissioner may require by rule, or by order or subpoena to be served on any public utility, railroad, air 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 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 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 or motor carrier for all expenses incurred in making such out-of-state examination.

Section 20. ORS 756.105 is amended to read:

756.105. (1) Every public utility, railroad, air 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, 764.

this 1973 Act and 767, and shall make specific answers to all questions submitted by the commissioner.

(2) If a public utility, railroad, air 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.

Section 21. ORS 756.115 is amended to read:

756.115. No officer, agent or employe of any public utility, railroad, air 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 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.

Section 22. ORS 756.160 is amended to read:

756.160. (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, railroad, air or motor carriers by any public utility, railroad, air 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 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 insti-

tute 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.

Section 23. ORS 756.180 is amended to read:

756.180. (1) Whenever it appears to the commissioner that any public utility, railroad, air or motor carrier 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 or motor carrier 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 or motor carrier, 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 lieu of any other enforcement provisions con-

tained in any statute administered by the commissioner.

Section 24. ORS 756.185 is amended to read:

756.185. (1) Any public utility, railroad, air or motor carrier which does, or causes or permits to be done, any matter, act or thing prohibited by ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act or 767 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's fee, to be fixed by the court in every case of recovery. Such attorney's fee 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 or motor carrier for personal injury or property damage.

Section 25. ORS 756.200 is amended to read:

756.200. (1) The remedies and enforcement procedures provided in ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act and 767 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 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, this 1973 Act and 767 are cumulative thereto.

Section 26. ORS 756.515 is amended to read:

756.515. (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 or 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 or 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) However, 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.

Section 27. ORS 756.572 is amended to read:

756.572. (1) An order of the commissioner issued in accordance with the provisions of ORS chapters 756, 757, 758, 760, 761, 763, 764, this 1973 Act and 767 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.

Section 28. ORS 756.990 is amended to read:

756.990. (1) Any public utility, railroad, air or motor carrier that fails to comply with an order or subpoena 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) Any public utility, railroad, air or motor carrier that 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 a sum of not less than \$100 nor more than \$10,000 for each such offense.

(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 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 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 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 or motor carrier acting within the scope of his employment shall in every case be deemed to be the act,

omission or failure of such public utility, railroad, air or motor carrier. With respect to any violation of any statute administered by the commissioner, any penalty provision applying to such a violation by a public utility, railroad, air or motor carrier shall apply to such a violation by any other person.

(7) All penalties, fines or forfeitures or other sums collected or paid under the provisions of any law administered by the commissioner shall be paid into the General Fund except where it is provided that the same shall be paid to the aggrieved party.

SENATE BILL BACK

▼ CROSS OUT INAPPLICABLE WORDS ▼

BILL

~~RESOLUTION~~

NUMBER 240

~~MEMORIAL~~

Title:

Relating to regulation of air commerce; creating new provisions; providing penalties; and amending ORS 756.010, 756.040, 756.070, ~~756.075~~, 756.090, 756.105, 756.115, 756.160, ~~756.180~~, ~~756.181~~, ~~756.200~~, 756.515, 756.572 and 756.990.

Principal Sponsors:

Senators *D. W. Newbry* and *John D. Burns*

(at the request of the Public Utility Commissioner of Oregon)

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 Wilhelms
 Willits
 Wolfer, C.
 Wolfer, M.

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ANALYST: Batties/Jacobson

DATE COMPLETED: April 12, 1973

1. Number of Measure SB 240	2. Status Re-Engrossed Bill and Senate Amendments of April 9	3. Class of Bill Fiscal <input checked="" type="checkbox"/> Non-Fiscal <input type="checkbox"/> Organizational <input type="checkbox"/>
4. Subject Confers jurisdiction on Public Utility Commissioner to regulate intrastate air commerce		
5. Government Unit or Program Affected Public Utility Commissioner		

6. Fiscal Impact

Effect on Revenue

None

Effect on Expenditures

Reduces General Fund impact of previous analysis by \$42,000 to \$50,000.

RB:sc

Reviewed by Legislative Fiscal Office.

Analyst: Stinson
Date: April 24, 1973