

Enrolled
Senate Bill 597

Sponsored by Senator METSGER; Senator JOHNSON

CHAPTER

AN ACT

Relating to nongovernmental entities; creating new provisions; and amending ORS 757.612.

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

SECTION 1. ORS 757.612 is amended to read:

757.612. (1) There is established an annual public purpose expenditure standard for electric companies and Oregon Community Power to fund new cost-effective local energy conservation, new market transformation efforts, the above-market costs of new renewable energy resources and new low-income weatherization. The public purpose expenditure standard shall be funded by the public purpose charge described in subsection (2) of this section.

(2)(a) Beginning on the date an electric company or Oregon Community Power offers direct access to its retail electricity consumers, except residential electricity consumers, the electric company or Oregon Community Power shall collect a public purpose charge from all of the retail electricity consumers located within its service area until January 1, 2026. Except as provided in paragraph (b) of this subsection, the public purpose charge shall be equal to three percent of the total revenues collected by the electric company, Oregon Community Power or the electricity service supplier from its retail electricity consumers for electricity services, distribution, ancillary services, metering and billing, transition charges and other types of costs included in electric rates on July 23, 1999.

(b) For an aluminum plant that averages more than 100 average megawatts of electricity use per year, beginning on March 1, 2002, the electric company or Oregon Community Power whose territory abuts the greatest percentage of the site of the aluminum plant shall collect from the aluminum company a public purpose charge equal to one percent of the total revenue from the sale of electricity services to the aluminum plant from any source.

(3)(a) The Public Utility Commission shall establish rules implementing the provisions of this section relating to electric companies and Oregon Community Power.

(b) Subject to paragraph (e) of this subsection, funds collected by an electric company or Oregon Community Power through public purpose charges shall be allocated as follows:

(A) Sixty-three percent for new cost-effective conservation and new market transformation.

(B) Nineteen percent for the above-market costs of constructing and operating new renewable energy resources with a nominal electric generating capacity, as defined in ORS 469.300, of 20 megawatts or less.

(C) Thirteen percent for new low-income weatherization.

(D) Five percent shall be transferred to the Housing and Community Services Department Electricity Public Purpose Charge Fund established by ORS 456.587 (1) and used for the purpose of providing grants as described in ORS 458.625 (2).

(c) The costs of administering subsections (1) to (6) of this section for an electric company or Oregon Community Power shall be paid out of the funds collected through public purpose charges. The commission may require that an electric company or Oregon Community Power direct funds collected through public purpose charges to the state agencies responsible for implementing subsections (1) to (6) of this section in order to pay the costs of administering such responsibilities.

(d) The commission shall direct the manner in which public purpose charges are collected and spent by an electric company or Oregon Community Power and may require an electric company or Oregon Community Power to expend funds through competitive bids or other means designed to encourage competition, except that funds dedicated for low-income weatherization shall be directed to the Housing and Community Services Department as provided in subsection (7) of this section. The commission may also direct that funds collected by an electric company or Oregon Community Power through public purpose charges be paid to a nongovernmental entity for investment in public purposes described in subsection (1) of this section. Notwithstanding any other provision of this subsection:

(A) At least 80 percent of the funds allocated for conservation shall be spent within the service area of the electric company that collected the funds; or

(B) If Oregon Community Power collected the funds, at least 80 percent of the funds allocated for conservation shall be spent within the service area of Oregon Community Power.

(e)(A) The first 10 percent of the funds collected annually by an electric company or Oregon Community Power under subsection (2) of this section shall be distributed to education service districts, as described in ORS 334.010, that are located in the service territory of the electric company or Oregon Community Power. The funds shall be distributed to individual education service districts according to the weighted average daily membership (ADMw) of the component school districts of the education service district for the prior fiscal year as calculated under ORS 327.013. The commission shall establish by rule a methodology for distributing a proportionate share of funds under this paragraph to education service districts that are only partially located in the service territory of the electric company or Oregon Community Power.

(B) An education service district that receives funds under this paragraph shall use the funds first to pay for energy audits for school districts located within the education service district. An education service district may not expend additional funds received under this paragraph on a school district facility until an energy audit has been completed for that school district. To the extent practicable, an education service district shall coordinate with the State Department of Energy and incorporate federal funding in complying with this paragraph. Following completion of an energy audit for an individual school district, the education service district may expend funds received under this paragraph to implement the energy audit. Once an energy audit has been conducted and completely implemented for each school district within the education service district, the education service district may expend funds received under this paragraph for any of the following purposes:

(i) Conducting energy audits. A school district shall conduct an energy audit prior to expending funds on any other purpose authorized under this paragraph unless the school district has performed an energy audit within the three years immediately prior to receiving the funds.

(ii) Weatherization and upgrading the energy efficiency of school district facilities.

(iii) Energy conservation education programs.

(iv) Purchasing electricity from environmentally focused sources and investing in renewable energy resources.

(f) The commission may not establish a different public purpose charge than the public purpose charge described in subsection (2) of this section.

(g) If the commission directs funds collected through public purpose charges to a nongovernmental entity, the entity shall:

(A) Include on the entity's board of directors an ex officio member designated by the commission, who shall also serve on the entity's nominating committee for filling board vacancies.

(B) Require the entity's officers and directors to provide an annual disclosure of economic interest to be filed with the commission on or prior to April 15 of each calendar year for public review in a form similar to the statement of economic interest required for public officials under ORS 244.060.

(C) Require the entity's officers and directors to declare actual and potential conflicts of interest at regular meetings of the entity's governing body when such conflicts arise, and require an officer or director to abstain from participating in any discussion or vote on any item where that officer or director has an actual conflict of interest. For the purposes of this subparagraph, "actual conflict of interest" and "potential conflict of interest" have the meanings given those terms in ORS 244.020.

(D) Arrange for an independent auditor to audit the entity's financial statements annually, and direct the auditor to file an audit opinion with the commission for public review.

(E) File with the commission annually the entity's budget, action plan and quarterly and annual reports for public review.

(F) At least once every five years, contract for an independent management evaluation to review the entity's operations, efficiency and effectiveness, and direct the independent reviewer to file a report with the commission for public review.

(h) The commission may remove from the board of directors of a nongovernmental entity an officer or director who fails to provide an annual disclosure of economic interest or declare actual or potential conflict of interest, as described in paragraph (g)(B) and (C) of this subsection, in connection with the allocation or expenditure of funds collected through public purpose charges and directed to the entity.

(4)(a) An electric company that satisfies its obligations under this section shall have no further obligation to invest in conservation, new market transformation or new low-income weatherization or to provide a commercial energy conservation services program and is not subject to ORS 469.631 to 469.645 and 469.860 to 469.900.

(b) Oregon Community Power, for any period during which Oregon Community Power collects a public purpose charge under subsection (2) of this section:

(A) Shall have no other obligation to invest in conservation, new market transformation or new low-income weatherization or to provide a commercial energy conservation services program; and

(B) Is not subject to ORS 469.631 to 469.645 and 469.860 to 469.900.

(5)(a) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year shall receive a credit against public purpose charges billed by an electric company or Oregon Community Power for that site. The amount of the credit shall be equal to the total amount of qualifying expenditures for new energy conservation, not to exceed 68 percent of the annual public purpose charges, and the above-market costs of purchases of new renewable energy resources incurred by the retail electricity consumer, not to exceed 19 percent of the annual public purpose charges, less administration costs incurred under this subsection. The credit may not exceed, on an annual basis, the lesser of:

(A) The amount of the retail electricity consumer's qualifying expenditures; or

(B) The portion of the public purpose charge billed to the retail electricity consumer that is dedicated to new energy conservation, new market transformation or the above-market costs of new renewable energy resources.

(b) To obtain a credit under this subsection, a retail electricity consumer shall file with the State Department of Energy a description of the proposed conservation project or new renewable energy resource and a declaration that the retail electricity consumer plans to incur the qualifying expenditure. The State Department of Energy shall issue a notice of precertification within 30 days of receipt of the filing, if such filing is consistent with this subsection. The credit may be taken after a retail electricity consumer provides a letter from a certified public accountant to the State Department of Energy verifying that the precertified qualifying expenditure has been made.

(c) Credits earned by a retail electricity consumer as a result of qualifying expenditures that are not used in one year may be carried forward for use in subsequent years.

(d)(A) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year may request that the State Department of Energy hire an independent auditor to assess the potential for conservation investments at the site. If the independent auditor determines there is no available conservation measure at the site that would have a simple payback of one to 10 years, the retail electricity consumer shall be relieved of 54 percent of its payment obligation for public purpose charges related to the site. If the independent auditor determines that there are potential conservation measures available at the site, the retail electricity consumer shall be entitled to a credit against public purpose charges related to the site equal to 54 percent of the public purpose charges less the estimated cost of available conservation measures.

(B) A retail electricity consumer shall be entitled each year to the credit described in this subsection unless a subsequent independent audit determines that new conservation investment opportunities are available. The State Department of Energy may require that a new independent audit be performed on the site to determine whether new conservation measures are available, provided that the independent audits shall occur no more than once every two years.

(C) The retail electricity consumer shall pay the cost of the independent audits described in this subsection.

(6) Electric utilities and retail electricity consumers shall receive a fair and reasonable credit for the public purpose expenditures of their energy suppliers. The State Department of Energy shall adopt rules to determine eligible expenditures and the methodology by which such credits are accounted for and used. The rules also shall adopt methods to account for eligible public purpose expenditures made through consortia or collaborative projects.

(7)(a) In addition to the public purpose charge provided under subsection (2) of this section, an electric company or Oregon Community Power shall collect funds for low-income electric bill payment assistance in an amount determined under paragraph (b) of this subsection.

(b) The commission shall establish the amount to be collected by each electric company in calendar year 2008 from retail electricity consumers served by the company, and the rates to be charged to retail electricity consumers served by the company, so that the total anticipated collection for low-income electric bill payment assistance by all electric companies in calendar year 2008 is \$15 million. In calendar year 2009 and subsequent calendar years, the commission may not change the rates established for retail electricity consumers, but the total amount collected in a calendar year for low-income electric bill payment assistance may vary based on electricity usage by retail electricity consumers and changes in the number of retail electricity consumers in this state. In no event shall a retail electricity consumer be required to pay more than \$500 per month per site for low-income electric bill payment assistance.

(c) Funds collected by the low-income electric bill payment assistance charge shall be paid into the Housing and Community Services Department Low-Income Electric Bill Payment Assistance Fund established by ORS 456.587 (2). Moneys deposited in the fund under this paragraph shall be used by the Housing and Community Services Department for the purpose of funding low-income electric bill payment assistance. The department's cost of administering this subsection shall be paid out of funds collected by the low-income electric bill payment assistance charge. Moneys deposited in the fund under this paragraph shall be expended solely for low-income electric bill payment assistance. Funds collected from an electric company or Oregon Community Power shall be expended in the service area of the electric company or Oregon Community Power from which the funds are collected.

(d) The Housing and Community Services Department, in consultation with the federal Advisory Committee on Energy, shall determine the manner in which funds collected under this subsection will be allocated by the department to energy assistance program providers for the purpose of providing low-income bill payment and crisis assistance, including programs that effectively reduce service disconnections and related costs to retail electricity consumers and electric utilities. Priority assistance shall be directed to low-income electricity consumers who are in danger of having their electricity service disconnected.

(e) Interest on moneys deposited in the Housing and Community Services Department Low-Income Electric Bill Payment Assistance Fund established by ORS 456.587 (2) may be used to provide heating bill payment and crisis assistance to electricity consumers whose primary source of heat is not electricity.

(f) Notwithstanding ORS 757.310, the commission may allow an electric company or Oregon Community Power to provide reduced rates or other payment or crisis assistance or low-income program assistance to a low-income household eligible for assistance under the federal Low Income Home Energy Assistance Act of 1981, as amended and in effect on July 23, 1999.

(8) For purposes of this section, "retail electricity consumers" includes any direct service industrial consumer that purchases electricity without purchasing distribution services from the electric utility.

(9) For purposes of this section, amounts collected by Oregon Community Power through public purpose charges are not considered moneys received from electric utility operations.

SECTION 2. The records related to any funds collected through public purpose charges and paid to a nongovernmental entity as described in ORS 757.612 shall be subject to audit by the Secretary of State.

SECTION 3. The amendments to ORS 757.612 by section 1 of this 2009 Act apply to disclosures of economic interest required to be filed with the Public Utility Commission for reporting periods beginning on or after January 1, 2010.

Passed by Senate June 12, 2009

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Secretary of Senate

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President of Senate

Passed by House June 26, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State