

# House Bill 2979

Sponsored by Representative WINGARD (Pre-session filed.)

## 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**.

Provides public purpose charge funds to compensate electric company for certain pilot program costs resulting from payment of incentive rates greater than general schedule of rates approved for electric company by Public Utility Commission.

## A BILL FOR AN ACT

1  
2 Relating to public utilities; amending ORS 757.365 and 757.612.

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

4 **SECTION 1.** ORS 757.365, as amended by section 2, chapter 78, Oregon Laws 2010, is amended  
5 to read:

6 757.365. (1) The Public Utility Commission shall establish a pilot program for each electric  
7 company to demonstrate the use and effectiveness of volumetric incentive rates and payments for  
8 electricity or for the nonenergy attributes of electricity, or both, from solar photovoltaic energy  
9 systems that are permanently installed in this state by retail electricity consumers and that first  
10 become operational after the program begins. The cumulative nameplate capacity of the qualifying  
11 systems enrolled in all of the pilot programs may not exceed 25 megawatts of alternating current.  
12 Qualifying systems enrolled in the pilot program may not have nameplate generating capacity  
13 greater than 500 kilowatts.

14 (2) The commission by rule shall adopt requirements for the pilot programs described in sub-  
15 section (1) of this section. Each electric company shall file for commission approval tariff schedules  
16 for the pilot programs that conform to the requirements.

17 (3) The commission may establish incentive rates for the pilot programs to enable the develop-  
18 ment of the most efficient solar photovoltaic energy systems.

19 (4) A retail electricity consumer participating in a pilot program may receive payments based  
20 on electricity generated from solar photovoltaic energy system output for 15 years from the  
21 consumer's date of enrollment in the program, at rates or through a rate formula in a tariff schedule  
22 established at the time of enrollment, or at rates otherwise established at the time of enrollment.  
23 The consumer thereafter may receive payments based upon electricity generated from the qualifying  
24 system at a rate equal to the resource value.

25 (5) The commission may adjust the tariff schedule as needed for new pilot program participants  
26 for the purpose of meeting the goal established in subsection (1) of this section. Once a retail elec-  
27 tricity consumer is enrolled in a program, the rates or rate formula for determining payments to the  
28 consumer may not be modified.

29 (6) The commission shall establish pilot programs designed to attain a goal of 75 percent of the  
30 capacity under each program to be deployed by residential qualifying systems and small commercial  
31 qualifying systems. The commission by rule may adjust the percentage goal for capacity deployed

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

1 by residential and small commercial qualifying systems based upon the costs of the energy gener-  
2 ated, the feasibility of attaining the goal and other factors.

3 (7) The commission may establish total generator nameplate capacity limits for an electric  
4 company so that the rate impact of the pilot program for any customer class does not exceed 0.25  
5 percent of the electric company's revenue requirement for the class in any year.

6 (8) Ownership of renewable energy certificates established under ORS 469A.130 that are asso-  
7 ciated with renewable energy generation under the pilot programs must be transferred to the elec-  
8 tric company and may be used to comply with the renewable portfolio standard described in ORS  
9 469A.052 or 469A.055.

10 (9) To the extent that rates paid under a pilot program exceed the resource value, qualifying  
11 systems participating in the pilot programs are not eligible for expenditures under ORS 757.612  
12 (3)(b)(B) or tax credits under ORS 469.160 to 469.180 or 469.185 to 469.225.

13 (10)(a) *[All prudently incurred costs associated with compliance with this section are recoverable*  
14 *in the rates of an electric company.]* **An electric company shall recover prudently incurred costs**  
15 **in complying with this section that result from incentive rates greater than the general**  
16 **schedule of rates approved by the commission for an electric company under ORS 757.210 to**  
17 **757.220 from moneys collected by the electric company under the public purpose charge pro-**  
18 **visions of ORS 757.612. The electric company may recover an amount equal to the difference**  
19 **between the incentive rates and the general schedule of rates.**

20 **(b) If moneys from the public purpose charges are insufficient during any calendar year**  
21 **to compensate the electric company for costs eligible for recovery by the electric company**  
22 **under paragraph (a) of this subsection, the electric company shall:**

23 **(A) Cease to enroll any new pilot programs and cease to allow increased generation of**  
24 **qualifying electricity by any existing pilot programs within the service area of the electric**  
25 **company until public purpose charge collections fully compensate the electric company for**  
26 **its costs under paragraph (a) of this subsection during a calendar year; and**

27 **(B) Recover all prudently incurred costs under paragraph (a) of this subsection that are**  
28 **greater than the amount of moneys collected from public purpose charges in the rates paid**  
29 **by all retail electricity customers.**

30 (11) The commission shall advise and assist the owners and operators of qualifying systems in  
31 identifying and using grants, incentive moneys, federal funding and other sources of noninvestment  
32 financial support for the construction and operation of qualifying systems.

33 (12) The pilot programs described in subsection (1) of this section close to new participants on  
34 the earlier of:

35 (a) March 31, 2015; or

36 (b) The date the cumulative nameplate capacity of solar photovoltaic energy systems that have  
37 been permanently installed by retail electricity consumers under the pilot programs equals 25  
38 megawatts of alternating current.

39 (13) The commission shall submit a report to the Legislative Assembly by January 1 of each  
40 odd-numbered year. The report must evaluate the effectiveness of the pilot programs described in  
41 subsection (1) of this section compared to the effectiveness of expenditures under ORS 757.612  
42 (3)(b)(B) or tax credits under ORS 469.160 to 469.180 or 469.185 to 469.225 for promoting the use of  
43 solar photovoltaic energy systems and reducing system costs. The report must also evaluate the es-  
44 timated cost of the program to retail electricity consumers.

45 **SECTION 2.** ORS 757.612 is amended to read:

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

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

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

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

22 (b) Subject to *[paragraph]* **paragraphs (e) and (f)** of this subsection, funds collected by an  
23 electric company or Oregon Community Power through public purpose charges shall be allocated  
24 as follows:

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

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

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

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

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

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

1 subsection:

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

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

6 **(e) Prior to allocation of any public purpose charge funds collected by an electric com-**  
7 **pany under paragraph (b) or (f) of this subsection, the electric company may deduct from the**  
8 **public purpose charge funds collected any prudently incurred costs referred to in ORS 757.365**  
9 **greater than the costs of electricity generation associated with a general schedule of rates**  
10 **for the electric company approved by the commission under ORS 757.210 to 757.220.**

11 [(e)(A)] **(f)(A) Except as provided in paragraph (e) of this subsection,** the first 10 percent  
12 of the funds collected annually by an electric company or Oregon Community Power under sub-  
13 section (2) of this section shall be distributed to education service districts, as described in ORS  
14 334.010, that are located in the service territory of the electric company or Oregon Community  
15 Power. The funds shall be distributed to individual education service districts according to the  
16 weighted average daily membership (ADMw) of the component school districts of the education  
17 service district for the prior fiscal year as calculated under ORS 327.013. The commission shall es-  
18 tablish by rule a methodology for distributing a proportionate share of funds under this paragraph  
19 to education service districts that are only partially located in the service territory of the electric  
20 company or Oregon Community Power.

21 (B) An education service district that receives funds under this paragraph shall use the funds  
22 first to pay for energy audits for school districts located within the education service district. An  
23 education service district may not expend additional funds received under this paragraph on a  
24 school district facility until an energy audit has been completed for that school district. To the  
25 extent practicable, an education service district shall coordinate with the State Department of En-  
26 ergy and incorporate federal funding in complying with this paragraph. Following completion of an  
27 energy audit for an individual school district, the education service district may expend funds re-  
28 ceived under this paragraph to implement the energy audit. Once an energy audit has been con-  
29 ducted and completely implemented for each school district within the education service district, the  
30 education service district may expend funds received under this paragraph for any of the following  
31 purposes:

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

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

36 (iii) Energy conservation education programs.

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

39 [(f)] **(g)** The commission may not establish a different public purpose charge than the public  
40 purpose charge described in subsection (2) of this section.

41 [(g)] **(h)** If the commission directs funds collected through public purpose charges to a nongov-  
42 ernmental entity, the entity shall:

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

45 (B) Require the entity's officers and directors to provide an annual disclosure of economic in-

1 terest to be filed with the commission on or prior to April 15 of each calendar year for public review  
2 in a form similar to the statement of economic interest required for public officials under ORS  
3 244.060.

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

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

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

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

16 [(h)] (i) The commission may remove from the board of directors of a nongovernmental entity  
17 an officer or director who fails to provide an annual disclosure of economic interest or declare ac-  
18 tual or potential conflict of interest, as described in paragraph [(g)(B)] (h)(B) and (C) of this sub-  
19 section, in connection with the allocation or expenditure of funds collected through public purpose  
20 charges and directed to the entity.

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

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

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

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

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

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

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

42 (b) To obtain a credit under this subsection, a retail electricity consumer shall file with the  
43 State Department of Energy a description of the proposed conservation project or new renewable  
44 energy resource and a declaration that the retail electricity consumer plans to incur the qualifying  
45 expenditure. The State Department of Energy shall issue a notice of precertification within 30 days

1 of receipt of the filing, if such filing is consistent with this subsection. The credit may be taken after  
2 a retail electricity consumer provides a letter from a certified public accountant to the State De-  
3 partment of Energy verifying that the precertified qualifying expenditure has been made.

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

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

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

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

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

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

30 (b) The commission shall establish the amount to be collected by each electric company in cal-  
31 endar year 2008 from retail electricity consumers served by the company, and the rates to be  
32 charged to retail electricity consumers served by the company, so that the total anticipated col-  
33 lection for low-income electric bill payment assistance by all electric companies in calendar year  
34 2008 is \$15 million. In calendar year 2009 and subsequent calendar years, the commission may not  
35 change the rates established for retail electricity consumers, but the total amount collected in a  
36 calendar year for low-income electric bill payment assistance may vary based on electricity usage  
37 by retail electricity consumers and changes in the number of retail electricity consumers in this  
38 state. In no event shall a retail electricity consumer be required to pay more than \$500 per month  
39 per site for low-income electric bill payment assistance.

40 (c) Funds collected by the low-income electric bill payment assistance charge shall be paid into  
41 the Housing and Community Services Department Low-Income Electric Bill Payment Assistance  
42 Fund established by ORS 456.587 (2). Moneys deposited in the fund under this paragraph shall be  
43 used by the Housing and Community Services Department for the purpose of funding low-income  
44 electric bill payment assistance. The department's cost of administering this subsection shall be paid  
45 out of funds collected by the low-income electric bill payment assistance charge. Moneys deposited

1 in the fund under this paragraph shall be expended solely for low-income electric bill payment as-  
 2 sistance. Funds collected from an electric company or Oregon Community Power shall be expended  
 3 in the service area of the electric company or Oregon Community Power from which the funds are  
 4 collected.

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

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

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

20 (8) For purposes of this section, “retail electricity consumers” includes any direct service in-  
 21 dustrial consumer that purchases electricity without purchasing distribution services from the elec-  
 22 tric utility.

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

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