

# House Bill 3367

Sponsored by Representative BERGER; Representatives CAMERON, THATCHER, Senator WINTERS

## 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**.

Allows Salem-Keizer Public Schools to withdraw from Willamette Education Service District. Requires education service district to distribute to school district prorated amount of state funding available to education service district.

## A BILL FOR AN ACT

1  
2 Relating to education service districts; creating new provisions; and amending ORS 294.447, 327.019,  
3 327.297, 334.003, 334.032, 334.095, 334.125, 334.177 and 757.612.

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

5 **SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of ORS**  
6 **chapter 334.**

7 **SECTION 2. (1) Notwithstanding ORS 334.010 and 334.020, the Salem-Keizer Public**  
8 **Schools may withdraw from the Willamette Education Service District.**

9 **(2) The school district board of the Salem-Keizer Public Schools may choose to withdraw**  
10 **the school district from the education service district by an affirmative vote of two-thirds**  
11 **of the members of the board.**

12 **(3)(a) If the school district board chooses to withdraw the school district from the edu-**  
13 **cation service district as provided in subsection (2) of this section, the board must submit a**  
14 **plan of withdrawal to the State Board of Education. The plan must describe:**

15 **(A) How the school district will provide the services described in ORS 334.175 (2) to the**  
16 **students of the school district; and**

17 **(B) How the school district and education service district will dispose of any real property**  
18 **of the education service district that is located within the boundaries of the school district.**

19 **(b) A plan of withdrawal described in this subsection must be submitted to the state**  
20 **board no later than March 1 of the year in which the school district plans to withdraw from**  
21 **the education service district.**

22 **(4)(a) The State Board of Education must consider a plan of withdrawal submitted under**  
23 **subsection (3) of this section at the next meeting of the state board.**

24 **(b) Within 15 days after the meeting at which the state board considers the plan, the**  
25 **state board must approve or disapprove the plan.**

26 **(c) If the state board approves the plan, the state board shall issue an order that removes**  
27 **the school district from the education service district.**

28 **(d) If the state board disapproves the plan, the school district may appeal the decision**  
29 **as a contested case under ORS chapter 183.**

30 **(5) The withdrawal of the school district from the education service district as provided**  
31 **in this section becomes effective on July 1 following approval by the State Board of Educa-**

**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 tion.

2 **SECTION 3.** (1) If the school district board of the Salem-Keizer Public Schools has with-  
 3 drawn the Salem-Keizer Public Schools from the Willamette Education Service District as  
 4 provided in section 2 of this 2011 Act, the school district board may choose to rejoin the  
 5 school district to the education service district.

6 (2) The school district board may choose to rejoin the school district to the education  
 7 service district as provided in subsection (1) of this section by an affirmative vote of two-  
 8 thirds of the members of the board. A vote described in this subsection must occur no later  
 9 than March 1 of the year in which the school district board plans to rejoin the school district  
 10 to the education service district.

11 (3) At the next meeting of the State Board of Education following a vote described in  
 12 subsection (2) of this section, the state board shall issue an order recognizing that the school  
 13 district is rejoining the education service district.

14 (4) The rejoining of the school district to the education service district as provided in this  
 15 section becomes effective on July 1 after the State Board of Education issues the order de-  
 16 scribed in subsection (3) of this section.

17 **SECTION 4.** ORS 334.003 is amended to read:

18 334.003. For purposes of this chapter:

19 (1) “Component school district” means a common school district or a union high school district  
 20 that:

21 (a) Is located within the territory of an education service district[.]; and

22 (b) Is not withdrawn from the education service district as provided in section 2 of this  
 23 2011 Act.

24 (2) “Education service district” means a district created under ORS 334.010 that provides re-  
 25 gional educational services to component school districts.

26 (3) “Joint school district” means a common school district or a union high school district located  
 27 within the territory of more than one education service district.

28 **SECTION 5.** ORS 334.032 is amended to read:

29 334.032. (1) The board of directors of an education service district shall divide the education  
 30 service district into not more than 11 zones as nearly equal in census population as may be practi-  
 31 cable, measured along common school district boundary lines except that zones may be established  
 32 using voting precinct boundaries in order to achieve greater equality of population. If possible, the  
 33 board shall establish the zones so that each county within the education service district, the ma-  
 34 jority of the land area of which lies within the boundaries of the education service district, has at  
 35 least one member on the board.

36 (2) Each county within the education service district, the majority of the land area of which lies  
 37 within the boundaries of the education service district, shall have at least one member on the board  
 38 or shall have at least one member on the budget committee of the education service district.

39 (3) The board may readjust the boundaries of the zones once each year and shall readjust the  
 40 boundaries of the zones immediately upon:

41 (a) Any change of the boundaries of the education service district[.];

42 (b) The withdrawing of a school district as provided in section 2 of this 2011 Act; or

43 (c) The rejoining of a school district as provided in section 3 of this 2011 Act.

44 **SECTION 6.** ORS 334.095 is amended to read:

45 334.095. (1) The education service district board shall declare the office of director vacant upon

1 the happening of any of the following:

2 (a) When an incumbent dies or resigns;

3 (b) When an incumbent is removed from office or the election thereto has been declared void  
4 by the judgment of any court;

5 (c) When an incumbent ceases to be a resident of **a school district that is a component school**  
6 **district of** the education service district;

7 (d) Subject to the provision of subsection (2) of this section, when an incumbent ceases to be a  
8 resident of the zone from which nominated;

9 (e) When an incumbent ceases to discharge the duties of office for two consecutive months un-  
10 less prevented therefrom by sickness or other unavoidable cause; or

11 (f) When an incumbent is recalled.

12 (2) A director nominated from a zone who changes permanent residence from one zone to an-  
13 other zone in which another director resides shall continue to serve as director until the next reg-  
14 ular election when a successor shall be elected to serve for the remainder of the unexpired term.

15 (3) A director guilty of misfeasance or malfeasance in office, by the appropriate proceeding, may  
16 be removed from office by a court of competent jurisdiction.

17 (4) Members may be recalled in the manner provided in ORS 249.865 to 249.877. If the member  
18 was elected by a zone, the recall petition shall be signed by electors from that zone and electors  
19 from the zone are the only electors eligible to vote in the recall election. If the member was elected  
20 at large, the recall petition shall be signed by electors from the district and electors from the dis-  
21 trict are eligible to vote in the recall election.

22 **SECTION 7.** ORS 334.125 is amended to read:

23 334.125. (1) The education service district is a body corporate.

24 (2) The education service district board is authorized to transact all business coming within the  
25 jurisdiction of the education service district and may sue and be sued.

26 (3) The education service district board shall perform all duties required by law, including but  
27 not limited to:

28 (a) Distribution of such school funds as it is empowered to apportion;

29 (b) Conduct of audits;

30 (c) Duties as district boundary board;

31 (d) Budget and tax levying duties, including the levying of taxes under ORS 280.060;

32 (e) Contracting a bonded indebtedness and levying direct ad valorem taxes on all taxable prop-  
33 erty within the education service district in the manner that component school districts are au-  
34 thorized to issue bonds and levy taxes under ORS 328.205 to 328.304 and other laws applicable to  
35 the issuance of bonds and levying of taxes by school districts; and

36 (f) Creating a county education bond district under ORS 328.304 from a county within the dis-  
37 trict.

38 (4) In addition to its duties under subsection (3) of this section, an education service district  
39 board:

40 (a) May provide services required by the local service plan developed pursuant to ORS 334.175  
41 [*and*];

42 (b) May provide funds to component school districts to provide services required by the local  
43 plan in lieu of those school districts receiving services from the education service district[.]; **and**

44 (c) **Shall provide funds as specified in ORS 327.019 to a school district, within the terri-**  
45 **tory of the education service district, that has withdrawn from the education service district**

1 **as provided in section 2 of this 2011 Act.**

2 (5) The education service district board may employ and fix the compensation of such personnel  
3 as it considers necessary for carrying out duties of the board.

4 (6) In carrying out its duties, the education service district board:

5 (a) May locate, buy, accept by gift or lease such land, buildings and facilities as may be required  
6 for district purposes. Leases authorized by this section may be for a term of up to 30 years and  
7 include lease-purchase agreements whereunder the district may acquire ownership of the leased  
8 property.

9 (b) May acquire personal property by a lease-purchase agreement or contract of purchase for a  
10 term exceeding one year. A lease-purchase agreement is one in which the rent payable by the dis-  
11 trict is expressly agreed to have been established to reflect the savings resulting from the exemption  
12 from taxation, and the district is entitled to ownership of the property at a nominal or other price  
13 which is stated or determinable by the terms of the agreement and was not intended to reflect the  
14 true value of the property.

15 (c) May lease property or sell and convey property of the district as the board considers un-  
16 necessary to its purposes.

17 (d) May purchase relocatable structures in installment transactions in which deferred install-  
18 ments of the purchase price are payable over not more than 10 years from the date of delivery of  
19 the property to the district and are secured by a security interest in the property. The transactions  
20 may take the form of, but are not limited to, lease-purchase agreements.

21 (e) May accept money or property donated for the use or benefit of the district and use the  
22 money or property for the purpose for which it was donated.

23 (7) The education service district board may adopt rules it considers necessary to carry out the  
24 duties of the board.

25 (8) The education service district may contract with public and private entities for service de-  
26 livery.

27 (9)(a) The education service district shall work cooperatively with component school districts  
28 and review periodically with component school districts the operations of component school districts  
29 and shall submit to the component school districts plans for operations that achieve economies and  
30 efficiencies through consolidation of various operations of all or some of the districts. The education  
31 service district and its component school districts shall submit an annual report on the effectiveness  
32 of the consolidation of operations to the State Board of Education.

33 (b) As used in this subsection, “operations” means services involving transportation, payroll,  
34 student records, auditing, legal services, insurance, printing, investment and other similar services.

35 **SECTION 8.** ORS 327.019, as amended by section 13, chapter 846, Oregon Laws 2007, section  
36 4, chapter 439, Oregon Laws 2009, and section 11, chapter 698, Oregon Laws 2009, is amended to  
37 read:

38 327.019. (1) As used in this section:

39 (a) “Education service district extended ADMw” means the sum of the extended ADMw of the  
40 [component] school districts **located within the territory** of the education service district as com-  
41 puted under ORS 327.013.

42 (b) “Local revenues of an education service district” means the total of the following:

43 (A) The amount of revenue offset against local property taxes as determined by the Department  
44 of Revenue under ORS 311.175 (3)(a)(A);

45 (B) The amount of property taxes actually received by the district including penalties and in-

1 terest on taxes;

2 (C) The amount of revenue received by the district from state-managed forestlands under ORS  
3 530.115 (1)(b) and (c); and

4 (D) Any positive amount obtained by subtracting the operating property taxes actually imposed  
5 by the district based on the rate certified pursuant to ORS 310.060 from the amount that would have  
6 been imposed by the district if the district had certified the maximum rate of operating property  
7 taxes allowed by law.

8 (2) Each fiscal year, the Superintendent of Public Instruction shall calculate a State School Fund  
9 grant for each education service district as provided in this section.

10 (3)(a) Each fiscal year, the superintendent shall calculate the total amount appropriated or al-  
11 located to the State School Fund and available for distribution to school districts, education service  
12 districts and programs + total amount of local revenues of all school districts, computed as provided  
13 in ORS 327.011, + total amount of local revenues of all education service districts. The super-  
14 intendent may not include in the calculation under this paragraph amounts received by the De-  
15 partment of Education from the State School Fund under ORS 343.243.

16 (b) The superintendent shall multiply the amount calculated under paragraph (a) of this sub-  
17 section by 95.25 percent.

18 (c) Based on the amount calculated under paragraph (b) of this subsection, the superintendent  
19 shall calculate a funding percentage to distribute as nearly as practicable under ORS 327.006 to  
20 327.133 and 327.348 the total amount calculated under paragraph (b) of this subsection as school  
21 district general purpose grants, facility grants, high cost disabilities grants and transportation  
22 grants to school districts.

23 (d) Based on the funding percentage calculated under paragraph (c) of this subsection, the su-  
24 perintendent shall calculate the general purpose grant, facility grant, transportation grant and high  
25 cost disabilities grant amounts for each school district.

26 (4) The general services grant for an education service district shall equal the higher of:

27 (a) The total amount calculated under subsection (3)(d) of this section for the [*component*] school  
28 districts **located within the territory** of the education service district  $\times$  (4.75  $\div$  95.25); or

29 (b) \$1 million.

30 (5) Subject to subsection (6) of this section, the State School Fund grant for an education service  
31 district = general services grant – local revenues of the education service district.

32 (6)(a) After completing the calculations under subsections (2) to (5) of this section, the Super-  
33 intendent of Public Instruction shall apportion from the State School Fund to each education service  
34 district an amount = (funding percentage  $\times$  general services grant) – local revenues of the educa-  
35 tion service district.

36 (b) The funding percentage used in paragraph (a) of this subsection shall be calculated by the  
37 superintendent to distribute as nearly as practicable the total amount available for distribution to  
38 education service districts from the State School Fund for each fiscal year.

39 (7) Notwithstanding subsections (5) and (6) of this section:

40 (a) The State School Fund grant of an education service district may not be less than zero; and

41 (b) The State School Fund grant of an education service district shall be in an amount that,  
42 when combined with the local revenues of the education service district, equals \$1 million or more.

43 (8) An education service district shall distribute to [*its component*] **the** school districts **located**  
44 **within the territory of the education service district** any amount of local revenues of the edu-  
45 cation service district that is greater than the general services grant. The amount that each [*com-*

1 *ponent*] school district receives under this subsection shall be prorated based on the district  
 2 extended ADMw of *[each]* **the school district as calculated under ORS 327.013.**

3 **(9) An education service district shall distribute amounts described in ORS 334.177 (2) and**  
 4 **(3) and 757.612 to a school district that is located within the territory of the education service**  
 5 **district but that has withdrawn from the education service district as provided in section 2**  
 6 **of this 2011 Act. The amounts that a school district receives under this subsection shall be**  
 7 **prorated based on the district extended ADMw of the school district as calculated under ORS**  
 8 **327.013.**

9 **SECTION 9.** ORS 294.447 is amended to read:

10 294.447. (1) As used in this section, “extended ADMw” means:

11 (a) For a school district, the district extended ADMw as calculated under ORS 327.013.

12 (b) For an education service district, the sum of the extended ADMw of the *[component]* school  
 13 districts **located within the territory** of the education service district.

14 (2) Notwithstanding ORS 294.445, a school district or education service district that uses the  
 15 accrual basis method of accounting may include as accrued revenues in the budget and financial  
 16 statement of the school district or education service district, for any fiscal year, an amount from the  
 17 next fiscal year that is to be received in the next fiscal year. The amount accrued under this section  
 18 may not be greater than the amount calculated under subsection (3)(b) or (c) of this section multi-  
 19 plied by the extended ADMw of the school district or education service district.

20 (3)(a) For each fiscal year, the Department of Education shall calculate the amount available in  
 21 the State School Fund for grants and distributions to school districts and the amount available for  
 22 grants and distributions to education service districts under ORS 327.008, 327.013 and 327.019 based  
 23 on the appropriations and allocations made to the State School Fund for that fiscal year by the  
 24 Legislative Assembly in regular session. The department may not include in the amount calculated  
 25 to be available for school districts under this paragraph the amounts received by the Youth Cor-  
 26 rections Education Program and the Juvenile Detention Education Program under ORS 327.026 from  
 27 the State School Fund.

28 (b) The department shall calculate for school districts an amount equal to (the amount calcu-  
 29 lated under paragraph (a) of this subsection for school districts ÷ 12) ÷ the total statewide ex-  
 30 tended ADMw of all school districts.

31 (c) The department shall calculate for education service districts an amount equal to (the  
 32 amount calculated under paragraph (a) of this subsection for education service districts ÷ 12) ÷  
 33 the total statewide extended ADMw of all education service districts.

34 (d) The department may adjust the calculations under this subsection based on current data for  
 35 the factors used to calculate the State School Fund distribution to school districts and education  
 36 service districts under ORS 327.008, 327.013 and 327.019.

37 (e) Notwithstanding paragraph (d) of this subsection, the department may not adjust the calcu-  
 38 lation under paragraph (a) of this subsection based on changes made to the appropriations or allo-  
 39 cations to the State School Fund by the Legislative Assembly in special session or by rule of the  
 40 Oregon Department of Administrative Services relating to allotting funds.

41 (4) Notwithstanding ORS 294.445, a community college district or community college service  
 42 district that uses the accrual basis method of accounting may include as accrued revenues in the  
 43 budget and financial statement of the community college district or community college service dis-  
 44 trict, for any fiscal year, an amount from the next fiscal year that is to be received in the next fiscal  
 45 year. The amount accrued under this section may not be greater than 25 percent of the amount the

1 community college district or community college service district received as a Community College  
 2 Support Fund grant for the fiscal year for which the revenues are to be accrued.

3 **SECTION 10.** ORS 327.297 is amended to read:

4 327.297. (1) In addition to those moneys distributed through the State School Fund, the Depart-  
 5 ment of Education shall award grants to school districts, education service districts, the Youth  
 6 Corrections Education Program and the Juvenile Detention Education Program for activities that  
 7 relate to increases in student achievement, including:

8 (a) Early childhood support including establishing, maintaining or expanding quality  
 9 prekindergarten programs and full-day kindergarten programs;

10 (b) Class size reduction with an emphasis on the reduction of kindergarten through grade three  
 11 class sizes;

12 (c) Increases in instructional time including summer programs and before- and after-school pro-  
 13 grams;

14 (d) Mentoring, teacher retention and professional development;

15 (e) Remediation, alternative learning and student retention;

16 (f) Services to at-risk youth;

17 (g) Programs to improve a student achievement gap between student groups identified by cul-  
 18 ture, poverty, language and race and other student groups;

19 (h) Vocational education programs;

20 (i) Literacy programs;

21 (j) School library programs; and

22 (k) Other research-based student improvement strategies approved by the State Board of Edu-  
 23 cation.

24 (2)(a) Each school district, each education service district, the Youth Corrections Education  
 25 Program and the Juvenile Detention Education Program may apply to the Department of Education  
 26 for a grant.

27 (b) The department shall review and approve applications based on criteria established by the  
 28 State Board of Education. In establishing the criteria, the State Board of Education shall consider  
 29 the recommendations of the Quality Education Commission established under ORS 327.500.

30 (c) The applications shall include the activities to be funded and the goals of the district or  
 31 program for increases in student performance. The applications shall become part of the local dis-  
 32 trict continuous improvement plan described in ORS 329.095.

33 (3) The Department of Education shall evaluate the annual progress of each recipient of grant  
 34 funds under this section toward the performance targets established by the Quality Education  
 35 Commission. The evaluation shall become part of the requirements of the department for assessing  
 36 the effectiveness of the district under ORS 329.085, 329.095 and 329.105. The department shall ensure  
 37 district and program accountability by providing appropriate assistance, intervening and establish-  
 38 ing consequences in order to support progress toward the performance targets.

39 (4) Each biennium the Department of Education shall issue a report to the Legislative Assembly  
 40 on the grant program and the results of the grant program.

41 (5)(a) Notwithstanding ORS 338.155 (9), the Department of Education may not award a grant  
 42 under this section directly to a public charter school.

43 (b) A school district that receives a grant under this section may transfer a portion of the grant  
 44 to a public charter school based on the charter of the school or any other agreement between the  
 45 school district and the public charter school.

1 (c) A public charter school that receives grant funds under this subsection shall use those funds  
 2 for the activities specified in subsection (1) of this section.

3 (6)(a) The amount of each grant for a program or school district = the program’s or school  
 4 district’s ADMw × (the total amount available for distribution to programs and school districts as  
 5 grants in each fiscal year ÷ the total ADMw of all programs and school districts that receive a  
 6 grant).

7 (b) The amount of each grant for an education service district = the education service district’s  
 8 ADMw × (the total amount available for distribution to education service districts as grants in  
 9 each fiscal year ÷ the total ADMw of all education service districts that receive a grant).

10 (c) As used in this subsection, “ADMw” means:

11 (A) For a school district, the extended weighted average daily membership as calculated under  
 12 ORS 327.013, 338.155 (1) and 338.165 (3);

13 (B) For the Youth Corrections Education Program, the average daily membership as defined in  
 14 ORS 327.006 multiplied by 2.0;

15 (C) For the Juvenile Detention Education Program, the average daily membership as defined in  
 16 ORS 327.006 multiplied by 1.5; and

17 (D) For an education service district, the sum of the ADMw of the *[component]* school districts  
 18 **located within the territory** of the education service district.

19 (7) Each district or program shall deposit the grant amounts it receives under this section in a  
 20 separate account, and shall apply amounts in that account to pay for activities described in the  
 21 district’s or program’s application.

22 (8) The State Board of Education may adopt any rules necessary for the administration of the  
 23 grant program.

24 **SECTION 11.** ORS 334.177 is amended to read:

25 334.177. (1) As used in this section, “local revenues of an education service district” has the  
 26 meaning given that term in ORS 327.019 but does not include any local revenues distributed *[to*  
 27 *component school districts]* under ORS 327.019 (8).

28 (2) An education service district board shall expend at least 90 percent of all amounts received  
 29 from the State School Fund and at least 90 percent of all amounts considered to be local revenues  
 30 of an education service district on services or programs that have been approved by the component  
 31 school districts of the education service district through the resolution process described in ORS  
 32 334.175.

33 (3) An education service district board shall expend 100 percent of all amounts received from  
 34 the School Improvement Fund on services or programs that have been approved by the component  
 35 school districts of the education service district through the resolution process described in ORS  
 36 334.175.

37 **(4) The expenditure requirements of this section apply only to amounts retained by the**  
 38 **education service district after making any distributions required under ORS 327.019 (9).**

39 **SECTION 12.** ORS 757.612 is amended to read:

40 757.612. (1) There is established an annual public purpose expenditure standard for electric  
 41 companies and Oregon Community Power to fund new cost-effective local energy conservation, new  
 42 market transformation efforts, the above-market costs of new renewable energy resources and new  
 43 low-income weatherization. The public purpose expenditure standard shall be funded by the public  
 44 purpose charge described in subsection (2) of this section.

45 (2)(a) Beginning on the date an electric company or Oregon Community Power offers direct ac-



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

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

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

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

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

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

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

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

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

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

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

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

44 (e)(A) The first 10 percent of the funds collected annually by an electric company or Oregon  
45 Community Power under subsection (2) of this section shall be distributed to education service dis-

1 tricts, as described in ORS 334.010, that are located in the service territory of the electric company  
2 or Oregon Community Power. The funds shall be distributed to individual education service districts  
3 according to the weighted average daily membership (ADMw) of the [component] school districts  
4 **located within the territory** of the education service district for the prior fiscal year as calculated  
5 under ORS 327.013. The commission shall establish by rule a methodology for distributing a  
6 proportionate share of funds under this paragraph to education service districts that are only par-  
7 tially located in the service territory of the electric company or Oregon Community Power.

8 (B) An education service district that receives funds under this paragraph shall use the funds  
9 first to pay for energy audits for school districts located within the education service district. An  
10 education service district may not expend additional funds received under this paragraph on a  
11 school district facility until an energy audit has been completed for that school district. To the  
12 extent practicable, an education service district shall coordinate with the State Department of En-  
13 ergy and incorporate federal funding in complying with this paragraph. Following completion of an  
14 energy audit for an individual school district, the education service district may expend funds re-  
15 ceived under this paragraph to implement the energy audit. Once an energy audit has been con-  
16 ducted and completely implemented for each school district within the education service district, the  
17 education service district may expend funds received under this paragraph for any of the following  
18 purposes:

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

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

23 (iii) Energy conservation education programs.

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

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

28 (g) If the commission directs funds collected through public purpose charges to a nongovern-  
29 mental entity, the entity shall:

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

32 (B) Require the entity's officers and directors to provide an annual disclosure of economic in-  
33 terest to be filed with the commission on or prior to April 15 of each calendar year for public review  
34 in a form similar to the statement of economic interest required for public officials under ORS  
35 244.060.

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

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

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

45 (F) At least once every five years, contract for an independent management evaluation to review

1 the entity's operations, efficiency and effectiveness, and direct the independent reviewer to file a  
2 report with the commission for public review.

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

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

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

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

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

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

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

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

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

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

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

1 public purpose charges less the estimated cost of available conservation measures.

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

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

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

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

17 (b) The commission shall establish the amount to be collected by each electric company in cal-  
18 endar year 2008 from retail electricity consumers served by the company, and the rates to be  
19 charged to retail electricity consumers served by the company, so that the total anticipated col-  
20 lection for low-income electric bill payment assistance by all electric companies in calendar year  
21 2008 is \$15 million. In calendar year 2009 and subsequent calendar years, the commission may not  
22 change the rates established for retail electricity consumers, but the total amount collected in a  
23 calendar year for low-income electric bill payment assistance may vary based on electricity usage  
24 by retail electricity consumers and changes in the number of retail electricity consumers in this  
25 state. In no event shall a retail electricity consumer be required to pay more than \$500 per month  
26 per site for low-income electric bill payment assistance.

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

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

44 (e) Interest on moneys deposited in the Housing and Community Services Department Low-  
45 Income Electric Bill Payment Assistance Fund established by ORS 456.587 (2) may be used to pro-

1 vide heating bill payment and crisis assistance to electricity consumers whose primary source of  
2 heat is not electricity.

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

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

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

12 **SECTION 13. Section 3 of this 2011 Act and the amendments to ORS 294.447, 327.019,**  
13 **327.297, 334.003, 334.032, 334.095, 334.125, 334.177 and 757.612 by sections 4 to 12 of this 2011**  
14 **Act become operative June 30, 2012.**