

House Bill 3587

Sponsored by Representative WITT, Senator JOHNSON; Representative KRIEGER, Senators TELFER, VERGER, WHITSETT (at the request of John Charles, Cascade Policy Institute)

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**.

Changes sunset date for utility public purpose charges from January 1, 2026, to October 1, 2011. Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to utility public purpose charges ending date; amending ORS 757.612; and declaring an
3 emergency.

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

5 **SECTION 1.** ORS 757.612 is amended to read:

6 757.612. (1) There is established an annual public purpose expenditure standard for electric
7 companies and Oregon Community Power to fund new cost-effective local energy conservation, new
8 market transformation efforts, the above-market costs of new renewable energy resources and new
9 low-income weatherization. The public purpose expenditure standard shall be funded by the public
10 purpose charge described in subsection (2) of this section.

11 (2)(a) Beginning on the date an electric company or Oregon Community Power offers direct ac-
12 cess to its retail electricity consumers, except residential electricity consumers, the electric com-
13 pany or Oregon Community Power shall collect a public purpose charge from all of the retail
14 electricity consumers located within its service area until [*January 1, 2026*] **October 1, 2011**. Except
15 as provided in paragraph (b) of this subsection, the public purpose charge shall be equal to three
16 percent of the total revenues collected by the electric company, Oregon Community Power or the
17 electricity service supplier from its retail electricity consumers for electricity services, distribution,
18 ancillary services, metering and billing, transition charges and other types of costs included in
19 electric rates on July 23, 1999.

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

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

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

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

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

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 megawatts or less.

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

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

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

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

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

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

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

33 (B) An education service district that receives funds under this paragraph shall use the funds
 34 first to pay for energy audits for school districts located within the education service district. An
 35 education service district may not expend additional funds received under this paragraph on a
 36 school district facility until an energy audit has been completed for that school district. To the
 37 extent practicable, an education service district shall coordinate with the State Department of En-
 38 ergy and incorporate federal funding in complying with this paragraph. Following completion of an
 39 energy audit for an individual school district, the education service district may expend funds re-
 40 ceived under this paragraph to implement the energy audit. Once an energy audit has been con-
 41 ducted and completely implemented for each school district within the education service district, the
 42 education service district may expend funds received under this paragraph for any of the following
 43 purposes:

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

1 an energy audit within the three years immediately prior to receiving the funds.

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

3 (iii) Energy conservation education programs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (5)(a) A retail electricity consumer that uses more than one average megawatt of electricity at
43 any site in the prior year shall receive a credit against public purpose charges billed by an electric
44 company or Oregon Community Power for that site. The amount of the credit shall be equal to the
45 total amount of qualifying expenditures for new energy conservation, not to exceed 68 percent of the

1 annual public purpose charges, and the above-market costs of purchases of new renewable energy
2 resources incurred by the retail electricity consumer, not to exceed 19 percent of the annual public
3 purpose charges, less administration costs incurred under this subsection. The credit may not ex-
4 ceed, on an annual basis, the lesser of:

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

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

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

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

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

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

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

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

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

42 (b) The commission shall establish the amount to be collected by each electric company in cal-
43 endar year 2008 from retail electricity consumers served by the company, and the rates to be
44 charged to retail electricity consumers served by the company, so that the total anticipated col-
45 lection for low-income electric bill payment assistance by all electric companies in calendar year

1 2008 is \$15 million. In calendar year 2009 and subsequent calendar years, the commission may not
 2 change the rates established for retail electricity consumers, but the total amount collected in a
 3 calendar year for low-income electric bill payment assistance may vary based on electricity usage
 4 by retail electricity consumers and changes in the number of retail electricity consumers in this
 5 state. In no event shall a retail electricity consumer be required to pay more than \$500 per month
 6 per site for low-income electric bill payment assistance.

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

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

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

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

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

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

37 **SECTION 2. This 2011 Act being necessary for the immediate preservation of the public**
 38 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
 39 **on its passage.**