

# Senate Bill 250

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## 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 school district to withdraw from education service district. Requires education service district to distribute to school district prorated amount of state funding available to education service district. Allows school district to rejoin education service district.

Takes effect January 1, 2013.

## A BILL FOR AN ACT

1  
2 Relating to education service districts; creating new provisions; amending ORS 294.447, 327.019,  
3 327.297, 334.003, 334.032, 334.095, 334.125, 334.127, 334.177 and 757.612; and prescribing an ef-  
4 fective date.

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

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

8 **SECTION 2. (1) Notwithstanding ORS 334.010 and 334.020, one or more school districts**  
9 **of an education service district may withdraw from the education service district.**

10 **(2) A school district board may choose to withdraw a school district from an education**  
11 **service district by an affirmative vote of two-thirds of the members of the board.**

12 **(3)(a) A school district board that chooses to withdraw a school district from the educa-**  
13 **tion service district as provided in subsection (2) of this section must submit a plan of**  
14 **withdrawal to the State Board of Education. The plan of withdrawal must describe how the**  
15 **school district will provide the services described in ORS 334.175 (2) to the students of the**  
16 **school district.**

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

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

22 **(b) Within 15 days after the meeting at which the state board considers a plan of with-**  
23 **drawal, the state board must approve or disapprove the plan.**

24 **(c) If the state board approves the plan of withdrawal, the state board shall issue an or-**  
25 **der that removes the school district from the education service district.**

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

28 **(5) The withdrawal of a school district from an education service district becomes effec-**  
29 **tive on July 1 following approval by the State Board of Education.**

**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       **SECTION 3.** (1) A school district board that withdrew a school district from an education  
2 service district as provided in section 2 of this 2011 Act may choose to rejoin the school  
3 district to an education service district.

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

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

12       (4) The rejoining of a school district to an education service district becomes effective  
13 on July 1 after the State Board of Education issues the order described in subsection (3) of  
14 this section.

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

16       334.003. For purposes of this chapter:

17       (1) "Component school district" means a common school district or a union high school district  
18 that:

19       (a) Is located within the territory of an education service district; and

20       (b) Is not withdrawn from the education service district as provided in section 2 of this  
21 2011 Act.

22       (2) "Education service district" means a district created under ORS 334.010 that provides re-  
23 gional educational services to component school districts.

24       (3) "Joint school district" means a common school district or a union high school district located  
25 within the territory of more than one education service district.

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

27       334.032. (1) The board of directors of an education service district shall divide the education  
28 service district into not more than 11 zones as nearly equal in census population as may be practi-  
29 cable, measured along common school district boundary lines except that zones may be established  
30 using voting precinct boundaries in order to achieve greater equality of population. If possible, the  
31 board shall establish the zones so that each county within the education service district, the ma-  
32 jority of the land area of which lies within the boundaries of the education service district, has at  
33 least one member on the board.

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

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

39       (a) Any change of the boundaries of the education service district;

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

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

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

43       334.095. (1) The education service district board shall declare the office of director vacant upon  
44 the happening of any of the following:

45       (a) When an incumbent dies or resigns;

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

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

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

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

9 (f) When an incumbent is recalled.

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

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

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

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

21 334.125. (1) The education service district is a body corporate.

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

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

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

27 (b) Conduct of audits;

28 (c) Duties as district boundary board;

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

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

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

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

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

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

42 (c) **Shall provide funds as specified in ORS 327.019 to a school district, within the terri-**  
43 **tory of the education service district, that has withdrawn from the education service district**  
44 **as provided in section 2 of this 2011 Act.**

45 (5) The education service district board may employ and fix the compensation of such personnel

1 as it considers necessary for carrying out duties of the board.

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

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

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

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

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

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

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

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

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

31 (b) As used in this subsection, "operations" means services involving transportation, payroll,  
 32 student records, auditing, legal services, insurance, printing, investment and other similar services.

33 **SECTION 8.** ORS 334.127 is amended to read:

34 334.127. (1) Whenever an education service district ceases to exist, its real property shall pass  
 35 to the successor district, which is authorized to treat [*such*] **the** property in the same manner as  
 36 [*its*] **did the** predecessor district [*did*].

37 (2) **Whenever a school district withdraws from an education service district as provided**  
 38 **in section 2 of this 2011 Act, the school district and education service district shall determine**  
 39 **the disposition of any real property of the education service district that is located within**  
 40 **the boundaries of the school district. If the school district and the education service district**  
 41 **are unable to agree on how to dispose of the real property, the school district or education**  
 42 **service district may request that the State Board of Education issue an order to dispose of**  
 43 **the real property.**

44 **SECTION 9.** ORS 327.019, as amended by section 13, chapter 846, Oregon Laws 2007, section  
 45 4, chapter 439, Oregon Laws 2009, and section 11, chapter 698, Oregon Laws 2009, is amended to

1 read:

2 327.019. (1) As used in this section:

3 (a) "Education service district extended ADMw" means the sum of the extended ADMw of the  
4 [component] school districts **located within the territory** of the education service district as com-  
5 puted under ORS 327.013.

6 (b) "Local revenues of an education service district" means the total of the following:

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

9 (B) The amount of property taxes actually received by the district including penalties and in-  
10 terest on taxes;

11 (C) The amount of revenue received by the district from state-managed forestlands under ORS  
12 530.115 (1)(b) and (c); and

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

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

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

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

27 (c) Based on the amount calculated under paragraph (b) of this subsection, the superintendent  
28 shall calculate a funding percentage to distribute as nearly as practicable under ORS 327.006 to  
29 327.133 and 327.348 the total amount calculated under paragraph (b) of this subsection as school  
30 district general purpose grants, facility grants, high cost disabilities grants and transportation  
31 grants to school districts.

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

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

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

38 (b) \$1 million.

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

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

45 (b) The funding percentage used in paragraph (a) of this subsection shall be calculated by the

1 superintendent to distribute as nearly as practicable the total amount available for distribution to  
2 education service districts from the State School Fund for each fiscal year.

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

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

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

7 (8) An education service district shall distribute to *[its component]* **the** school districts **located**  
8 **within the territory of the education service district** any amount of local revenues of the edu-  
9 cation service district that is greater than the general services grant. The amount that each *[com-*  
10 *ponent]* school district receives under this subsection shall be prorated based on the district  
11 extended ADMw of *[each]* **the** school district **as calculated under ORS 327.013.**

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

18 **SECTION 10.** ORS 294.447 is amended to read:

19 294.447. (1) As used in this section, "extended ADMw" means:

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

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

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

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

37 (b) The department shall calculate for school districts an amount equal to (the amount calcu-  
38 lated under paragraph (a) of this subsection for school districts  $\div$  12)  $\div$  the total statewide ex-  
39 tended ADMw of all school districts.

40 (c) The department shall calculate for education service districts an amount equal to (the  
41 amount calculated under paragraph (a) of this subsection for education service districts  $\div$  12)  $\div$   
42 the total statewide extended ADMw of all education service districts.

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

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

5 (4) Notwithstanding ORS 294.445, a community college district or community college service  
6 district that uses the accrual basis method of accounting may include as accrued revenues in the  
7 budget and financial statement of the community college district or community college service dis-  
8 trict, for any fiscal year, an amount from the next fiscal year that is to be received in the next fiscal  
9 year. The amount accrued under this section may not be greater than 25 percent of the amount the  
10 community college district or community college service district received as a Community College  
11 Support Fund grant for the fiscal year for which the revenues are to be accrued.

12 **SECTION 11.** ORS 327.297 is amended to read:

13 327.297. (1) In addition to those moneys distributed through the State School Fund, the Depart-  
14 ment of Education shall award grants to school districts, education service districts, the Youth  
15 Corrections Education Program and the Juvenile Detention Education Program for activities that  
16 relate to increases in student achievement, including:

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

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

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

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

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

25 (f) Services to at-risk youth;

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

28 (h) Vocational education programs;

29 (i) Literacy programs;

30 (j) School library programs; and

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

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

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

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

42 (3) The Department of Education shall evaluate the annual progress of each recipient of grant  
43 funds under this section toward the performance targets established by the Quality Education  
44 Commission. The evaluation shall become part of the requirements of the department for assessing  
45 the effectiveness of the district under ORS 329.085, 329.095 and 329.105. The department shall ensure

1 district and program accountability by providing appropriate assistance, intervening and establish-  
2 ing consequences in order to support progress toward the performance targets.

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

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

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

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

12 (6)(a) The amount of each grant for a program or school district = the program's or school  
13 district's ADMw  $\times$  (the total amount available for distribution to programs and school districts as  
14 grants in each fiscal year  $\div$  the total ADMw of all programs and school districts that receive a  
15 grant).

16 (b) The amount of each grant for an education service district = the education service district's  
17 ADMw  $\times$  (the total amount available for distribution to education service districts as grants in  
18 each fiscal year  $\div$  the total ADMw of all education service districts that receive a grant).

19 (c) As used in this subsection, "ADMw" means:

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

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

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

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

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

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

33 **SECTION 12.** ORS 334.177 is amended to read:

34 334.177. (1) As used in this section, "local revenues of an education service district" has the  
35 meaning given that term in ORS 327.019 but does not include any local revenues distributed *[to*  
36 *component school districts]* under ORS 327.019 (8).

37 (2) An education service district board shall expend at least 90 percent of all amounts received  
38 from the State School Fund and at least 90 percent of all amounts considered to be local revenues  
39 of an education service district on services or programs that have been approved by the component  
40 school districts of the education service district through the resolution process described in ORS  
41 334.175.

42 (3) An education service district board shall expend 100 percent of all amounts received from  
43 the School Improvement Fund on services or programs that have been approved by the component  
44 school districts of the education service district through the resolution process described in ORS  
45 334.175.



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

3       **SECTION 13.** ORS 757.612 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

1 Power through public purpose charges be paid to a nongovernmental entity for investment in public  
2 purposes described in subsection (1) of this section. Notwithstanding any other provision of this  
3 subsection:

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

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

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

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

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

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

32 (iii) Energy conservation education programs.

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

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

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

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

41 (B) Require the entity's officers and directors to provide an annual disclosure of economic in-  
42 terest to be filed with the commission on or prior to April 15 of each calendar year for public review  
43 in a form similar to the statement of economic interest required for public officials under ORS  
44 244.060.

45 (C) Require the entity's officers and directors to declare actual and potential conflicts of interest

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (c) Credits earned by a retail electricity consumer as a result of qualifying expenditures that

1 are not used in one year may be carried forward for use in subsequent years.

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

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

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

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

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

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

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

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

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

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

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

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

21 **SECTION 14. Section 3 of this 2011 Act and the amendments to ORS 294.447, 327.019,**  
22 **327.297, 334.003, 334.032, 334.095, 334.125, 334.127, 334.177 and 757.612 by sections 4 to 13 of this**  
23 **2011 Act become operative June 30, 2013.**

24 **SECTION 15. This 2011 Act takes effect on January 1, 2013.**

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