

House Bill 2439

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Energy, Environment and Water)

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**.

Transfers certain duties, functions and powers related to renewable energy from State Department of Energy to Public Utility Commission.

Repeals provision requiring study of impact that renewable energy requirements have on jobs creation.

Becomes operative January 1, 2014.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to restructuring of State Department of Energy; creating new provisions; amending ORS
3 469A.020, 469A.025, 469A.130 and 758.552; repealing sections 25 and 26, chapter 301, Oregon
4 Laws 2007; and declaring an emergency.

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

TRANSFER

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9 **SECTION 1. The duties, functions and powers of the State Department of Energy relating**
10 **to ORS 469A.005 to 469A.210 are imposed upon, transferred to and vested in the Public Utility**
11 **Commission.**

RENEWABLE PORTFOLIO STANDARD

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15 **SECTION 2.** ORS 469A.020 is amended to read:

16 469A.020. (1) Except as provided in this section, electricity may be used to comply with a
17 renewable portfolio standard only if the electricity is generated by a facility that becomes opera-
18 tional on or after January 1, 1995.

19 (2) Electricity from a generating facility, other than a hydroelectric facility, that became opera-
20 tional before January 1, 1995, may be used to comply with a renewable portfolio standard if the
21 electricity is attributable to capacity or efficiency upgrades made on or after January 1, 1995.

22 (3) Electricity from a hydroelectric facility that became operational before January 1, 1995, may
23 be used to comply with a renewable portfolio standard if the electricity is attributable to efficiency
24 upgrades made on or after January 1, 1995. If an efficiency upgrade is made to a Bonneville Power
25 Administration facility, only that portion of the electricity generation attributable to Oregon's share
26 of the electricity may be used to comply with a renewable portfolio standard.

27 (4) Subject to the limit imposed by ORS 469A.025 (5), electricity from a hydroelectric facility
28 that became operational before January 1, 1995, may be used to comply with a renewable portfolio

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 standard if the facility is certified as a low-impact hydroelectric facility on or after January 1, 1995,
 2 by a national certification organization recognized by the [*State Department of Energy*] **Public**
 3 **Utility Commission** by rule, and if the facility is either:

4 (a) Owned by an electric utility; or

5 (b) Not owned by an electric utility and located in Oregon and licensed by the Federal Energy
 6 Regulatory Commission under the Federal Power Act, 16 U.S.C. 791a et seq., or exempt from such
 7 license.

8 (5)(a) Electricity from a generating facility located in this state that uses biomass and that be-
 9 came operational before January 1, 1995, may be used to comply with a renewable portfolio standard
 10 if the facility meets the requirements of the federal Public Utility Regulatory Policies Act of 1978
 11 (P.L. 95-617) on March 4, 2010, regardless of whether the facility qualifies under the requirements
 12 of the Public Utility Commission.

13 (b) Renewable energy certificates derived from electricity generated by a facility that qualifies
 14 under paragraph (a) of this subsection may not be used to comply with a renewable portfolio
 15 standard before January 1, 2026. However, renewable energy certificates issued before January 1,
 16 2026, may be banked pursuant to ORS 469A.005 to 469A.210 for use on or after January 1, 2026.

17 (6) A facility located in this state that generates electricity from direct combustion of municipal
 18 solid waste and that became operational before January 1, 1995, may be used to comply with a
 19 renewable portfolio standard for up to 11 average megawatts of electricity generated per calendar
 20 year. Renewable energy certificates derived from electricity generated by a facility described in this
 21 subsection may not be used to comply with a renewable portfolio standard before January 1, 2026.
 22 However, renewable energy certificates issued before January 1, 2026, may be banked pursuant to
 23 ORS 469A.005 to 469A.210 for use on or after January 1, 2026.

24 **SECTION 3.** ORS 469A.025 is amended to read:

25 469A.025. (1) Electricity generated utilizing the following types of energy may be used to comply
 26 with a renewable portfolio standard:

27 (a) Wind energy.

28 (b) Solar photovoltaic and solar thermal energy.

29 (c) Wave, tidal and ocean thermal energy.

30 (d) Geothermal energy.

31 (2) Except as provided in subsection (3) of this section, electricity generated from biomass and
 32 biomass by-products may be used to comply with a renewable portfolio standard, including but not
 33 limited to electricity generated from:

34 (a) Organic human or animal waste;

35 (b) Spent pulping liquor;

36 (c) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest
 37 or rangeland ecological health and to reduce uncharacteristic stand replacing wildfire risk;

38 (d) Wood material from hardwood timber grown on land described in ORS 321.267 (3);

39 (e) Agricultural residues;

40 (f) Dedicated energy crops; and

41 (g) Landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters or
 42 municipal solid waste.

43 (3) Electricity generated from the direct combustion of biomass may not be used to comply with
 44 a renewable portfolio standard if any of the biomass combusted to generate the electricity includes
 45 wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or

1 chromated copper arsenate.

2 (4) Electricity generated by a hydroelectric facility may be used to comply with a renewable
3 portfolio standard only if:

4 (a) The facility is located outside any protected area designated by the Pacific Northwest Elec-
5 tric Power and Conservation Planning Council as of July 23, 1999, or any area protected under the
6 federal Wild and Scenic Rivers Act, P.L. 90-542, or the Oregon Scenic Waterways Act, ORS 390.805
7 to 390.925; or

8 (b) The electricity is attributable to efficiency upgrades made to the facility on or after January
9 1, 1995.

10 (5)(a) Up to 50 average megawatts of electricity per year generated by an electric utility from
11 certified low-impact hydroelectric facilities described in ORS 469A.020 (4)(a) may be used to comply
12 with a renewable portfolio standard, without regard to the number of certified facilities operated
13 by the electric utility or the generating capacity of those facilities. A hydroelectric facility described
14 in this paragraph is not subject to the requirements of subsection (4) of this section.

15 (b) Up to 40 average megawatts of electricity per year generated by certified low-impact hy-
16 droelectric facilities described in ORS 469A.020 (4)(b) may be used to comply with a renewable
17 portfolio standard, without regard to the number of certified facilities or the generating capacity
18 of those facilities. A hydroelectric facility described in this paragraph is not subject to the require-
19 ments of subsection (4) of this section.

20 (6)(a) Direct combustion of municipal solid waste in a generating facility located in this state
21 may be used to comply with a renewable portfolio standard. The qualification of a municipal solid
22 waste facility for use in compliance with a renewable portfolio standard has no effect on the quali-
23 fication of the facility for a tax credit under ORS 469B.130 to 469B.169.

24 (b) The total amount of electricity generated in this state by direct combustion of municipal
25 solid waste by generating facilities that became operational in this state on or after January 1, 1995,
26 may not exceed nine average megawatts per year for the purpose of complying with a renewable
27 portfolio standard.

28 (7) Electricity generated from hydrogen gas, including electricity generated by hydrogen power
29 stations using anhydrous ammonia as a fuel source, may be used to comply with a renewable port-
30 folio standard if:

31 (a) The electricity is derived from:

32 (A) Any source of energy described in subsection (1) or (2) of this section; or

33 (B) A hydroelectric facility that complies with subsection (4) of this section and that is certified
34 as a low-impact hydroelectric facility as described in ORS 469A.020 (4); and

35 (b) The output of the original source of energy is not also used to comply with a renewable
36 portfolio standard.

37 (8) If electricity generation employs multiple energy sources, that portion of the electricity
38 generated that is attributable to energy sources described in this section may be used to comply
39 with a renewable portfolio standard.

40 (9) The [*State Department of Energy*] **Public Utility Commission** by rule may approve energy
41 sources other than those described in this section that may be used to comply with a renewable
42 portfolio standard. The [*department*] **commission** may not approve petroleum, natural gas, coal or
43 nuclear fission as an energy source that may be used to comply with a renewable portfolio standard.

44
45 **RENEWABLE ENERGY CERTIFICATE SYSTEM**

SECTION 4. ORS 469A.130 is amended to read:

469A.130. (1) The [*State Department of Energy*] **Public Utility Commission** shall establish a system of renewable energy certificates that can be used by an electric utility or electricity service supplier to establish compliance with the applicable renewable portfolio standard. [*The department shall consult with the Public Utility Commission before establishing a system of renewable energy certificates under this section.*] The [*department*] **commission** may allow use of renewable energy certificates that are issued, monitored, accounted for or transferred by or through a regional system or trading program, including but not limited to the Western Renewable Energy Generation Information System. The system established by the [*department*] **commission** shall allow issuance, transfer and use of renewable energy certificates in electronic form.

(2) The validity of a bundled renewable energy certificate for purposes of compliance with the applicable renewable portfolio standard is not affected by the substitution of any other electricity for the qualifying electricity at any point after the time of generation.

SECTION 5. ORS 758.552 is amended to read:

758.552. (1) For contracts executed pursuant to the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) and in effect prior to November 30, 2005, renewable energy certificates created pursuant to a system established by the [*State Department of Energy*] **Public Utility Commission** under ORS 469A.130, for generation during the term of such a contract, are owned by the owner of a qualifying facility, unless the owner has transferred a certificate in a contract between the owner and another person.

(2) Subsection (1) of this section applies to qualifying facilities that:

- (a) Are located in this state;
- (b) Are certified as qualifying small power production facilities or qualifying cogeneration facilities under the Federal Power Act (16 U.S.C. 796) as in effect on June 7, 2011; and
- (c) Produce electricity that is priced under ORS 758.525.

RECORDS, PROPERTY, EMPLOYEES

SECTION 6. (1) **The Director of the State Department of Energy shall:**

(a) **Deliver to the Public Utility Commission all records and property within the jurisdiction of the director that relate to the duties, functions and powers transferred by section 1 of this 2013 Act; and**

(b) **Transfer to the commission those employees engaged primarily in the exercise of the duties, functions and powers transferred by section 1 of this 2013 Act.**

(2) **The commission shall take possession of the records and property, and shall take charge of the employees and employ them in the exercise of the duties, functions and powers transferred by section 1 of this 2013 Act, without reduction of compensation but subject to change or termination of employment or compensation as provided by law.**

(3) **The Governor shall resolve any dispute between the State Department of Energy and the commission relating to transfers of records, property and employees under this section, and the Governor’s decision is final.**

UNEXPENDED REVENUES

SECTION 7. (1) **The unexpended balances of amounts authorized to be expended by the**

1 State Department of Energy for the biennium beginning July 1, 2013, from revenues dedi-
 2 cated, continuously appropriated, appropriated or otherwise made available for the purpose
 3 of administering and enforcing the duties, functions and powers transferred by section 1 of
 4 this 2013 Act are transferred to and are available for expenditure by the Public Utility Com-
 5 mission for the biennium beginning July 1, 2013, for the purpose of administering and en-
 6 forcing the duties, functions and powers transferred by section 1 of this 2013 Act.

7 (2) The expenditure classifications, if any, established by Acts authorizing or limiting
 8 expenditures by the department remain applicable to expenditures by the commission under
 9 this section.

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 11 ACTION, PROCEEDING, PROSECUTION
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13 SECTION 8. The transfer of duties, functions and powers to the Public Utility Commis-
 14 sion by section 1 of this 2013 Act does not affect any action, proceeding or prosecution in-
 15 volving or with respect to such duties, functions and powers begun before and pending at the
 16 time of the transfer, except that the commission is substituted for the State Department of
 17 Energy in the action, proceeding or prosecution.

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 19 LIABILITY, DUTY, OBLIGATION
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21 SECTION 9. (1) Nothing in section 1 of this 2013 Act, sections 6 to 12 of this 2013 Act,
 22 the amendments to ORS 469A.020, 469A.025, 469A.130 or 758.552 by sections 2 to 5 of this 2013
 23 Act or the repeal of sections 25 and 26, chapter 301, Oregon Laws 2007, by section 13 of this
 24 2013 Act relieves a person of a liability, duty or obligation accruing under or with respect to
 25 the duties, functions and powers transferred by section 1 of this 2013 Act. The Public Utility
 26 Commission may undertake the collection or enforcement of any such liability, duty or obli-
 27 gation.

28 (2) The rights and obligations of the State Department of Energy legally incurred under
 29 contracts, leases and business transactions executed, entered into or begun before the op-
 30 erative date specified in section 14 of this 2013 Act and accruing under or with respect to the
 31 duties, functions and powers transferred by section 1 of this 2013 Act are transferred to the
 32 commission. For the purpose of succession to these rights and obligations, the commission
 33 is a continuation of the department and not a new authority.

34
 35 RULES
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37 SECTION 10. Notwithstanding the transfer of duties, functions and powers by section 1
 38 of this 2013 Act, the rules of the State Department of Energy with respect to such duties,
 39 functions or powers that are in effect on the operative date specified in section 14 of this 2013
 40 Act continue in effect until superseded or repealed by rules of the Public Utility Commission.
 41 References in such rules of the department to the department or an officer or employee of
 42 the department are considered to be references to the commission or an officer or employee
 43 of the commission.

44 SECTION 11. Whenever, in any uncodified law or resolution of the Legislative Assembly
 45 or in any rule, document, record or proceeding authorized by the Legislative Assembly, in

1 the context of the duties, functions and powers transferred by section 1 of this 2013 Act,
2 reference is made to the State Department of Energy, or an officer or employee of the de-
3 partment, whose duties, functions or powers are transferred by section 1 of this 2013 Act,
4 the reference is considered to be a reference to the Public Utility Commission or an officer
5 or employee of the commission who by this 2013 Act is charged with carrying out such du-
6 ties, functions and powers.

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8 **AGENCY NAME CHANGE**

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10 **SECTION 12.** For the purpose of harmonizing and clarifying statutory law, the Legislative
11 Counsel may substitute for words designating the “State Department of Energy” or its offi-
12 cers, wherever they occur in ORS 469A.005 to 469A.210, other words designating the “Public
13 Utility Commission” or its officers.

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15 **REPEALS**

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17 **SECTION 13.** Sections 25 and 26, chapter 301, Oregon Laws 2007, are repealed.

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19 **OPERATIVE DATE**

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21 **SECTION 14.** Section 1 of this 2013 Act, sections 6 to 12 of this 2013 Act, the amendments
22 to ORS 469A.020, 469A.025, 469A.130 and 758.552 by sections 2 to 5 of this 2013 Act and the
23 repeal of sections 25 and 26, chapter 301, Oregon Laws 2007, by section 13 of this 2013 Act
24 become operative on January 1, 2014.

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26 **UNIT AND SECTION CAPTIONS**

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28 **SECTION 15.** The unit and section captions used in this 2013 Act are provided only for
29 the convenience of the reader and do not become part of the statutory law of this state or
30 express any legislative intent in the enactment of this 2013 Act.

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32 **EMERGENCY CLAUSE**

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34 **SECTION 16.** This 2013 Act being necessary for the immediate preservation of the public
35 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
36 on its passage.

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