

Senate Bill 807

Sponsored by Senators OLSEN, JOHNSON; Senator THOMSEN

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**.

Requires nongovernmental entity, as condition of receiving public purpose charge moneys, to be assessed by independent third party.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to a nongovernmental entity that receives public purpose charge moneys; creating new
3 provisions; amending ORS 757.612; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 757.600 to**
6 **757.689.**

7 **SECTION 2. (1) The Public Utility Commission, upon entering into or renewing an**
8 **agreement with a nongovernmental entity described in ORS 757.612 (3)(g) involving the re-**
9 **ceipt of moneys as authorized by ORS 757.612 (3)(d), shall require the nongovernmental en-**
10 **tity, as a condition of receiving the moneys, to:**

11 (a) **Be annually assessed by an independent third party selected by the Oregon Depart-**
12 **ment of Administrative Services at the nongovernmental entity's expense; and**

13 (b) **Pay for the department's expenditures incurred under subsection (3) of this section.**

14 (2) **An assessment conducted under this section must identify:**

15 (a) **How the nongovernmental entity prioritizes projects for funding;**

16 (b) **The criteria by which the nongovernmental entity selects trade ally contractors;**

17 (c) **The frequency with which the nongovernmental entity updates its pool of trade ally**
18 **contractors;**

19 (d) **The amount of moneys received under ORS 757.612 (3)(d) that the nongovernmental**
20 **entity spends on marketing;**

21 (e) **The internal overhead of the nongovernmental entity, including how much the non-**
22 **governmental entity spends on salaries and benefits and purchasing equipment and supplies;**

23 (f) **An accounting of each trade ally contractor endorsed by the nongovernmental entity,**
24 **including an accounting of each trade ally contractor's aggregate number of customers re-**
25 **ferred to the trade ally contractor by the nongovernmental entity and any moneys received**
26 **from the trade ally contractor from the nongovernmental entity;**

27 (g) **An estimate of the return on investment for expenditures made by the nongovern-**
28 **mental entity;**

29 (h) **An estimate of the degree to which moneys received under ORS 757.612 (3)(d) promote**
30 **both short-term and long-term economic growth;**

31 (i) **An estimate of the number of jobs created and supported by moneys received under**

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 **ORS 757.612 (3)(d);**

2 **(j) An estimate of the overall energy savings for residents of this state that are attrib-**
 3 **utable to moneys received under ORS 757.612 (3)(d); and**

4 **(k) An estimate of the overall energy savings for businesses and industries located in this**
 5 **state that are attributable to moneys received under ORS 757.612 (3)(d).**

6 **(3) The independent third party that prepares the assessment described in this section**
 7 **shall provide the assessment and a summary of the assessment to the department and the**
 8 **commission on or before July 1 of each year or on a date agreed to by the independent third**
 9 **party and the department. The department, upon receiving the assessment, shall:**

10 **(a) Annually provide a copy of the assessment and the summary of the assessment to the**
 11 **interim committees of the Legislative Assembly related to business, general government and**
 12 **energy on or before September 1; and**

13 **(b) Submit an annual report to the Legislative Assembly, in the manner provided in ORS**
 14 **192.245, describing the findings of the assessment.**

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

16 757.612. (1) There is established an annual public purpose expenditure standard for electric
 17 companies and Oregon Community Power to fund new cost-effective local energy conservation, new
 18 market transformation efforts, the above-market costs of new renewable energy resources and new
 19 low-income weatherization. The public purpose expenditure standard shall be funded by the public
 20 purpose charge described in subsection (2) of this section.

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

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

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

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

39 (A) Sixty-three percent for new cost-effective conservation, new market transformation.

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

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

44 (D) Five percent shall be transferred to the Housing and Community Services Department
 45 Electricity Public Purpose Charge Fund established by ORS 456.587 (1) and used for the purpose of

1 providing grants as described in ORS 458.625 (2).

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

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

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

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

20 (e)(A) The first 10 percent of the funds collected annually by an electric company or Oregon
21 Community Power under subsection (2) of this section shall be distributed to school districts that
22 are located in the service territory of the electric company or Oregon Community Power. The funds
23 shall be distributed to individual school districts according to the weighted average daily member-
24 ship (ADMw) of each school district for the prior fiscal year as calculated under ORS 327.013. The
25 commission shall establish by rule a methodology for distributing a proportionate share of funds
26 under this paragraph to school districts that are only partially located in the service territory of the
27 electric company or Oregon Community Power.

28 (B) A school district that receives funds under this paragraph shall use the funds first to pay
29 for energy audits for schools located within the school district. A school district may not expend
30 additional funds received under this paragraph on a school facility until an energy audit has been
31 completed for that school facility. To the extent practicable, a school district shall coordinate with
32 the State Department of Energy and incorporate federal funding in complying with this paragraph.
33 Following completion of an energy audit for an individual school, the school district may expend
34 funds received under this paragraph to implement the energy audit. Once an energy audit has been
35 conducted and completely implemented for each school within the school district, the school district
36 may expend funds received under this paragraph for any of the following purposes:

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

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

41 (iii) Energy conservation education programs.

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

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

1 (g) If the commission directs funds collected through public purpose charges to a nongovern-
 2 mental entity, the entity shall, **pursuant to an agreement entered into or renewed between the**
 3 **commission and the entity:**

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

6 (B) Require the entity's officers and directors to provide an annual disclosure of economic in-
 7 terest to be filed with the commission on or prior to April 15 of each calendar year for public review
 8 in a form similar to the statement of economic interest required for public officials under ORS
 9 244.060.

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

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

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

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

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

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

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

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

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

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

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

45 (B) The portion of the public purpose charge billed to the retail electricity consumer that is

1 dedicated to new energy conservation, new market transformation or the above-market costs of new
2 renewable energy resources.

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

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

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

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

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

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

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

36 (b) The commission shall establish the amount to be collected by each electric company in cal-
37 endar year 2008 from retail electricity consumers served by the company, and the rates to be
38 charged to retail electricity consumers served by the company, so that the total anticipated col-
39 lection for low-income electric bill payment assistance by all electric companies in calendar year
40 2008 is \$15 million. In calendar year 2009 and subsequent calendar years, the commission may not
41 change the rates established for retail electricity consumers, but the total amount collected in a
42 calendar year for low-income electric bill payment assistance may vary based on electricity usage
43 by retail electricity consumers and changes in the number of retail electricity consumers in this
44 state. In no event shall a retail electricity consumer be required to pay more than \$500 per month
45 per site for low-income electric bill payment assistance.

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

11 (d)(A) The Housing and Community Services Department, in consultation with the advisory
12 committee on energy established by ORS 458.515, shall determine the manner in which funds col-
13 lected under this subsection will be allocated by the department to energy assistance program pro-
14 viders for the purpose of providing low-income bill payment and crisis assistance.

15 (B) The department shall investigate and may implement alternative delivery models specified
16 by the advisory committee on energy, in consultation with electric companies, to effectively reduce
17 service disconnections and related costs to retail electricity consumers and electric utilities.

18 (C) Priority assistance shall be directed to low-income electricity consumers who are in danger
19 of having their electricity service disconnected.

20 (D) The department shall maintain records and provide those records upon request to an electric
21 company, Oregon Community Power and the Citizens' Utility Board established under ORS chapter
22 774 on a quarterly basis. Records maintained must include the numbers of low-income electricity
23 consumers served, the average amounts paid and the type of assistance provided. Electric companies
24 and Oregon Community Power shall, if requested, provide the department with aggregate data re-
25 lating to consumers served on a quarterly basis to support program development.

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

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

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

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

39 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**
40 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
41 **on its passage.**