

House Bill 3142

Sponsored by Representative BUEHLER

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 that enters into contract with Public Utility Commission for receipt of public purpose charge moneys to administer loan program whereby entity makes loans to public land bank authorities created by local governments for purposes of acquiring, rehabilitating, redeveloping, reutilizing or restoring brownfield properties. Requires loans to be repaid in full, excepting any loan moneys exclusively used to fund public purposes on which public purpose charge moneys may be spent.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to brownfields; creating new provisions; amending ORS 757.612; and prescribing an effective
3 date.

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

5 **SECTION 1. Section 2 of this 2017 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 use not less than 10 percent of the moneys**
11 **for the purpose of issuing loans in accordance with section 4 of this 2017 Act.**

12 **(2) Except as provided in section 4 (7) of this 2017 Act:**

13 **(a) All loans issued in accordance with section 4 of this 2017 Act must be repaid to the**
14 **nongovernmental entity in full; and**

15 **(b) All moneys that are repaid to the nongovernmental entity as required by paragraph**
16 **(a) of this subsection must be invested by the nongovernmental entity in public purposes**
17 **described in ORS 757.612 (1).**

18 **SECTION 3. Section 4 of this 2017 Act is added to and made a part of ORS 465.600 to**
19 **465.621.**

20 **SECTION 4. (1) A nongovernmental entity described in ORS 757.612 (3)(g) that has en-**
21 **tered into an agreement with the Public Utility Commission for the receipt of moneys as**
22 **authorized by ORS 757.612 (3)(d) shall:**

23 **(a) Solicit from authorities proposals to fund projects through which authorities will ac-**
24 **quire, rehabilitate, redevelop, reutilize and restore brownfield properties; and**

25 **(b) Make loans to authorities for the purposes of acquiring, rehabilitating, redeveloping,**
26 **reutilizing or restoring brownfield properties.**

27 **(2) The nongovernmental entity shall make the loans described in subsection (1) of this**
28 **section from moneys available to the nongovernmental entity pursuant to ORS 757.612 (3)(d)**

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 and section 2 of this 2017 Act.

2 (3) To receive a loan under this section, an authority must submit to the nongovern-
 3 mental entity a proposal to fund a project. The proposal:

4 (a) Must include a description of the proposed project, including any details related to the
 5 authority:

- 6 (A) Acquiring brownfield properties;
- 7 (B) Rehabilitating brownfield properties;
- 8 (C) Redeveloping brownfield properties;
- 9 (D) Reutilizing brownfield properties; and
- 10 (E) Restoring brownfield properties.

11 (b) Must include a description of any aspect of the proposed project related to funding
 12 public purposes described in ORS 757.612 (1), including any funding of:

- 13 (A) New cost-effective local energy conservation;
- 14 (B) New market transformation efforts; and
- 15 (C) The above-market costs of constructing and operating new renewable energy re-
 16 sources.

17 (c) Must include the estimated cost of the proposed project and the estimated amount
 18 of loan moneys that the authority needs to complete the proposed project.

19 (d) Must include a proposed schedule for repayment of the estimated amount of loan
 20 moneys requested by the authority for the proposed project.

21 (4) The nongovernmental entity shall prescribe the form and manner of making a pro-
 22 posal under this section.

23 (5) Upon receiving a proposal under this section, the nongovernmental entity shall eval-
 24 uate the proposal to determine whether to make a loan, in whole or in part, to the authority
 25 that submitted the proposal. In evaluating the proposal, the nongovernmental entity shall
 26 consider:

- 27 (a) The proposed project's potential to benefit brownfield properties;
- 28 (b) The proposed project's potential to fund public purposes described in ORS 757.612 (1);
- 29 (c) The plan and processes that the authority has set forth for executing the proposed
 30 project;
- 31 (d) The type of expertise and workforce that the authority will use to execute the pro-
 32 posed project;
- 33 (e) The feasibility of the authority completing the proposed project;
- 34 (f) The feasibility of the authority completing the proposed project for the estimated cost;
- 35 (g) Whether the proposed project is partly funded by other moneys available for acquir-
 36 ing, rehabilitating, redeveloping, reutilizing and restoring brownfield properties; and
- 37 (h) If the proposed project is partly funded by other moneys, whether additional moneys
 38 are necessary to complete the proposed project.

39 (6) Except as provided in subsection (7) of this section, all loans issued in accordance with
 40 this section must be repaid to the nongovernmental entity in full.

41 (7) An authority is not required to repay any loan moneys received by the authority un-
 42 der this section that the authority exclusively used to fund a public purpose described in ORS
 43 757.612 (1). An authority must prove a claim for relief under this subsection to the satisfac-
 44 tion of the nongovernmental entity.

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

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

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

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

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

22 (b) *[Subject to paragraph (e)]* **Except as provided in paragraph (e)** of this subsection, funds
 23 collected *[by an electric company or Oregon Community Power]* through public purpose charges **un-**
 24 **der subsection (2) of this section** shall be allocated as follows:

25 (A) Sixty-three percent for new cost-effective **local energy** conservation[,] **and** new market
 26 transformation **efforts**.

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

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

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

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

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 **new** low-income weatherization shall be di-
 44 rected to the Housing and Community Services Department *[as provided in subsection (7) of this*
 45 *section]* **for purposes related to new low-income weatherization**. The commission *[may also direct*

1 *that* **may also require** funds collected [*by an electric company or Oregon Community Power*] through
 2 public purpose charges **to be paid** to a nongovernmental entity for investment in public purposes
 3 described in subsection (1) of this section **and for making loans as described in section 4 of this**
 4 **2017 Act**. Notwithstanding any other provision of this subsection:

5 (A) **If an electric company collected the funds**, at least 80 percent of the funds allocated for
 6 **new cost-effective local energy** conservation shall be spent within the service area of the electric
 7 company [*that collected the funds*]; or

8 (B) If Oregon Community Power collected the funds, at least 80 percent of the funds allocated
 9 for **new cost-effective local energy** conservation shall be spent within the service area of Oregon
 10 Community Power.

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

19 (B) A school district that receives funds under this paragraph shall use the funds first to pay
 20 for energy audits for schools located within the school district. A school district may not expend
 21 additional funds received under this paragraph on a school [*facility*] until an energy audit has been
 22 completed for that school [*facility*]. To the extent practicable, a school district shall coordinate with
 23 the State Department of Energy and incorporate federal funding in complying with this paragraph.
 24 Following completion of an energy audit for an individual school, the school district may expend
 25 funds received under this paragraph to implement the energy audit. Once an energy audit has been
 26 conducted and completely implemented for each school within the school district, the school district
 27 may expend funds received under this paragraph for any of the following purposes:

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

31 (ii) [*Weatherization*] **Weatherizing school district facilities** and upgrading the energy effi-
 32 ciency of school district facilities.

33 (iii) Energy conservation education programs.

34 (iv) Purchasing electricity from [*environmentally focused*] sources **that protect the environ-**
 35 **ment.** [*and*]

36 (v) Investing in renewable energy resources.

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

39 (g) If the commission [*directs*] **requires** funds collected through public purpose charges to **be**
 40 **paid to** a nongovernmental entity, the entity shall, **pursuant to an agreement entered into or**
 41 **renewed between the commission and the entity:**

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

44 (B) Require the entity's officers and directors to provide an annual disclosure of economic in-
 45 terest to be filed with the commission on or prior to April 15 of each calendar year for public review

1 in a form similar to the statement of economic interest required for public officials under ORS
2 244.060.

3 (C) Require the entity's officers and directors to declare actual and potential conflicts of interest
4 at regular meetings of the entity's governing body when such conflicts arise, and require an officer
5 or director to abstain from participating in any discussion or *[vote]* **voting** on any item where that
6 officer or director has an actual conflict of interest. For the purposes of this subparagraph, "actual
7 conflict of interest" and "potential conflict of interest" have the meanings given those terms in ORS
8 244.020.

9 (D) **Annually**, arrange for an independent auditor to audit the entity's financial statements
10 *[annually]*, and direct the auditor to file an audit opinion with the commission for public review.

11 (E) **Annually** file with the commission *[annually]* the entity's budget, action plan and quarterly
12 and annual reports for public review.

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

16 (h) The commission may remove from the board of directors of a nongovernmental entity an of-
17 ficer or director who fails to provide an annual disclosure of economic interest, or **who fails to**
18 declare **an** actual or potential conflict of interest, as described in paragraph (g)(B) and (C) of this
19 subsection, *[in connection with]* **if the failure is connected to** the allocation or expenditure of funds
20 collected through public purpose charges and *[directed]* **paid** to the entity.

21 (4)(a) An electric company that satisfies its obligations under this section *[shall have]*:

22 (A) **Has** no further obligation to invest in **new cost-effective local energy** conservation, new
23 market transformation or new low-income weatherization, or to provide a commercial energy con-
24 servation services program; and

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

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

28 (A) *[Shall have]* **Has** no *[other]* **further** obligation to invest in **new cost-effective local energy**
29 conservation, new market transformation or new low-income weatherization, or to provide a com-
30 mercial energy conservation services program; and

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

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

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

42 (B) The portion of the public purpose charge billed to the retail electricity consumer that is
43 dedicated to new **cost-effective local** energy conservation, new market transformation or the
44 above-market costs of new renewable energy resources.

45 (b) To obtain a credit under **paragraph (a) of** this subsection, a retail electricity consumer shall

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

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

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

19 (B) A retail electricity consumer shall be entitled each year to the credit described in this
20 *[subsection]* **paragraph** unless a subsequent independent audit determines that new conservation
21 investment opportunities are available. The State Department of Energy may require that a new
22 independent audit be performed on the site to determine whether new conservation measures are
23 available, provided that the independent audits *[shall]* occur no more than once every two years.

24 (C) The retail electricity consumer shall pay the cost of the independent audits described in this
25 *[subsection]* **paragraph**.

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

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

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

44 (c) Funds collected *[by]* **through** the low-income electric bill payment assistance charge shall
45 be paid into the Housing and Community Services Department Low-Income Electric Bill Payment

1 Assistance Fund established by ORS 456.587 (2). Moneys deposited in the fund under this paragraph
2 shall be used by the Housing and Community Services Department **solely** for [*the purpose of*
3 *funding*] **purposes related to** low-income electric bill payment assistance[.] **and for the Housing**
4 **and Community Services** Department's cost of administering this subsection. [*shall be paid out of*
5 *funds collected by the low-income electric bill payment assistance charge. Moneys deposited in the fund*
6 *under this paragraph shall be expended solely for low-income electric bill payment assistance.*] Funds
7 collected [*from*] **by** an electric company or Oregon Community Power **under this subsection** shall
8 be expended in the service area of the electric company or Oregon Community Power from which
9 the funds are collected.

10 (d)(A) The Housing and Community Services Department shall determine the manner in which
11 funds collected under this subsection will be allocated by the **Housing and Community Services**
12 Department to energy assistance program providers for the purpose of providing low-income bill
13 payment [*and crisis*] assistance.

14 (B) The **Housing and Community Services** Department, **in consultation with electric com-**
15 **panies**, shall investigate and may implement alternative delivery models [*in consultation with electric*
16 *companies*] to effectively reduce service disconnections and related costs to retail electricity con-
17 sumers 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 **Housing and Community Services** Department shall maintain records and provide
21 those records upon request to an electric company, Oregon Community Power and the Citizens'
22 Utility Board established under ORS chapter 774 on a quarterly basis. Records maintained must
23 include the numbers of low-income electricity consumers served, the average amounts paid **to low-**
24 **income electricity consumers** and the type of assistance provided **to low-income electricity**
25 **consumers**. Electric companies and Oregon Community Power shall, if requested, provide the
26 **Housing and Community Services** Department with aggregate data relating to **low-income elec-**
27 **tricity** consumers served on a quarterly basis to support program development.

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

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

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

39 (9) For purposes of this section, [*amounts*] **funds** collected by Oregon Community Power through
40 public purpose charges are not considered moneys received from electric utility operations.

41 **SECTION 6. This 2017 Act takes effect on the 91st day after the date on which the 2017**
42 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**