

Senate Bill 659

Sponsored by Senator OLSEN

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.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to assessment by independent third party of nongovernmental entity that receives public
3 purpose charges; creating new provisions; amending ORS 757.612; and prescribing an effective
4 date.

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

6 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS 757.600 to**
7 **757.689.**

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

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

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

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

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

17 (b) **The criteria by which the nongovernmental entity selects contractors;**

18 (c) **The frequency with which the nongovernmental entity updates the nongovernmental**
19 **entity's pool of contractors;**

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

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

25 (f) **An accounting of each contractor selected by the nongovernmental entity, including**
26 **an accounting of each contractor's aggregate number of customers referred to the contrac-**
27 **tor by the nongovernmental entity and any moneys received by the contractor from the**
28 **nongovernmental entity;**

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

31 (h) **An estimate of the degree to which moneys received by the nongovernmental entity**

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 **under ORS 757.612 (3)(d) promote both short-term and long-term economic growth;**

2 (i) **An estimate of the number of jobs created and supported by moneys received by the**
3 **nongovernmental entity under ORS 757.612 (3)(d);**

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

6 (k) **An estimate of the overall energy savings for businesses and industries located in this**
7 **state that are attributable to moneys received by the nongovernmental entity under ORS**
8 **757.612 (3)(d).**

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

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

16 (b) **Submit an annual report to the Legislative Assembly, in the manner provided in ORS**
17 **192.245, describing the findings of the assessment.**

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

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

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

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

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

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

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

45 (B) Nineteen percent for the above-market costs of constructing and operating new renewable

1 energy resources with a nominal electric generating capacity, as defined in ORS 469.300, of 20
2 megawatts or less.

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

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

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

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

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

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

28 (e)(A) The first 10 percent of [*the*] funds collected [*annually*] **each year** by an electric company
29 or Oregon Community Power under subsection (2) of this section shall be distributed to school dis-
30 tricts that are located in the service territory of the electric company or Oregon Community Power.
31 The funds shall be distributed to individual school districts according to the weighted average daily
32 membership (ADMw) of each school district for the prior fiscal year as calculated under ORS
33 327.013. The commission shall establish by rule a methodology for distributing a proportionate share
34 of funds under this paragraph to school districts that are only partially located in the service ter-
35 ritory of the electric company or Oregon Community Power.

36 (B) A school district that receives funds under this paragraph shall use the funds first to pay
37 for energy audits for schools located within the school district. A school district may not expend
38 additional funds received under this paragraph on a school [*facility*] until an energy audit has been
39 completed for that school [*facility*]. To the extent practicable, a school district shall coordinate with
40 the State Department of Energy and incorporate federal funding in complying with this paragraph.
41 Following completion of an energy audit for an individual school, the school district may expend
42 funds received under this paragraph to implement the energy audit. Once an energy audit has been
43 conducted and completely implemented for each school within the school district, the school district
44 may expend funds received under this paragraph for any of the following purposes:

45 (i) Conducting **additional** energy audits. A school district shall conduct an energy audit prior

1 to expending funds on any other purpose authorized under this paragraph unless the school district
2 has performed an energy audit within the three years immediately prior to receiving the funds.

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

5 (iii) Energy conservation education programs.

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

8 (v) Investing in renewable energy resources.

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

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

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

16 (B) Require the entity's officers and directors to provide an annual disclosure of economic in-
17 terest to be filed with the commission on or prior to April 15 of each calendar year for public review
18 in a form similar to the statement of economic interest required for public officials under ORS
19 244.060.

20 (C) Require the entity's officers and directors to declare actual and potential conflicts of interest
21 at regular meetings of the entity's governing body when such conflicts arise, and require an officer
22 or director to abstain from participating in any discussion or [*vote*] **voting** on any item where that
23 officer or director has an actual conflict of interest. For the purposes of this subparagraph, "actual
24 conflict of interest" and "potential conflict of interest" have the meanings given those terms in ORS
25 244.020.

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

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

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

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

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

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

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

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

45 (A) [*Shall have*] **Has** no [*other*] **further** obligation to invest in **new cost-effective local energy**

1 conservation, new market transformation or new low-income weatherization, or to provide a com-
2 mercial energy conservation services program; and

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

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

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

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

17 (b) To obtain a credit under **paragraph (a) of** this subsection, a retail electricity consumer shall
18 file with the State Department of Energy a description of the proposed conservation project or new
19 renewable energy resource and a declaration that the retail electricity consumer plans to incur the
20 qualifying expenditure. The State Department of Energy shall issue a notice of precertification
21 within 30 days of receipt of the filing, if such filing is consistent with **paragraph (a) of** this sub-
22 section. The credit may be taken after a retail electricity consumer provides a letter from a certified
23 public accountant to the State Department of Energy verifying that the precertified qualifying ex-
24 penditure has been made.

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

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

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

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

43 (6) Electric utilities and retail electricity consumers shall receive a fair and reasonable credit
44 for the public purpose expenditures of their energy suppliers. The State Department of Energy shall
45 adopt rules to determine eligible expenditures and the *[methodology]* **method** by which such credits

1 are accounted for and used. The *[rules]* **State Department of Energy** also shall adopt methods to
2 account for eligible public purpose expenditures made through consortia or collaborative projects.

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

6 (b) The commission shall establish the amount to be collected by each electric company in cal-
7 endar year 2008 from retail electricity consumers served by the company, and the rates to be
8 charged to retail electricity consumers served by the company, so that the total anticipated col-
9 lection for low-income electric bill payment assistance by all electric companies in calendar year
10 2008 is \$15 million. In calendar year 2009 and subsequent calendar years, the commission may not
11 change the rates established for retail electricity consumers, but the total amount collected in a
12 calendar year for low-income electric bill payment assistance may vary based on electricity usage
13 by retail electricity consumers and changes in the number of retail electricity consumers in this
14 state. In no event shall a retail electricity consumer be required to pay more than \$500 per month
15 per site for low-income electric bill payment assistance.

16 (c) Funds collected *[by]* **through** the low-income electric bill payment assistance charge shall
17 be paid into the Housing and Community Services Department Low-Income Electric Bill Payment
18 Assistance Fund established by ORS 456.587 (2). Moneys deposited in the fund under this paragraph
19 shall be used by the Housing and Community Services Department **solely** for *[the purpose of*
20 *funding]* **purposes related to** low-income electric bill payment assistance $[\cdot]$ **and for the Housing**
21 **and Community Services** Department's cost of administering this subsection. *[shall be paid out of*
22 *funds collected by the low-income electric bill payment assistance charge. Moneys deposited in the fund*
23 *under this paragraph shall be expended solely for low-income electric bill payment assistance.]* Funds
24 collected *[from]* **by** an electric company or Oregon Community Power **under this subsection** shall
25 be expended in the service area of the electric company or Oregon Community Power from which
26 the funds are collected.

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

31 (B) The **Housing and Community Services** Department, **in consultation with electric com-**
32 **panies**, shall investigate and may implement alternative delivery models *[in consultation with electric*
33 *companies]* to effectively reduce service disconnections and related costs to retail electricity con-
34 sumers and electric utilities.

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

37 (D) The **Housing and Community Services** Department shall maintain records and provide
38 those records upon request to an electric company, Oregon Community Power and the Citizens'
39 Utility Board established under ORS chapter 774 on a quarterly basis. Records maintained must
40 include the numbers of low-income electricity consumers served, the average amounts paid **to low-**
41 **income electricity consumers** and the type of assistance provided **to low-income electricity**
42 **consumers**. Electric companies and Oregon Community Power shall, if requested, provide the
43 **Housing and Community Services** Department with aggregate data relating to **low-income elec-**
44 **tricity** consumers served on a quarterly basis to support program development.

45 (e) Interest on moneys deposited in the Housing and Community Services Department Low-

1 Income Electric Bill Payment Assistance Fund established by ORS 456.587 (2) may be used to pro-
2 vide bill payment [*and crisis*] assistance to electricity consumers whose primary source of heat is
3 not electricity.

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

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

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

13 **SECTION 4. This 2017 Act takes effect on the 91st day after the date on which the 2017**
14 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**