

D R A F T

SUMMARY

Requires eight percent of electricity sold in this state by each electric company that makes sales to 25,000 or more retail electricity consumers to be generated by small-scale renewable energy facilities or certain biomass facilities.

Increases, to 100 average megawatts of electricity per year, amount of electricity generated by certified low-impact hydroelectric facilities that may be used to comply with renewable portfolio standards.

Establishes, for purposes of public utilities that provide electric power to consumers in this state, additional standards for purchase of energy or energy and capacity from qualifying facilities.

Allows person injured by certain violations by public utility related to purchase and sale of energy or energy and capacity to recover treble damages from public utility.

A BILL FOR AN ACT

Relating to sustainable energy; creating new provisions; and amending ORS 469A.025, 469A.075, 469A.210, 756.185, 758.515, 758.525 and 758.545.

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

SMALL-SCALE RENEWABLE ENERGY STANDARD

SECTION 1. ORS 469A.210 is amended to read:

469A.210. (1) The Legislative Assembly finds **and declares** that:

(a) [*community-based renewable energy projects*] **Small-scale renewable energy facilities**, including but not limited to marine renewable energy resources that are either developed in accordance with the Territorial Sea Plan adopted pursuant to ORS 196.471 or located on structures adjacent to the

1 coastal shorelands, are an essential element of this state's energy future[.];

2 **(b) Small-scale renewable energy facilities are one of the integral**
3 **parts of this state's emergency preparedness and, when paired with**
4 **energy storage and other emerging technology, help ensure that elec-**
5 **tricity will be available during catastrophic natural disasters;**

6 **(c) A diverse portfolio of electricity generation facilities that in-**
7 **cludes small-scale renewable energy facilities helps reduce the risk of**
8 **power outages and other technical and financial failures;**

9 **(d) A diverse portfolio of electricity generation facilities that in-**
10 **cludes small-scale renewable energy facilities helps reduce the need to**
11 **construct transmission lines to supply electricity to retail electricity**
12 **consumers from a single large-scale electricity generation facility;**

13 **(e) Supplying electricity to retail electricity consumers that is gen-**
14 **erated by small-scale renewable energy facilities is necessary in order**
15 **to meet the renewable portfolio standards established under ORS**
16 **469A.005 to 469A.210 and therefore necessary for improving this state's**
17 **air quality and public health;**

18 **(f) Small-scale renewable energy facilities have a smaller footprint**
19 **on the landscape than large-scale electricity generation facilities and,**
20 **therefore, are more easily incorporated into existing infrastructure;**

21 **(g) There are substantial existing small-scale renewable energy fa-**
22 **ilities that have the potential to continue to produce renewable en-**
23 **ergy well into the future;**

24 **(h) There is substantial potential for adding small-scale renewable**
25 **energy facilities; and**

26 **(i) Absent the requirement established in this section, electric**
27 **companies might otherwise procure electricity only from large-scale**
28 **electricity generation facilities.**

29 (2) For purposes related to the findings in subsection (1) of this section,
30 by the year 2025, at least eight percent of the [*aggregate electrical capacity*
31 *of all electric companies*] **electricity sold in this state by each electric**

1 **company** that [*make*] **makes** sales of electricity to 25,000 or more retail
2 electricity consumers in this state must be composed of electricity generated
3 by one or both of the following sources:

4 (a) Small-scale renewable energy [*projects*] **facilities** with a generating
5 capacity of 20 megawatts or less that **are not owned by a person that is**
6 **an electric company and that** generate electricity utilizing a type of en-
7 ergy described in ORS 469A.025; or

8 (b) Facilities **that are not owned by a person that is an electric**
9 **company and** that generate electricity using biomass **and** that also generate
10 thermal energy for a secondary purpose.

11 (3) Regardless of the facility's nameplate capacity, any single facility de-
12 scribed in subsection (2)(b) of this section may be used to comply with the
13 requirement specified in subsection (2) of this section for up to 20 megawatts
14 of capacity.

15 (4) **An electric company must comply with the requirements of**
16 **subsection (2) of this section in each calendar year by using bundled**
17 **renewable energy certificates issued or acquired during the compliance**
18 **year. To the extent otherwise permitted under ORS 469A.005 to**
19 **469A.210, an electric company may acquire and use the same bundled**
20 **renewable energy certificates to comply with both this section and**
21 **ORS 469A.052.**

22 (5) **Beginning on the effective date of this 2019 Act and until the**
23 **year 2025, and as necessary to comply with the requirements of sub-**
24 **section (2) of this section, an electric company subject to subsection**
25 **(2) of this section shall make best efforts to continually increase the**
26 **annual percentage of electricity sold in this state by the electric com-**
27 **pany that is generated by sources described in subsection (2)(a) and (b)**
28 **of this section.**

29 (6) **The Public Utility Commission shall adopt rules as necessary to**
30 **implement this section.**

31 **SECTION 2.** ORS 469A.075 is amended to read:

1 469A.075. (1) An electric company that is subject to a renewable portfolio
2 standard shall develop an implementation plan for meeting the requirements
3 of the renewable portfolio standard and file the implementation plan with the
4 Public Utility Commission. Implementation plans must be revised and up-
5 dated at least once every two years.

6 (2) At a minimum, an implementation plan must contain:

7 (a) Annual targets for acquisition and use of qualifying electricity; and

8 (b) The estimated cost of meeting the annual targets, including the cost
9 of transmission, the cost of firming, shaping and integrating qualifying
10 electricity, the cost of alternative compliance payments and the cost of ac-
11 quiring renewable energy certificates.

12 **(3) An implementation plan for an electric company that is subject**
13 **to ORS 468A.210 shall, in addition to meeting any other requirements**
14 **for the content of the implementation plan, contain:**

15 **(a) Annual targets for the acquisition and use of electricity gener-**
16 **ated by small-scale renewable energy facilities; and**

17 **(b) The estimated cost of meeting the annual targets, including the**
18 **cost of transmission, the cost of firming, shaping and integrating**
19 **qualifying electricity, the cost of alternative compliance payments and**
20 **the cost of acquiring renewable energy certificates.**

21 [(3)] (4) The commission shall acknowledge an implementation plan no
22 later than six months after the implementation plan is filed with the com-
23 mission. The commission may acknowledge the implementation plan subject
24 to conditions specified by the commission.

25 [(4)] (5) The commission shall adopt rules:

26 (a) Establishing requirements for the content of implementation plans;

27 (b) Establishing the procedure for acknowledgment of implementation
28 plans under this section, including provisions for public comment;

29 (c) Providing for the integration of an implementation plan with the in-
30 tegrated resource planning guidelines established by the commission for the
31 purpose of planning for the least-cost, least-risk acquisition of resources; and

1 (d) Providing for the evaluation of competitive bidding processes that al-
2 low for diverse ownership of renewable energy sources that generate quali-
3 fying electricity.

4 [(5)] (6) An implementation plan filed under this section may include
5 procedures that will be used by the electric company to determine whether
6 the costs of constructing a facility that generates electricity from a
7 renewable energy source, or the costs of acquiring bundled or unbundled
8 renewable energy certificates, are consistent with the renewable portfolio
9 standards of the commission relating to least-cost, least-risk planning for
10 acquisition of resources.

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

12 469A.025. (1) Electricity generated utilizing the following types of energy
13 may be used to comply with a renewable portfolio standard:

- 14 (a) Wind energy.
- 15 (b) Solar photovoltaic and solar thermal energy.
- 16 (c) Wave, tidal and ocean thermal energy.
- 17 (d) Geothermal energy.

18 (2) Except as provided in subsection (3) of this section, electricity gener-
19 ated from biomass and biomass by-products may be used to comply with a
20 renewable portfolio standard, including but not limited to electricity gener-
21 ated from:

- 22 (a) Organic human or animal waste;
- 23 (b) Spent pulping liquor;
- 24 (c) Forest or rangeland woody debris from harvesting or thinning con-
25 ducted to improve forest or rangeland ecological health and to reduce un-
26 characteristic stand replacing wildfire risk;
- 27 (d) Wood material from hardwood timber grown on land described in ORS
28 321.267 (3);
- 29 (e) Agricultural residues;
- 30 (f) Dedicated energy crops; and
- 31 (g) Landfill gas or biogas produced from organic matter, wastewater,

1 anaerobic digesters or municipal solid waste.

2 (3) Electricity generated from the direct combustion of biomass may not
3 be used to comply with a renewable portfolio standard if any of the biomass
4 combusted to generate the electricity includes wood that has been treated
5 with chemical preservatives such as creosote, pentachlorophenol or
6 chromated copper arsenate.

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

9 (a) The facility is located outside any protected area designated by the
10 Pacific Northwest Electric Power and Conservation Planning Council as of
11 July 23, 1999, or any area protected under the federal Wild and Scenic Rivers
12 Act, P.L. 90-542, or the Oregon Scenic Waterways Act, ORS 390.805 to
13 390.925; or

14 (b) The electricity is attributable to efficiency upgrades made to the fa-
15 cility on or after January 1, 1995.

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

23 (b) Up to [40] **100** average megawatts of electricity per year generated by
24 certified low-impact hydroelectric facilities described in ORS 469A.020 (4)(b)
25 may be used to comply with a renewable portfolio standard, without regard
26 to the number of certified facilities or the generating capacity of those fa-
27 cilities. A hydroelectric facility described in this paragraph is not subject to
28 the requirements of subsection (4) of this section.

29 (6)(a) Direct combustion of municipal solid waste in a generating facility
30 located in this state may be used to comply with a renewable portfolio
31 standard. The qualification of a municipal solid waste facility for use in

1 compliance with a renewable portfolio standard has no effect on the quali-
2 fication of the facility for a tax credit under ORS 469B.130 to 469B.169.

3 (b) The total amount of electricity generated in this state by direct com-
4 bustion of municipal solid waste by generating facilities that became opera-
5 tional in this state on or after January 1, 1995, may not exceed nine average
6 megawatts per year for the purpose of complying with a renewable portfolio
7 standard.

8 (7) Electricity generated from hydrogen gas, including electricity gener-
9 ated by hydrogen power stations using anhydrous ammonia as a fuel source,
10 may be used to comply with a renewable portfolio standard if:

11 (a) The electricity is derived from:

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

14 (B) A hydroelectric facility that complies with subsection (4) of this sec-
15 tion and that is certified as a low-impact hydroelectric facility as described
16 in ORS 469A.020 (4); and

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

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

22 (9) The State Department of Energy by rule may approve energy sources
23 other than those described in this section that may be used to comply with
24 a renewable portfolio standard. The department may not approve petroleum,
25 natural gas, coal or nuclear fission as an energy source that may be used to
26 comply with a renewable portfolio standard.

27

28 **COGENERATION AND SMALL POWER PRODUCTION FACILITIES**

29

30 **SECTION 4.** ORS 758.515 is amended to read:

31 758.515. (1) The Legislative Assembly finds and declares that[:]

1 [(1)] the State of Oregon has abundant renewable resources.

2 (2) *[It is the goal of Oregon to]* **The Public Utility Commission shall:**

3 (a) Promote the development of a diverse array of permanently
4 sustainable energy resources using the public and private sectors to the
5 highest degree possible; *[and]*

6 (b) Insure that rates for purchases by an electric utility from, and rates
7 for sales to, a qualifying facility shall over the term of a contract be just
8 and reasonable to the electric consumers of the electric utility, the qualify-
9 ing facility and in the public interest[.];

10 [(3) *It is, therefore, the policy of the State of Oregon to:*]

11 [(a)] (c) Increase the marketability of electric energy produced by quali-
12 fying facilities located throughout the state for the benefit of Oregon's *[citi-*
13 *zens]* **residents**; and

14 [(b)] (d) Create a settled and uniform institutional climate for the quali-
15 fying facilities in Oregon.

16 **SECTION 5.** ORS 758.525 is amended to read:

17 758.525. [(1)] (1)(a) At least once every two years each electric utility
18 shall prepare, publish and file with the Public Utility Commission a schedule
19 of avoided costs equaling the utility's forecasted incremental cost of electric
20 resources over at least the next 20 years.

21 (b) Prices contained in *[the]* schedules filed by public utilities *[shall]*
22 **must** be reviewed and approved by the commission. **The public utility that**
23 **files the schedule shall bear the burden of proving that the prices**
24 **contained in the schedule are fair, just and reasonable for customers**
25 **of the public utility and qualifying facilities. The commission shall**
26 **hold a hearing on a schedule filed with the commission if a customer**
27 **of the public utility or a qualifying facility requests a hearing on the**
28 **schedule within 60 days after the date the schedule is published and**
29 **filed with the commission under paragraph (a) of this subsection. The**
30 **commission shall give notice of the time and place of a hearing held**
31 **pursuant to a request under this paragraph, and shall hold the hearing**

1 **no earlier than 60 days after the date that the request for the hearing**
2 **is received.**

3 **(c) Schedules filed by public utilities that adjust avoided costs may**
4 **not take effect until the latest of:**

5 **(A) One hundred twenty days after the date on which the public**
6 **utility files the schedule;**

7 **(B) One hundred twenty days after the date on which the public**
8 **utility serves notice of filing the schedule on each qualifying facility**
9 **that will be affected by the adjustment; and**

10 **(C) Thirty days after the date on which the commission approves**
11 **the schedule.**

12 (2) An electric utility shall offer to purchase energy or energy and ca-
13 pacity whether delivered directly or indirectly from a qualifying facility.
14 Except as provided in subsection [(3)] (4) of this section, the price for such
15 a purchase shall not be less than the utility's avoided costs. At the option
16 of the qualifying facility, exercised before beginning delivery of the energy
17 or energy and capacity, such prices may be based on:

18 (a) The avoided costs calculated at the time of delivery; or

19 (b) The projected avoided costs calculated at the time the legal obligation
20 to purchase the energy or energy and capacity is incurred. **Avoided costs**
21 **calculated under this paragraph shall include the electric utility's**
22 **transmission costs to transmit electric energy from a point of origin**
23 **of generation, or between transfer stations, to the point at which the**
24 **energy is transferred to distribution lines for delivery to end users.**

25 (3) **If an electric utility makes an offer to purchase energy and ca-**
26 **capacity to a qualifying facility that, at the time of the offer, is already**
27 **being paid by the electric utility for energy and capacity, the electric**
28 **utility shall, as part of a contract to purchase the energy and capacity,**
29 **provide the qualifying facility with the option of delivering the energy**
30 **and capacity in exchange for an immediate payment of the projected**
31 **fixed costs of capacity for the term of the contract that the electric**

1 **utility would avoid by purchasing the output of the qualifying facility.**
2 **Projected fixed costs of capacity for purposes of this subsection shall**
3 **include but need not be limited to the capital, land, tax, salary and**
4 **insurance costs of baseload, peaking, renewable generation and stor-**
5 **age facilities.**

6 [(3)] (4) Nothing contained in ORS 543.610, 757.005 and 758.505 to 758.555
7 shall be construed to require an electric utility to pay full avoided-cost
8 prices for a purchase from a qualifying facility on which construction began
9 before November 8, 1978, but the price for a purchase from such a facility
10 shall be sufficient to encourage production of energy or energy and capacity.

11 [(4)] (5) The rates of an electric utility for the sale of electricity shall not
12 discriminate against qualifying facilities.

13 (6)(a) **A public utility shall offer, and the commission shall approve,**
14 **standard avoided cost rates and contracts for purchases of energy or**
15 **energy and capacity from qualifying facilities with a design capacity**
16 **of not more than 10,000 kilowatts alternating current.**

17 (b) **For purposes of this subsection:**

18 (A) **The design capacity of a qualifying facility shall be calculated**
19 **as the maximum amount of electric energy in alternating current that**
20 **the qualifying facility, including any energy storage devices associated**
21 **with the facility, is capable of delivering to the electrical grid, as**
22 **measured on a rolling one-hour basis, without exceeding facility con-**
23 **trols, interconnection capacity or transformer capacity; and**

24 (B) **A qualifying facility that includes any associated energy storage**
25 **devices shall be eligible for all applicable standard avoided cost rates**
26 **and contracts offered to other qualifying facilities with a similar de-**
27 **sign capacity, if:**

28 (i) **The energy storage devices are charged with energy solely from**
29 **the qualifying facility with which the energy storage devices are as-**
30 **sociated; and**

31 (ii) **The qualifying facility meets the requirements of the Federal**

1 **Energy Regulatory Commission for qualifying facilities.**

2 **(c) A qualifying facility that utilizes generation technology charac-**
3 **terized as variable or intermittent shall be eligible for standard**
4 **avoided cost rates and contracts that have been approved by the**
5 **commission for qualifying facilities that utilize generation technology**
6 **characterized as firm, baseload or nonvariable if the qualifying facility**
7 **is capable, through the use of associated energy storage devices or**
8 **otherwise, of:**

9 **(A) Reasonably demonstrating an ability to meet the contribution**
10 **to the public utility's peak capacity of the qualifying facilities that**
11 **utilize generation technology characterized as firm, baseload or non-**
12 **variable; or**

13 **(B) Committing to the contractual requirements associated with the**
14 **standard avoided cost rates approved by the commission for qualifying**
15 **facilities that utilize generation technology characterized as firm,**
16 **baseload or nonvariable.**

17 **SECTION 6. Section 7 of this 2019 Act is added to and made a part**
18 **of ORS 758.505 to 758.555.**

19 **SECTION 7. Notwithstanding ORS 756.500:**

20 **(1) Nothing in ORS 758.505 to 758.555 is intended to provide the legal**
21 **basis for assumption by the Public Utility Commission of subject**
22 **matter jurisdiction over a dispute between a public utility and a qual-**
23 **ifying facility over an executed contract or an established legally en-**
24 **forceable obligation for the qualifying facility to sell energy or energy**
25 **and capacity to the public utility.**

26 **(2) The commission has subject matter jurisdiction over a complaint**
27 **brought by a qualifying facility against a public utility in order to es-**
28 **tablish the terms and conditions of a legally enforceable obligation for**
29 **the qualifying facility to sell energy or energy and capacity to a public**
30 **utility.**

31 **(3) A qualifying facility seeking a judicial declaration, interpreta-**

1 **tion or enforcement of a contract or legally enforceable obligation for**
2 **the qualifying facility to sell energy or energy and capacity to a public**
3 **utility is not required to first seek review by the commission.**

4 **SECTION 8.** ORS 756.185 is amended to read:

5 756.185. (1)(a) Any public utility which does, or causes or permits to be
6 done, any matter, act or thing prohibited by ORS chapter 756, 757 or 758 or
7 omits to do any act, matter or thing required to be done by such statutes,
8 is liable to the person injured thereby in the amount of damages sustained
9 in consequence of such violation.

10 (b) If the party seeking damages alleges and proves that the wrong or
11 omission **as described in paragraph (a) of this subsection** was the result
12 of gross negligence or willful misconduct, the public utility is liable to the
13 person injured [*thereby*] **by the wrong or omission** in treble the amount of
14 damages sustained in consequence of the violation.

15 (c) **If the wrong or omission as described in paragraph (a) of this**
16 **subsection was a violation of any of the following, the public utility**
17 **is liable to the person injured by the wrong or omission in treble the**
18 **amount of damages sustained in consequence of the violation:**

19 (A) **ORS 758.505 to 758.555 or the federal Public Utility Regulatory**
20 **Policies Act of 1978 (P.L. 95-617);**

21 (B) **A contract entered into pursuant to ORS 758.505 to 758.555 or**
22 **the federal Public Utility Regulatory Policies Act of 1978 (P.L. 95-617);**
23 **or**

24 (C) **A legally enforceable obligation for the purchase by a public**
25 **utility, as defined in ORS 758.505, of energy or energy and capacity**
26 **from a qualifying facility, as defined in ORS 758.505.**

27 (d) Except as provided in subsection (2) of this section, the court may
28 award reasonable attorney fees to the prevailing party in an action under
29 this section.

30 (2) The court may not award attorney fees to a prevailing defendant under
31 the provisions of subsection (1) of this section if the action under this section

1 is maintained as a class action pursuant to ORCP 32.

2 (3) Any recovery under this section does not affect recovery by the state
3 of the penalty, forfeiture or fine prescribed for such violation.

4 (4) This section does not apply with respect to the liability of any public
5 utility for personal injury or property damage.

6 **SECTION 9.** ORS 758.545 is amended to read:

7 758.545. (1) If an electric utility fails to make a good faith effort to comply
8 with a request from a qualifying facility to transmit energy or energy and
9 capacity produced by the qualifying facility to another electric utility or to
10 the Bonneville Power Administration, the electric utility shall purchase the
11 qualifying facility's energy or energy and capacity at a price which is the
12 higher of:

13 (a) The electric utility's avoided cost; or

14 (b) The index rate.

15 **(2) A public utility may not charge a qualifying facility for the use**
16 **of the public utility's transmission facilities unless the public utility**
17 **joins a regional transmission organization or an independent system**
18 **operator.**

19 [(2)] **(3)** As used in this section, "good faith effort" shall be demonstrated
20 by the electric utility's publication of a generally applicable, reasonable
21 policy of the electric utility to allow a qualifying facility to use the electric
22 utility's transmission facilities on a cost-related basis.

23

24

MISCELLANEOUS

25

26 **SECTION 10.** The amendments to ORS 758.525 by section 5 of this
27 2019 Act apply to contracts entered into on and after the effective date
28 of this 2019 Act.

29 **SECTION 11.** The unit captions used in this 2019 Act are provided
30 only for the convenience of the reader and do not become part of the
31 statutory law of this state or express any legislative intent in the

1 **enactment of this 2019 Act.**

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