

Senate Bill 802

Sponsored by COMMITTEE ON ENERGY AND ENVIRONMENT

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**.

Authorizes public utility, upon approval by Public Utility Commission, to issue bonds and securitize debt for costs and expenses incurred or to be incurred by public utility associated with events subject to federal or state declaration of emergency.

Establishes criteria and procedures for commission for approving public utility's application to designate rate recovery assets or expenditures as bondable and establish rate schedules to recover rate recovery expenditures.

Pledges State of Oregon to not limit or alter collection of rate recovery assets or impair rate recovery bonds. Prohibits State of Oregon, public body or commission from limiting or altering collection of rate recovery assets or impairing rate recovery bonds.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the securitization of public utility expenditures other than expenditures for generation
3 asset retirement; creating new provisions; amending ORS 757.415, 757.455 and 757.460; and de-
4 claring an emergency.

5 Whereas the purpose of this 2023 Act is to allow a public utility, if authorized by an order is-
6 sued by the Public Utility Commission, to use securitization financing for certain types of costs re-
7 lated to emergency events and approved for recovery in rates; and

8 Whereas securitized debt may lower the total rates in comparison with other methods of re-
9 covery and may benefit the citizens of this state who are public utility customers; and

10 Whereas rate recovery bonds are not a public debt or pledge of the full faith and credit of the
11 state but require the state to provide clear and exclusive methods to create, transfer and encumber
12 the rate recovery assets and prohibit future impairment; and

13 Whereas this 2023 Act allowing public utilities to use securitization financing for emergency
14 related costs does not limit, impair or affect the Public Utility Commission's plenary authority and
15 jurisdiction over rates and services offered by public utilities; now, therefore,

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

17 **SECTION 1.** ORS 757.415 is amended to read:

18 757.415. (1) Except as otherwise permitted by subsection (4) of this section, a public utility may
19 issue stocks and bonds, notes and other evidences of indebtedness, certificates of beneficial interests
20 in a trust and securities for the following purposes and no others:

21 (a) The acquisition of property, or the construction, completion, extension or improvement of its
22 facilities.

23 (b) The improvement or maintenance of its service.

24 (c) The discharge or lawful refunding of its obligations.

25 (d) The reimbursement of money actually expended from income or from any other money in the
26 treasury of the public utility not secured by or obtained from the issue of stocks or bonds, notes or
27 other evidences of indebtedness, or securities of such public utility, for any of the purposes listed

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 in paragraphs (a) to (c) of this subsection except the maintenance of service and replacements, in
 2 cases where the applicant has kept its accounts and vouchers for such expenditures in such manner
 3 as to enable the Public Utility Commission of Oregon to ascertain the amount of money so expended
 4 and the purposes for which such expenditures were made.

5 (e) The compliance with terms and conditions of options granted to its employees to purchase
 6 its stock, if the commission first finds that such terms and conditions are reasonable and in the
 7 public interest.

8 (f) The finance or refinance of bondable [*conservation investment*] **rate recovery expenditures**
 9 as described in ORS 757.455. Bonds, notes, certificates of beneficial interests in a trust and other
 10 evidences of indebtedness or ownership, issued for this purpose are [*conservation*] **rate recovery**
 11 bonds for the purposes of ORS 757.460. [*Conservation bonds may rely partly or wholly for repayment*
 12 *on conservation investment assets and revenues arising with respect to conservation investment*
 13 *assets.*]

14 (2) Before issuing such securities a public utility, in addition to the other requirements of law,
 15 shall secure from the commission upon application an order authorizing such issue, stating:

16 (a) The amount of the issue and the purposes to which the issue or the proceeds thereof are to
 17 be applied;

18 (b) In the opinion of the commission, the money, property or labor to be procured, [*or*] paid for
 19 **or refinanced** by such issue reasonably is required for the purposes specified in the order and
 20 compatible with the public interest, which is necessary or appropriate for or consistent with the
 21 proper performance by the applicant of service as a public utility, and will not impair its ability to
 22 perform that service; and

23 (c) Except as otherwise permitted in the order in the case of bonds, notes or other evidences
 24 of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating ex-
 25 penses or to income.

26 (3) This section and ORS 757.410 apply to demand notes but do not apply to the issuance or
 27 renewal of a note or evidence of indebtedness maturing not more than one year after date of such
 28 issue or renewal.

29 (4) Nothing in ORS 757.400 to 757.460 shall prevent issuance of stock to stockholders as a stock
 30 dividend if there has been secured from the commission an order:

31 (a) Finding that the stock dividend is compatible with the public interest;

32 (b) Authorizing such issue and a transfer of surplus to capital in an amount equal to the par
 33 or stated value of the stock so authorized; and

34 (c) Finding that a sum equal to the amount to be so transferred was expended for the purposes
 35 enumerated in subsection (1) of this section.

36 (5) [*Conservation*] **Rate recovery** bonds authorized pursuant to subsection [(1)] (1)(f) of this
 37 section may be issued directly by a public utility or through a finance subsidiary. A “finance sub-
 38 sidiary” means any corporation, limited liability company, company, association, trust or other en-
 39 tity that is:

40 (a) Beneficially owned, directly or indirectly, by a public utility or, in the case of a trust, for
 41 which a public utility or subsidiary thereof is the grantor; or

42 (b) Unaffiliated with a public utility and acquires bondable [*conservation investment*] **rate re-**
 43 **covery assets** directly or indirectly from a public utility in a transaction approved by the commis-
 44 sion.

45 **SECTION 2.** ORS 757.455 is amended to read:

1 757.455. (1) As used in this section, “rate recovery expenditures” means costs and ex-
 2 penses incurred or to be incurred by a public utility associated with:

3 (a) An event that is the subject of a federal or state declaration of a state of emergency,
 4 such as severe weather, catastrophic wildfire, pandemic or other event that causes or
 5 threatens to cause widespread loss of life, injury to person or property, human suffering or
 6 financial loss, except for those costs and expenses that are a criminal or civil fine or penalty
 7 or judgment from a civil action based on negligence related to the event.

8 (b) An energy conservation program that provides loans and cash payments to customers
 9 for the installation of energy conservation measures at the expense of the public utility, in-
 10 cluding, but not limited to, the costs or expenditures for specific acquisition program devel-
 11 opment, promotion and labor costs and associated general supervision, rents, leases and
 12 overheads.

13 [(1)] (2) It is the policy of the [Public Utility Commission] State of Oregon to encourage fi-
 14 nancing certain expenditures and investments by public utilities at the lowest possible cost to
 15 utility customers, including but not limited to [conservation program] rate recovery expenditures.
 16 To carry out the policy described in this subsection, the State of Oregon pledges and agrees
 17 to not limit or alter the collection of rate recovery assets established under subsection (5)
 18 of this section or impair rate recovery bonds issued pursuant to ORS 757.415 or 757.460. A
 19 public utility or finance subsidiary issuing rate recovery bonds may include this pledge in the
 20 issued bonds.

21 [(2)] (3) If the Public Utility Commission [decides] determines that a public utility should defer
 22 and amortize certain [conservation program] rate recovery expenditures, the public utility may ap-
 23 ply to the commission for an order designating all or part of the [conservation program] rate re-
 24 covery expenditures as bondable [conservation investment] rate recovery expenditures, for the
 25 purpose of financing or refinancing the designated expenditures under ORS 757.415 (1)(f). After no-
 26 tice and an opportunity for a hearing, the commission may approve the application if it finds that:

27 (a) The [conservation program] expenditures included in the application are [used, useful] rea-
 28 sonable and prudent;

29 (b) [and that] Financing or refinancing the expenditures is likely to be more favorable to cus-
 30 tomers than by recovery of the expenditures through other [reasonably] available alternatives[.];
 31 and

32 (c) Bonds, notes, certificates of beneficial interests in a trust and other evidences of
 33 indebtedness or ownership issued pursuant to the approval are reasonably likely to receive
 34 a determination of, at a minimum, investment grade by credit rating agencies.

35 (4)(a) [Upon approval,] The commission shall issue an order [stating the] within 180 days of
 36 application approving or denying the application. If the commission approves the application,
 37 the order shall specify the highest amount of [the conservation program] expenditures that qualify
 38 as bondable [conservation investment] rate recovery expenditures.

39 (b) In specifying the amount for rate recovery expenditures associated with an event
 40 described in subsection (1)(a) of this section, net of appropriate adjustments as determined
 41 by the commission to be reasonable, the commission may allow as rate recovery expen-
 42 ditures, without limitation, the following:

43 (A) Capital and operating costs incurred or to be incurred as a result of the event;

44 (B) Lost revenue associated with the event;

45 (C) Costs and expenses that may be recovered at a later time from third parties or

1 **insurers; and**

2 **(D) Carrying costs or charges.**

3 *[(3) The commission shall set rates to include in revenue requirement recovery of a public utility's*
 4 *bondable conservation investment, as well as the costs of equity and debt capital associated with it,*
 5 *including, without limitation, the payment of principal, premium, if any, and interest on conservation*
 6 *bonds. Revenues collectible or collected under this subsection shall be known as "conservation invest-*
 7 *ment assets." The commission shall not revalue bondable conservation investment for rate-making pur-*
 8 *poses, determine that revenues required to recover bondable conservation investment and associated*
 9 *equity and debt capital costs are unjust or unreasonable, impair or reduce in any way the value of*
 10 *conservation investment assets, or impair the timing or the amount of revenues arising with respect to*
 11 *conservation investment assets that have been used to secure financing or refinancing under ORS*
 12 *757.415 (1)(f).]*

13 *[(4) Subsections (2) and (3) of this section shall apply to any amounts presently deferred by a utility*
 14 *regardless of whether expended prior to September 9, 1995.]*

15 *[(5) As used in this section, "conservation program expenditures" includes, without limitation, loans*
 16 *and cash payments made to customers, the costs of conservation measures installed at the expense of*
 17 *the public utility, specific acquisition program development, promotion and labor costs and associated*
 18 *general supervision, rents, leases and overheads.]*

19 **(5)(a) As part of an order approving an application, the commission shall establish rate**
 20 **schedules that permit recovery of a public utility's rate recovery expenditures, plus the**
 21 **payment of premium and interest on rate recovery bonds, the costs of issuance of the bonds**
 22 **and any estimated or expected tax payments. Revenues collected or collectable under this**
 23 **subsection are rate recovery assets for purposes of this section and ORS 757.460.**

24 **(b) Rates established under this section shall be collected through rates or charges paid**
 25 **by customers of the utility consistent with cost causation and rate design principles and any**
 26 **other statutory or regulatory requirements.**

27 **(c) Rates established under this section by a final, nonappealable order are irrevocable**
 28 **and unchangeable until the payment of principal, premium and interest on rate recovery**
 29 **bonds and issuance costs are repaid. Consistent with this restriction, the State of Oregon,**
 30 **a public body, as defined in ORS 174.109, or the commission may not:**

31 **(A) Revalue bondable rate recovery expenditures for ratemaking purposes;**

32 **(B) Determine that rates or revenues established under this section are unjust or un-**
 33 **reasonable;**

34 **(C) Impair or reduce the value, amount, timing or collection period of rate recovery as-**
 35 **sets;**

36 **(D) Rescind, suspend or amend the order authorizing the rate recovery assets, unless all**
 37 **amounts specified by the order have been repaid; or**

38 **(E) When setting other rates or charges for the public utility or taking other actions**
 39 **pursuant to the commission's authority, consider rate recovery bonds issued pursuant to**
 40 **ORS 757.460 as debt of the public utility, rate recovery assets to be revenue for the public**
 41 **utility or rate recovery expenditures to be costs of the public utility.**

42 **(6) The commission may not require a public utility to:**

43 **(a) Apply to the commission for an order designating all or part of rate recovery expen-**
 44 **ditures as bondable rate recovery expenditures; or**

45 **(b) Finance or refinance rate recovery expenditures that the commission has designated**

1 as bondable rate recovery expenditures.

2 (7) The commission shall order a separate and distinct rate credit for ratepayers that
3 reflects any moneys that a public utility recovers from a third party or insurer for costs or
4 expenses incurred by the public utility associated with events described under subsection
5 (1)(a) of this section if those costs and expenditures have been incorporated into a rate
6 schedule established under subsection (5) of this section for the recovery of the public
7 utility's rate recovery expenditures.

8 **SECTION 3.** ORS 757.460 is amended to read:

9 757.460. (1) As used in this section:

10 (a) "Bonds" includes bonds, notes, certificates of beneficial interests in a trust and other
11 evidence of indebtedness.

12 (b) "Finance subsidiary" has the meaning given that term under ORS 757.415.

13 (c) "Rate recovery assets" means the revenues, claims, payments, moneys or proceeds
14 collected or collectable under an order issued by the Public Utility Commission pursuant to
15 ORS 757.455 to recover rate recovery expenditures and any other associated costs and ex-
16 penses in the order.

17 (d) "Rate recovery bonds" means bonds issued by a public utility or finance subsidiary
18 to finance or refinance bondable rate recovery expenditures pursuant to ORS 757.455.

19 (e) "Secured party" means the holder of any bonds that has been granted a security in-
20 terest in rate recovery assets.

21 *[(1) A public utility or finance subsidiary may pledge conservation investment assets as collateral*
22 *for conservation bonds by providing for a security interest in the conservation investment assets. A*
23 *security interest in conservation investment assets is created and perfected only upon entry of an order*
24 *by the Public Utility Commission of Oregon approving a contract governing the granting of the security*
25 *interest, and the filing with the Secretary of State of a Uniform Commercial Code Article I financing*
26 *statement showing such pledger as "debtor" and identifying the conservation investment assets and the*
27 *bondable conservation investment pledged as security. The security interest is enforceable against the*
28 *debtor and all third parties, subject to the rights of any third parties holding security interests in the*
29 *conservation investment assets perfected in the manner described in this section if value has been given*
30 *by the purchasers of the conservation bonds. An approved security interest in conservation investment*
31 *assets is a continuously perfected security interest in all revenues and proceeds arising with respect to*
32 *the associated bondable conservation investment, whether or not those revenues have accrued. Upon*
33 *approval by the commission, the priority of the security interest shall be as set forth in the contract*
34 *governing the conservation bonds. Conservation investment assets constitute property for the purposes*
35 *of contracts securing the conservation bonds, whether or not the related revenues have accrued.]*

36 (2)(a) A public utility or finance subsidiary may grant a security interest in rate recovery
37 assets as collateral for rate recovery bonds. A security interest in rate recovery assets is
38 valid and enforceable against the debtor and third parties, subject to the rights of any third
39 parties holding security interests in the rate recovery assets attached and perfected in the
40 manner described under this subsection.

41 (b) A security interest in rate recovery assets attaches if:

42 (A) The commission has entered an order designating rate recovery expenditures as
43 bondable pursuant to ORS 757.455;

44 (B) The secured party has given value; and

45 (C) The debtor has signed a security agreement granting the secured party a security

1 interest in the rate recovery assets.

2 (c) A valid and enforceable security interest in rate recovery assets is perfected if:

3 (A) The security interest has attached in the manner described in paragraph (b) of this
4 subsection; and

5 (B) A financing statement has been filed in accordance with the requirements of ORS
6 chapter 79 that identifies the debtor as “debtor” and the rate recovery assets granted as
7 security. A description in the financial statement that refers to the commission order cre-
8 ating the bondable rate recovery expenditures and rate schedules upon which the rate re-
9 covery assets are based shall be sufficient for identifying the rate recovery assets granted
10 as security.

11 (d) A perfected security interest in rate recovery assets is a continuously perfected se-
12 curity interest, whether or not the related revenues have accrued. Rate recovery assets
13 constitute property for the purposes of contracts securing the rate recovery bonds, whether
14 or not the related revenues have accrued. Multiple security interests in the same rate re-
15 covery assets shall rank according to priority in time of perfection.

16 [(2)] (3)(a) Subject to the terms of the security agreement covering the rate recovery
17 assets, the relative priority of a security interest created under this section is not [defeated or]
18 adversely affected by the commingling of revenues arising with respect to [conservation investment]
19 rate recovery assets with other funds of the debtor. [The holders of conservation bonds] Upon
20 compliance with the requirements under subsection (2) of this section, the secured party
21 shall have a perfected security interest in all cash [and deposit accounts] of the debtor in which re-
22 venues arising with respect to [conservation investment] rate recovery assets pledged to the holders
23 of [conservation] rate recovery bonds have been commingled with other funds, but the perfected
24 security interest is limited to an amount not greater than the amount of [the revenues] rate recov-
25 ery assets received by the debtor within 12 months before any default under the [conservation] rate
26 recovery bonds held by the holders or the institution of insolvency proceedings by or against the
27 debtor, less payments made from the revenues to the holders during that 12-month period. [If a de-
28 fault occurs under an approved contract governing conservation bonds, the holders of the conservation
29 bonds or their authorized representatives, as secured parties, may foreclose or otherwise enforce the
30 perfected security interest in the conservation investment assets securing the conservation bonds, subject
31 to the rights of any third parties holding prior security interests in the conservation investment assets
32 perfected in the manner provided in this section.]

33 (b) Notwithstanding any provision of this subsection, the rights and remedies of a se-
34 cured party in enforcing a secured interest do not include and are without recourse to any
35 public utility asset except for the rate recovery assets, even if the rate recovery assets are
36 commingled with other funds of the public utility.

37 (c) A secured party or secured party’s representatives may apply to the commission for
38 relief, if a public utility or finance subsidiary defaults on a required payment arising from
39 the issuance of rate recovery bonds. Upon application by [the holders of the conservation bonds
40 or their] a secured party or secured party’s representatives, without limiting other remedies of
41 [those holders or] the secured party or secured party’s representatives, the commission shall order
42 the sequestration and payment to the [holders or their] secured party or secured party’s repre-
43 sentatives of revenues arising with respect to the [debtor] rate recovery assets. Notwithstanding
44 any bankruptcy, reorganization or other insolvency proceeding with respect to the debtor or
45 transferor of the rate recovery assets, the commission’s order shall remain in full force and

1 **effect. Any surplus in excess of amounts necessary to pay principal, premium, if any, inter-**
 2 **est, costs and arrearages on the rate recovery bonds and other costs arising under the se-**
 3 **curity agreement shall be remitted to the debtor or transferor.**

4 [(3)] (4) The granting, perfection and enforcement of security interests in [*conservation invest-*
 5 *ment*] **rate recovery** assets to secure [*conservation*] **rate recovery** bonds [*is governed by this section*
 6 *and not by*] **are subject to** ORS chapter 79, **except that when a provision in ORS chapter 79**
 7 **comes in conflict with a provision in this section, the provision in this section shall control.**

8 [(4)] (5) A transfer of [*conservation investment*] **rate recovery** assets by a public utility to a fi-
 9 nance subsidiary that the parties have expressly stated in the governing documentation to be a sale
 10 or other absolute transfer, in a transaction approved in an order issued by the commission and made
 11 in connection with the issuance by the finance subsidiary of [*conservation*] **rate recovery** bonds,
 12 shall be treated as a true sale and not as a pledge or other financing of the [*conservation*
 13 *investment*] **rate recovery** assets. According the holders of [*conservation*] **rate recovery** bonds a
 14 preferred right to revenues of the public utility or the provision by the utility of other credit en-
 15 hancement with respect to [*conservation*] **rate recovery** bonds does not impair or negate the char-
 16 acterization of any transfer as a true sale.

17 [(5)] (6) Any successor to a public utility pursuant to any bankruptcy, reorganization or other
 18 insolvency proceeding shall perform and satisfy all obligations of the utility under an approved
 19 contract governing [*conservation*] **rate recovery** bonds in the same manner and to the same extent
 20 as was required of the utility before the proceeding, including, without limitation, collecting and
 21 paying to the holders of the [*conservation*] **rate recovery** bonds or their representatives revenues
 22 arising with respect to the [*conservation investment*] **rate recovery** assets pledged to secure the
 23 [*conservation*] **rate recovery** bonds.

24 (7) **If a public utility transfers rate recovery assets to a finance subsidiary and the fi-**
 25 **nance subsidiary issues rate recovery bonds secured by the rate recovery assets, the finance**
 26 **subsidiary shall place the proceeds from the issuance of the rate recovery bonds in a sepa-**
 27 **rate account maintained by the finance subsidiary. The commission order approving the**
 28 **transaction must specify that the public utility shall be reimbursed for authorized rate re-**
 29 **covery expenditures only from the separate account maintained by the finance subsidiary.**

30 [(6) *As used in this section:*]

31 [(a) "*Conservation investment assets*" has the meaning given under ORS 757.455.]

32 [(b) "*Finance subsidiary*" has the meaning given under ORS 757.415.]

33 **SECTION 4. The amendments to ORS 757.415, 757.455 and 757.460 by sections 1 to 3 of this**
 34 **2023 Act apply to costs and expenses incurred by a public utility even if the costs and ex-**
 35 **penses were incurred by the public utility prior to the effective date of this 2023 Act.**

36 **SECTION 5. This 2023 Act being necessary for the immediate preservation of the public**
 37 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
 38 **on its passage.**

39