

**Enrolled**  
**House Bill 3141**

Sponsored by COMMITTEE ON ENERGY AND ENVIRONMENT (at the request of Representative Pam Marsh)

CHAPTER .....

AN ACT

Relating to energy; creating new provisions; amending ORS 297.300, 317A.100, 456.587, 757.054, 757.247, 757.365, 757.612, 757.613 and 757.617 and section 1, chapter 63, Oregon Laws 2016; repealing ORS 757.689; and prescribing an effective date.

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

**PUBLIC PURPOSE CHARGE**

**SECTION 1.** ORS 757.612 is amended to read:

757.612. (1)(a) There is established an annual public purpose expenditure standard for electric companies and Oregon Community Power to fund [*new cost-effective energy conservation, new market transformation efforts,*]:

(A) The above-market costs of new renewable energy resources and **customer investments in distribution system-connected technologies that support reliability, resilience and the integration of renewable energy resources with the distribution systems of electric companies and Oregon Community Power;**

(B) New low-income weatherization;

(C) **New energy-related investments in schools; and**

(D) **Low-income housing.**

(b) The public purpose expenditure standard shall be funded by the public purpose charge described in subsection (2) of this section.

(2)(a) [*Beginning on the date an electric company or Oregon Community Power offers direct access to retail electricity consumers, except residential electricity consumers, the*] **Until January 1, 2036, an electric company or Oregon Community Power shall collect a nonbypassable public purpose charge equal to 1.5 percent of the revenues described in paragraph (b) of this subsection, apportioned as further set forth in subsection (3)(b) of this section. The electric company or Oregon Community Power shall collect the public purpose charge from all of the retail electricity consumers located within the electric company’s or Oregon Community Power’s service [*area until January 1, 2026*] territory, including retail electricity consumers served by electricity service suppliers.**

(b) [*Except as provided in paragraph (b) of this subsection, The public purpose charge shall be equal to three percent*] **The percentages described in paragraph (a) of this subsection and subsection (3)(b) of this section shall be calculated as percentages of the total revenues collected by the electric company, Oregon Community Power or the electricity service supplier from retail**

electricity consumers for electricity services, distribution services, ancillary services, metering and billing, transition charges and other types of costs included in electric rates on July 23, 1999.

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

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

(b) *[Except as provided in paragraph (e) of this subsection, Funds collected through public purpose charges under subsection (2) of this section shall be allocated as follows:]* **The public purpose charge described in subsection (2)(a) of this section shall be the sum total of the following percentages of revenues described in subsection (2)(b) of this section, allocated for the following purposes:**

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

**(A) 0.3 percent of revenues for school districts that are located in the service territory of the electric company or Oregon Community Power, as further directed under paragraph (e) of this subsection.**

**(B) *[Nineteen percent for]* As further directed under paragraph (f) of this subsection, 0.51 percent of revenues for:**

**(i)** The above-market costs of constructing and operating new renewable energy resources with a nominal electric generating capacity, as defined in ORS 469.300, of 20 megawatts or less[.]; **or**

**(ii) Customer investments in distribution system-connected technologies that support reliability, resilience and the integration of renewable energy resources with the distribution system of the electric company or Oregon Community Power.**

**(C) *[Thirteen percent]* 0.55 percent of revenues for new low-income weatherization, as further directed under paragraph (g) of this subsection.**

**(D) *[Five percent]* 0.14 percent of revenues for deposit in the Housing and Community Services Department Electricity Public Purpose Charge Fund established by ORS 456.587 (1) for the purpose of providing grants as described in ORS 458.625 (2).**

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

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

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

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

(e)(A) *[The first 10 percent of funds collected each year by an electric company or Oregon Community Power under subsection (2) of this section shall be distributed to school districts that are located in the service territory of the electric company or Oregon Community Power. The]* Funds **allocated under subsection (3)(b)(A) of this section** shall be distributed to individual school districts according to the weighted average daily membership (ADMw) of each school district for the prior fiscal year as calculated under ORS 327.013. The commission shall establish by rule a methodology for distributing a proportionate share of funds under this paragraph to school districts that are only partially located in the service territory of the electric company or Oregon Community Power.

(B) A school district that receives funds under this paragraph shall use the funds first to pay for energy audits for schools located within the school district or for a fleet audit for the school district. To the extent practicable, a school district shall coordinate with the State Department of Energy and incorporate federal funding in complying with this paragraph. Following completion of an audit, the school district may expend funds received under this paragraph to implement the audit.

(C) Once an energy audit has been conducted and completely implemented for each school within the school district, the school district may expend funds received under this paragraph for any of the following purposes:

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

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

(iii) Energy conservation education programs.

(iv) Purchasing electricity from environmentally focused sources.

(v) Investing in renewable energy resources.

(D) Once a fleet audit has been conducted for the school district, the school district may expend funds received under this paragraph for any of the following purposes:

(i) Purchasing or leasing zero-emission vehicles, as defined in ORS 283.398, including buses.

(ii) Purchasing or installing electric vehicle charging stations to provide electricity to zero-emission vehicles.

**(f) Of the funds allocated under subsection (3)(b)(B) of this section, 25 percent must be used for activities, resources and technologies that serve low and moderate income customers, including for technologies that do not have above-market costs.**

**(g)(A) Funds collected by an electric company or Oregon Community Power, allocated for new low-income weatherization under subsection (3)(b)(C) of this section and directed to the Housing and Community Services Department shall be spent within the service territory of the electric company or Oregon Community Power from which the funds are collected.**

**(B) As further determined by the Housing and Community Services Department, a portion of the funds described in this paragraph may be used for manufactured housing replacements as a means to deliver energy efficiency, pursuant to a program dedicated to manufactured housing replacement.**

**(C) For purposes of this paragraph and as further determined by the Housing and Community Services Department, purposes related to new low-income weatherization includes providing funding for participants in programs by low-income weatherization service providers to change energy sources from bulk fuels to electricity service.**

*[(f)]* **(h)** The commission may not establish a different public purpose charge than the public purpose charge described in subsection (2) of this section.

*[(g) If the commission requires funds collected through public purpose charges to be paid to a nongovernmental entity, the entity shall:]*

*[(A) Include on the entity's board of directors an ex officio member designated by the commission, who shall also serve on the entity's nominating committee for filling board vacancies.]*

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

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

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

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

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

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

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

*[(A) Has no further obligation to invest in new cost-effective energy conservation, new market transformation or new low-income weatherization, or to provide a commercial energy conservation services program; and]*

*[(B) Is not subject to ORS 469.631 to 469.645 and 469.860 to 469.900.]*

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

*[(A) Has no further obligation to invest in new cost-effective energy conservation, new market transformation or new low-income weatherization, or to provide a commercial energy conservation services program; and]*

*[(B) Is not subject to ORS 469.631 to 469.645 and 469.860 to 469.900.]*

*[(5)(a)] (4)(a) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year shall receive a credit against public purpose charges billed by an electric company or Oregon Community Power for that site. The amount of the credit shall be equal to the total amount of qualifying expenditures for *[new cost-effective energy conservation, not to exceed 68 percent of the annual public purpose charges, and]* the above-market costs of new renewable energy resources **and investments in distribution system-connected technologies** incurred by the retail electricity consumer, not to exceed *[19]* **25.5** percent of the annual public purpose charges, less administration costs incurred under this paragraph and paragraphs (b) and (c) of this subsection. The credit may not exceed, on an annual basis, the lesser of:*

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

*(B) The portion of the public purpose charge billed to the retail electricity consumer that is dedicated to *[new cost-effective energy conservation, new market transformation or]* the above-market costs of new renewable energy resources **and investments in distribution system-connected technologies**.*

*(b) To obtain a credit under paragraph (a) of this subsection, a retail electricity consumer shall file with the State Department of Energy a description of the proposed *[conservation project or]* new renewable energy resource **or investment in distribution system-connected technology** and a declaration that the retail electricity consumer plans to incur the qualifying expenditure. The State Department of Energy shall issue a notice of precertification within 30 days of receipt of the filing, if such filing is consistent with paragraph (a) of this subsection. The credit may be taken after a*

retail electricity consumer provides a letter from a certified public accountant to the State Department of Energy verifying that the precertified qualifying expenditure has been made.

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

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

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

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

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

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

*[(b) The commission shall establish the amount to be collected by each electric company from retail electricity consumers, and the rates to be charged by each electric company to retail electricity consumers, so that the forecasted collection by all electric companies in calendar year 2018 is \$20 million. In subsequent calendar years, the commission may not decrease the rates below those established for calendar year 2018. The commission may temporarily adjust the rates if forecasted collections or actual collections are less than \$20 million in any calendar year. A retail electricity consumer may not be required to pay more than \$500 per month per site for low-income electric bill payment assistance.]*

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

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

*[(B) The Housing and Community Services Department, in consultation with electric companies, shall investigate and may implement alternative delivery models to effectively reduce service disconnections and related costs to retail electricity consumers and electric utilities.]*

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

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

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

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

**[(8)] (6)** For purposes of this section, “retail electricity consumers” includes any direct service industrial consumer that purchases electricity without purchasing distribution services from the electric utility.

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

## **COST-EFFECTIVE ENERGY EFFICIENCY**

**SECTION 2.** ORS 757.054 is amended to read:

757.054. (1) As used in this section[.]:

**(a)** “Electric company” has the meaning given that term in ORS 757.600.

**(b) “Retail electricity consumer” means a retail electricity consumer, as defined in ORS 757.600, that is located in Oregon.**

(2) The Legislative Assembly finds and declares that:

(a) Energy efficiency programs promote lower energy bills, protect the public health and safety, improve environmental benefits, stimulate sustainable economic development, create new employment opportunities and reduce reliance on imported fuels; and

(b) Demand response resources result in more efficient use of existing resources and reduce the need for procuring new power generating resources, which, in turn, reduces energy bills, protects the public health and safety and improves environmental benefits.

(3) For the purpose of ensuring prudent investments by an electric company in energy efficiency and demand response before the electric company acquires new generating resources, and in order to produce cost-effective energy savings, reduce customer demand for energy, reduce overall electrical system costs, increase the public health and safety and improve environmental benefits, each electric company serving customers in this state shall:

(a) Plan for and pursue all available energy efficiency resources that are cost effective, reliable and feasible; and

(b) As directed by the Public Utility Commission by rule or order, plan for and pursue the acquisition of **available** cost-effective demand response resources.

**(4) All funds necessary to plan for and pursue cost-effective energy efficiency resources pursuant to subsection (3)(a) of this section must be collected in the rates of an electric company through charges paid by all retail electricity consumers, including those retail electricity consumers receiving electricity from electricity service suppliers subject to the limitations set forth in section 3 of this 2021 Act. The commission may require that a portion of all of the funds collected under this subsection be paid to a nongovernmental entity to make expenditures consistent with this section.**

(5)(a) A retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year shall receive a credit against the amount charged in rates pursuant to subsection (4) of this section for that site for qualifying expenditures for energy efficiency resources made by the retail electricity consumer. The amount of the credit may not exceed the lesser of:

(A) The amount charged to the retail electricity consumer in rates; or

(B) The total amount of qualifying energy efficiency expenditures described in subsection (3)(a) of this section made by the retail electricity consumer for that site, less administration costs incurred under this subsection.

(b) The State Department of Energy shall adopt by rule procedures and other provisions necessary for a retail electricity consumer to obtain a credit under this subsection.

**SECTION 3.** (1) As used in this section:

(a) "Single contiguous area" includes an area of land crossed by a public or railroad right of way, but does not include infrastructure facilities located within the public or railroad right of way for purposes of determining whether the single contiguous area of land constitutes a site.

(b) "Site" means:

(A) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter;

(B) A single contiguous area of land containing buildings or other structures within which each building or structure is no more than 1,000 feet from at least one other building or structure, if the buildings and structures and the land containing and connecting the buildings and structures are all owned by a single retail electricity consumer, either directly or through a wholly owned subsidiary, that is billed for electricity use at the buildings and structures; or

(C) For any single retail electricity consumer, each account of the retail electricity consumer that has exceeded 4,000 kilowatts at least twice within the most recent 13-month period and for which the retail electricity consumer maintains a load factor of 80 percent or greater, if the combined electricity usage across all of the accounts described in this subparagraph, in the aggregate, equals 100 average megawatts or more in a calendar year.

(2) For the period beginning on the effective date of this 2021 Act and ending December 31, 2025, a retail electricity consumer that uses more than one average megawatt of electricity at any site in the prior year may not be charged an amount in rates pursuant to ORS 757.054 (4) that exceeds 1.7 percent of the total revenue received from the sale of electricity services to the site from any source.

(3) For the period beginning January 1, 2026, and ending December 31, 2035, the combined annual amount charged under ORS 757.054 and 757.612 to a retail electricity consumer that uses more than one average megawatt and less than 10 average megawatts of electricity at any site in the prior year may not exceed \$250,000.

(4)(a) For the period beginning January 1, 2026, and ending December 31, 2030, the combined annual amount charged under ORS 757.054 and 757.612 to a retail electricity consumer that uses more than 10 average megawatts of electricity at any site in the prior year may not exceed \$4 million.

(b) For the period beginning January 1, 2031, and ending December 31, 2035, the combined annual amount charged under ORS 757.054 and 757.612 to a retail electricity consumer that uses more than 10 average megawatts of electricity at any site in the prior year may not exceed \$4.5 million.

**SECTION 4.** Section 3 of this 2021 Act is repealed on January 2, 2036.

**SECTION 5.** ORS 757.613 is amended to read:

757.613. (1) If an electric company [or *Oregon Community Power*] invests moneys collected **under ORS 757.054** [as a public purpose charge under ORS 757.612] on new cost-effective local energy conservation, or if the nongovernmental entity described in [ORS 757.612 (3)(g)] **section 9 of this**

**2021 Act** invests moneys paid to the nongovernmental entity under [ORS 757.612 (3)(d)] **ORS 757.054** on new cost-effective local energy conservation, and if the investment involves updating the energy efficiency of a residential or nonresidential building, the electric company, Oregon Community Power or the nongovernmental entity may make those investments by conducting a whole building assessment of the energy efficiency of the building and, in consideration of the whole building assessment, by maximizing the overall energy efficiency of the building. For purposes of this subsection, a “whole building assessment” means a single assessment of savings opportunities, as identified by the Public Utility Commission by rule or order.

(2) An investment described in subsection (1) of this section must be limited to an investment in a single project, as authorized by the commission by rule or order.

#### **APPLICABILITY OF CERTAIN ENERGY CONSERVATION PROGRAM REQUIREMENTS TO ELECTRIC COMPANIES**

**SECTION 6.** Section 7 of this 2021 Act is added to and made a part of ORS chapter 757.

**SECTION 7.** Notwithstanding the specific requirements imposed on an electric company by ORS 469.631 to 469.645 and 469.860 to 469.900, an electric company meets the requirements of ORS 469.631 to 469.645 and 469.860 to 469.900 if the electric company:

- (1) Meets the public purpose expenditure standard established under ORS 757.612; and
- (2) Plans for and pursues cost-effective energy efficiency and demand response resources as required under ORS 757.054.

#### **REQUIREMENTS RELATED TO NONGOVERNMENTAL ENTITIES (Generally)**

**SECTION 8.** Section 9 of this 2021 Act is added to and made a part of ORS chapter 757.

**SECTION 9.** (1) If the Public Utility Commission requires funds collected pursuant to ORS 757.054, through natural gas tariffs or through public purpose charges pursuant to ORS 757.612 to be paid to a nongovernmental entity, the entity shall:

(a) Include on the entity’s board of directors an ex officio member designated by the commission, who shall also serve on the entity’s nominating committee for filling board vacancies.

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

(c) Require the entity’s officers and directors to declare actual and potential conflicts of interest at regular meetings of the entity’s governing body when such conflicts arise, and require an officer or director to abstain from participating in any discussion or voting on any item where that officer or director has an actual conflict of interest. For the purposes of this paragraph, “actual conflict of interest” and “potential conflict of interest” have the meanings given those terms in ORS 244.020.

(d) Annually, arrange for an independent auditor to audit the entity’s financial statements, and direct the auditor to file an audit opinion with the commission for public review.

(e) With public utilities, jointly develop public utility-specific budgets, action plans and agreements that detail the entity’s public utility-specific planned activities, resources and technologies pursuant to ORS 757.054 and 757.612 (3)(b)(B), including coordinated activities that require joint investment and deployment. Each action plan must reflect stakeholder feedback gathered through a public process managed by the entity and the relevant public utility as overseen by the commission.



(f) File with the commission the entity's budget, action plan and quarterly and annual reports for public review. The entity's budget and action plan must include the budget and action plans jointly developed with public utilities under paragraph (e) of this subsection.

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

(2) The commission may remove from the board of directors of a nongovernmental entity an officer or director who fails to provide an annual disclosure of economic interest, or who fails to declare an actual or potential conflict of interest, as described in this section, if the failure is connected to the allocation or expenditure of funds collected pursuant to ORS 757.054, through natural gas tariffs or through public purpose charges pursuant to ORS 757.612 and paid to the entity.

(Environmental Justice)

SECTION 10. Section 11 of this 2021 Act is added to and made a part of ORS chapter 757.

SECTION 11. (1) As used in this section, "Environmental justice" means the equal treatment, protection from environmental and health hazards, and meaningful involvement of environmental justice communities in the development, implementation and enforcement of regulations and policies that affect the environment in which people live, work, learn, practice spirituality and play.

(2) The Public Utility Commission shall establish, and update no less than once every four years, equity metrics for the purpose of assessing, addressing and creating accountability for environmental justice in the expenditure and investment of funds collected pursuant to ORS 757.054, through natural gas tariffs or through public purpose charges pursuant to ORS 757.612 and paid to a nongovernmental entity. The equity metrics and each update required by this section must reflect feedback gathered through a public process that is managed by the commission and that, at a minimum, includes representatives of environmental justice communities.

(3) Each nongovernmental entity that is paid funds collected pursuant to ORS 757.054, through natural gas tariffs or through public purpose charges pursuant to ORS 757.612 shall, as part of the entity's filings required under section 9 (1)(f) of this 2021 Act, report on the entity's progress in achieving the equity metrics established pursuant to this section.

SECTION 12. The equity metrics required to be established under section 11 of this 2021 Act shall first be established by the Public Utility Commission no later than December 31, 2022.

REPEAL

SECTION 13. ORS 757.689 is repealed.

LOW-INCOME ELECTRIC BILL PAYMENT ASSISTANCE

SECTION 14. Section 15 of this 2021 Act is added to and made a part of ORS chapter 757.

SECTION 15. (1) An electric company, as defined in ORS 757.600, or Oregon Community Power shall collect funds for low-income electric bill payment and crisis assistance in an amount determined by the Public Utility Commission. The commission shall:

(a) Establish the amount to be collected and rates to be charged by each electric company from its customers, including customers receiving electricity from other sources, such that the forecasted collection by all electric companies in a calendar year is at least \$20 million.

(b) Adjust the rates if forecasted collections or actual collections are less than \$20 million in any calendar year but shall not otherwise adjust the rates once set.

(c) Ensure that no customer pays more than \$500 per month per customer site for low-income electric bill payment and crisis assistance.

(2) Funds collected by an electric company or Oregon Community Power under this section shall be:

(a) Paid into the Housing and Community Services Department Low-Income Electric Bill Payment Assistance Fund established by ORS 456.587 (2);

(b) Used by the Housing and Community Services Department solely for purposes related to low-income electric bill payment and crisis assistance and for the Housing and Community Services Department's cost of administering this section; and

(c) Expended in the service area of the electric company or Oregon Community Power from which the funds are collected.

(3) The Housing and Community Services Department shall determine the manner in which funds collected under this subsection are allocated by the department to energy assistance program providers for the purpose of providing low-income electric bill payment and crisis assistance. However, the department shall:

(a) In consultation with electric companies, investigate and may implement alternative delivery models to effectively reduce service disconnections and related costs to customers and electric companies; and

(b) Direct priority assistance to low-income customers who are in danger of having their electricity service disconnected.

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

(5) Interest on moneys deposited in the Housing and Community Services Department Low-Income Electric Bill Payment Assistance Fund established by ORS 456.587 (2) may be used to provide bill payment and crisis assistance to customers whose primary source of heat is not electricity.

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

**NOTE:** Sections 16 and 17 were deleted by amendment. Subsequent sections were not renumbered.

## CONFORMING AMENDMENTS

**SECTION 18.** Section 1, chapter 63, Oregon Laws 2016, is amended to read:

**Sec. 1.** (1) As used in this section:

(a) "Investor-owned utility" means an investor-owned utility, as defined in ORS 469.631, that distributes electricity.

(b) "Nameplate capacity" means the maximum rated output of a generator, inverter or other electric power production equipment measured in alternating current under specific conditions designated by the manufacturer of the equipment.

(c) "Publicly owned utility" has the meaning given that term in ORS 469.649.

(d) "Solar photovoltaic energy system" means equipment and devices that have the primary purpose of collecting solar energy and generating electricity by photovoltaic effect.

(2) The Oregon Business Development Department shall establish a program to incentivize the generation of electricity derived from solar energy. In establishing the program, the department shall:

(a) Prescribe the form and manner by which the owner or operator of a solar photovoltaic energy system may apply to participate in the program;

(b) Require an owner or operator of a solar photovoltaic energy system applying to participate in the program to submit a plan to complete construction of the solar photovoltaic energy system and begin to generate electricity within one year after being enrolled in the program;

(c) Enroll in the program applicants that own or operate solar photovoltaic energy systems qualified to be included in the program;

(d) Limit the cumulative nameplate capacity of solar photovoltaic energy systems included in the program that are owned or operated by a single program enrollee, and any business affiliated with the program enrollee, to 35 megawatts; and

(e) Close the program to new applicants on the earlier of the following dates:

(A) The date on which all solar photovoltaic energy systems included in the program have a cumulative nameplate capacity of 150 megawatts; or

(B) January 2, 2017.

(3)(a) To participate in the program, an owner or operator of a solar photovoltaic energy system must demonstrate to the satisfaction of the department that the solar photovoltaic energy system is qualified to be included in the program. A solar photovoltaic energy system is qualified to be included in the program if the solar photovoltaic energy system:

(A) Is located in this state;

(B) Has a nameplate capacity of at least two megawatts;

(C) Has a nameplate capacity of no more than 10 megawatts;

(D) Has a commercial operations date, as specified in a power purchase agreement, of January 1, 2016, or later;

(E) Is either directly connected to the electrical system of an investor-owned utility or publicly owned utility, or is indirectly connected to the electrical system of an investor-owned utility or publicly owned utility in a manner that the department determines is acceptable for program enrollees;

(F) Has a meter or other device that monitors and measures the quantity of energy generated by the solar photovoltaic energy system; and

(G) Meets any other siting, design, interconnection, installation and electric output standards required by the laws of this state.

(b) An investor-owned utility or a publicly owned utility that owns a qualified solar photovoltaic energy system is eligible to participate in the program.

(4)(a) Subject to paragraphs (b) and (c) of this subsection, for the purpose of incentivizing the generation of electricity derived from solar energy, the department shall make a monthly payment to a program enrollee for a solar photovoltaic energy system that generates electricity for an amount that equals one-half cent per kilowatt hour of electricity generated by the solar photovoltaic energy system during the preceding month. Payments shall continue for five years after the date on which the department makes the initial payment to the program enrollee for energy generated by the solar photovoltaic energy system.

(b) Beginning one year after a program enrollee is enrolled in the program, for each month that the program enrollee's solar photovoltaic energy system does not generate electricity, the department shall reduce by one month the number of monthly payments otherwise required to be paid to the program enrollee under paragraph (a) of this subsection for that solar photovoltaic energy system.

(c) If by two years after a program enrollee is enrolled in the program the program enrollee's solar photovoltaic energy system has not generated electricity, the department shall remove the

solar photovoltaic energy system from the program established under this section and the program enrollee may not receive any payments otherwise required to be paid to the program enrollee under paragraph (a) of this subsection for that solar photovoltaic energy system.

(5) Before enrolling an applicant as described in subsection (2)(c) of this section, the Oregon Business Development Department shall:

(a) Consult with the State Department of Energy to ensure that:

(A) A proposed solar photovoltaic energy system is qualified as described in subsection (3) of this section; and

(B) The solar photovoltaic energy system, if not generating electricity on the date of application, is likely to begin generating electricity no later than one year after the date on which the owner or operator of the solar photovoltaic energy system applies to be included in the program; and

(b) If applicable, consult with the Public Utility Commission to ensure that the costs associated with a solar photovoltaic energy system will be recoverable pursuant to a schedule submitted to and approved by the commission in accordance with ORS 757.205 and 757.210 or pursuant to other applicable provisions of law providing for the recovery of costs borne by investor-owned utilities.

(6) The owner of a solar photovoltaic energy system included in the program established under this section:

(a) Also owns all renewable energy certificates established under ORS 469A.130 that are associated with the generation of electricity by the solar photovoltaic energy system; and

(b) Is not eligible to receive funds under ORS 757.612 (3)(b)(B) **(2019 Edition)** unless the funds are received pursuant to an agreement entered into before *[the effective date of this 2016 Act]* **March 16, 2016**.

(7) The Oregon Business Development Department may adopt rules to implement this section.

(8) The department shall submit a report on implementing this section in the manner provided by ORS 192.245 to an interim committee of the Legislative Assembly related to energy no later than September 15 of each odd-numbered year.

**SECTION 19.** ORS 297.300 is amended to read:

297.300. The records related to any funds collected **pursuant to ORS 757.054, through natural gas tariffs or** through public purpose charges **pursuant to ORS 757.612** and paid to a nongovernmental entity as described in *[ORS 757.612]* **section 9 of this 2021 Act** shall be subject to audit by the Secretary of State.

**SECTION 20.** ORS 317A.100, as amended by section 1, chapter 2, Oregon Laws 2020 (first special session), is amended to read:

317A.100. As used in ORS 317A.100 to 317A.158:

(1)(a) "Commercial activity" means:

(A) The total amount realized by a person, arising from transactions and activity in the regular course of the person's trade or business, without deduction for expenses incurred by the trade or business;

(B) If received by a financial institution:

(i) If the reporting person for a financial institution is a holding company, all items of income reported on the FR Y-9 filed by the holding company;

(ii) If the reporting person for a financial institution is a bank organization, all items of income reported on the call report filed by the bank organization; and

(iii) If the reporting person for a financial institution is a nonbank financial organization, all items of income reported in accordance with generally accepted accounting principles; and

(C)(i) If received by an insurer, as reported on the statement of premiums accompanying the annual statement required under ORS 731.574 to be filed with the Director of the Department of Consumer and Business Services, all gross direct life insurance premiums, gross direct accident and health insurance premiums and gross direct property and casualty insurance premiums; and

(ii) The gross amount of surplus lines premiums received on Oregon home state risks as shown in the report required by ORS 735.465.

(b) "Commercial activity" does not include:

- (A) Interest income except:
  - (i) Interest on credit sales; or
  - (ii) Interest income, including service charges, received by financial institutions;
- (B) Receipts from the sale, exchange or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code, without regard to the length of time the person held the asset;
- (C) If received by an insurer, federally reinsured premiums or income from transactions between a reciprocal insurer and its attorney in fact operating under ORS 731.142;
- (D) Receipts from hedging transactions, to the extent that the transactions are entered into primarily to protect a financial position, including transactions intended to manage the risk of exposure to foreign currency fluctuations that affect assets, liabilities, profits, losses, equity or investments in foreign operations, risk of exposure to interest rate fluctuations or risk of commodity price fluctuations;
- (E) Proceeds received attributable to the repayment, maturity or redemption of the principal of a loan, bond, mutual fund, certificate of deposit or marketable instrument;
- (F) The principal amount received under a repurchase agreement or on account of any transaction properly characterized as a loan to the person;
- (G) Contributions received by a trust, plan or other arrangement, any of which is described in section 501(a) of the Internal Revenue Code, or to which title 26, subtitle A, chapter 1, subchapter (D) of the Internal Revenue Code applies;
- (H) Compensation, whether current or deferred, and whether in cash or in kind, received or to be received by an employee, a former employee or the employee's legal successor for services rendered to or for an employer, including reimbursements received by or for an individual for medical or education expenses, health insurance premiums or employee expenses or on account of a dependent care spending account, legal services plan, any cafeteria plan described in section 125 of the Internal Revenue Code or any similar employee reimbursement;
- (I) Proceeds received from the issuance of the taxpayer's own stock, options, warrants, puts or calls, or from the sale of the taxpayer's treasury stock;
- (J) Proceeds received on the account of payments from insurance policies, including crop insurance policies, owned by the taxpayer, except those proceeds received for the loss of commercial activity;
- (K) Gifts or charitable contributions received, membership dues received by trade, professional, homeowners' or condominium associations, payments received for educational courses, meetings or meals, or similar payments to a trade, professional or other similar association, and fundraising receipts received by any person when any excess receipts are donated or used exclusively for charitable purposes;
- (L) Damages received as the result of litigation in excess of amounts that, if received without litigation, would be treated as commercial activity;
- (M) Property, money and other amounts received or acquired by an agent on behalf of another in excess of the agent's commission, fee or other remuneration;
- (N) Tax refunds from any tax program, other tax benefit recoveries and reimbursements for the tax imposed under ORS 317A.100 to 317A.158 made by entities that are part of the same unitary group as provided under ORS 317A.106, and reimbursements made by entities that are not members of a unitary group that are required to be made for economic parity among multiple owners of an entity whose tax obligation under ORS 317A.100 to 317A.158 is required to be reported and paid entirely by one owner, as provided in ORS 317A.106;
- (O) Pension reversions;
- (P) Contributions to capital;
- (Q) Receipts from the sale, transfer, exchange or other disposition of motor vehicle fuel or any other product used for the propulsion of motor vehicles;
- (R) In the case of receipts from the sale of cigarettes or tobacco products by a wholesale dealer, retail dealer, distributor, manufacturer or seller, an amount equal to the federal and state excise

taxes paid by any person on or for such cigarettes or tobacco products under subtitle E of the Internal Revenue Code or ORS chapter 323;

(S) In the case of receipts from the sale of malt beverages or wine, as defined in ORS 471.001, cider, as defined in ORS 471.023 or distilled liquor, as defined in ORS 471.001, by a person holding a license issued under ORS chapter 471, an amount equal to the federal and state excise taxes paid by any person on or for such malt beverages, wine or distilled liquor under subtitle E of the Internal Revenue Code or ORS chapter 471 or 473, and any amount paid to the Oregon Liquor Control Commission for sales of distilled spirits by an agent appointed under ORS 471.750;

(T) In the case of receipts from the sale of marijuana items, as defined in ORS 475B.015, by a person holding a license issued under ORS 475B.010 to 475B.545, an amount equal to the federal and state excise taxes paid by any person on or for such marijuana items under subtitle E of the Internal Revenue Code or ORS 475B.700 to 475B.760 and any local retail taxes authorized under ORS 475B.491;

(U) Local taxes collected by a restaurant or other food establishment on sales of meals, prepared food or beverages;

(V) Tips or gratuities collected by a restaurant or other food establishment and passed on to employees;

(W) Receipts realized by a vehicle dealer certified under ORS 822.020 or a person described in ORS 320.400 (8)(a)(B) from the sale or other transfer of a motor vehicle, as defined in ORS 801.360, to another vehicle dealer for the purpose of resale by the transferee vehicle dealer, but only if the sale or other transfer was based upon the transferee's need to meet a specific customer's preference for a motor vehicle;

(X) Registration fees or taxes collected by a vehicle dealer certified under ORS 822.020 or a person described in ORS 320.400 (8)(a)(B) at the sale or other transfer of a motor vehicle, as defined in ORS 801.360, that are owed to a third party by the purchaser of the motor vehicle and passed to the third party by the dealer;

(Y) Receipts from a financial institution for services provided to the financial institution in connection with the issuance, processing, servicing and management of loans or credit accounts, if the financial institution and the recipient of the receipts have at least 50 percent of their ownership interests owned or controlled, directly or constructively through related interests, by common owners;

(Z) In the case of amounts retained as commissions by a holder of a license under ORS chapter 462, an amount equal to the amounts specified under ORS chapter 462 that must be paid to or collected by the Department of Revenue as a tax and the amounts specified under ORS chapter 462 to be used as purse money;

(AA) Net revenue of residential care facilities as defined in ORS 443.400 or in-home care agencies as defined in ORS 443.305, to the extent that the revenue is derived from or received as compensation for providing services to a medical assistance or Medicare recipient;

(BB) Dividends received;

(CC) Distributive income received from a pass-through entity;

(DD) Receipts from sales to a wholesaler in this state, if the seller receives certification at the time of sale from the wholesaler that the wholesaler will sell the purchased property outside this state;

(EE) Receipts from the wholesale or retail sale of groceries;

(FF) Receipts from transactions among members of a unitary group;

(GG) Moneys, including public purpose charge moneys collected under ORS 757.612 and *[costs of funding or implementing cost-effective energy conservation measures collected under ORS 757.689]* **moneys collected to plan for and pursue cost-effective energy efficiency resources under ORS 757.054**, that are collected from customers, passed to a utility and approved by the Public Utility Commission and that support energy conservation, renewable resource acquisition and low-income assistance programs;

(HH) Moneys collected by a utility from customers for the payment of loans through on-bill financing;

(II) Surcharges collected under ORS 757.736;

(JJ) Moneys passed to a utility by the Bonneville Power Administration for the purpose of effectuating the Regional Power Act Exchange credits or pursuant to any settlement associated with the exchange credit;

(KK) Moneys collected or recovered, by entities listed in ORS 756.310, cable operators as defined in 47 U.S.C. 522(5), telecommunications carriers as defined in 47 U.S.C. 153(51) and providers of information services as defined in 47 U.S.C. 153(24), for fees payable under ORS 756.310, right-of-way fees, franchise fees, privilege taxes, federal taxes and local taxes;

(LL) Charges paid to the Residential Service Protection Fund required by chapter 290, Oregon Laws 1987;

(MM) Universal service surcharge moneys collected or recovered and paid into the universal service fund established in ORS 759.425;

(NN) Moneys collected for public purpose funding as described in ORS 759.430;

(OO) Moneys collected or recovered and paid into the federal universal service fund as determined by the Federal Communications Commission;

(PP) In the case of a seller or provider of telecommunications services, the amount of tax imposed under ORS 403.200 for access to the emergency communications system that is collected from subscribers or consumers;

(QQ) In the case of a transient lodging tax collector, the amount of tax imposed under ORS 320.305 and of any local transient lodging tax imposed upon the occupancy of transit lodging;

(RR) In the case of a seller of bicycles, the amount of tax imposed under ORS 320.415 upon retail sales of bicycles;

(SS) In the case of a qualified heavy equipment provider, the amount of tax imposed under ORS 307.872 upon the rental price of heavy equipment;

(TT) Farmer sales to an agricultural cooperative in this state that is a cooperative organization described in section 1381 of the Internal Revenue Code;

(UU) Revenue received by a business entity that is mandated by contract or subcontract to be distributed to another person or entity if the revenue constitutes sales commissions that are paid to a person who is not an employee of the business entity, including, without limitation, a split-fee real estate commission; and

(VV) Receipts from the sale of fluid milk by dairy farmers that are not members of an agricultural cooperative.

(2) "Cost inputs" means:

(a) The cost of goods sold as calculated in arriving at federal taxable income under the Internal Revenue Code; or

(b) In the case of a taxpayer that is engaged in a farming operation, as defined in section 6, chapter 2, Oregon Laws 2020 (first special session) (Enrolled House Bill 4202), and that does not report cost of goods sold for federal tax purposes, the taxpayer's operating expenses excluding labor costs.

(3) "Doing business" means engaging in any activity, whether legal or illegal, that is conducted for, or results in, the receipt of commercial activity at any time during a calendar year.

(4) "Excluded person" means any of the following:

(a) Organizations described in sections 501(c) and 501(j) of the Internal Revenue Code, unless the exemption is denied under section 501(h), (i) or (m) or under section 502, 503 or 505 of the Internal Revenue Code.

(b) Organizations described in section 501(d) of the Internal Revenue Code, unless the exemption is denied under section 502 or 503 of the Internal Revenue Code.

(c) Organizations described in section 501(e) of the Internal Revenue Code.

(d) Organizations described in section 501(f) of the Internal Revenue Code.

(e) Charitable risk pools described in section 501(n) of the Internal Revenue Code.

- (f) Organizations described in section 521 of the Internal Revenue Code.
- (g) Qualified state tuition programs described in section 529 of the Internal Revenue Code.
- (h) Foreign or alien insurance companies, but only with respect to the underwriting profit derived from writing wet marine and transportation insurance subject to tax under ORS 731.824 and 731.828.
  - (i) Governmental entities.
  - (j) Any person with commercial activity that does not exceed \$750,000 for the calendar year, other than a person that is part of a unitary group as provided in ORS 317A.106 with commercial activity in excess of \$750,000.
  - (k) Hospitals subject to assessment under ORS 414.855, long term care facilities subject to assessment under ORS 409.801 or any entity subject to assessment under ORS 414.880 or section 3 or 5, chapter 538, Oregon Laws 2017.
  - (L) Manufactured dwelling park nonprofit cooperatives organized under ORS chapter 62.
- (5) "Financial institution" has the meaning given that term in ORS 314.610, except that "financial institution" does not include a credit union.
  - (6)(a) "FR Y-9" means the consolidated or parent-only financial statements that a holding company is required to file with the Federal Reserve Board pursuant to 12 U.S.C. 1844.
  - (b) In the case of a holding company required to file both consolidated and parent-only financial statements, "FR Y-9" means the consolidated financial statements that the holding company is required to file.
- (7) "Governmental entity" means:
  - (a) The United States and any of its unincorporated agencies and instrumentalities.
  - (b) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.
  - (c) The State of Oregon and any of its unincorporated agencies and instrumentalities.
  - (d) Any county, city, district or other political subdivision of the state.
  - (e) A special government body as defined in ORS 174.117.
  - (f) A federally recognized Indian tribe.
- (8) "Groceries" means food as defined in 7 U.S.C. 2012(k), but does not include cannabinoid edibles or marijuana seeds.
  - (9)(a) "Hedging transaction" means a hedging transaction as defined in section 1221 of the Internal Revenue Code or a transaction accorded hedge accounting treatment under Financial Accounting Standards Board Statement No. 133.
  - (b) "Hedging transaction" does not include a transaction in which an actual transfer of title of real or tangible property to another entity occurs.
- (10) "Insurer" has the meaning given that term in ORS 317.010.
- (11) "Internal Revenue Code," except where the Legislative Assembly has provided otherwise, refers to the laws of the United States or to the Internal Revenue Code as they are amended and in effect on December 31, 2018.
- (12) "Labor costs" means total compensation of all employees, not to include compensation paid to any single employee in excess of \$500,000.
- (13)(a) "Motor vehicle fuel or any other product used for the propulsion of motor vehicles" means:
  - (A) Motor vehicle fuel as defined in ORS 319.010; and
  - (B) Fuel the use of which in a motor vehicle is subject to taxation under ORS 319.530.
- (b) "Motor vehicle fuel or any other product used for the propulsion of motor vehicles" does not mean:
  - (A) Electricity; or
  - (B) Electric batteries or any other mechanical or physical component or accessory of a motor vehicle.
- (14) "Person" includes individuals, combinations of individuals of any form, receivers, assignees, trustees in bankruptcy, firms, companies, joint-stock companies, business trusts, estates, partner-



ships, limited liability partnerships, limited liability companies, associations, joint ventures, clubs, societies, entities organized as for-profit corporations under ORS chapter 60, C corporations, S corporations, qualified subchapter S subsidiaries, qualified subchapter S trusts, trusts, entities that are disregarded for federal income tax purposes and any other entities.

(15) "Retailer" means a person doing business by selling tangible personal property to a purchaser for a purpose other than:

(a) Resale by the purchaser of the property as tangible personal property in the regular course of business;

(b) Incorporation by the purchaser of the property in the course of regular business as an ingredient or component of real or personal property; or

(c) Consumption by the purchaser of the property in the production for sale of a new article of tangible personal property.

(16) "Taxable commercial activity" means commercial activity sourced to this state under ORS 317A.128, less any subtraction pursuant to ORS 317A.119.

(17)(a) "Taxpayer" means any person or unitary group required to register, file or pay tax under ORS 317A.100 to 317A.158.

(b) "Taxpayer" does not include excluded persons, except to the extent that a tax-exempt entity has unrelated business income as described in the Internal Revenue Code.

(18)(a) "Unitary business" means a business enterprise in which there exists directly or indirectly between the members or parts of the enterprise a sharing or exchange of value as demonstrated by:

(A) Centralized management or a common executive force;

(B) Centralized administrative services or functions resulting in economies of scale; or

(C) Flow of goods, capital resources or services demonstrating functional integration.

(b) "Unitary business" may include a business enterprise the activities of which:

(A) Are in the same general line of business, such as manufacturing, wholesaling or retailing;

or

(B) Constitute steps in a vertically integrated process, such as the steps involved in the production of natural resources, which might include exploration, mining, refining and marketing.

(19) "Unitary group" means a group of persons with more than 50 percent common ownership, either direct or indirect, that is engaged in business activities that constitute a unitary business.

(20) "Wholesaler" means a person primarily doing business by merchant distribution of tangible personal property to retailers or to other wholesalers.

**SECTION 21.** ORS 456.587 is amended to read:

456.587. (1) The Housing and Community Services Department Electricity Public Purpose Charge Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Housing and Community Services Department Electricity Public Purpose Charge Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Housing and Community Services Department to be used for purposes specified in ORS 757.612 (3)(b)(D).

(2) The Housing and Community Services Department Low-Income Electric Bill Payment Assistance Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Housing and Community Services Department Low-Income Electric Bill Payment Assistance Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Housing and Community Services Department for purposes described in [ORS 757.612 (7)] **section 15 of this 2021 Act.**

**SECTION 22.** ORS 757.365 is amended to read:

757.365. (1) The Public Utility Commission shall establish a pilot program for each electric company to demonstrate the use and effectiveness of volumetric incentive rates and payments for electricity or for the nonenergy attributes of electricity, or both, from solar photovoltaic energy systems that are permanently installed in this state by retail electricity consumers and that first become operational after the program begins. The cumulative nameplate capacity of the qualifying systems enrolled in all of the pilot programs may not exceed 27.5 megawatts of alternating current.

Qualifying systems enrolled in the pilot program may not have nameplate generating capacity greater than 500 kilowatts.

(2) The commission by rule shall adopt requirements for the pilot programs described in subsection (1) of this section. Each electric company shall file for commission approval tariff schedules for the pilot programs that conform to the requirements.

(3) The commission may establish incentive rates for the pilot programs to enable the development of the most efficient solar photovoltaic energy systems.

(4) A retail electricity consumer participating in a pilot program may receive payments based on electricity generated from solar photovoltaic energy system output for 15 years from the consumer's date of enrollment in the program, at rates or through a rate formula in a tariff schedule established at the time of enrollment, or at rates otherwise established at the time of enrollment. The consumer thereafter may receive payments based upon electricity generated from the qualifying system at a rate equal to the resource value.

(5) The commission may adjust the tariff schedule as needed for new pilot program participants for the purpose of meeting the goal established in subsection (1) of this section. Once a retail electricity consumer is enrolled in a program, the rates or rate formula for determining payments to the consumer may not be modified.

(6) The commission may adopt and adjust a percentage goal for capacity deployed by residential and small commercial qualifying systems based upon the costs of the energy generated, the feasibility of attaining the goal and other factors. For purposes of attaining the goal described in this subsection, the commission shall require 2.5 megawatts of alternating current from the cumulative nameplate capacity of qualifying systems to be generated by individual systems with a nameplate generating capacity between five and 100 kilowatts.

(7) The commission may establish total generator nameplate capacity limits for an electric company so that the rate impact of the pilot program for any customer class does not exceed 0.25 percent of the electric company's revenue requirement for the class in any year.

(8) Ownership of renewable energy certificates established under ORS 469A.130 that are associated with renewable energy generation under the pilot programs must be transferred to the electric company and may be used to comply with the renewable portfolio standard described in ORS 469A.052 or 469A.055.

(9) To the extent that rates paid under a pilot program exceed the resource value, qualifying systems participating in the pilot programs are not eligible for expenditures under ORS 757.612 (3)(b)(B) (**2019 Edition**) or tax credits under ORS 469B.100 to 469B.118 or 469B.130 to 469B.169.

(10) All prudently incurred costs associated with compliance with this section are recoverable in the rates of an electric company.

(11) The commission shall advise and assist the owners and operators of qualifying systems in identifying and using grants, incentive moneys, federal funding and other sources of noninvestment financial support for the construction and operation of qualifying systems.

(12) The pilot programs described in subsection (1) of this section close to new participants on the earlier of:

(a) March 31, 2016; or

(b) The date the cumulative nameplate capacity of solar photovoltaic energy systems that have been permanently installed by retail electricity consumers under the pilot programs equals 27.5 megawatts of alternating current.

(13) The commission shall submit a report to the Legislative Assembly by January 1 of each odd-numbered year. The report must evaluate the effectiveness of the pilot programs described in subsection (1) of this section compared to the effectiveness of expenditures under ORS 757.612 (3)(b)(B) (**2019 Edition**) or tax credits under ORS 469B.100 to 469B.118 or 469B.130 to 469B.169 for promoting the use of solar photovoltaic energy systems and reducing system costs. The report must also estimate the cost of the program to retail electricity consumers and the resource value of solar energy.

**SECTION 23.** ORS 757.247 is amended to read:

757.247. (1) The Public Utility Commission may authorize a public utility, upon application of the utility, to file and place into effect a tariff schedule establishing rates or charges for the cost of energy resource measures provided to an individual property owner or customer pursuant to an agreement entered into between the individual property owner or customer and the public utility. Energy resource measures provided under this section may include:

(a) The installation of renewable energy generation facilities on the property of property owners or the premises of customers;

(b) The implementation of energy conservation measures, including measures that are not cost-effective;

(c) The installation of equipment or devices or the implementation of measures that enable demand reduction, peak load reduction, improved integration of renewable energy generation or more effective utilization of energy resources;

(d) Loans for the purposes described in paragraphs (a) to (c) of this subsection; and

(e) Direct payments to third parties for the purposes described in paragraphs (a) to (c) of this subsection.

(2) Subject to the agreement entered into between the individual property owner or customer and the public utility, a tariff schedule placed into effect under this section may include provisions for:

(a) The payment of the rates or charges over a period of time;

(b) Except as provided in subsection (5) of this section, a reasonable rate of return on any investment made by the public utility;

(c) The application of any payment obligation to successive owners of the property to which the energy resource measure is attached or to successive customers located at the premises to which the energy resource measure is attached; and

(d) The application of the payment obligation to the current property owner or customer alone, secured by methods agreed to by the property owner or customer and the public utility.

(3) Application of a tariff schedule under this section is subject to approval by the commission.

(4) If a payment obligation applies to successive property owners or customers as described in subsection (2)(c) of this section, a public utility shall record a notice of the payment obligation in the records maintained by the county clerk under ORS 205.130. The commission may prescribe by rule other methods by which the public utility shall notify property owners or customers of such payment obligations.

(5) A public utility may use moneys obtained through a rate established under ORS 757.603 (2)(a) to provide a renewable energy generation facility to a property owner or customer under this section. A public utility may not charge interest to a property owner or customer for a renewable energy generation facility acquired with moneys obtained through a rate established under ORS 757.603 (2)(a).

(6) Agreements entered into and tariff schedules placed into effect under this section are not subject to ORS 470.500 to 470.710, **757.054** or 757.612 [or 757.689].

**SECTION 24.** ORS 757.617 is amended to read:

757.617. (1)(a) The Public Utility Commission and the State Department of Energy jointly shall select an independent nongovernmental entity to prepare a biennial report to the Legislative Assembly describing program spending and results for public purpose requirements undertaken pursuant to ORS 757.612. [The first report shall be due on January 1, 2003.]

(b) The commission and the department jointly shall select an independent nongovernmental entity to prepare a report to the Legislative Assembly describing proposed modifications to public purpose requirements undertaken pursuant to ORS 757.612. The report shall be due on January 1, 2007.]

(c) The commission and the department jointly shall select an independent nongovernmental entity to prepare a report to the Legislative Assembly recommending whether the public purpose funding requirements under ORS 757.612 should be renewed. The report shall be due on January 1, 2011.]

(2) The Housing and Community Services Department shall prepare a biennial report to the Legislative Assembly describing program spending and needs for low-income bill assistance. [*The first report shall be due on January 1, 2003.*]

#### **OPERATIVE DATE**

**SECTION 25.** (1) Sections 3, 4, 6 to 12, 14 and 15 of this 2021 Act, the amendments to statutes and session law by sections 1, 2, 5 and 18 to 24 of this 2021 Act and the repeal of ORS 757.689 by section 13 of this 2021 Act become operative on January 1, 2022.

(2) The Housing and Community Services Department, the Public Utility Commission and the State Department of Energy may take any action before the operative date specified in subsection (1) of this section that is necessary for the Housing and Community Services Department, the Public Utility Commission and the State Department of Energy to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the Housing and Community Services Department, the Public Utility Commission and the State Department of Energy by sections 3, 4, 6 to 12, 14 and 15 of this 2021 Act, the amendments to statutes and session law by sections 1, 2, 5 and 18 to 24 of this 2021 Act and the repeal of ORS 757.689 by section 13 of this 2021 Act.

**SECTION 26.** The amendments to ORS 757.612 by section 1 of this 2021 Act do not affect actions taken before the operative date specified in section 25 of this 2021 Act by a nongovernmental entity related to funds that are:

- (1) Collected through public purpose charges; and
- (2) Paid to the nongovernmental entity prior to the operative date specified in section 25 of this 2021 Act for investment in public purposes.

#### **EXPENDITURE LIMITATION**

**SECTION 27.** Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2, chapter \_\_\_\_\_, Oregon Laws 2021 (Enrolled House Bill 5011), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses for operations, from fees, moneys or other revenues, including Miscellaneous Receipts and federal funds from the United States Department of Housing and Urban Development for contract services, but excluding lottery funds and federal funds not described in section 2, chapter \_\_\_\_\_, Oregon Laws 2021 (Enrolled House Bill 5011), collected or received by the Housing and Community Services Department, is increased by \$9,751,584 for expenses related to the Energy Conservation Helping Oregonians program.

#### **CAPTIONS**

**SECTION 28.** The unit captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

#### **EFFECTIVE DATE**

**SECTION 29.** This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

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**Passed by House June 24, 2021**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate June 26, 2021**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2021

**Approved:**

.....M.,....., 2021

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2021

.....  
Shemia Fagan, Secretary of State