

Enrolled Senate Bill 66

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of State Treasurer Randall Edwards)

CHAPTER

AN ACT

Relating to administration of public funds; creating new provisions; amending ORS 291.002, 291.201, 426.506, 446.533, 456.579, 468B.455, 541.378 and 757.612; repealing ORS 291.230 and 291.280; appropriating money; and declaring an emergency.

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

SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 293.701 to 293.820.

SECTION 2. (1) Moneys in a fund established by law may not be discretely invested unless the law establishing the fund specifically indicates that the moneys may be invested. A provision in a law establishing a fund that requires interest earned by the fund to be retained by the fund is not, by itself, a specific indication that the moneys in the fund may be discretely invested.

(2) As used in this section, "discretely invested" means invested in something other than the state investment fund established under ORS 293.701 (2)(o).

SECTION 3. ORS 446.533 is amended to read:

446.533. There hereby is established [*in*] **separate and distinct from** the General Fund the Mobile Home Parks Account of the Housing and Community Services Department. Except as otherwise provided by law, all moneys appropriated or credited to the [*Housing and Community Services Department hereby*] **account** are appropriated continuously for and shall be used by the Director of the Housing and Community Services Department for the purpose of carrying out the duties and responsibilities imposed under ORS 105.138 and 446.515 to 446.547. Interest earned on the account shall be credited to the account.

SECTION 4. ORS 456.579 is amended to read:

456.579. (1) There is established [*in*] **separate and distinct from** the General Fund an account to be known as the Mobile Home Parks Purchase Account. Except as otherwise provided by law, all moneys appropriated or credited to the Mobile Home Parks Purchase Account are appropriated continuously for and shall be used by the Director of the Housing and Community Services Department for the purpose of carrying out the duties and responsibilities imposed upon the Housing and Community Services Department under ORS 90.100, 90.630, 90.760, 90.800 to 90.840, 308.905, 446.003 and 456.581 and this section. Interest earned on the account shall be credited to the account.

(2) Except for loans provided in ORS 90.840, the account described in subsection (1) of this section shall not be connected to or commingled in any way with the funds described in ORS 456.720.

(3) For the purpose of carrying out the provisions of ORS 90.100, 90.630, 90.760, 90.800 to 90.840, 308.905, 446.003 and 456.581 and this section, the Housing and Community Services Department may seek funds from sources other than that described in ORS 308.905 (1). Such funds shall be credited to the Mobile Home Parks Purchase Account.

SECTION 5. ORS 468B.455 is amended to read:

468B.455. (1) There is established an Oil Spillage Control Fund [*within*] **separate and distinct from** the General Fund. This account shall be a revolving fund, the interest of which [*accrues*] **shall be credited** to the Oil Spillage Control Fund.

(2) All penalties recovered under ORS 468B.450 (1) shall be paid into the Oil Spillage Control Fund. Such moneys are continuously appropriated to the Department of Environmental Quality for the advancement of costs incurred in carrying out cleanup activities and for the rehabilitation of affected fish and wildlife as provided under ORS 468B.060.

(3) With the approval of the Environmental Quality Commission, the moneys in the Oil Spillage Control Fund may be invested as provided by ORS 293.701 to 293.820, and earnings from such investment shall be credited to the fund.

(4) The Oil Spillage Control Fund shall not be used for any purpose other than that for which the fund was created.

SECTION 6. ORS 541.378 is amended to read:

541.378. (1) [*There is created in the General Fund of the State Treasury*] The Restoration and Protection Research Fund **is established separate and distinct from the General Fund**. Interest earned by the Restoration and Protection Research Fund shall be credited to the fund. Moneys credited to the fund are continuously appropriated to the Oregon Watershed Enhancement Board for the purpose of funding research and other activities related to the restoration and protection of native salmonid populations, watersheds, fish and wildlife habitats and water quality, including but not limited to research, monitoring, evaluation and assessment related to the Oregon Plan.

(2) All moneys received by the Oregon Watershed Enhancement Board from interest earned on the Restoration and Protection Subaccount of the Parks and Natural Resources Fund created under ORS 541.377, from the Watershed Improvement Operating Fund created under ORS 541.379 and from the Watershed Improvement Grant Fund created under ORS 541.397 shall be credited to the Restoration and Protection Research Fund. Moneys credited to the fund and not expended by the completion of a biennium shall remain in the fund.

SECTION 7. ORS 426.506 is amended to read:

426.506. (1) There is created in the State Treasury, separate and distinct from the General Fund, the Community Mental Health Housing Fund. All earnings on investments of moneys in the Community Mental Health Housing Fund shall accrue to the fund. Interest earned on moneys in the fund shall be credited to the fund. All moneys in the fund are continuously appropriated to the Department of Human Services to carry out the provisions of ORS 426.504.

(2) The Community Mental Health Housing Fund shall be administered by the department to provide housing for chronically mentally ill persons. As used in this subsection, "housing" may include acquisition, maintenance, repair, furnishings and equipment.

(3)(a) There is established within the Community Mental Health Housing Fund a Community Housing Trust Account. **With approval of the State Treasurer and upon request of the Director of Human Services, moneys in the account may be invested as provided in ORS 293.701 to 293.820.**

(b) Notwithstanding the provisions of ORS 270.150, the department shall deposit into the **Community Housing Trust** Account the proceeds, less costs to the state, received by the department from the sale of F. H. Dammasch State Hospital property under ORS 426.508. The department may expend, for the purposes set forth in ORS 426.504, any earnings credited to the account, including any interest earned on moneys deposited in the account, and up to five percent of the sale proceeds initially credited to the account by the Oregon Department of Administrative Services. At least 95 percent of the sale proceeds shall remain in the account in perpetuity. Proceeds deposited in the

account may not be commingled with proceeds from the sale of any surplus real property owned, operated or controlled by the Department of Human Services and used as a state training center.

~~[(b)]~~ (c) Interest earned on moneys in the Community Housing Trust Account may be expended in the following manner:

(A) Seventy percent of interest earned on deposits in the account shall be expended for community housing purposes; and

(B) Thirty percent of interest earned on deposits in the account shall be expended for institutional housing purposes.

~~[(c)]~~ (d) Interest earned on deposits in the **Community Housing Trust** Account shall not be used to support operating expenses of the department.

(4) The Community Mental Health Housing Fund shall consist of:

(a) Moneys appropriated to the fund by the Legislative Assembly;

(b) Sale proceeds and earnings from the account under subsection (3) of this section;

(c) Proceeds from the sale, transfer or lease of any surplus real property owned, operated or controlled by the department and used as community housing;

(d) Moneys reallocated from other areas of the department's budget;

(e) Interest and earnings credited to the fund; and

(f) Gifts of money or other property from any source, to be used for the purposes of developing housing for chronically mentally ill persons.

(5) The department shall adopt policies:

(a) To establish priorities for the use of moneys in the Community Mental Health Housing Fund for the sole purpose of developing housing for chronically mentally ill persons;

(b) To match public and private moneys available from other sources for developing housing for chronically mentally ill persons; and

(c) To administer the fund in a manner that will not exceed the State Treasury's maximum cost per transaction.

(6) The Department of Human Services shall collaborate with the Housing and Community Services Department to ensure the highest return and best value for community housing from the Community Mental Health Housing Fund.

(7) The Department of Human Services shall provide a report of revenues to and expenditures from the Community Mental Health Housing Fund as part of its budget submission to the Governor and Legislative Assembly under ORS chapter 291.

SECTION 8. (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 9. ORS 757.612 is amended to read:

757.612. (1) There is established an annual public purpose expenditure standard for electric companies to fund new cost-effective local energy conservation, new market transformation efforts, the above-market costs of new renewable energy resources and new low-income weatherization. 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 offers direct access to its retail electricity consumers, except residential electricity consumers, the electric company shall collect a public

purpose charge from all of the retail electricity consumers located within its service area for a period of 10 years. Except as provided in paragraph (b) of this subsection, the public purpose charge shall be equal to three percent of the total revenues collected by the electric company or electricity service supplier from its retail electricity consumers for electricity services, distribution, 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, beginning on March 1, 2002, the electric company whose territory 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.

(b) Subject to paragraph (e) of this subsection, funds collected by an electric company through public purpose charges shall be allocated as follows:

(A) Sixty-three percent for new cost-effective conservation and new market transformation.

(B) Nineteen percent for the above-market costs of new renewable energy resources.

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

(D) Five percent shall be transferred to the Housing and Community Services Department [*Revolving Account created under ORS 456.574*] **Electricity Public Purpose Charge Fund established by section 8 (1) of this 2007 Act** and used for the purpose of providing grants as described in ORS 458.625 (2). [*Moneys deposited in the account under this subparagraph are continuously appropriated to the Housing and Community Services Department for the purposes of ORS 458.625 (2). Interest on moneys deposited in the account under this subparagraph shall accrue to the account.*]

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

(d) The commission shall direct the manner in which public purpose charges are collected and spent by an electric company and may require an electric company to expend funds through competitive bids or other means designed to encourage competition, except that funds dedicated for low-income weatherization shall be directed to the Housing and Community Services Department as provided in subsection (7) of this section. The commission may also direct that funds collected by an electric company through public purpose charges 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, at least 80 percent of the funds allocated for conservation shall be spent within the service area of the electric company that collected the funds.

(e)(A) The first 10 percent of the funds collected annually by an electric company under subsection (2) of this section shall be distributed to education service districts, as described in ORS 334.010, that are located in the service territory of the electric company. The funds shall be distributed to individual education service districts according to the weighted average daily membership (ADMw) of the component school districts of the education service 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 education service districts that are only partially located in the service territory of the electric company.

(B) An education service district that receives funds under this paragraph shall use the funds first to pay for energy audits for school districts located within the education service district. An education service district may not expend additional funds received under this paragraph on a school district facility until an energy audit has been completed for that school district. To the extent practicable, an education service district shall coordinate with the State Department of Energy and incorporate federal funding in complying with this paragraph. Following completion of an

energy audit for an individual school district, the education service district may expend funds received under this paragraph to implement the energy audit. Once an energy audit has been conducted and completely implemented for each school district within the education service district, the education service district may expend funds received under this paragraph for any of the following purposes:

(i) Conducting 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) Weatherization and upgrading the energy efficiency of school district facilities.

(iii) Energy conservation education programs.

(iv) Purchasing electricity from environmentally focused sources and investing in renewable energy resources.

(f) The commission may establish a different public purpose charge than the public purpose charge otherwise described in subsection (2) of this section for an individual retail electricity consumer or any class of retail electricity consumers located within the service area of an electric company, provided that a retail electricity consumer with a load greater than one average megawatt is not required to pay a public purpose charge in excess of three percent of its total cost of electricity services.

(g) The commission shall remove from the rates of each electric company any costs for public purposes described in subsection (1) of this section that are included in rates. A rate adjustment under this paragraph shall be effective on the date that the electric company begins collecting public purpose charges.

(4) An electric company that satisfies its obligations under this section shall have no further obligation to invest in conservation, new market transformation, new renewable energy resources or new low-income weatherization or to provide a commercial energy conservation services program and is not subject to ORS 469.631 to 469.645, 469.860 to 469.900 and 758.505 to 758.555.

(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 public purpose charges billed by an electric company for that site. The amount of the credit shall be equal to the total amount of qualifying expenditures for new energy conservation, not to exceed 68 percent of the annual public purpose charges, and the above-market costs of purchases of new renewable energy resources incurred by the retail electricity consumer, not to exceed 19 percent of the annual public purpose charges, less administration costs incurred under 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 energy conservation, new market transformation or the above-market costs of new renewable energy resources.

(b) To obtain a credit under 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 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 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 subsection 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 shall occur no more than once every two years.

(C) The retail electricity consumer shall pay the cost of the independent audits described in this subsection.

(6) 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 methodology by which such credits are accounted for and used. The rules 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, beginning on October 1, 2001, an electric company shall collect funds for low-income electric bill payment assistance in an amount determined under paragraph (b) of this subsection.

(b) The total amount collected for low-income electric bill payment assistance under this section shall be \$10 million per year. The commission shall determine each electric company's proportionate share of the total amount. The commission shall determine the amount to be collected from a retail electricity consumer, except that a retail electricity consumer is not required to pay more than \$500 per month per site for low-income electric bill payment assistance.

(c) Funds collected by the low-income electric bill payment assistance charge shall be paid into the Housing and Community Services Department [*Revolving Account created under ORS 456.574*] **Low-Income Electric Bill Payment Assistance Fund established by section 8 (2) of this 2007 Act.** Moneys deposited in the [*account*] **fund** under this paragraph [*are continuously appropriated to*] **shall be used by** the Housing and Community Services Department for the purpose of funding low-income electric bill payment assistance. [*Interest earned on moneys deposited in the account under this paragraph shall accrue to the account.*] The department's cost of administering this subsection shall be paid out of funds collected by the low-income electric bill payment assistance charge. Moneys deposited in the [*account*] **fund** under this paragraph shall be expended solely for low-income electric bill payment assistance. Funds collected from an electric company shall be expended in the service area of the electric company from which the funds are collected.

(d) The Housing and Community Services Department, in consultation with the federal Advisory Committee on Energy, shall determine the manner in which funds collected under this subsection will be allocated by the department to energy assistance program providers for the purpose of providing low-income bill payment and crisis assistance, including programs that effectively reduce service disconnections and related costs to retail electricity consumers and electric utilities. Priority assistance shall be directed to low-income electricity consumers who are in danger of having their electricity service disconnected.

(e) [*Notwithstanding ORS 293.140,*] Interest on moneys deposited in the Housing and Community Services Department [*Revolving Account under this subsection shall accrue to the account and*] **Low-Income Electric Bill Payment Assistance Fund established by section 8 (2) of this 2007 Act** may be used to provide heating 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 to provide reduced rates or other 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) 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.

SECTION 10. ORS 291.002 is amended to read:

291.002. *[Except as otherwise provided in ORS 291.201 and 291.230,]* As used in ORS 291.001 to 291.034, 291.201 to 291.222, 291.230 to 291.260, 291.261, 291.307 and 291.990, unless the context requires otherwise:

(1) “Classification of expenditures” means the major groups or categories of expenditures for the purpose of budget-making and accounting that are established as provided in ORS 291.206.

(2) **“Dedicated fund” means a fund in the State Treasury, or a separate account or fund in the General Fund in the State Treasury, that by law is dedicated, appropriated or set aside for a limited object or purpose, but “dedicated fund” does not include a revolving fund or a trust fund.**

~~[(2)]~~ (3) “Department” means the Oregon Department of Administrative Services.

~~[(3)]~~ (4) “Director” means the Director of the Oregon Department of Administrative Services.

~~[(4)]~~ *“Dedicated fund” means a fund in the State Treasury, or a separate account or fund in the General Fund in the State Treasury, that by law is dedicated, appropriated or set aside for a limited object or purpose; but “dedicated fund” does not include a revolving fund or a trust fund.*

(5) “Legislatively adopted budget” means the budget enacted by the Legislative Assembly during a regular session.

(6) “Legislatively approved budget” means the legislatively adopted budget as modified by the Emergency Board or by the Legislative Assembly meeting in special session.

(7) “Revolving fund” means a fund in the State Treasury, established by law, from which is paid the cost of goods or services furnished to or by a state agency, and which is replenished through charges made for such goods or services or through transfers from other accounts or funds; and specifically includes funds derived from receipts by the State Board of Higher Education of tuition, fees, dormitory earnings, student activity receipts and sales of products and services incident to education functions.

~~[(8)]~~ *“Trust fund” means a fund in the State Treasury in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes.*

~~[(9)]~~ (8) “State agency” or “agency” means every state officer, board, commission, department, institution, branch or agency of the state government, whose costs are paid wholly or in part from funds held in the State Treasury, except:

(a) The Legislative Assembly, the courts and their officers and committees;

(b) The Public Defense Services Commission; and

(c) The Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

~~[(10)]~~ (9) “State officer” means any elected or appointed state officer, including members of boards and commissions, except the members and officers of the Legislative Assembly, the courts, the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices and the members of the Public Defense Services Commission.

(10) **“Trust fund” means a fund in the State Treasury in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes.**

SECTION 11. ORS 291.201 is amended to read:

291.201. *[Notwithstanding ORS 291.002 (9) and (10), as used in ORS 291.201 to 291.222:]*

~~[(1)]~~ *“State agency” or “agency” means every state officer, board, commission, department, institution, branch or agency of the state government, whose costs are paid wholly or in part from funds held in the State Treasury, except:]*

[(a) *The Legislative Assembly, the courts and their officers and committees; and*

[(b) *The Public Defense Services Commission.*]

[(2) "State officer" means any elected or appointed state officer, including members of boards and commissions, except the members and officers of the Legislative Assembly, the courts and the members of the Public Defense Services Commission.]

[(3) As used in ORS 291.201 to 291.222, "tax expenditure" means any law of the federal government or this state that exempts, in whole or in part, certain persons, income, goods, services or property from the impact of established taxes, including but not limited to tax deductions, tax exclusions, tax subtractions, tax exemptions, tax deferrals, preferential tax rates and tax credits.

SECTION 12. ORS 291.230 and 291.280 are repealed.

SECTION 13. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect July 1, 2007.

Passed by Senate March 19, 2007

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Secretary of Senate

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President of Senate

Passed by House May 10, 2007

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Speaker of House

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State