A-Engrossed
House Bill 3274

Ordered by the House April 16
Including House Amendments dated April 16

Sponsored by Representative BONHAM, Senator BENTZ, Representatives HELM, HELT, Senator ROBLAN (at the request of Oregon Water Resources Congress)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

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

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

Allows renewable energy certificates issued at any time for electricity generated by certified low-impact hydroelectric facility to be banked and carried forward indefinitely.

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

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

[*Declares jurisdiction of Public Utility Commission over certain matters related to qualifying facilities.*]

A BILL FOR AN ACT

Relating to renewable energy; creating new provisions; and amending ORS 469A.025, 469A.075, 469A.140, 469A.210, 756.185, 758.515 and 758.525.

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

SMALL-SCALE RENEWABLE ENERGY STANDARD

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

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

(a) [*community-based renewable energy projects*] **Small-scale renewable energy facilities**, including but not limited to marine renewable energy resources that are either developed in accordance with the Territorial Sea Plan adopted pursuant to ORS 196.471 or located on structures adjacent to the coastal shorelands, are an essential element of this state's energy future[.]**;**

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

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

(d) A diverse portfolio of electricity generation facilities that includes small-scale

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

renewable energy facilities helps reduce the need to construct transmission lines to supply electricity to retail electricity consumers from a single large-scale electricity generation facility;

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

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

(g) There are substantial existing small-scale renewable energy facilities that have the potential to continue to produce renewable energy well into the future;

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

(i) Small-scale renewable low-impact hydroelectric facilities can improve:

(A) Ecological flow regimes that support healthy habitats;

(B) Water quality that supports fish and wildlife resources and human uses;

(C) Safe, timely and effective downstream and upstream fish passage;

(D) Protection, mitigation and enhancement of the soils, vegetation and ecosystem functions of a watershed;

(E) Protection of threatened and endangered species;

(F) Protection from impacts on cultural and historic resources; and

(G) Recreation access; and

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

(2) For purposes related to the findings in subsection (1) of this section, by the year 2025, at least eight percent of the [*aggregate electrical capacity of all electric companies*] **electricity sold in this state by each electric company** that [*make*] **makes** sales of electricity to 25,000 or more retail electricity consumers in this state must be composed of electricity generated by one or both of the following sources:

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

(b) Facilities that generate electricity using biomass **and** that also generate thermal energy for a secondary purpose.

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

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

(5) Beginning on the effective date of this 2019 Act and until the year 2025, and as necessary to comply with the requirements of subsection (2) of this section, an electric company subject to subsection (2) of this section shall make best efforts to continually increase the

annual percentage of electricity sold in this state by the electric company that is generated by sources described in subsection (2)(a) and (b) of this section.

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

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

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

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

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

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

(3) An implementation plan for an electric company that is subject to ORS 469A.210 shall, in addition to meeting any other requirements for the content of the implementation plan, contain:

(a) Annual targets for the acquisition and use of electricity generated by small-scale renewable energy facilities; and

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

[*(3)*] **(4)** The commission shall acknowledge an implementation plan no later than six months after the implementation plan is filed with the commission. The commission may acknowledge the implementation plan subject to conditions specified by the commission.

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

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

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

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

(d) Providing for the evaluation of competitive bidding processes that allow for diverse ownership of renewable energy sources that generate qualifying electricity.

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

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

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

(a) Wind energy.

(b) Solar photovoltaic and solar thermal energy.

(c) Wave, tidal and ocean thermal energy.

(d) Geothermal energy.

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

(a) Organic human or animal waste;

(b) Spent pulping liquor;

(c) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and to reduce uncharacteristic stand replacing wildfire risk;

(d) Wood material from hardwood timber grown on land described in ORS 321.267 (3);

(e) Agricultural residues;

(f) Dedicated energy crops; and

(g) Landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters or municipal solid waste.

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

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

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

(b) The electricity is attributable to efficiency upgrades made to the facility on or after January 1, 1995.

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

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

(6)(a) Direct combustion of municipal solid waste in a generating facility located in this state may be used to comply with a renewable portfolio standard. The qualification of a municipal solid waste facility for use in compliance with a renewable portfolio standard has no effect on the qualification of the facility for a tax credit under ORS 469B.130 to 469B.169.

(b) The total amount of electricity generated in this state by direct combustion of municipal solid waste by generating facilities that became operational in this state on or after January 1, 1995, may not exceed nine average megawatts per year for the purpose of complying with a renewable portfolio standard.

(7) Electricity generated from hydrogen gas, including electricity generated by hydrogen power stations using anhydrous ammonia as a fuel source, may be used to comply with a renewable port-

folio standard if:

(a) The electricity is derived from:

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

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

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

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

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

SECTION 4. ORS 469A.140 is amended to read:

469A.140. (1) Renewable energy certificates may be traded, sold or otherwise transferred.

(2) Renewable energy certificates that are not used by a consumer-owned utility to comply with a renewable portfolio standard in a calendar year may be banked and carried forward indefinitely for the purpose of complying with a renewable portfolio standard in a subsequent year. For the purpose of a consumer-owned utility complying with a renewable portfolio standard in any calendar year, banked renewable energy certificates with the oldest issuance date must be used to comply with the renewable portfolio standard before banked renewable energy certificates with more recent issuance dates are used.

(3)(a) Renewable energy certificates issued on or before March 8, 2016, **or issued at any time for electricity generated from a certified low-impact hydroelectric facility described in ORS 469A.020 (4),** that are not used by an electric company or electricity service supplier to comply with a renewable portfolio standard in a calendar year may be banked and carried forward indefinitely for the purpose of complying with a renewable portfolio standard in a subsequent year.

(b) For qualifying electricity generated from a renewable energy source that becomes operational on or before March 8, 2016, or for qualifying electricity that is acquired under a contract, having a duration of less than 20 years, for the purchase of electricity generated from a renewable energy source that becomes operational between March 8, 2016, and December 31, 2022, renewable energy certificates issued for the qualifying electricity after March 8, 2016, that are not used by an electric company or an electricity service supplier to comply with a renewable portfolio standard in the calendar year in which the renewable energy certificates are issued may be banked and carried forward, for up to five compliance years immediately following the compliance year in which the renewable energy certificates are issued, for the purpose of complying with a renewable portfolio standard in one of those five compliance years.

(c) For qualifying electricity generated from a renewable energy source that becomes operational between March 8, 2016, and December 31, 2022, or for qualifying electricity that is acquired under a contract, having a duration of 20 years or more, for the purchase of electricity generated from a renewable energy source that becomes operational between March 8, 2016, and December 31, 2022, renewable energy certificates issued for the qualifying electricity during the five-year period after the date the renewable energy source becomes operational that are not used by an electric company or an electricity service supplier to comply with a renewable portfolio standard in the

calendar year in which the renewable energy certificates are issued may be banked and carried forward indefinitely for the purpose of complying with a renewable portfolio standard in a subsequent year.

(d) For qualifying electricity generated from a renewable energy source that becomes operational between March 8, 2016, and December 31, 2022, or for qualifying electricity that is acquired under a contract, having a duration of 20 years or more, for the purchase of electricity generated from a renewable energy source that becomes operational between March 8, 2016, and December 31, 2022, renewable energy certificates issued for the qualifying electricity more than five years after the renewable energy source becomes operational that are not used by an electric company or an electricity service supplier to comply with a renewable portfolio standard in the calendar year in which the renewable energy certificates are issued may be banked and carried forward, for up to five compliance years immediately following the compliance year in which the renewable energy certificates are issued, for the purpose of complying with a renewable portfolio standard in one of those five compliance years.

(e) For qualifying electricity generated from a renewable energy source that becomes operational after December 31, 2022, renewable energy certificates issued for the qualifying electricity that are not used by an electric company or an electricity service supplier to comply with a renewable portfolio standard in the calendar year in which the renewable energy certificates are issued may be banked and carried forward, for up to five compliance years immediately following the compliance year in which the renewable energy certificates are issued, for the purpose of complying with a renewable portfolio standard in one of those five compliance years.

(4) An electric utility or electricity service supplier is responsible for demonstrating that a renewable energy certificate used to comply with a renewable portfolio standard is derived from a renewable energy source and that the electric utility or electricity service supplier has not used, traded, sold or otherwise transferred the renewable energy certificate.

(5) A renewable energy certificate may be used by an electric utility or electricity service supplier to comply with both a federal renewable portfolio standard and a renewable portfolio standard established under ORS 469A.005 to 469A.210. An electric utility or electricity service supplier that uses a renewable energy certificate to comply with a renewable portfolio standard imposed by a state other than this state may not use the same renewable energy certificate to comply with a renewable portfolio standard established under ORS 469A.005 to 469A.210.

COGENERATION AND SMALL POWER PRODUCTION FACILITIES

SECTION 5. ORS 758.515 is amended to read:

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

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

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

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

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

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

[*(a)*] **(c)** Increase the marketability of electric energy produced by qualifying facilities located

throughout the state for the benefit of Oregon's [*citizens*] **residents**; and

[*(b)*] **(d)** Create a settled and uniform institutional climate for the qualifying facilities in Oregon.

SECTION 6. ORS 758.525 is amended to read:

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

(b) Prices contained in [*the*] schedules filed by public utilities [*shall*] **must** be reviewed and approved by the commission. **The public utility that files the schedule shall bear the burden of proving that the prices contained in the schedule are fair, just and reasonable. The commission shall hold a hearing on a schedule filed with the commission and shall give notice of the time and place of the hearing.**

(c) Schedules filed by public utilities that adjust avoided costs may not take effect until ninety days after the date on which the public utility files the schedule.

(2) An electric utility shall offer to purchase energy or energy and capacity whether delivered directly or indirectly from a qualifying facility. Except as provided in subsection [*(3)*] **(5)** of this section, the price [*for such a*] **of the** purchase [*shall*] **of energy or energy and capacity from a qualifying facility may** not be less than the utility's avoided costs. At the option of the qualifying facility, exercised before beginning delivery of the energy or energy and capacity, such prices may be based on:

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

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

(3)(a) If an electric utility makes an offer to purchase energy and capacity to a qualifying facility that, at the time of the offer, has been paid by the electric utility for energy and capacity for at least 15 years, the electric utility shall, as part of a contract to purchase the energy and capacity, provide the qualifying facility with the option of delivering the energy and capacity in exchange for an immediate payment of the projected fixed costs of capacity for the term of the contract that the electric utility would avoid by purchasing the output of the qualifying facility. Projected fixed costs of capacity for purposes of this subsection shall include but need not be limited to the capital, land, tax, salary and insurance costs of baseload, peaking, renewable generation and storage facilities.

(b) Paragraph (a) of this subsection may not be interpreted to prevent the commission from requiring an electric utility to, as part of any contract not described in paragraph (a) of this subsection to purchase energy and capacity, provide a qualifying facility with the option of delivering energy and capacity in exchange for an immediate payment of the projected fixed costs of capacity for the term of the contract that the electric utility would avoid by purchasing the output of the qualifying facility.

(4) If a public utility offers to purchase energy or energy and capacity that is delivered indirectly from a qualifying facility, the public utility shall, as part of a contract to purchase the energy or energy and capacity, provide the qualifying facility with the option of delivering the energy or energy and capacity in exchange for:

(a) Full avoided-cost prices for all energy or energy and capacity delivered to the public

utility during a calendar month that is less than or equal to the net electric power output of the qualifying facility during the same calendar month; and

(b) Short-term market prices, as established by the commission, for all energy or energy and capacity delivered to the public utility during a calendar month that is greater than the net electric power output of the qualifying facility during the same calendar month.

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

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

(b) For purposes of this subsection:

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

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

(i) The energy storage devices are charged with energy solely from the qualifying facility with which the energy storage devices are associated; and

(ii) The qualifying facility meets the requirements of the Federal Energy Regulatory Commission for qualifying facilities.

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

(A) Reasonably demonstrating an ability to meet the same contribution to the public utility's peak capacity as the qualifying facilities that utilize generation technology characterized as firm, baseload or nonvariable; or

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

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

SECTION 7. ORS 756.185 is amended to read:

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

(b) If the party seeking damages alleges and proves that the wrong or omission **as described in paragraph (a) of this subsection** was the result of gross negligence or willful misconduct, the

public utility is liable to the person injured [*thereby*] **by the wrong or omission** in treble the amount of damages sustained in consequence of the violation.

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

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

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

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

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

(2) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (1) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

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

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

MISCELLANEOUS

SECTION 8. The amendments to ORS 758.525 by section 6 of this 2019 Act apply to contracts entered into on and after the effective date of this 2019 Act.

SECTION 9. The unit captions used in this 2019 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 2019 Act.