

# House Bill 3221

Sponsored by Representatives HELM, OWENS, Senator HANSELL; Representative WILLIAMS, Senator DEMBROW, FINDLEY

## SUMMARY

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

Establishes Oregon Renewable Options Program.  
Becomes operative January 1, 2023.  
Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

2 Relating to renewable electricity; and prescribing an effective date.

3 Whereas Oregon's state, local and tribal governments, local service districts, residents and  
4 businesses want to achieve clean energy goals while keeping electricity rates affordable, creating  
5 and sustaining energy-related jobs, investing in equitable economic development, promoting commu-  
6 nity resilience and supporting a healthy environment; and

7 Whereas Oregon's state, local and tribal governments and local service districts want to main-  
8 tain and build upon their long-standing relationships with investor-owned electric utilities; and

9 Whereas expanding renewable energy production, including both small, meaning 20 megawatts  
10 or less, and large renewable energy projects, creates opportunities for economic growth and com-  
11 munity benefits in Oregon; and

12 Whereas Oregon's state, local and tribal governments and local service districts support oppor-  
13 tunities to generate and purchase affordable electricity from renewable energy projects; and


14 Whereas Oregon's state, local and tribal governments and local service districts desire access  
15 to a transparent and accountable program that enables participating entities, in partnership with  
16 their community stakeholders, to envision and solicit a locally appropriate, low-cost power mix that  
17 can include up to 100 percent renewable electricity from small renewable energy projects; and

18 Whereas small renewable energy projects can provide a unique variety of local economic, envi-  
19 ronmental and resiliency benefits; now, therefore,

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

21 **SECTION 1. Sections 2 to 6 of this 2021 Act are added to and made a part of ORS chapter**  
22 **757.**

23 **SECTION 2. As used in sections 2 to 6 of this 2021 Act:**

24 (1) **"Community energy resilience" means the ability of a community to continue to pro-**  
25 **vide electricity in order to power services from critical sectors both during and after a**  
26 **magnitude 9.0 Cascadia subduction zone seismic event or other extreme natural event such**  
27 **as a wildfire, flood or heat wave.** 

28 (2) **"Critical sectors" includes:**

29 (a) **Emergency operations centers, hospitals, police stations, fire stations and emergency**  
30 **shelters; and**

**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.

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1 (b) Buildings that are necessary for the provision of basic services to communities as  
2 they begin to restore functions and return to normal life after an extreme natural event,  
3 such as schools, housing, certain retail stores, and banks.

4 (3) "Energy project scoring criteria" means the factors of importance that are deter-  
5 mined by one or more participating communities to be the factors that must be used in pri-  
6 oritizing the scoping and sourcing of renewable energy projects under an ORO Community  
7 Program application.

8 (4) "Independent evaluator" means an independent, third-party organization identified  
9 and contracted with by the Public Utility Commission to conduct an independent evaluation  
10 of an ORO Community Program proposal based on the applicable energy project scoring cri-  
11 teria.

12 (5) "Large renewable energy project" means a renewable energy project with a generating  
13 capacity of more than 20 megawatts.

14 (6) "Local government" has the meaning given that term in ORS 174.116.

15 (7) "Local service district" has the meaning given that term in ORS 174.116.

16 (8) "Oregon Renewable Options Program" means the statewide voluntary renewable  
17 electricity program established under sections 2 to 6 of this 2021 Act.

18 (9) "ORO Community Program" means a program under the Oregon Renewable Options  
19 Program that is overseen by the commission as further described under section 3 of this 2021  
20 Act.

21 (10) "Participating community" means a local government, local service district or tribal  
22 government whose residents or businesses are served by a qualified utility.

23 (11) "Participating customer" means a person that:

24 (a) Is a customer of a qualified utility located within the boundary of a local government,  
25 local service district or tribal government in which an ORO Community Program has been  
26 approved by the commission; and

27 (b) Has not exercised the right to decline to participate in the ORO Community Program  
28 pursuant to section 4 of this 2021 Act.

29 (12) "Public Purpose Fund Administrator" has the meaning given that term in ORS  
30 470.050.

31 (13) "Qualified utility" means an electric company as that term is defined in ORS 757.600.

32 (14) "Renewable energy" means electricity generated utilizing the types of energy de-  
33 scribed in ORS 469A.025.

34 (15) "Small renewable energy project" means a renewable energy project with a generat-  
35 ing capacity of 20 megawatts or less.

36 (16) "Tribal government" means the governing body of a federally recognized Indian tribe  
37 in Oregon or the governing body of an Oregon Indian tribe as defined in ORS 294.805.

38 **SECTION 3.** (1) The Public Utility Commission shall implement an Oregon Renewable  
39 Options Program for providing local governments, local service districts and tribal govern-  
40 ments with opportunities, through approved ORO Community Programs, to have a greater  
41 choice over the renewable energy that powers and increases the resilience of their commu-  
42 nities.

43 (2) The Oregon Renewable Options Program shall set forth a process for the develop-  
44 ment, approval and implementation of an ORO Community Program. The Oregon Renewable  
45 Options Program shall allow for:

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1 (a) One or more participating communities to submit, to the commission and the quali-  
2 fied utility that provides electricity in the service territory within which the participating  
3 community is located, an **ORO Community Program** application for renewable energy to be  
4 supplied to the participating community through renewable energy projects;

5 (b) Review of the application by the qualified utility and development, in coordination  
6 with the **Public Purpose Fund Administrator** and subject to review and comment by the  
7 participating community, of an **ORO Community Program** proposal that is responsive to an  
8 application; and

9 (c) Approval by the commission of the **ORO Community Program** proposal and oversight  
10 by the commission of implementation by the qualified utility of the **ORO Community Pro-**  
11 **gram.**

12 (3)(a) An **ORO Community Program** application must:

13 (A) Specify the cumulative generating capacity requested to be supplied by small  
14 renewable energy projects and large renewable energy projects through an **ORO Community**  
15 **Program;**

16 (B) Specify the date by which the renewable energy shall first begin to be supplied;

17 (C) Specify the energy project scoring criteria that must be used by the qualified utility  
18 and the **Public Purpose Fund Administrator** to select small renewable energy projects and  
19 large renewable energy projects to include in a proposal responsive to the application under  
20 subsection (2)(a) of this section, which may include but need not be limited to criteria related  
21 to:

22 (i) Electricity pricing;

23 (ii) Community energy resilience principles;

24 (iii) Individual renewable energy project size;

25 (iv) Job creation; or

26 (v) Environmental benefits;

27 (D) Include a report on how the participating communities incorporated the feedback  
28 solicited under paragraph (b) of this subsection in the application; and

29 (E) Include a record of the final vote of the governing body of each participating com-  
30 munity on the decision to submit the application.

31 (b) In developing an application, the participating communities engaged in the develop-  
32 ment must utilize a public engagement process, as further specified by the commission by  
33 rule, that includes explicit solicitation of feedback from, and that addresses the needs of,  
34 participating customers, especially participating customers that are disadvantaged, climate-  
35 vulnerable or energy burdened.

36 (c) **The Public Purpose Fund Administrator** shall provide facilitation services, resilience  
37 planning and other technical assistance as requested by participating communities in the  
38 development of applications for **ORO Community Programs.**

39 (4)(a) A qualified utility may propose to meet the requirements of an application through  
40 supplying electricity from any combination of one or more small renewable energy projects  
41 and one or more large renewable energy projects, subject to paragraph (b) of this subsection.

42 (b)(A) The cumulative generating capacity of all small renewable energy projects included  
43 in a proposal developed under this subsection must, at a minimum, be the lesser of:

44 (i) Five megawatts; or

45 (ii) Five percent of the cumulative generating capacity specified under subsection

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1 (3)(a)(A) of this section.

2 (B) The cumulative generating capacity of all large renewable energy projects included  
3 in a proposal developed under this subsection may not exceed 95 percent of the cumulative  
4 generating capacity specified under subsection (3)(a)(A) of this section.

5 (c) In developing a proposal in response to an application for an **ORO Community pro-**  
6 **gram**, a qualified utility shall engage the **Public Purpose Fund Administrator** to be primarily  
7 responsible for soliciting small renewable energy projects on the qualified utility's behalf for  
8 inclusion in the proposal. The **qualified utility** shall be primarily responsible for soliciting  
9 large renewable energy projects for inclusion in the proposal.

10 (5)(a) The commission shall contract with an independent evaluator to evaluate a pro-  
11 posal submitted by a qualified utility in response to an application for an **ORO Community**  
12 **Program**. The independent evaluator shall prepare a report that, at a minimum, details:

13 (A) Whether the proposal is responsive to, and meets, the requirements and energy  
14 project scoring criteria set forth in the application;

15 (B) The costs of and proposed rates for the renewable energy projects included in the  
16 proposal as compared to the costs of and rates for comparable recently purchased energy  
17 or energy and capacity by the qualified utility; and

18 (C) Any additional benefits to the community, including but not limited to resiliency  
19 benefits, that may be provided by the renewable energy projects included in the proposal.

20 (b) In authorizing an **ORO Community Program** as set forth in a proposal by a qualified  
21 utility, the commission shall consider information contained in the application submitted  
22 under subsection (2)(a) of this section and the report prepared under paragraph (a) of this  
23 subsection. Tariff schedules and rates allowed pursuant to this subsection may allow a re-  
24 turn of and a return on an investment made by a qualified utility and shall be recovered in  
25 a manner specified by the commission.

26 **SECTION 4.** (1) A qualified utility implementing an **ORO Community Program** shall:

27 (a) Include in the billing statements provided to participating customers information on  
28 the costs of participation in the **ORO Community Program**; and

29 (b) Provide written notice to participating customers of any change in rate for partic-  
30 ipation in the **ORO Community Program**.

31 (2)(a) A qualified utility may automatically enroll all eligible customers within a partic-  
32 ipating community in an **ORO Community Program**. The qualified utility shall provide eligible  
33 customers an opportunity to decline being enrolled as a participating customer. The qualified  
34 utility may not assess a fee or penalty against an eligible customer that declines to participate  
35 in the program within an initial opt-out period as determined by the **Public Utility Commis-**  
36 **sion**.

37 (b) The qualified utility shall provide notice of the **automatic enrollment** and the oppor-  
38 tunity to opt out to eligible customers:

39 (A) No less than twice during the 60-day period prior to the date that eligible customers  
40 will be automatically enrolled as participating customers; and

41 (B) Separately from the customer's monthly billing.

42 (c) Notice required under paragraph (b) of this subsection must:

43 (A) Inform the eligible customer that they are to be automatically enrolled in an **ORO**  
44 **Community Program** operated by the qualified utility and that the customer may decline  
45 enrollment;

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1 (B) Inform the eligible customer of the projected rates and terms of participation in the  
2 **ORO Community Program;**

3 (C) Provide an estimated comparison between the rates described in subparagraph (B)  
4 of this paragraph and the current rates paid by the eligible customer;

5 (D) Provide a mechanism for the eligible customer to decline being enrolled as a partic-  
6 ipating customer within an initial opt-out period, as set forth by the commission by rule,  
7 which may take the form of a self-addressed return postcard or other simply and readily  
8 understood mechanism; and

9 (E) Include any other information required by the commission.

10 (3) An eligible customer that previously declined to participate in the **ORO Community**  
11 **Program** under subsection (2) of this section may become a participating customer as allowed  
12 by the commission by rule and by giving notice to the qualified utility in the manner required  
13 by the commission.

14 (4) A person shall be provided notice and an opportunity to decline participation in the  
15 **ORO Community Program** in a manner determined by the commission and consistent with  
16 subsection (2) of this section if the person:

17 (a) First begins receiving electricity service from the qualified utility within the partic-  
18 ipating community served by an **ORO Community Program** after the date of implementation  
19 of the program; or

20 (b) The area in which the person is located was outside the participating community on  
21 the date of implementation of the **ORO Community Program**, but after the implementation  
22 date the area becomes annexed into the boundaries of the participating community.

23 (5)(a) If a participating customer is located in an area that becomes annexed into the  
24 boundaries of a municipal electric utility organized under ORS chapter 225 or a people's  
25 utility district organized under ORS chapter 261:

26 (A) The participating customer may continue to be served by the qualified utility under  
27 the **ORO Community Program** pursuant to an agreement between the qualified utility and  
28 the annexing municipal electric utility or people's utility district; or

29 (B) If no agreement under subparagraph (A) of this paragraph is entered into, the an-  
30 nexing municipal electric utility or people's utility district shall pay an applicable termination  
31 charge as determined by the commission for each participating customer that will no longer  
32 be served by the **ORO Community Program**.

33 (b)(A) Nothing in this subsection authorizes or may be interpreted to authorize a mu-  
34 nicipal electric utility organized under ORS chapter 225 or a people's utility district organized  
35 under ORS chapter 261 to acquire the service territory of another electric utility as that  
36 term is defined in ORS 757.600 without the consent of the electric utility from which service  
37 territory was acquired.

38 (B) The provisions of this subsection do not authorize the acquisition by a municipal  
39 electric utility organized under ORS chapter 225 of service territory of a people's utility dis-  
40 trict organized under ORS chapter 261.

41 (6) A participating customer that declines to continue to participate in the **ORO Com-**  
42 **munity Program** after the initial opt-out period has tolled may be subject to a termination  
43 charge, as determined by the commission, which may include the cost of renewable energy  
44 resources acquired or constructed for the **ORO Community Program** that are not being uti-  
45 lized by participating customers as necessary to prevent shifting costs to other customers

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1 of the qualified utility.

2 **SECTION 5.** (1) Upon its own motion or at the request of a qualified utility, the Public  
3 Utility Commission may open an investigation to determine whether a qualified utility's  
4 compliance with one or more of the requirements of an **ORO Community Program** authorized  
5 pursuant to sections 2 to 6 of this 2021 Act is likely to result in conflicts with or compro-  
6 mises to the qualified utility's obligation to comply with the mandatory and enforceable re-  
7 liability standards of the North American Electric Reliability Corporation, or compromises  
8 to the integrity of the qualified utility's electrical system. A qualified utility making a re-  
9 quest under this subsection must submit an application to the commission that includes:

10 (a) An explanation of the reliability or integrity issue and how a temporary exemption  
11 from complying with one or more of the requirements of the **ORO Community Program** will  
12 avoid the reliability or integrity issue; and

13 (b) A plan to achieve full compliance with the requirements of the **ORO Community**  
14 **Program.**

15 (2) In applying for a temporary exemption under this section, a qualified utility has the  
16 burden of demonstrating that compliance with one or more of the requirements of the **ORO**  
17 **Community Program** is likely to result in:

18 (a) Conflicts with or compromises to the qualified utility's obligation to comply with the  
19 mandatory and enforceable reliability standards of the North American Electric Reliability  
20 Corporation; or

21 (b) Compromises to the integrity of the qualified utility's electrical system.

22 (3) If the commission determines under this section that compliance with one or more  
23 of the requirements of the **ORO Community Program** is likely to result in conflicts with or  
24 compromises to a qualified utility's obligation to comply with the mandatory and enforceable  
25 reliability standards of the North American Electric Reliability Corporation, or compromises  
26 to the integrity of the qualified utility's electrical system, the commission shall issue an or-  
27 der:

28 (a) Notwithstanding the terms of the **ORO Community Program**, temporarily exempting  
29 the qualified utility from one or more of the requirements of the program for an amount of  
30 time sufficient to allow the qualified utility to achieve full compliance with the requirements  
31 of the program;

32 (b) Directing the qualified utility to file a progress report on achieving full compliance  
33 with the requirements of the **ORO Community Program** within six months after issuing the  
34 order, or within an amount of time determined to be reasonable by the commission; and

35 (c) Directing the qualified utility to take specific actions to achieve full compliance with  
36 the requirements of the **ORO Community Program.**

37 (4) A qualified utility may request an extension of a temporary exemption granted under  
38 this section.

39 (5) This section does not permanently relieve a qualified utility of its obligation to comply  
40 with the requirements of an **ORO Community Program.**

41 **SECTION 6.** (1) The **Public Utility Commission** shall adopt rules necessary to carry out  
42 the requirements of sections 2 to 6 of this 2021 Act.

43 (2) Rules adopted under this section must include provisions setting forth:

44 (a) The required number of public stakeholder meetings necessary for the public en-  
45 gagement process required by section 3 (3)(b) of this 2021 Act.

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1 (b) Competitive solicitation processes and any other required processes or rules for the  
2 acquisition of renewable energy resources to meet the energy requirements set forth in an  
3 application filed by one or more participating communities under section 3 of this 2021 Act,  
4 including:

5 (A) Processes and requirements for solicitation of renewable energy projects; and

6 (B) Processes necessary to enable new, long-term electricity sales contracts with exist-  
7 ing, small renewable energy resources or large renewable energy resources to fulfill the en-  
8 ergy requirements set forth in the application.

9 (c) A process for determining electricity rates for participating customers under an **ORO**  
10 **Community Program** that:

11 (A) Results in negligible shifting of costs or benefits to other customers of the qualified  
12 utility;

13 (B) Includes an assessment of the costs related to all aspects of administering the **ORO**  
14 **Community Program** for the commission, the qualified utility and the Public Purpose Fund  
15 Administrator and an assessment of how the costs may be recovered for those entities as  
16 part of the rate structure;

17 (C) Considers and addresses the needs of energy-burdened customers;

18 (D) Includes any required processes for cost recovery by a qualified utility for the ac-  
19 quisition of new renewable energy resources under the **ORO Community Program**; and

20 (E) Includes processes for qualified utilities to make rate adjustment filings as necessary.

21 (d) Notice and comment processes for **ORO Community Program** applications and pro-  
22 posals under section 3 of this 2021 Act.

23 (e) Timelines applicable to the application, proposal and approval processes under section  
24 3 of this 2021 Act.

25 (f) A process for identifying and hiring an **independent evaluator** as required under sec-  
26 tion 3 (5) of this 2021 Act.

27 (g) A process for review and approval of **ORO Community Programs** under section 3 (2)  
28 of this 2021 Act.

29 (h) Terms and conditions of agreements necessary for implementation of an **ORO Com-**  
30 **munity Program.**

31 (i) Any other requirements determined by the commission to be necessary to protect the  
32 public interest and to implement sections 2 to 6 of this 2021 Act.

33 (3) Rulemaking by the commission under this section shall be conducted pursuant to an  
34 open public process that ensures meaningful participation by local governments, local service  
35 districts and tribal governments.

36 **SECTION 7.** (1) Sections 2 to 6 of this 2021 Act become operative on January 1, 2023.

37 (2) The **Public Utility Commission** may adopt rules, issue orders or take any actions be-  
38 fore the operative date specified in subsection (1) of this section that are necessary to enable  
39 the commission, on and after the operative date specified in subsection (1) of this section,  
40 to carry out the provisions of sections 2 to 6 of this 2021 Act.

41 **SECTION 8.** This 2021 Act takes effect on the 91st day after the date on which the 2021  
42 regular session of the Eighty-first Legislative Assembly adjourns sine die.