

(To Resolve Conflicts)

**C-Engrossed
Senate Bill 1149**

Ordered by the House June 29
Including Senate Amendments dated April 13 and House Amendments
dated June 22 and June 29 to resolve conflicts

Sponsored by COMMITTEE ON PUBLIC AFFAIRS

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.

Provides Oregon commercial electricity consumers direct access to competitive electricity markets not later than October 1, 2001. Adopts transition policies for competitive electricity markets. Adopts retail electricity consumer protections. Permits certain electric utilities to elect exemption from direct access requirements of Act. Establishes public purpose expenditure standard funded by public purpose charge. Allows local governments to levy privilege tax for use of public streets, alleys or highways.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to restructuring of electric power industry; creating new provisions; amending ORS 192.502,
3 221.450, 225.270, 225.450, 225.460, 225.470, 225.490, 261.235, 261.240, 261.245, 261.255, 757.005 and
4 757.259; appropriating money; and declaring an emergency.

5 Whereas the continued competitiveness of the state's economy requires that the Legislative
6 Assembly consider national trends toward electric deregulation; and

7 Whereas the divestiture or functional separation of electrical power generation from the dis-
8 tribution functions is the most effective means of stimulating competition, providing depth and
9 liquidity to the wholesale market and facilitating the transition to a fully competitive market by
10 alleviating horizontal and vertical monopoly market power and providing a more accurate estimation
11 and mitigation of stranded costs; and

12 Whereas price and service unbundling is the best way to identify the costs associated with
13 generation, transmission and distribution of electricity services and is essential to the development
14 of a competitive market; and

15 Whereas restructuring of the electricity industry must be crafted in a way that retains the
16 benefits of low-cost resources for consumers; and

17 Whereas all Oregon retail electricity consumers should be provided fair, non-discriminatory ac-
18 cess to competitive electricity options; and

19 Whereas retail electricity consumers that want and have the technical capability should be al-
20 lowed, either on their own or through aggregation, to take advantage of competitive electricity
21 markets as soon as is practicable; and

22 Whereas this state must adopt reasonable transition policies, including a portfolio access option
23 and public purpose funding, that lead to a competitive electricity market that is accessible to 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.

1 benefits all classes of electricity consumers; and

2 Whereas this state must adopt adequate electricity consumer protections; and

3 Whereas this state must allow municipalities, cooperatives and people’s utility districts to elect
4 to become exempt from the direct access requirements of this 1999 Act under certain conditions;
5 now, therefore,

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

7 **SECTION 1.** As used in sections 1 to 20 and 22 to 27 of this 1999 Act, unless the context
8 requires otherwise:

9 (1) **“Aggregate” means combining retail electricity consumers into a buying group for the**
10 **purchase of electricity and related services.**

11 (2) **“Ancillary services” means services necessary or incidental to the transmission and**
12 **delivery of electricity from generating facilities to retail electricity consumers, including but**
13 **not limited to scheduling, load shaping, reactive power, voltage control and energy balancing**
14 **services.**

15 (3) **“Commission” means the Public Utility Commission.**

16 (4) **“Consumer-owned utility” means a municipal electric utility, a people’s utility district**
17 **or an electric cooperative.**

18 (5) **“Default supplier” means an electricity service supplier or electric company that has**
19 **a legal obligation to provide electricity services to a consumer, as determined by the com-**
20 **mission.**

21 (6) **“Direct access” means the ability of a retail electricity consumer to purchase elec-**
22 **tricity and certain ancillary services, as determined by the commission for an electric com-**
23 **pany or the governing body of a consumer-owned utility, directly from an entity other than**
24 **the distribution utility.**

25 (7) **“Direct service industrial consumer” means an end user of electricity that obtains**
26 **electricity directly from the transmission grid and not through a distribution utility.**

27 (8) **“Distribution” means the delivery of electricity to retail electricity consumers**
28 **through a distribution system consisting of local area power poles, transformers, conductors,**
29 **meters, substations and other equipment.**

30 (9) **“Distribution utility” means an electric utility that owns and operates a distribution**
31 **system connecting the transmission grid to the retail electricity consumer.**

32 (10) **“Economic utility investment” means all electric company investments made prior**
33 **to the date the electric company offers direct access under sections 1 to 20 of this 1999 Act,**
34 **including plants and equipment and contractual or other legal obligations, properly dedicated**
35 **to generation or conservation, that were prudent at the time the obligations were assumed**
36 **but the full benefits of which are no longer available to consumers as a direct result of**
37 **sections 1 to 20 of this 1999 Act, absent transition credits. “Economic utility investment”**
38 **does not include costs or expenses disallowed by the commission in a prudence review or**
39 **other proceeding, to the extent of such disallowance, and does not include fines or penalties**
40 **authorized and imposed under state or federal law.**

41 (11) **“Electric company” means an entity engaged in the business of distributing elec-**
42 **tricity to retail electricity consumers in this state, but does not include a consumer-owned**
43 **utility.**

44 (12) **“Electric cooperative” means an electric cooperative corporation organized under**
45 **ORS chapter 62 or under the laws of another state if the service territory of the electric**

1 cooperative includes a portion of this state.

2 (13) "Electric utility" means an electric company or consumer-owned utility that is en-
3 gaged in the business of distributing electricity to retail electricity consumers in this state.

4 (14) "Electricity" means electric energy, measured in kilowatt-hours, or electric capacity,
5 measured in kilowatts, or both.

6 (15) "Electricity services" means electricity distribution, transmission, generation or
7 generation-related services.

8 (16) "Electricity service supplier" means a person or entity that offers to sell electricity
9 services available pursuant to direct access to more than one retail electricity consumer.
10 "Electricity service supplier" does not include an electric utility selling electricity to retail
11 electricity consumers in its own service territory.

12 (17) "Governing body" means the board of directors or the commissioners of an electric
13 cooperative or people's utility district, or the council or board of a city with respect to a
14 municipal electric utility.

15 (18) "Load" means the amount of electricity delivered to or required by a retail electricity
16 consumer at a specific point of delivery.

17 (19) "Low-income weatherization" means repairs, weatherization and installation of en-
18 ergy efficient appliances and fixtures for low-income residences for the purpose of enhancing
19 energy efficiency.

20 (20) "Municipal electric utility" means an electric distribution utility owned and operated
21 by or on behalf of a city.

22 (21) "New renewable energy resource" means a renewable energy resource project, or a
23 new addition to an existing renewable energy resource project, or the electricity produced
24 by the project, that is not in operation on the effective date of this 1999 Act. "New renewable
25 energy resource" does not include any portion of a renewable energy resource project under
26 contract to the Bonneville Power Administration on or before the effective date of this 1999
27 Act.

28 (22) "Office of Energy" means the Office of Energy created under ORS 469.030.

29 (23) "One average megawatt" means 8,760,000 kilowatt-hours of electricity per year.

30 (24) "People's utility district" has the meaning given that term in ORS 261.010.

31 (25) "Portfolio access" means the ability of a retail electricity consumer to choose from
32 a set of product and pricing options for electricity determined by the governing board of a
33 consumer-owned utility and may include product and pricing options offered by the utility
34 or by an electricity service supplier.

35 (26) "Power generation company" means a company engaged in the production and sale
36 of electricity to wholesale customers, including but not limited to independent power pro-
37 ducers, affiliated generation companies, municipal and state authorities, provided the com-
38 pany is not regulated by the commission.

39 (27) "Qualifying expenditures" means those expenditures for energy conservation meas-
40 ures that have a simple payback period of not less than one year and not more than 10 years,
41 and expenditures for the above-market costs of new renewable energy resources, provided
42 that the Office of Energy by rule may establish a limit on the maximum above-market cost
43 for renewable energy that is allowed as a credit.

44 (28) "Renewable energy resources" means:

45 (a) Electricity generation facilities fueled by wind, waste, solar or geothermal power or

1 by low-emission nontoxic biomass based on solid organic fuels from wood, forest and field
2 residues.

3 (b) Dedicated energy crops available on a renewable basis.

4 (c) Landfill gas and digester gas.

5 (d) Hydroelectric facilities located outside protected areas as defined by federal law in
6 effect on the effective date of this 1999 Act.

7 (29) "Residential electricity consumer" means an electricity consumer who resides at a
8 dwelling primarily used for residential purposes. "Residential electricity consumer" does not
9 include retail electricity consumers in a dwelling typically used for residency periods of less
10 than 30 days, including hotels, motels, camps, lodges and clubs. As used in this subsection,
11 "dwelling" includes but is not limited to single family dwellings, separately metered apart-
12 ments, adult foster homes, manufactured dwellings, recreational vehicles and floating homes.

13 (30) "Retail electricity consumer" means the end user of electricity for specific purposes
14 such as heating, lighting or operating equipment, and includes all end users of electricity
15 served through the distribution system of an electric utility on or after the effective date
16 of this 1999 Act, whether or not each end user purchases the electricity from the electric
17 utility.

18 (31) "Site" means a single contiguous area of land containing buildings or other struc-
19 tures that are separated by not more than 1,000 feet, or buildings and related structures that
20 are interconnected by facilities owned by a single retail electricity consumer and that are
21 served through a single electric meter.

22 (32) "Transition charge" means a charge or fee that recovers all or a portion of an une-
23 conomic utility investment.

24 (33) "Transition credit" means a credit that returns to consumers all or a portion of the
25 benefits from an economic utility investment.

26 (34) "Transmission facility" means the plant and equipment used to transmit electricity
27 in interstate commerce.

28 (35) "Undue market power" means the unfair or improper exercise of influence to in-
29 crease or decrease the availability or price of a service or product in a manner inconsistent
30 with competitive markets.

31 (36) "Uneconomic utility investment" means all investments made by an electric company
32 prior to the date the electric company offers direct access under sections 1 to 20 of this 1999
33 Act, including plants and equipment and contractual or other legal obligations, properly
34 dedicated to generation, conservation and workforce commitments, that were prudent at the
35 time the obligations were assumed but the full costs of which are no longer recoverable as
36 a direct result of sections 1 to 20 of this 1999 Act, absent transition charges. "Uneconomic
37 utility investment" does not include costs or expenses disallowed by the commission in a
38 prudence review or other proceeding, to the extent of such disallowance, and does not include
39 fines or penalties as authorized by state or federal law.

40 **SECTION 2.** (1) All retail electricity consumers of an electric company, other than resi-
41 dential electricity consumers, shall be allowed direct access not later than October 1, 2001.

42 (2) The Public Utility Commission shall report to the Legislative Assembly not later than
43 January 1, 2003, on whether residential electricity consumers would benefit from direct ac-
44 cess to electricity services. The report shall address, at a minimum, issues of market devel-
45 opment for residential and small-farm consumers and the impact of direct access on

1 residential and small-farm consumers' access to benefits from the federal Columbia River
2 power system.

3 (3) Residential electricity consumers shall be allowed to purchase electricity from among
4 a portfolio of rate options as described in section 4 of this 1999 Act, not later than October
5 1, 2001.

6 (4) Sections 1 to 20 and 22 to 29 and the amendments to ORS 192.502, 221.450, 225.270,
7 225.450, 225.460, 225.470, 225.490, 261.235, 261.240, 261.245, 261.255, 757.005 and 757.259 by
8 sections 21 and 30 to 41 of this 1999 Act do not apply to an electric company providing elec-
9 tricity services to fewer than 25,000 consumers in this state unless the electric company of-
10 fers direct access to any of its retail electricity consumers in this state or offers to sell
11 electricity services available under direct access to more than one retail electricity consumer
12 of another electric utility.

13 **SECTION 3.** (1) There is established an annual public purpose expenditure standard for
14 electric companies to fund new cost-effective local energy conservation, new market trans-
15 formation efforts, the above-market costs of new renewable energy resources, and new low-
16 income weatherization. The public purpose expenditure standard shall be funded by the public
17 purpose charge described in subsection (2) of this section.

18 (2)(a) Beginning on the date an electric company offers direct access to its retail elec-
19 tricity consumers, except residential electricity consumers, the electric company shall col-
20 lect a public purpose charge from all of the retail electricity consumers located within its
21 service area for a period of 10 years. Except as provided in paragraph (b) of this subsection,
22 the public purpose charge shall be equal to three percent of the total revenues collected by
23 the electric company or electricity service supplier from its retail electricity consumers for
24 electricity services, distribution, ancillary services, metering and billing, transition charges
25 and other types of costs included in electric rates on the effective date of this 1999 Act.

26 (b) For an aluminum plant that averages more than 100 average megawatts of electricity
27 use per year, beginning on October 1, 2001, the electric company whose territory abuts the
28 greatest percentage of the site of the aluminum plant shall collect from the aluminum com-
29 pany a public purpose charge equal to one percent of the total revenue from the sale of
30 electricity services to the aluminum plant from any source.

31 (3)(a) The Public Utility Commission shall establish rules implementing the provisions of
32 this section relating to electric companies.

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

35 (A) Sixty-three percent for new cost-effective conservation and new market transforma-
36 tion;

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

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

39 (D) Five percent shall be transferred to the Housing and Community Services Depart-
40 ment Revolving Account created under ORS 456.574 and used for the purpose of providing
41 grants as described in ORS 458.625 (2). Moneys deposited in the account under this subpara-
42 graph are continuously appropriated to the Housing and Community Services Department for
43 the purposes of ORS 458.625 (2). Interest on moneys deposited in the account under this
44 subparagraph shall accrue to the account.

45 (c) The costs of administering subsections (1) to (6) of this section for an electric com-

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

5 (d) The commission shall direct the manner in which public purpose charges are collected
6 and spent by an electric company and may require an electric company to expend funds
7 through competitive bids or other means designed to encourage competition, except that
8 funds dedicated for low-income weatherization shall be directed to the Housing and Commu-
9 nity Services Department as provided in subsection (7) of this section. The commission may
10 also direct that funds collected by an electric company through public purpose charges be
11 paid to a nongovernmental entity for investment in public purposes described in subsection
12 (1) of this section. Notwithstanding any other provision of this subsection, at least 80 percent
13 of the funds allocated for conservation shall be spent within the service area of the electric
14 company that collected the funds.

15 (e)(A) The first 10 percent of the funds collected annually by an electric company under
16 subsection (2) of this section shall be distributed to education service districts, as described
17 in ORS 334.010, that are located in the service territory of the electric company. The funds
18 shall be distributed to individual education service districts according to the weighted aver-
19 age daily membership (ADMw) of the education service district for the prior fiscal year as
20 calculated under ORS 327.013. The commission shall establish by rule a methodology for dis-
21 tributing a proportionate share of funds under this paragraph to education service districts
22 that are only partially located in the service territory of the electric company.

23 (B) An education service district that receives funds under this paragraph shall use the
24 funds first to pay for energy audits for school districts located within the education service
25 district. An education service district shall not expend additional funds received under this
26 paragraph on a school district facility until an energy audit has been completed for that
27 school district. To the extent practicable, an education service district shall coordinate with
28 the Office of Energy and incorporate federal funding in complying with this paragraph.
29 Following completion of an energy audit for an individual school district, the education ser-
30 vice district may expend funds received under this paragraph to implement the energy audit.
31 Once an energy audit has been conducted and completely implemented for each school dis-
32 trict within the education service district, the education service district may expend funds
33 received under this paragraph for any of the following purposes:

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

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

39 (iii) Energy conservation education programs.

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

42 (f) The commission may establish a different public purpose charge than the public pur-
43 pose charge otherwise described in subsection (2) of this section for an individual retail
44 electricity consumer or any class of retail electricity consumers located within the service
45 area of an electric company, provided that a retail electricity consumer with a load greater

1 than one average megawatt shall not be required to pay a public purpose charge in excess
2 of three percent of its total cost of electricity services.

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

7 (4) An electric company that satisfies its obligations under this section shall have no
8 further obligation to invest in conservation, new market transformation, new renewable en-
9 ergy resources or new low-income weatherization and is not subject to ORS 469.631 to 469.645
10 and 758.505 to 758.555.

11 (5)(a) A retail electricity consumer that uses more than one average megawatt of elec-
12 tricity at any site in the prior year shall receive a credit against public purpose charges billed
13 by an electric company for that site. The amount of the credit shall be equal to the total
14 amount of qualifying expenditures for new energy conservation, not to exceed 68 percent of
15 the annual public purpose charges, and the above-market costs of purchases of new
16 renewable energy resources incurred by the retail electricity consumer, not to exceed 19
17 percent of the annual public purpose charges, less administration costs incurred under this
18 subsection. The credit shall not exceed, on an annual basis, the lesser of:

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

20 (B) The portion of the public purpose charge billed to the retail electricity consumer that
21 is dedicated to new energy conservation, new market transformation or the above-market
22 costs of new renewable energy resources.

23 (b) To obtain a credit under this subsection, a retail electricity consumer shall file with
24 the Office of Energy a description of the proposed conservation project or new renewable
25 energy resource and a declaration that the retail electricity consumer plans to incur the
26 qualifying expenditure. The Office of Energy shall issue a notice of precertification within
27 30 days of receipt of the filing, if such filing is consistent with this subsection. The credit
28 may be taken after a retail electricity consumer provides a letter from a certified public
29 accountant to the Office of Energy verifying that the precertified qualifying expenditure has
30 been made.

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

33 (d)(A) A retail electricity consumer that uses more than one average megawatt of elec-
34 tricity at any site in the prior year may request that the Office of Energy hire an inde-
35 pendent auditor to assess the potential for conservation investments at the site. If the
36 independent auditor determines there is no available conservation measure at the site that
37 would have a simple payback of one to 10 years, the retail electricity consumer shall be re-
38 lieved of 54 percent of its payment obligation for public purpose charges related to the site.
39 If the independent auditor determines that there are potential conservation measures avail-
40 able at the site, the retail electricity consumer shall be entitled to a credit against public
41 purpose charges related to the site equal to 54 percent of the public purpose charges less the
42 estimated cost of available conservation measures.

43 (B) A retail electricity consumer shall be entitled each year to the credit described in this
44 subsection unless a subsequent independent audit determines that new conservation invest-
45 ment opportunities are available. The Office of Energy may require that a new independent

1 **audit be performed on the site to determine whether new conservation measures are avail-**
2 **able, provided that the independent audits shall occur no more than once every two years.**

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

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

10 **(7)(a) In addition to the public purpose charge provided under subsection (2) of this sec-**
11 **tion, beginning on the date direct access is offered under section 2 (1) of this 1999 Act, an**
12 **electric company shall collect funds for low-income electric bill payment assistance in an**
13 **amount determined under paragraph (b) of this subsection.**

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

20 **(c) Funds collected by the low-income electric bill payment assistance charge shall be**
21 **paid into the Housing and Community Services Department Revolving Account created under**
22 **ORS 456.574. Moneys deposited in the account under this paragraph are continuously ap-**
23 **propriated to the Housing and Community Services Department for the purpose of funding**
24 **low-income electric bill payment assistance. Interest earned on moneys deposited in the ac-**
25 **count under this paragraph shall accrue to the account. The department's cost of adminis-**
26 **tering this subsection shall be paid out of funds collected by the low-income electric bill**
27 **payment assistance charge. Moneys deposited in the account under this paragraph shall be**
28 **expended solely for low-income electric bill payment assistance. Funds collected from an**
29 **electric company shall be expended in the service area of the electric company from which**
30 **the funds are collected.**

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

38 **(e) Notwithstanding ORS 293.140, interest on moneys deposited in the Housing and Com-**
39 **munity Services Department Revolving Account under this subsection shall accrue to the**
40 **account and may be used to provide heating bill payment and crisis assistance to electricity**
41 **consumers whose primary source of heat is not electricity.**

42 **(f) Notwithstanding ORS 757.310, the commission may allow an electric company to pro-**
43 **vide reduced rates or other payment or crisis assistance or low-income program assistance**
44 **to a low-income household eligible for assistance under the federal Low Income Home Energy**
45 **Assistance Act of 1981, as amended and in effect on the effective date of this 1999 Act.**

1 **(8) In addition to all other charges provided in this section, for the period from January**
2 **1, 2000, to the date direct access is offered under section 2 (1) of this 1999 Act, an electric**
3 **company shall collect from its retail electricity consumers an electric bill payment assistance**
4 **charge. A retail electricity consumer shall not be required to pay more than \$500 per month**
5 **per site for low-income electric bill payment assistance under this subsection. The statewide**
6 **total amount collected under this subsection shall equal \$5 million per year, prorated for any**
7 **fraction of a year. The commission shall determine each electric company's proportionate**
8 **share of the statewide total amount. Moneys collected under this subsection shall be de-**
9 **posited in the Housing and Community Services Department Revolving Account created un-**
10 **der ORS 456.574 and expended for low-income electric bill payment assistance in the manner**
11 **provided in subsection (7)(d) of this section.**

12 **(9) For purposes of this section, "retail electricity consumers" includes any direct service**
13 **industrial consumer that purchases electricity without purchasing distribution services from**
14 **the electric utility.**

15 **SECTION 3a.** **(1)(a) The Public Utility Commission and the Office of Energy jointly shall**
16 **select an independent nongovernmental entity to prepare a biennial report to the Legislative**
17 **Assembly describing program spending and results for public purpose requirements under-**
18 **taken pursuant to section 3 of this 1999 Act. The first report shall be due on January 1, 2003.**

19 **(b) The commission and the Office of Energy jointly shall select an independent nongov-**
20 **ernmental entity to prepare a report to the Legislative Assembly describing proposed mod-**
21 **ifications to public purpose requirements undertaken pursuant to section 3 of this 1999 Act.**
22 **The report shall be due on January 1, 2007.**

23 **(c) The commission and the Office of Energy jointly shall select an independent nongov-**
24 **ernmental entity to prepare a report to the Legislative Assembly recommending whether the**
25 **public purpose funding requirements under section 3 of this 1999 Act should be renewed. The**
26 **report shall be due on January 1, 2011.**

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

30 **SECTION 4.** **(1) Not later than October 1, 2001, an electric company shall provide resi-**
31 **dential electricity consumers and small commercial electricity consumers, as defined by the**
32 **Public Utility Commission, that are connected to the electric company's distribution system**
33 **with a cost-of-service rate option. The commission may require, by order made following a**
34 **public hearing, an electric company to provide a cost-of-service rate option to other elec-**
35 **tricity consumers.**

36 **(2) Not later than October 1, 2001, each electric company shall provide each residential**
37 **electricity consumer that is connected to its distribution system a portfolio of rate options.**
38 **The portfolio shall include at least the following options:**

39 **(a) A rate that reflects significant new renewable energy resources; and**

40 **(b) A market-based rate.**

41 **(3)(a) The commission shall regulate the cost-of-service rate option under subsection (1)**
42 **of this section and the portfolio of rate options under subsection (2) of this section. The**
43 **commission shall reasonably ensure that the costs and risks of serving each option are re-**
44 **flected in the rates for each option.**

45 **(b) The commission may prohibit or otherwise limit the use of a cost-of-service rate by**

1 retail electricity consumers who have been served through direct access, and may limit
2 switching among portfolio options and the cost-of-service rate by residential electricity con-
3 sumers.

4 **SECTION 4a.** The Public Utility Commission shall establish the terms and conditions for
5 providing default electricity service for nonresidential electricity consumers in an emer-
6 gency. The commission also shall establish reasonable terms and conditions for providing
7 default service to a nonresidential electricity consumer in circumstances when the consumer
8 is receiving electricity services through direct access and elects instead to receive such
9 services through the default service. The terms and conditions for default service established
10 by the commission shall provide for viable competition among electricity service suppliers.

11 **SECTION 5. (1)** Not later than October 1, 2001, an electric company shall unbundle the
12 costs of electricity services into power generation, transmission, distribution and retail ser-
13 vices.

14 (2) Every electric company shall maintain separate accounting records for each compo-
15 nent of electricity service provided by the electric company to retail electricity consumers.
16 Accounts shall be maintained according to regulations issued by the Federal Energy Regu-
17 latory Commission.

18 (3) Unless required to provide a different accounting under federal requirements, each
19 electric company shall, to a reasonable level of detail, separately identify and account for its
20 costs of:

21 (a) Generation;

22 (b) Transmission services;

23 (c) Distribution services;

24 (d) Ancillary services;

25 (e) Consumer service charges levied on retail electricity consumers, including but not
26 limited to metering and billing;

27 (f) Investment in public purposes; and

28 (g) State and local taxes paid by retail electricity consumers.

29 (4) An electric company shall separately identify and account for the costs of any addi-
30 tional components as the Public Utility Commission may require.

31 **SECTION 6. (1)** The duties, functions and powers of the Public Utility Commission shall
32 include developing policies to eliminate barriers to the development of a competitive retail
33 market structure. The policies shall be designed to mitigate the vertical and horizontal
34 market power of incumbent electric companies, prohibit preferential treatment, or the ap-
35 pearance of such treatment, of generation or market affiliates and determine the electricity
36 services likely to be competitive. The commission may require an electric company acting
37 as an electricity service supplier do so through an affiliate.

38 (2) The commission may provide incentives for divestiture to unaffiliated persons of the
39 generation assets of an electric company, or the structural separation of such assets. The
40 commission shall ensure that divestiture does not deprive consumers of the benefit of the
41 utility's or the region's low-cost resources, independent of the power supplier.

42 (3) The commission shall establish by rule a code of conduct for electric companies and
43 their affiliates to protect against market abuses and anticompetitive practices. The code
44 shall, at a minimum:

45 (a) Require an electric company and any affiliate that shares the same name and logo to

1 disclose to all consumers the relationship between the company and affiliate and to clarify
2 that the affiliate is not the same as the electric company and that in order to receive service
3 from the company a consumer does not have to purchase the services of the affiliate;

4 (b) Prohibit preferential access by an electric company affiliate to confidential consumer
5 information;

6 (c) Prohibit cross-subsidization between competitive operations and regulated operations,
7 including the use of electric company personnel and other resources;

8 (d) Prohibit joint marketing activities and exclusive referral arrangements between an
9 electric company and its affiliates;

10 (e) Provide the commission with all necessary access to books and records;

11 (f) Require electric companies to make regular compliance filings; and

12 (g) Require fair treatment of all competitors by a distribution utility.

13 (4) An electric company shall provide the commission access to all books and records
14 necessary for the commission to monitor the electric company and its affiliate relationships.
15 The commission shall require an electric company biannually to file a report detailing com-
16 pliance with this subsection.

17 **SECTION 7.** Every electricity service supplier is authorized to use the distribution facil-
18 ities of an electric company on a nondiscriminatory basis after the retail electricity con-
19 sumers of the electricity service supplier are afforded direct access pursuant to section 2 of
20 this 1999 Act.

21 **SECTION 8.** The Public Utility Commission shall ensure that direct access programs of-
22 fered by electric companies meet the following conditions:

23 (1) The provision of direct access to some retail electricity consumers must not cause
24 the unwarranted shifting of costs to other retail electricity consumers of the electric com-
25 pany. The commission may, in establishing any rates and charges under sections 1 to 20 of
26 this 1999 Act, consider and mitigate the rate impact on consumers from the reduction or
27 elimination of subsidies in existing rate structures.

28 (2) The direct access, portfolio of rate options and cost-of-service rates may include
29 transition charges or transition credits that reasonably balance the interests of retail elec-
30 tricity consumers and utility investors. The commission may determine that full or partial
31 recovery of the costs of uneconomic utility investments, or full or partial pass-through of
32 the benefits of economic utility investments to retail electricity consumers, is in the public
33 interest.

34 (3) The commission shall allow recovery, through a transition charge, of any otherwise
35 unrecoverable costs arising from or related to an electric company's contractual or other
36 legal obligations to the Bonneville Power Administration under section 19 of this 1999 Act,
37 or arising from or related to a failure of the Bonneville Power Administration to meet its
38 contractual or other legal obligations to the electric company, from those classes of con-
39 sumers for which electric power was purchased from the Bonneville Power Administration.

40 (4) Notwithstanding ORS 757.355, the commission may allow a return on the unamortized
41 balance of an uneconomic utility investment or an economic utility investment that is in-
42 cluded in rates.

43 **SECTION 9.** (1) An electric company shall permit retail electricity consumers that are
44 eligible for direct access to voluntarily aggregate their electricity loads.

45 (2) A retail electricity consumer that is eligible for direct access may voluntarily aggre-

1 gate its electricity load with the electricity load of any other retail electricity consumer that
2 is eligible for direct access.

3 **SECTION 10.** To the extent permissible under federal law, the Public Utility Commission
4 shall ensure that an electric company that offers direct access:

5 (1) Provides electricity service suppliers and retail electricity consumers access to its
6 transmission facilities and distribution system comparable to that provided for its own use;
7 and

8 (2) Provides electricity service suppliers and retail electricity consumers timely access
9 to information about its transmission facilities and distribution system, metering and loads
10 comparable to that provided to its own nondistribution divisions, affiliates and related par-
11 ties.

12 **SECTION 11.** An electric utility that sells electricity, either directly or through a related
13 party, to a nonresidential electricity consumer of another electric utility in this state shall
14 permit any other electricity service supplier to sell electricity to nonresidential electricity
15 consumers of the electric utility.

16 **SECTION 12.** Upon receiving a complaint, or on its own motion, the Public Utility Com-
17 mission is authorized to investigate, as provided under ORS 756.515, whether any electric
18 company that is an electricity service supplier has exercised undue market power with re-
19 spect to the sale or distribution of electricity services. The commission may take such
20 action as authorized by law to mitigate an exercise of undue market power.

21 **SECTION 13.** Any claim that an electric company has failed to comply with sections 1 to
22 20 of this 1999 Act shall be filed as a complaint with the Public Utility Commission pursuant
23 to ORS 756.500. After reasonable notice to the electric company and exhausting all available
24 remedies before the commission, any person injured by an electric company's failure to
25 comply with any provision of sections 1 to 20 of this 1999 Act may file an action in the circuit
26 court for the county where the electric company has its principal business office in this state
27 for an order requiring compliance with sections 1 to 20 of this 1999 Act.

28 **SECTION 14.** (1)(a) A person or other entity shall not act as an electricity service sup-
29 plier unless the person or entity is certified by the Public Utility Commission. The commis-
30 sion, by rule, shall establish standards for certification of persons or other entities as
31 electricity service suppliers in this state. The rules shall, at a minimum, address:

32 (A) The ability of the person or entity to meet the person's or entity's obligation to
33 provide electricity services pursuant to direct access; and

34 (B) The ability of the person or entity to comply with applicable consumer protection
35 laws.

36 (b) The commission may require an electricity service supplier to provide a bond or other
37 security.

38 (c) The commission may establish a fee, not to exceed \$500, for initial certification and
39 annual recertification of electricity service suppliers.

40 (d) The commission, at any time, may revoke an electricity service supplier's certif-
41 ication for failure to comply with applicable statutes and rules.

42 (e) The commission may require an electricity service supplier to provide information
43 necessary to ensure compliance with section 3 of this 1999 Act. The commission shall ensure
44 the privacy of all information and the protection of any proprietary information provided.

45 (2) Every electric utility shall maintain the integrity of its transmission facilities and

1 **distribution system and provide safe, reliable service to all retail electricity consumers.**
2 **Nothing in sections 1 to 20 or 22 to 27 of this 1999 Act shall reduce or diminish the statutory**
3 **or contractual obligations of electric utilities to maintain the safety and reliability of their**
4 **transmission facilities and distribution system and other infrastructure and equipment used**
5 **to deliver electricity.**

6 **(3) The commission for electric companies, or the governing body for other electric util-**
7 **ities, shall adopt rules, ordinances, policies and service quality standards designed to main-**
8 **tain a reliable, safe and efficient distribution system. The commission shall regulate**
9 **electrical safety regarding generation, transmission, substation and distribution facilities for**
10 **electric utilities and other electrical system owners and operators as provided under ORS**
11 **757.035.**

12 **(4) Every bill to a direct access retail electricity consumer from an electricity service**
13 **supplier shall contain at least:**

14 **(a) The rate and amount due for each service or product that the retail electricity con-**
15 **sumer is purchasing and other price information necessary to facilitate direct access, as**
16 **determined by the commission;**

17 **(b) The rates and amounts of state and local taxes or fees, if any, imposed on the retail**
18 **electricity consumer;**

19 **(c) The amount of any public purpose charge or credit;**

20 **(d) The amount of any transition charge or transition credit; and**

21 **(e) Power source and environmental impact information necessary to ensure that all**
22 **consumers have useful, reliable and necessary information to exercise informed choice, as**
23 **determined by the commission.**

24 **(5)(a) A retail electricity consumer of an electric company shall receive, upon request, a**
25 **separate bill from every individual electricity service supplier that provides products or ser-**
26 **vices to the retail electricity consumer. If a retail electricity consumer of an electric com-**
27 **pany does not request separate bills, or a consolidated bill from an electricity service supplier**
28 **as provided in paragraph (c) of this subsection, the electric company shall consolidate the**
29 **bills for all electricity services into a single statement, and electricity service suppliers shall**
30 **provide to the electric company the information necessary to prepare a consolidated state-**
31 **ment.**

32 **(b) The requirement for bill consolidation by an electric company shall continue through**
33 **December 31, 2001, after which time the commission may waive the requirement if the waiver**
34 **results in effective billing procedures for retail electricity consumers.**

35 **(c) Upon the request of a retail electricity consumer of an electric company, an elec-**
36 **tricity service supplier shall consolidate the bills for all electricity services into a single**
37 **statement, and electric utilities and other electricity service suppliers shall provide to the**
38 **billing electricity service supplier any information necessary to prepare a consolidated**
39 **statement.**

40 **(d) For retail electricity consumers of an electric company, the commission shall adopt**
41 **by rule provisions relating to the failure of a consumer to make full payment on a consol-**
42 **idated bill. The rules shall address collection of payments, service disconnection and recon-**
43 **nection, and the allocation of costs associated with collection, disconnection and**
44 **reconnection. A distribution utility shall be solely responsible for actual disconnection and**
45 **reconnection.**

1 **SECTION 15.** According to the applicable provisions of ORS 183.310 to 183.550 and 756.060,
2 the Public Utility Commission shall adopt such rules as are necessary to implement sections
3 1 to 20 of this 1999 Act. Rules adopted by the commission shall address at least the following:

4 (1) Requirements and methodologies for each electric company to provide unbundled
5 rates and services pursuant to section 5 of this 1999 Act.

6 (2) Requirements for each electric company allowing aggregation of electricity loads
7 pursuant to section 9 of this 1999 Act, which may include aggregation of demand for other
8 services available under direct access.

9 (3) Requirements for consumer protection. Consumer protection rules adopted by the
10 commission that relate to electricity service suppliers shall be applicable throughout this
11 state and shall, at a minimum, contain provisions for the disclosure of price, power source
12 and environmental impact in contract offers and marketing information.

13 (4) Market valuation methodologies for determining the amount and recovery of the costs
14 of uneconomic utility investment and the amount of and credit for economic utility invest-
15 ment.

16 (5) Policies for the divestiture or structural separation of generating assets and power
17 supply contracts owned or controlled by electric companies, consistent with the provisions
18 of section 6 of this 1999 Act.

19 (6) Requirements for each electric company to offer a portfolio of rate options under
20 section 4 of this 1999 Act.

21 (7) The method of determining a default supplier for those consumers who are not eligible
22 to participate in a portfolio program under section 4 of this 1999 Act in a manner that pro-
23 vides for viable competition among electricity service suppliers and among power generation
24 companies. The commission may condition the use of a default service option by requiring
25 reasonable notice and commitment from a consumer who intends to use the default service
26 option in nonemergency situations.

27 (8) Requirements for market structure described in section 6 of this 1999 Act.

28 (9) Requirements for public purpose charges and credits under section 3 of this 1999 Act.

29 (10) Requirements for meters, metering services, billing and collection services, and
30 customer response functions.

31 **SECTION 15a.** Electric meter installation, testing and maintenance shall be performed
32 only by a distribution utility.

33 **SECTION 16.** The Public Utility Commission shall adopt final rules under section 15 of
34 this 1999 Act not later than January 1, 2001.

35 **SECTION 17.** Nothing in sections 1 to 20 of this 1999 Act shall diminish, or authorize
36 regulations that diminish, a city's authority to control the use of its rights of way and to
37 collect license fees, privilege taxes, rent or other charges for the use of the city's rights of
38 way.

39 **SECTION 18.** (1) Sections 2, 3 (1) to (7) and (9), 4, 6, 11 and 29 of this 1999 Act shall not
40 become operative until the Public Utility Commission determines by order, made following
41 notice and public comment, that implementation of sections 2 and 6 of this 1999 Act will not
42 have a material adverse impact on the ability of an electric company to access cost-based
43 power from the Bonneville Power Administration pursuant to the Pacific Northwest Electric
44 Power Planning and Conservation Act of 1980 (Public Law 96-501), on behalf of the company's
45 residential and small-farm consumers.

1 **(2) The commission shall make an initial determination under subsection (1) of this sec-**
2 **tion not later than May 1, 2001. If the commission determines that implementation of section**
3 **2 or 6 of this 1999 Act will have a material adverse impact on the ability of an electric com-**
4 **pany to access cost-based power from the Bonneville Power Administration on behalf of the**
5 **electric company's residential and small-farm consumers, or if the commission is unable to**
6 **make a determination, the commission may make second and subsequent determinations,**
7 **following notice and public comment, that implementation of sections 2 and 6 will not have**
8 **such adverse impact.**

9 **(3) If the commission is unable to make a determination under this section by January**
10 **1, 2003, the commission shall make a report to the Seventy-second Legislative Assembly de-**
11 **tailing the reasons the commission is unable to make a determination.**

12 **(4) In addition to subsections (1) to (3) of this section, sections 2, 3 (1) to (7) and (9), 4,**
13 **6, 11 and 29 of this 1999 Act shall not become operative until the commission:**

14 **(a) Has approved a rate or schedule of rates for an electric company that provides the**
15 **electric company the opportunity to recover all costs prudently incurred in the acquisition,**
16 **development, operation and maintenance of investments, systems and procedures, including**
17 **arrangements with third parties, necessary to comply with sections 1 to 20 and 29 of this 1999**
18 **Act, or authorizes the deferral of costs for later recovery in rates; and**

19 **(b) Following investigation and review of the electric company's investments, systems**
20 **and procedures, including arrangements with third parties, necessary to comply with**
21 **sections 1 to 20 and 29 of this 1999 Act, certifies that allowing sections 2, 3 (1) to (7) and (9),**
22 **4, 6, 11 and 29 of this 1999 Act to become operative will neither diminish the electric com-**
23 **pany's ability to comply with its statutory or contractual obligations to maintain the safety**
24 **and reliability of its transmission facilities and distribution system and other infrastructure**
25 **and equipment used to deliver electricity, nor impair its ability to attract capital for future**
26 **investments in such transmission facilities, distribution system or other infrastructure and**
27 **equipment.**

28 **SECTION 19.** **In order to preserve the benefits of federal low-cost power for residential**
29 **and small-farm consumers of electric utilities, the Public Utility Commission may require**
30 **an electric company to enter into contracts with the Bonneville Power Administration for**
31 **the purpose of securing such benefits. The contracts shall be subject to approval by the**
32 **commission. In reviewing a contract, the commission, at a minimum, shall consider:**

33 **(1) The short-term expected cost of electric power from the Bonneville Power Adminis-**
34 **tration compared to market-priced alternatives;**

35 **(2) The long-term benefit of retaining the rights to purchase electric power from the**
36 **Bonneville Power Administration at cost, compared to market-priced alternatives; and**

37 **(3) Other factors deemed relevant by the commission.**

38 **SECTION 20.** **The Public Utility Commission may require an electric company to make**
39 **any filings under ORS chapter 757 that the commission determines necessary to implement**
40 **sections 1 to 20 of this 1999 Act.**

41 **SECTION 21.** **ORS 757.005 is amended to read:**

42 **757.005. (1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection,**
43 **"public utility" means:**

44 **(A) Any corporation, company, individual, association of individuals, or its lessees, trustees or**
45 **receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this**

1 state for the production, transmission, delivery or furnishing of heat, light, water or power, directly
2 or indirectly to or for the public, whether or not such plant or equipment or part thereof is wholly
3 within any town or city.

4 (B) Any corporation, company, individual or association of individuals, which is party to an oral
5 or written agreement for the payment by a public utility, for service, managerial construction, en-
6 gineering or financing fees, and having an affiliated interest with the public utility.

7 (b) As used in this chapter, "public utility" does not include:

8 (A) Any plant owned or operated by a municipality.

9 (B) Any railroad, as defined in ORS 824.020, or any industrial concern by reason of the fact that
10 it furnishes, without profit to itself, heat, light, water or power to the inhabitants of any locality
11 where there is no municipal or public utility plant to furnish the same.

12 (C) Any corporation, company, individual or association of individuals providing heat, light or
13 power:

14 (i) From any energy resource to fewer than 20 customers, if it began providing service to a
15 customer prior to July 14, 1985;

16 (ii) From any energy resource to fewer than 20 residential customers so long as the corporation,
17 company, individual or association of individuals serves only residential customers;

18 (iii) From solar or wind resources to any number of customers; or

19 (iv) From biogas, waste heat or geothermal resources for nonelectric generation purposes to any
20 number of customers.

21 (D) A qualifying facility on account of sales made under the provisions of ORS 758.505 to
22 758.555.

23 (E) Any water utility serving less than 300 customers at an average annual residential rate of
24 \$18 per month or less, which provides adequate and nondiscriminatory service.

25 (F) Any person furnishing heat, but not delivering electricity or natural gas to its customers,
26 except:

27 (i) As provided in ORS 757.007 and 757.009; or

28 (ii) With respect to heat furnished in municipalities which on January 1, 1989, had a municipally
29 owned system that was furnishing steam or other thermal forms of heat to its customers.

30 (G) Notwithstanding subparagraph (F) of this paragraph, any corporation, company, partnership,
31 individual or association of individuals furnishing heat to a single thermal end user from an electric
32 generating facility, plant or equipment that is physically interconnected with the single thermal end
33 user.

34 **(H) An electricity service supplier, as defined in section 1 of this 1999 Act.**

35 (2) Nothing in subsection (1)(b)(C)(iv) of this section shall prohibit third party financing of ac-
36 quisition or development by a utility customer of energy resources to meet the heat, light or power
37 requirements of that customer.

38 **SECTION 22. The Legislative Assembly declares that it is the policy of the State of**
39 **Oregon regarding consumer-owned utilities to:**

40 **(1) Preserve and enhance the ability of community-based, consumer-owned utilities to**
41 **provide reliable electric power to their consumers;**

42 **(2) Recognize that communities served by consumer-owned utilities located in various**
43 **parts of the State of Oregon may differ in their needs and desires concerning the provision**
44 **of electricity and related products and services;**

45 **(3) Preserve and enhance the ability of consumer-owned utilities and their elected gov-**

1 **erning bodies to respond to their consumers' needs and desires;**

2 **(4) Retain local control over consumer-owned utilities that provide or distribute elec-**
3 **tricity to retail electricity consumers;**

4 **(5) Preserve, clarify and, as provided herein, enhance the rights and authorities of**
5 **consumer-owned utilities and their governing bodies; and**

6 **(6) Preserve the existing exclusive distribution rights of electric utilities as and to the**
7 **extent such rights exist under current law.**

8 **SECTION 23. (1) Nothing in sections 2 to 20 of this 1999 Act is intended to limit or re-**
9 **strict the rights and authority of a consumer-owned utility, or to subject a consumer-owned**
10 **utility to the regulatory authority of the Public Utility Commission not otherwise provided**
11 **by law. Sections 2 to 20 of this 1999 Act shall not apply to a consumer-owned utility.**

12 **(2) Notwithstanding subsection (1) of this section, a consumer-owned utility that sells**
13 **electricity, either directly or through a related party, to a nonresidential electricity con-**
14 **sumer of another electric utility in this state, shall permit any other electricity service**
15 **supplier to sell electricity to the consumer-owned utility's nonresidential electricity con-**
16 **sumers whose electricity use, measured in average megawatts per year, is equal to or**
17 **greater than the use of the nonresidential electricity consumer of the other electric utility.**
18 **Such consumer-owned utility shall be subject to section 14 (1) to (4) of this 1999 Act and rules**
19 **adopted thereunder.**

20 **SECTION 24. The governing body of a consumer-owned utility is authorized to determine**
21 **whether and under what terms and conditions it will offer its retail electricity consumers**
22 **direct access, portfolio access or other forms of access to electric service suppliers. In**
23 **making such determination, the governing body of a consumer-owned utility shall consider**
24 **such factors as it deems appropriate. A consumer-owned utility shall have sole authority to**
25 **determine:**

26 **(1) The quality and nature of electric service, including but not limited to different**
27 **product and pricing options, which shall be made available to its retail electricity consumers.**

28 **(2) The extent to which products and services will be unbundled and the rates, tariffs,**
29 **terms and conditions on which they may be offered.**

30 **(3) Whether one or more pilot programs for direct access, portfolio access or other forms**
31 **of access to alternative suppliers will be offered.**

32 **(4) Notwithstanding section 1 (10) and (36) of this 1999 Act, what constitutes an economic**
33 **or uneconomic utility investment, the value of such investments and, in the case of uneco-**
34 **nomical utility investments, the manner and means of mitigating such investments.**

35 **(5) Whether and on what basis a transition charge will be adopted, assessed and collected**
36 **from a retail electricity consumer located within the utility's service territory, including but**
37 **not limited to a nonbypassable distribution charge, the amount and period of recovery for**
38 **the charges, the allocation of the charges among retail electricity consumers located within**
39 **the utility's service territory and the method of collecting such charges including but not**
40 **limited to whether to impose a nonbypassable distribution charge.**

41 **(6) The manner of collecting stranded distribution charges, systems benefit charges,**
42 **franchise fees, taxes and payments made in lieu of taxes from retail electricity consumers**
43 **located within the utility's service territory for electric power transactions using trans-**
44 **mission facilities, whether or not such transactions use distribution facilities. The governing**
45 **body may assign charges on the basis of usage, demand or any combination or method it**

1 finds appropriate. Charges need not be assigned to specific facilities.

2 (7) The collection from retail electricity consumers located within the utility's service
3 territory through rates, fees or charges, including the imposition of a nonbypassable dis-
4 tribution charge, in amounts sufficient to recover 100 percent of stranded costs imposed by,
5 or incurred pursuant to the purchase of cost-based electric power from, the Bonneville
6 Power Administration. Such stranded cost charges may include the difference in cost asso-
7 ciated with purchasing electric power from the Bonneville Power Administration and the cost
8 of purchasing a like and similar amount of electric power at market prices.

9 (8) The establishment of technical capability requirements, financial responsibility re-
10 quirements and other protections for retail electricity consumers located within the utility's
11 service territory and the consumer-owned utility in dealings with electric service suppliers.

12 (9) Access to or use of the utility's transmission facilities or distribution system by retail
13 electricity consumers or electric service suppliers.

14 (10) The utility's qualification standards for energy service suppliers in addition to any
15 certification standards established by the Public Utility Commission, provided that the qual-
16 ification standards are uniformly applied to electricity service providers in a
17 nondiscriminatory manner.

18 SECTION 25. (1) Nothing in sections 22 to 27 of this 1999 Act is intended to impair the
19 rights or obligations of any party to net billing agreements. Notwithstanding any other pro-
20 vision of sections 1 to 20, 24 and 27 of this 1999 Act, and in the event a participating utility
21 is required to make payments pursuant to a net billing agreement, the governing body of a
22 participating utility may levy a rate, fee or charge, including a nonbypassable distribution
23 system access charge against retail electricity consumers located within the utility's service
24 territory, to meet its obligations.

25 (2) As used in this section:

26 (a) "EWEB" means the City of Eugene, Oregon, acting by and through the Eugene Water
27 and Electric Board.

28 (b) "Net billing agreements" means those certain agreements that provide for the pay-
29 ment, through net billing of costs of certain nuclear power projects, including the payment
30 of bonds, notes or other evidences of indebtedness issued by EWEB and by the supply sys-
31 tem, respectively, to pay such project costs entered into prior to the effective date of this
32 1999 Act:

33 (A) Between the administrator of the Bonneville Power Administration and EWEB;

34 (B) Among a participating utility, the administrator of the Bonneville Power Adminis-
35 tration and EWEB; or

36 (C) Among a participating utility, the administrator of the Bonneville Power Adminis-
37 tration and the supply system.

38 (c) "Participating utility" means a consumer-owned utility established by, or organized
39 and existing under, the Oregon Constitution and laws of the State of Oregon, and that is a
40 party to a net billing agreement.

41 (d) "Supply system" means the Washington Public Power Supply System, a municipal
42 corporation or joint power agency organized and existing under and pursuant to the laws of
43 the State of Washington.

44 SECTION 26. Notwithstanding the provisions of sections 1 to 20 of this 1999 Act, a
45 consumer-owned utility shall have exclusive distribution rights, to the extent such rights are

1 provided by law, and exclusive responsibility for the performance and oversight of its dis-
2 tribution system including the acquisition, construction, financing, operation and mainte-
3 nance of distribution facilities and metering, billing, collection and consumer response
4 functions relating to the distribution of electricity to retail electricity consumers located
5 within the utility's service territory. Nothing in this section shall diminish or enlarge the
6 rights of any person under ORS 758.400 to 758.475.

7 **SECTION 27.** (1) Beginning on the date a consumer-owned utility provides direct access
8 to any class of retail electric consumers, the consumer-owned utility shall collect from that
9 consumer class a nonbypassable public purpose charge for a period of 10 years. Except as
10 provided in subsection (8) of this section, the amount of the public purpose charge shall be
11 sufficient to produce revenue of not less than three percent of the total revenue collected
12 by the consumer-owned utility from its retail electricity consumers for electricity services,
13 distribution, ancillary services, metering and billing, transition charges and any other costs
14 included in rates as of the effective date of this 1999 Act, except that the consumer-owned
15 utility may exclude from the calculation of such costs any cost related to the public purposes
16 described in subsection (5) of this section. If a consumer-owned utility has fewer than 17
17 consumers per mile of distribution line, the amount of the public purpose charge shall be
18 sufficient to produce revenue not less than three percent of the total revenue from the sale
19 of electricity services in the utility's service area to the consumer class that is provided di-
20 rect access, or the utility's consumer class percentage share of state total electricity sales
21 multiplied by three percent of total statewide retail electric revenue, whichever is less.

22 (2) Except as provided in subsection (9) of this section, the governing body of a
23 consumer-owned utility shall determine the manner of collecting and expending funds for
24 public purposes required by law to be assessed against and paid by the retail electric con-
25 sumers of the utility. A determination by the governing body shall include:

- 26 (a) The manner for collecting public purpose charges;
- 27 (b) Public purpose programs upon which revenue from the charges may be expended; and
- 28 (c) The allocation of expenditures for each program.

29 (3) Beginning on the same date two years after the effective date of this 1999 Act, a
30 consumer-owned utility shall report annually to the Office of Energy created under ORS
31 469.030 on the public purpose charges paid to the utility by its retail electric consumers and
32 the public purposes on which the revenue was expended.

33 (4) A consumer-owned utility may comply with the public purpose requirements of this
34 section by participating in collaborative efforts with other consumer-owned utilities located
35 in this state.

36 (5) Funds assessed and paid by, and credits or other financial assistance issued or ex-
37 tended to, retail electric consumers for purposes of this section may, in the discretion of the
38 governing body of the consumer-owned utility, be expended to fund programs for energy
39 conservation, renewable resources or low-income energy services otherwise required by the
40 laws of this state, adopted by the governing body pursuant to the National Energy Conser-
41 vation Policy Act (Public Law 95-619, as amended November 10, 1981), or conducted by the
42 utility pursuant to agreement with the Bonneville Power Administration under the Pacific
43 Northwest Electric Power Planning and Conservation Act (Public Law 96-501). All such funds
44 expended, credits issued and incremental costs incurred in connection with the performance
45 of a consumer-owned utility's obligations under this section shall be credited toward the

1 utility's public purpose funding obligation under this section.

2 (6) A consumer-owned utility also may credit toward its funding obligations under this
3 section any incremental costs incurred by the utility for capital expenditures made to reduce
4 its distribution system energy losses, existing biomass gas and waste to energy systems,
5 existing hydroelectric generation projects using fish attraction water, for new energy con-
6 servation and renewable resource funding costs included in its wholesale power supplier's
7 charges and for electric power generated by renewable or cogeneration resources pursuant
8 to requirements of the Public Utilities Regulatory Policy Act of 1978 (Public Law 95-617), to
9 the extent that such costs exceed the average cost of the utility's other electric power re-
10 sources.

11 (7) A consumer-owned utility also may credit toward its public purpose funding obli-
12 gations under this section any costs incurred in complying with ORS 469.649 to 469.659.

13 (8) Beginning on October 1, 2001, a consumer-owned utility whose territory abuts the
14 greatest percentage of the site of an aluminum plant that averages more than 100 megawatts
15 of electricity use per year shall collect from the aluminum company a public purpose charge
16 equal to one percent of the total revenue from the sale of electricity services to the alumi-
17 num plant from any source.

18 (9)(a) A retail electricity consumer that uses more than one average megawatt of elec-
19 tricity at any site in the prior year shall receive a credit against public purpose charges billed
20 by a consumer-owned utility for that site. The amount of the credit shall be equal to the
21 total amount of qualifying expenditures for new energy conservation, not to exceed 68 per-
22 cent of the annual public purpose charges, and the above-market costs of purchases of new
23 renewable energy resources incurred by the retail electricity consumer, less administration
24 costs incurred under this subsection. The credit shall not exceed, on an annual basis, the
25 lesser of:

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

27 (B) The portion of the public purpose charge billed to the retail electricity consumer that
28 is dedicated to new energy conservation, new market transformation or the above-market
29 costs of new renewable resources.

30 (b) To obtain a credit under this subsection, a retail electricity consumer shall file with
31 the Office of Energy a description of the proposed conservation project, new market trans-
32 formation or new renewable energy resource and a declaration that the retail electricity
33 consumer plans to incur the qualifying expenditure. The Office of Energy shall issue a notice
34 of precertification within 30 days of receipt of the filing, if such filing is consistent with this
35 subsection. Notice shall be issued to the retail electricity consumer and the appropriate
36 consumer-owned utility. The credit may be taken after a retail electricity consumer provides
37 a letter from a certified public accountant to the Office of Energy verifying that the pre-
38 certified qualifying expenditure has been made.

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

41 (d)(A) A retail electricity consumer that uses more than one average megawatt of elec-
42 tricity at any site in the prior year may request that the Office of Energy hire an inde-
43 pendent auditor to assess the potential for conservation measures at the site. If the
44 independent auditor determines there is no available conservation measure at the site that
45 would have a simple payback of one to 10 years, the retail electricity consumer shall be re-

1 **lied of 54 percent of its payment obligation for public purpose charges related to the site.**
2 **If the auditor determines that there are potential conservation measures available at the**
3 **site, the retail electricity consumer shall be entitled to a credit against public purpose**
4 **charges related to the site equal to 54 percent of the public purpose charges less the esti-**
5 **mated cost of available conservation measures.**

6 **(B) A retail electricity consumer shall be entitled each year to the credit described in this**
7 **paragraph unless a subsequent audit determines that new conservation investment opportu-**
8 **nities are available. The Office of Energy may require that a new audit be performed on the**
9 **site to determine whether new conservation measures are available, provided that the audits**
10 **occur no more than once every two years.**

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

13 **(10) A retail electricity consumer with a load greater than one average megawatt shall**
14 **not be required to pay a public purpose charge in excess of three percent of the consumer's**
15 **total cost of electricity services unless the charge is established in an agreement between**
16 **the consumer and the consumer-owned utility.**

17 **(11) Beginning on the later of October 1, 2001, or the date direct access is offered under**
18 **section 2 (1) of this 1999 Act, a consumer-owned utility shall have in operation a bill assist-**
19 **ance program for households that qualify for federal low-income energy assistance in the**
20 **consumer-owned utility's service area. A consumer-owned utility shall report annually to the**
21 **Housing and Community Services Department detailing the utility's program and program**
22 **expenditures.**

23 **(12) A consumer-owned utility may require an electricity service supplier to provide in-**
24 **formation necessary to ensure compliance with this section. The consumer-owned utility**
25 **shall ensure the privacy and protection of any proprietary information provided.**

26 **SECTION 28. Nothing in sections 22 to 27 of this 1999 Act is intended to affect adminis-**
27 **tration and enforcement of ORS 758.400 to 758.475 or to diminish or enlarge the rights of any**
28 **person under ORS 758.400 to 758.475.**

29 **SECTION 29. (1) The city council or governing body of an incorporated city may levy and**
30 **collect from a distribution utility providing direct access to electricity services under section**
31 **2 (1) or 24 of this 1999 Act, except a municipal electric utility, operating for a period of 30**
32 **days within the city without a franchise from the city and actually using the streets, alleys**
33 **or highways in such city for other than travel, a privilege tax for the use of those public**
34 **streets, alleys or highways. The privilege tax shall be based on a volumetric rate times the**
35 **volume of electric energy in kilowatt hours delivered, transmitted or distributed to retail**
36 **electricity consumers within the city by the distribution utility, provided that the privilege**
37 **tax shall not be applied to electric energy generated by a retail electricity consumer's own**
38 **generating facilities or to electric energy delivered by the federal government. The**
39 **volumetric rate of the privilege tax for the distribution utility may vary by customer class.**

40 **(2) The privilege tax described in subsection (1) of this section shall be subject to the**
41 **following:**

42 **(a) The volumetric rate, in cents per kilowatt hour, for any customer class shall not ex-**
43 **ceed five percent of the 1999 gross revenue of an electric utility within the city for the cus-**
44 **tomers class divided by the amount of electric energy in kilowatt hours delivered to the**
45 **customer class in 1999.**

1 **(b) A city with a franchise fee or privilege tax in effect on July 1, 1999, that was less than**
2 **five percent shall not establish a volumetric rate for any customer class of the distribution**
3 **utility in an amount in excess of the city's 1999 franchise fee or privilege tax rate times the**
4 **1999 gross revenue of any electric utility within the city from the customer class divided by**
5 **the amount of electric energy in kilowatt hours delivered to the customer class in 1999, ex-**
6 **cept following a hearing with notice and opportunity for public comment.**

7 **(3) Subject to the limitations established in subsection (2) of this section, once a city has**
8 **established volumetric rates for the purpose of calculating the privilege tax under this sec-**
9 **tion, any subsequent change in the volumetric rates shall be applied on an equal percentage**
10 **basis to all customer classes.**

11 **(4)(a) The Public Utility Commission shall determine the manner in which a privilege tax**
12 **under this section is collected from the customers of an electric company. The privilege tax**
13 **shall be allocated across an electric company's customer classes in the same proportional**
14 **amounts as levied by the city against the electric company.**

15 **(b) The governing body of an electric cooperative or people's utility district shall deter-**
16 **mine the manner in which a privilege tax under this section is collected from the customers**
17 **of the electric cooperative or people's utility district. The governing body shall allocate the**
18 **privilege tax across customer classes in the same proportional amounts as levied by the city**
19 **against the electric cooperative or people's utility district.**

20 **SECTION 30.** ORS 221.450 is amended to read:

21 221.450. **Except as provided in section 29 of this 1999 Act,** the city council or other governing
22 body of every incorporated city may levy and collect from every electric cooperative, people's utility
23 district, privately owned public utility, telecommunications utility or heating company operating for
24 a period of 30 days within the city without a franchise from the city and actually using the streets,
25 alleys or highways, or all of them, in such city for other than travel on such streets or highways,
26 a privilege tax for the use of those public streets, alleys or highways, or all of them, in such city
27 in an amount not exceeding five percent of the gross revenues of the cooperative, utility, district
28 or company currently earned within the boundary of the city. However, the gross revenues earned
29 in interstate commerce or on the business of the United States Government shall be exempt from
30 the provisions of this section. The privilege tax authorized in this section shall be for each year, or
31 part of each year, such utility, cooperative, district or company operates without a franchise.

32 **SECTION 31.** ORS 757.259 is amended to read:

33 757.259. (1) In addition to powers otherwise vested in the Public Utility Commission, and subject
34 to the limitations contained in subsection (6) of this section, under amortization schedules set by the
35 commission, a rate or rate schedule may reflect the following:

36 (a) Amounts lawfully imposed retroactively by order of another governmental agency; or

37 (b) Amounts deferred under subsection (2) of this section.

38 (2) Upon application of a utility or ratepayer or upon the commission's own motion and after
39 public notice and opportunity for comment, the commission by order may authorize deferral of the
40 following amounts for later incorporation in rates:

41 (a) Amounts incurred by a utility resulting from changes in the wholesale price of natural gas
42 or electricity approved by the Federal Energy Regulatory Commission;

43 (b) Balances resulting from the administration of Section 5(c) of the Pacific Northwest Electric
44 Power Planning and Conservation Act of 1980;

45 (c) **Direct or indirect costs arising from any purchase made by a public utility from the**

1 **Bonneville Power Administration pursuant to section 19 of this 1999 Act, provided that such**
2 **costs shall be recovered only from residential and small-farm retail electricity consumers;**

3 [(c)] (d) Amounts accruing under a plan for the protection of short-term earnings under ORS
4 757.262 (2); or

5 [(d)] (e) Utility expenses or revenues, the recovery or refund of which the commission finds
6 should be deferred in order to minimize the frequency of rate changes or the fluctuation of rate
7 levels or to match appropriately the costs borne by and benefits received by ratepayers.

8 (3) The commission may authorize deferrals under subsection (2) of this section beginning with
9 the date of application, together with interest established by the commission. A deferral may be
10 authorized for a period not to exceed 12 months beginning on or after the date of application.
11 However, amounts deferred under subsection (2)(c) **and (d)** of this section are not subject to sub-
12 sections (4) and (6) of this section, but are subject to such limitations and requirements as the
13 commission may prescribe.

14 (4) Unless subject to an automatic adjustment clause under ORS 757.210 (1), amounts described
15 in this section shall be allowed in rates only to the extent authorized by the commission in a pro-
16 ceeding to change rates and upon review of the utility's earnings at the time of application to
17 amortize the deferral.

18 (5) Amounts that have accrued in deferred accounts with commission authorization before July
19 10, 1987, also may be reflected in rates. However, in order to continue to use such accounts the
20 public utility shall apply for authorization of the commission under subsection (2) of this section.

21 (6) In any one year, the overall average rate impact of the amortizations authorized under this
22 section shall not exceed three percent of the utility's gross revenues for the preceding calendar
23 year.

24 (7) The provisions of this section shall not apply to a telecommunications utility.

25 **SECTION 32.** ORS 225.270 is amended to read:

26 225.270. When any city which owns or operates a municipal electric power plant or system or
27 distributing system, has paid principal and interest to date on all indebtedness incurred in con-
28 nection therewith, and has created and accumulated an adequate depreciation and replacement re-
29 serve in the judgment of the officer having control of such plant or system, the city shall, for the
30 purpose of reducing general property taxes within such city, pay to itself not less than three percent
31 of the annual gross operating revenue of such plant or system, **or a volumetric charge based upon**
32 **the amounts of electricity delivered, transmitted or distributed to retail electricity consum-**
33 **ers regardless of the source. The volumetric charge shall not be less than the equivalent of**
34 **three percent of the gross operating revenues of the municipality utility in 1999. The city**
35 **shall adjust a volumetric charge to end users such that charges established for different**
36 **customer classes bear the same approximate relationship as the gross revenues per kilowatt**
37 **hour paid by the classes in 1999.**

38 **SECTION 33.** ORS 192.502 is amended to read:

39 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

40 (1) Communications within a public body or between public bodies of an advisory nature to the
41 extent that they cover other than purely factual materials and are preliminary to any final agency
42 determination of policy or action. This exemption shall not apply unless the public body shows that
43 in the particular instance the public interest in encouraging frank communication between officials
44 and employees of public bodies clearly outweighs the public interest in disclosure.

45 (2) Information of a personal nature such as but not limited to that kept in a personal, medical

1 or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy,
2 unless the public interest by clear and convincing evidence requires disclosure in the particular in-
3 stance. The party seeking disclosure shall have the burden of showing that public disclosure would
4 not constitute an unreasonable invasion of privacy.

5 (3)(a) Public body employee or volunteer addresses and telephone numbers contained in person-
6 nel records maintained by the public body that is the employer or the recipient of volunteer ser-
7 vices. This exemption does not apply:

8 (A) To such employees or volunteers if they are elected officials, except that a judge or district
9 attorney subject to election may seek to exempt the judge's or district attorney's address or tele-
10 phone number, or both, under the terms of ORS 192.445; or

11 (B) To such employees or volunteers to the extent that the party seeking disclosure shows by
12 clear and convincing evidence that the public interest requires disclosure in a particular instance.

13 (b) Nothing in this subsection exempting employee records from disclosure relieves a public
14 employer of any duty under ORS 243.650 to 243.782.

15 (4) Information submitted to a public body in confidence and not otherwise required by law to
16 be submitted, where such information should reasonably be considered confidential, the public body
17 has obliged itself in good faith not to disclose the information, and when the public interest would
18 suffer by the disclosure.

19 (5) Information or records of the Department of Corrections, including the State Board of Parole
20 and Post-Prison Supervision, to the extent that disclosure thereof would interfere with the rehabili-
21 tation of a person in custody of the department or substantially prejudice or prevent the carrying
22 out of the functions of the department, if the public interest in confidentiality clearly outweighs the
23 public interest in disclosure.

24 (6) Records, reports and other information received or compiled by the Director of the Depart-
25 ment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
26 otherwise required by law to be made public, to the extent that the interests of lending institutions,
27 their officers, employees and customers in preserving the confidentiality of such information out-
28 weighs the public interest in disclosure.

29 (7) Reports made to or filed with the court under ORS 137.077 or 137.530.

30 (8) Any public records or information the disclosure of which is prohibited by federal law or
31 regulations.

32 (9) Public records or information the disclosure of which is prohibited or restricted or otherwise
33 made confidential or privileged under Oregon law.

34 (10) Public records or information described in this section, furnished by the public body ori-
35 ginally compiling, preparing or receiving them to any other public officer or public body in con-
36 nection with performance of the duties of the recipient, if the considerations originally giving rise
37 to the confidential or exempt nature of the public records or information remain applicable.

38 (11) Records of the Energy Facility Siting Council concerning the review or approval of security
39 programs pursuant to ORS 469.530.

40 (12) Employee and retiree address, telephone number and other nonfinancial membership records
41 and employee financial records maintained by the Public Employees Retirement System pursuant to
42 ORS chapter 238 and ORS 238.410.

43 (13) Records submitted by private persons or businesses to the State Treasurer or the Oregon
44 Investment Council relating to proposed acquisition, exchange or liquidation of public investments
45 under ORS chapter 293 may be treated as exempt from disclosure when and only to the extent that

1 disclosure of such records reasonably may be expected to substantially limit the ability of the
2 Oregon Investment Council to effectively compete or negotiate for, solicit or conclude such trans-
3 actions. Records which relate to concluded transactions are not subject to this exemption.

4 (14) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the
5 Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as
6 exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

7 (15) Reports of unclaimed property filed by the holders of such property to the extent permitted
8 by ORS 98.352.

9 (16) The following records, communications and information submitted to the Oregon Economic
10 Development Commission, the Economic Development Department, the State Department of Agri-
11 culture, the Oregon Resource and Technology Development Corporation, the Port of Portland or
12 other ports, as defined in ORS 777.005, by applicants for loans or services described in ORS
13 285A.224:

14 (a) Personal financial statements.

15 (b) Financial statements of applicants.

16 (c) Customer lists.

17 (d) Information of an applicant pertaining to litigation to which the applicant is a party if the
18 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
19 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
20 concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery
21 or deposition statutes to a party to litigation or potential litigation.

22 (e) Production, sales and cost data.

23 (f) Marketing strategy information that relates to applicant's plan to address specific markets
24 and applicant's strategy regarding specific competitors.

25 (17) Records, reports or returns submitted by private concerns or enterprises required by law
26 to be submitted to or inspected by a governmental body to allow it to determine the amount of any
27 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such
28 information is in a form which would permit identification of the individual concern or enterprise.
29 Nothing in this subsection shall limit the use which can be made of such information for regulatory
30 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-
31 payer of the delinquency immediately by certified mail. However, in the event that the payment or
32 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the
33 public body shall disclose, upon the request of any person, the following information:

34 (a) The identity of the individual concern or enterprise that is delinquent over 60 days in the
35 payment or delivery of the taxes.

36 (b) The period for which the taxes are delinquent.

37 (c) The actual, or estimated, amount of the delinquency.

38 (18) All information supplied by a person under ORS 151.430 to 151.491 for the purpose of re-
39 questing court-appointed counsel, and all information supplied to the State Court Administrator from
40 whatever source for the purpose of verifying indigency of a person pursuant to ORS 151.430 to
41 151.491.

42 (19) Workers' compensation claim records of the Department of Consumer and Business Services,
43 except in accordance with rules adopted by the Director of the Department of Consumer and Busi-
44 ness Services, in any of the following circumstances:

45 (a) When necessary for insurers, self-insured employers and third party claim administrators to

1 process workers' compensation claims.

2 (b) When necessary for the director, other governmental agencies of this state or the United
3 States to carry out their duties, functions or powers.

4 (c) When the disclosure is made in such a manner that the disclosed information cannot be used
5 to identify any worker who is the subject of a claim.

6 (d) When a worker or the worker's representative requests review of the worker's claim record.

7 (20) Sensitive business records or financial or commercial information of the Oregon Health
8 Sciences University that is not customarily provided to business competitors.

9 (21) Records of the Oregon Health Sciences University regarding candidates for the position of
10 university president.

11 (22) The records of a library, including circulation records, showing use of specific library ma-
12 terial by a named person or consisting of the name of a library patron together with the address
13 or telephone number, or both, of the patron.

14 (23) The following records, communications and information submitted to the Housing and
15 Community Services Department by applicants for and recipients of loans, grants and tax credits:

16 (a) Personal and corporate financial statements and information, including tax returns.

17 (b) Credit reports.

18 (c) Project appraisals.

19 (d) Market studies and analyses.

20 (e) Articles of incorporation, partnership agreements and operating agreements.

21 (f) Commitment letters.

22 (g) Project pro forma statements.

23 (h) Project cost certifications and cost data.

24 (i) Audits.

25 (j) Project tenant correspondence requested to be confidential.

26 (k) Tenant files relating to certification.

27 (L) Housing assistance payment requests.

28 (24) Raster geographic information system (GIS) digital databases, provided by private forestland
29 owners or their representatives, voluntarily and in confidence to the State Forestry Department,
30 that is not otherwise required by law to be submitted.

31 **(25) Personally identifiable information about customers of a municipal electric utility**
32 **or a people's utility district. The utility or district may, however, release such information**
33 **to a third party if the customer consents in writing or electronically, or if the disclosure is**
34 **necessary to render utility or district services to the customer, or if the disclosure is re-**
35 **quired pursuant to a court order. The utility or district may charge as appropriate for the**
36 **costs of providing such information. The utility or district may make customer records**
37 **available to third party credit agencies on a regular basis in connection with the establish-**
38 **ment and management of customer accounts or in the event such accounts are delinquent.**

39 **(26) Sensitive business, financial or commercial information furnished to or developed by**
40 **a public body engaged in the business of providing electricity or electricity services is exempt**
41 **from disclosure if the information is directly related to a bid, proposal or negotiations for**
42 **the sale or purchase of electricity or electricity services and the disclosure of which would**
43 **competitively disadvantage the public body or its retail electricity consumers. This sub-**
44 **section does not apply to cost-of-service studies used in the development or review of gen-**
45 **erally applicable rate schedules.**

1 **SECTION 33a. If House Bill 3576 becomes law, section 33 of this 1999 Act (amending ORS**
2 **192.502) is repealed.**

3 **SECTION 33b. If House Bill 3218 becomes law and House Bill 3576 does not become law,**
4 **section 33 of this 1999 Act (amending ORS 192.502) is repealed and ORS 192.502, as amended**
5 **by section 3, chapter _____, Oregon Laws 1999 (Enrolled House Bill 3218), is amended to**
6 **read:**

7 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

8 (1) Communications within a public body or between public bodies of an advisory nature to the
9 extent that they cover other than purely factual materials and are preliminary to any final agency
10 determination of policy or action. This exemption shall not apply unless the public body shows that
11 in the particular instance the public interest in encouraging frank communication between officials
12 and employees of public bodies clearly outweighs the public interest in disclosure.

13 (2) Information of a personal nature such as but not limited to that kept in a personal, medical
14 or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy,
15 unless the public interest by clear and convincing evidence requires disclosure in the particular in-
16 stance. The party seeking disclosure shall have the burden of showing that public disclosure would
17 not constitute an unreasonable invasion of privacy.

18 (3)(a) Public body employee or volunteer addresses and telephone numbers contained in person-
19 nel records maintained by the public body that is the employer or the recipient of volunteer ser-
20 vices. This exemption does not apply:

21 (A) To such employees or volunteers if they are elected officials, except that a judge or district
22 attorney subject to election may seek to exempt the judge's or district attorney's address or tele-
23 phone number, or both, under the terms of ORS 192.445; or

24 (B) To such employees or volunteers to the extent that the party seeking disclosure shows by
25 clear and convincing evidence that the public interest requires disclosure in a particular instance.

26 (b) Nothing in this subsection exempting employee records from disclosure relieves a public
27 employer of any duty under ORS 243.650 to 243.782.

28 (4) Information submitted to a public body in confidence and not otherwise required by law to
29 be submitted, where such information should reasonably be considered confidential, the public body
30 has obliged itself in good faith not to disclose the information, and when the public interest would
31 suffer by the disclosure.

32 (5) Information or records of the Department of Corrections, including the State Board of Parole
33 and Post-Prison Supervision, to the extent that disclosure thereof would interfere with the rehabili-
34 tation of a person in custody of the department or substantially prejudice or prevent the carrying
35 out of the functions of the department, if the public interest in confidentiality clearly outweighs the
36 public interest in disclosure.

37 (6) Records, reports and other information received or compiled by the Director of the Depart-
38 ment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
39 otherwise required by law to be made public, to the extent that the interests of lending institutions,
40 their officers, employees and customers in preserving the confidentiality of such information out-
41 weighs the public interest in disclosure.

42 (7) Reports made to or filed with the court under ORS 137.077 or 137.530.

43 (8) Any public records or information the disclosure of which is prohibited by federal law or
44 regulations.

45 (9) Public records or information the disclosure of which is prohibited or restricted or otherwise

1 made confidential or privileged under Oregon law.

2 (10) Public records or information described in this section, furnished by the public body ori-
3 ginally compiling, preparing or receiving them to any other public officer or public body in con-
4 nection with performance of the duties of the recipient, if the considerations originally giving rise
5 to the confidential or exempt nature of the public records or information remain applicable.

6 (11) Records of the Energy Facility Siting Council concerning the review or approval of security
7 programs pursuant to ORS 469.530.

8 (12) Employee and retiree address, telephone number and other nonfinancial membership records
9 and employee financial records maintained by the Public Employees Retirement System pursuant to
10 ORS chapter 238 and ORS 238.410.

11 (13) Records submitted by private persons or businesses to the State Treasurer or the Oregon
12 Investment Council relating to proposed acquisition, exchange or liquidation of public investments
13 under ORS chapter 293 may be treated as exempt from disclosure when and only to the extent that
14 disclosure of such records reasonably may be expected to substantially limit the ability of the
15 Oregon Investment Council to effectively compete or negotiate for, solicit or conclude such trans-
16 actions. Records which relate to concluded transactions are not subject to this exemption.

17 (14) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the
18 Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as
19 exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

20 (15) Reports of unclaimed property filed by the holders of such property to the extent permitted
21 by ORS 98.352.

22 (16) The following records, communications and information submitted to the Oregon Economic
23 Development Commission, the Economic Development Department, the State Department of Agri-
24 culture, the Oregon Resource and Technology Development Corporation, the Port of Portland or
25 other ports, as defined in ORS 777.005, by applicants for loans or services described in ORS
26 285A.224:

27 (a) Personal financial statements.

28 (b) Financial statements of applicants.

29 (c) Customer lists.

30 (d) Information of an applicant pertaining to litigation to which the applicant is a party if the
31 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
32 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
33 concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery
34 or deposition statutes to a party to litigation or potential litigation.

35 (e) Production, sales and cost data.

36 (f) Marketing strategy information that relates to applicant's plan to address specific markets
37 and applicant's strategy regarding specific competitors.

38 (17) Records, reports or returns submitted by private concerns or enterprises required by law
39 to be submitted to or inspected by a governmental body to allow it to determine the amount of any
40 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such
41 information is in a form which would permit identification of the individual concern or enterprise.
42 Nothing in this subsection shall limit the use which can be made of such information for regulatory
43 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-
44 payer of the delinquency immediately by certified mail. However, in the event that the payment or
45 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the

1 public body shall disclose, upon the request of any person, the following information:

2 (a) The identity of the individual concern or enterprise that is delinquent over 60 days in the
3 payment or delivery of the taxes.

4 (b) The period for which the taxes are delinquent.

5 (c) The actual, or estimated, amount of the delinquency.

6 (18) All information supplied by a person under ORS 151.430 to 151.491 for the purpose of re-
7 questing court-appointed counsel, and all information supplied to the State Court Administrator from
8 whatever source for the purpose of verifying indigency of a person pursuant to ORS 151.430 to
9 151.491.

10 (19) Workers' compensation claim records of the Department of Consumer and Business Services,
11 except in accordance with rules adopted by the Director of the Department of Consumer and Busi-
12 ness Services, in any of the following circumstances:

13 (a) When necessary for insurers, self-insured employers and third party claim administrators to
14 process workers' compensation claims.

15 (b) When necessary for the director, other governmental agencies of this state or the United
16 States to carry out their duties, functions or powers.

17 (c) When the disclosure is made in such a manner that the disclosed information cannot be used
18 to identify any worker who is the subject of a claim.

19 (d) When a worker or the worker's representative requests review of the worker's claim record.

20 (20) Sensitive business records or financial or commercial information of the Oregon Health
21 Sciences University that is not customarily provided to business competitors.

22 (21) Records of the Oregon Health Sciences University regarding candidates for the position of
23 university president.

24 (22) The records of a library, including circulation records, showing use of specific library ma-
25 terial by a named person or consisting of the name of a library patron together with the address
26 or telephone number, or both, of the patron.

27 (23) The following records, communications and information submitted to the Housing and
28 Community Services Department by applicants for and recipients of loans, grants and tax credits:

29 (a) Personal and corporate financial statements and information, including tax returns.

30 (b) Credit reports.

31 (c) Project appraisals.

32 (d) Market studies and analyses.

33 (e) Articles of incorporation, partnership agreements and operating agreements.

34 (f) Commitment letters.

35 (g) Project pro forma statements.

36 (h) Project cost certifications and cost data.

37 (i) Audits.

38 (j) Project tenant correspondence requested to be confidential.

39 (k) Tenant files relating to certification.

40 (L) Housing assistance payment requests.

41 (24) Raster geographic information system (GIS) digital databases, provided by private forestland
42 owners or their representatives, voluntarily and in confidence to the State Forestry Department,
43 that is not otherwise required by law to be submitted.

44 (25) Sensitive business, commercial or financial information furnished to or developed by a
45 public body engaged in the business of providing electricity or electricity services, if the information

1 is directly related to a transaction described in section 1, **chapter _____, Oregon Laws 1999**
2 **(Enrolled House Bill 3218)**, or if the information is directly related to a bid, proposal or ne-
3 **gotiations for the sale or purchase of electricity or electricity services**, [of this 1999 Act] and
4 disclosure of the information would cause a competitive disadvantage for the public body or its re-
5 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
6 velopment or review of generally applicable rate schedules.

7 (26) Sensitive business, commercial or financial information furnished to or developed by the
8 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath
9 Cogeneration Project, if the information is directly related to a transaction described in section 2,
10 **chapter _____, Oregon Laws 1999 (Enrolled House Bill 3218)**, [of this 1999 Act] and disclosure
11 of the information would cause a competitive disadvantage for the Klamath Cogeneration Project.
12 This subsection does not apply to cost-of-service studies used in the development or review of gen-
13 erally applicable rate schedules.

14 **(27) Personally identifiable information about customers of a municipal electric utility**
15 **or a people’s utility district. The utility or district may, however, release such information**
16 **to a third party if the customer consents in writing or electronically, if the disclosure is**
17 **necessary to render utility or district services to the customer, or if the disclosure is re-**
18 **quired pursuant to a court order. The utility or district may charge as appropriate for the**
19 **costs of providing such information. The utility or district may make customer records**
20 **available to third party credit agencies on a regular basis in connection with the establish-**
21 **ment and management of customer accounts or in the event such accounts are delinquent.**

22 **SECTION 34.** ORS 225.450 is amended to read:

23 225.450. As used in ORS 225.450 to 225.490, unless the context requires otherwise:

24 (1) “City” means a city organized under the law of California, Colorado, Idaho, Montana,
25 Nevada, Oregon, Washington or Wyoming and owning and operating an electric light and power
26 system.

27 (2) “Common facilities” means any works and facilities necessary or incidental to the
28 generation, **transmission, distribution or marketing** of electric power [*and energy by nuclear,*
29 *geothermal, solar, wind or other means, and for the transmission thereof*] **and related goods and**
30 **commodities.**

31 (3) “District” means a people’s utility district organized under ORS chapter 261 or a similar
32 public utility district organized under the law of California, Colorado, Idaho, Montana, Nevada,
33 Washington or Wyoming.

34 (4) “Electric cooperative” means a cooperative corporation organized under the law of
35 California, Colorado, Idaho, Oregon, Montana, Nevada, Washington or Wyoming and owning and
36 operating an electric generation, transmission or distribution system.

37 **SECTION 35.** ORS 225.460 is amended to read:

38 225.460. (1) The Legislative Assembly finds and declares it to be in the public interest and for
39 a public purpose that cities, districts, electric cooperatives[,] and electric utility companies [*de-*
40 *scribed in ORS 225.470,*] participate as authorized in ORS 225.450 to 225.490 **jointly and with other**
41 **persons** to:

42 (a) Achieve economies of scale in the generation of electricity; [*and*]

43 (b) Meet the future power needs of this state and its inhabitants[.]; **and**

44 (c) **Participate in transactions useful for the development of an efficient system for the**
45 **transmission and distribution or marketing of electric power and related goods and com-**

1 **modities.**

2 (2) ORS 225.450 to 225.490 shall be construed liberally to effectuate the purposes set out in
3 subsection (1) of this section.

4 **SECTION 36.** ORS 225.470 is amended to read:

5 225.470. In addition to the powers otherwise conferred on cities of this state, such a city owning
6 and operating an electric light and power system may plan, finance, construct, acquire, operate, own
7 and maintain an undivided interest in common facilities within or without the state jointly with one
8 or more other cities, with one or more districts, with one or more electric cooperatives or with one
9 or more privately owned electric utility companies subject to regulation by [*the Public Utility Com-*
10 *mission of Oregon or the equivalent officer or commission of California, Colorado, Idaho, Montana,*
11 *Nevada, Washington or Wyoming*] **other persons**, or with any combination of such cities, districts,
12 electric cooperatives or [*companies in this or such other states*] **persons**, and may make such plans
13 and enter into such contracts and agreements as are necessary or appropriate for such joint plan-
14 ning, financing, construction, acquisition, operation, ownership or maintenance.

15 **SECTION 37.** ORS 225.490 is amended to read:

16 225.490. Any city of this state participating in common facilities under ORS 225.450 to 225.490
17 may furnish money and provide property, both real and personal, and to the extent and in the
18 manner provided by its charter issue and notwithstanding any other provision of law, sell, either
19 at public or privately negotiated sale, revenue bonds pledging revenues of its electric system and its
20 interest or share of the revenues derived from the common facilities and any additions or
21 betterments thereto, in order to pay its respective share of the cost of the planning, financing,
22 acquisition[,] **and** construction [*and the initial fuel costs*] thereof. All moneys paid or property sup-
23 plied by any such city for the purpose of carrying out the powers conferred by ORS 225.450 to
24 225.490 are declared to be for a public purpose.

25 **SECTION 38.** ORS 261.235 is amended to read:

26 261.235. As used in ORS 261.235 to 261.255, unless the context requires otherwise:

27 (1) "City" means a city organized under the law of California, Idaho, Montana, Nevada, Oregon
28 or Washington and owning and operating an electric light and power system.

29 (2) "Common facilities" means any works and facilities necessary or incidental to the
30 generation, **transmission, distribution or marketing** of electric power [*and energy by nuclear,*
31 *geothermal, solar, wind or other means, and for the transmission thereof*] **and related goods and**
32 **commodities.**

33 (3) "District" means a people's utility district organized under this chapter or a similar public
34 utility district organized under the law of California, Idaho, Montana, Nevada or Washington.

35 (4) "Electric cooperative" means a cooperative corporation organized under the law of
36 California, Idaho, Montana, Nevada, Oregon or Washington and owning and operating an electric
37 distribution system.

38 **SECTION 39.** ORS 261.240 is amended to read:

39 261.240. (1) The Legislative Assembly finds and declares it to be in the public interest and for
40 a public purpose that districts, cities, electric cooperatives, and electric utility companies [*described*
41 *in ORS 261.245*] participate as authorized in ORS 261.235 to 261.255 **jointly and with other persons**
42 to:

43 (a) Achieve economies of scale in the generation of electricity; [*and*]

44 (b) Meet the future power needs of this state and its inhabitants[.]; **and**

45 (c) **Participate in transactions useful for the development of an efficient system for the**

1 **transmission and distribution or marketing of electric power and related goods and com-**
 2 **modities.**

3 (2) ORS 261.235 to 261.255 shall be construed liberally to effectuate the purposes set out in
 4 subsection (1) of this section.

5 **SECTION 40.** ORS 261.245 is amended to read:

6 261.245. In addition to the powers otherwise conferred on districts of this state, such a district
 7 owning and operating an electric light and power system may plan, finance, construct, acquire, op-
 8 erate, own and maintain an undivided interest in common facilities within or without the state
 9 jointly with one or more other districts, with one or more cities, with one or more electric cooper-
 10 atives, or with one or more [*privately owned electric utility companies subject to regulation by the*
 11 *Public Utility Commission of Oregon or the equivalent officer or commission of California, Idaho,*
 12 *Montana, Nevada or Washington,*] **other persons** or with any combination of such districts, cities,
 13 electric cooperatives or [*companies in this or such other states*] **persons**, and may make such plans
 14 and enter into contracts and agreements as are necessary or appropriate for such joint planning,
 15 financing, construction, acquisition, operation, ownership or maintenance.

16 **SECTION 41.** ORS 261.255 is amended to read:

17 261.255. Any district of this state participating in common facilities under ORS 261.235 to
 18 261.255 may furnish money and provide property, both real and personal, and to the extent and in
 19 the manner provided by ORS 261.355 issue and sell revenue bonds pledging revenues of its electric
 20 system and its interest or share of the revenues derived from the common facilities and any addi-
 21 tions or betterments thereto, in order to pay its respective share of the cost of the planning, fi-
 22 nancing, acquisition[,] **and** construction [*and the initial fuel costs*] thereof. All moneys paid or
 23 property supplied by any such district for the purpose of carrying out the powers conferred by ORS
 24 261.235 to 261.255 are declared to be for a public purpose.

25 **SECTION 42.** **The Public Utility Commission shall report to the Seventy-first Legislative**
 26 **Assembly on the implementation of sections 1 to 20 of this 1999 Act.**

27 **SECTION 43.** **Nothing in sections 1 to 20 and 22 to 29 of this 1999 Act or in the amend-**
 28 **ments to ORS 192.502, 221.450, 225.270, 225.450, 225.460, 225.470, 225.490, 261.235, 261.240,**
 29 **261.245, 261.255, 757.005 and 757.259 by sections 21 and 30 to 41 of this 1999 Act is intended:**

30 (1) **To affect the terms and conditions of any contract executed on or before the effective**
 31 **date of this 1999 Act; or**

32 (2) **To alter or restrict the enforcement of any provision of ORS 646.605 to 646.652.**

33 **SECTION 44.** (1) **Sections 1 to 20 and 22 to 28 of this 1999 Act are added to and made a**
 34 **part of ORS chapter 757.**

35 (2) **Section 29 of this 1999 Act is added to and made a part of ORS chapter 221.**

36 **SECTION 45.** (1) **The Legislative Assembly intends that every part of this 1999 Act be**
 37 **considered essential and inseparably connected with and dependent upon every other part**
 38 **of this 1999 Act. Except as provided in this section and notwithstanding ORS 174.040, the**
 39 **Legislative Assembly does not intend that any part of this 1999 Act become effective if any**
 40 **other part is found unconstitutional, unlawful or otherwise unenforceable.**

41 (2) **If any part of this 1999 Act is found unconstitutional, unlawful or otherwise**
 42 **unenforceable prior to the date electricity consumers of an electric company are allowed di-**
 43 **rect access under sections 1 to 20 of this 1999 Act, notwithstanding ORS 757.355, the Public**
 44 **Utility Commission shall allow the electric company to recover in rates all costs and a return**
 45 **on all costs prudently incurred in anticipation of compliance with sections 1 to 20 and 29 of**

1 **this 1999 Act.**

2 **(3) If any part of this 1999 Act is found unconstitutional, unlawful or otherwise**
3 **unenforceable after the date electricity consumers of an electric company are allowed direct**
4 **access under sections 1 to 20 of this 1999 Act, notwithstanding ORS 757.355, the commission**
5 **shall allow the electric company to recover in rates all costs and a return on all costs**
6 **prudently incurred to comply with sections 1 to 20 and 29 of this 1999 Act. The commission**
7 **also shall allow the electric company to recover in rates all costs and a return on all costs**
8 **that are determined by the commission to be in the public interest and prudently expended**
9 **by the electric company to rebuild and replace the electric company's investments, systems**
10 **and procedures, including arrangements with third parties, necessary to allow the company**
11 **to provide electricity service as if sections 1 to 20 and 29 of this 1999 Act were not enacted.**

12 **SECTION 46. This 1999 Act being necessary for the immediate preservation of the public**
13 **peace, health and safety, an emergency is declared to exist, and this 1999 Act takes effect**
14 **on its passage.**

15