

Enrolled
House Bill 3169

Sponsored by Representative HOLVEY

CHAPTER

AN ACT

Relating to green energy technology in public buildings; creating new provisions; amending ORS 279C.527 and 279C.528; and declaring an emergency.

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

SECTION 1. ORS 279C.527, as amended by section 1, chapter 83, Oregon Laws 2012, is amended to read:

279C.527. (1) As used in this section and in ORS 279C.528:

(a)(A) "Green energy technology" means *[technology or]* a system that employs:

[(A)] (i) **Solar or geothermal** *[electricity generation or direct use of geothermal]* energy **directly** for space or water heating **or to generate electricity; or**

(ii) **Building design** that *[reduces]* **uses solar energy passively to reduce** energy use from other sources by at least 20 percent from a level **required under ORS 276.900 to 276.915 or achieved in buildings constructed according to state building code standards that the Department of Consumer and Business Services approves under ORS 455.496.** *[otherwise specified by law:]*

[(i) At the site of a public building; or]

[(ii) Away from the site of a public building if the geothermal source is within this state and is in the same county as the public building or an adjacent county, if using energy from a geothermal source that is away from the site of the public building is more cost-effective than using geothermal energy from a source at the site of the public building, if generating or using geothermal energy at the site of the public building is not feasible and if in addition to geothermal energy the public building includes additional new capacity for renewable electricity generation.]

[(B) Solar electricity generation, solar thermal generation or passive solar energy generation, if the system that employs passive solar energy generation reduces energy use from other sources by at least 20 percent from a level otherwise specified by law:]

[(i) At the site of a public building; or]

[(ii) Away from the site of a public building if the solar energy source is within this state and is in the same county as the public building or an adjacent county, if using energy from a solar energy source that is away from the site of the public building is more cost-effective than using solar energy from a source at the site of the public building, if generating or using solar energy at the site of the public building is not feasible and if in addition to solar energy the public building includes additional new capacity for renewable electricity generation.]

(B) "Green energy technology" does not include a system that:

(i) Uses water, groundwater or the ground as a heat source at temperatures less than 140 degrees Fahrenheit; or

(ii) **Incorporates solar energy indirectly into other methods for generating energy, such as from the action of waves on water, from hydroelectric facilities or from wind-powered turbines.**

(b) "Public building" means a building that a public body, as defined in ORS 174.109, owns or controls, and that is:

(A) Used or occupied by employees of the public body; or

(B) Used for conducting public business.

(2)(a) Except as otherwise provided in this section, a public improvement contract for the construction of a public building or for the reconstruction or major renovation of a public building, if the cost of the reconstruction or major renovation exceeds 50 percent of the value of the public building, shall contain **and reserve** an amount equal to at least 1.5 percent of the total contract price for the *[inclusion of]* **purpose of including** appropriate green energy technology *[in]* **as part of the construction, reconstruction or major renovation of** the public building.

(b) **A public improvement contract to construct, reconstruct or renovate a public building may provide for constructing green energy technology at a site that is located away from the site of the public building if:**

(A) **Constructing green energy technology away from the site of the public building and using the energy from the green energy technology at the site of the public building is more cost-effective, taking into account additional costs associated with transmitting generated energy to the site of the public building, than is constructing and using green energy technology at the site of the public building;**

(B) **The green energy technology that is located away from the site of the public building is located within this state and in the same county as, or in a county adjacent to, the site of the public building; and**

(C) **The public improvement contract provides that all of the moneys for constructing green energy technology away from the site of the public building must fund new energy generating capacity that does not replace or constitute a purchase and use of energy generated from green energy technology that:**

(i) **Employs solar energy and that existed on the date that the original building permit for the public building was issued; or**

(ii) **Employs geothermal energy and for which construction was completed before January 1, 2013.**

(c) **In making the determination required under paragraph (b)(A) of this subsection, a contracting agency shall:**

(A) **Compare the costs of constructing green energy technology that employs solar energy at the site of the public building only with the corresponding costs of green energy technology that employs solar energy at a location away from the site of the public building; and**

(B) **Compare the costs of green energy technology that employs geothermal energy at the site of the public building only with the corresponding costs of green energy technology that employs geothermal energy at a location away from the site of the public building.**

(3) Before entering into a public improvement contract described in subsection (2) of this section, a contracting agency shall prepare a written determination of whether *[the inclusion of]* **including** green energy technology *[in]* **as part of** the construction, reconstruction or major renovation of the public building is appropriate. The contracting agency shall *[include]* **list** in the determination the total contract price and **specify** the amount the agency intends to expend on *[the inclusion of]* **including** green energy technology *[in the public building]* **as part of the construction, reconstruction or major renovation.** The State Department of Energy shall develop a form **that** a contracting agency may use to prepare the written determination described in this subsection.

(4)(a) If the contracting agency determines that *[including green energy technology in the construction, reconstruction or major renovation of the public building]* **green energy technology** is not

appropriate for the public building, subsection (2) of this section does not apply to the public improvement contract. *[However:]* **A contracting agency's determination under this paragraph must consider whether constructing green energy technology at the site of the public building is appropriate and whether constructing green energy technology away from the site of the public building and in accordance with subsection (2)(b) and (c) of this section is appropriate.**

(b) If subsection (2) of this section does not apply to the public improvement contract:

[(a)] **(A)** The contracting agency shall spend an amount equal to at least 1.5 percent of the total contract price *[on the inclusion of]* **to include** appropriate green energy technology *[in]* **as part of** a future public building project; and

[(b)] **(B)** The amount the contracting agency spends on the future public building project *[pursuant to paragraph (a) of this subsection]* **in accordance with subparagraph (A) of this paragraph** is in addition to any amount required under subsection (2) of this section for *[the inclusion of]* **including** appropriate green energy technology *[in]* **as part of** the future public building project.

(5) Subsection (4)(b) of this section does not apply to a public improvement contract for which state funds are not directly or indirectly used.

(6)(a) This section does not exempt an authorized state agency, as defined in ORS 276.905, from complying with ORS 276.900 to 276.915, except that an authorized state agency, without complying with ORS 276.900 to 276.915, may determine that green energy technology is appropriate to include *[in]* **as part of** the construction, reconstruction or major renovation of a public building.

(b) A contracting agency may not use an amount described in subsection (4)(b) of this section to comply with requirements set forth in ORS 276.900 to 276.915 or with a state building code standard that the Department of Consumer and Business Services approves under ORS 455.496.

(7) Notwithstanding the provisions of ORS 174.108 (3), this section applies to intergovernmental entities described in ORS 174.108 (3).

SECTION 2. ORS 279C.528, as amended by section 2, chapter 83, Oregon Laws 2012, is amended to read:

279C.528. (1) *[Public improvement contracts subject to ORS 279C.527 are also]* **Each contracting agency, in soliciting, awarding and administering public improvement contracts that are subject to ORS 279C.527, is subject to rules the State Department of Energy adopts that include, but are not limited to, requirements and specifications for:**

[(1)] **(a)** Using particular green energy technologies in public improvements;

[(2)] **(b)** Determining the cost-effectiveness of green energy technologies;

[(3)] **(c)** *[Reporting the use of green energy technologies in public improvements or]* Submitting documents **required under ORS 279C.527** to the department for review*[, as appropriate]*; and

[(4)] **(d)** Determining whether a structure is a public building subject to the requirements of ORS 279C.527.

(2)(a) Each contracting agency shall collect and maintain information concerning the contracting agency's compliance with ORS 279C.527, which must include, at a minimum:

(A) Records that show how the contracting agency disposed of moneys the contracting agency reserved for including appropriate green energy technology as part of constructing, reconstructing or renovating a public building;

(B) An identification of each public improvement contract for which the contracting agency spent moneys reserved for including appropriate green technology as part of constructing, reconstructing or renovating a public building;

(C) An identification of each public improvement contract for which the contracting agency determined that including green technology as part of constructing, reconstructing or renovating a public building was not appropriate;

(D) An identification of the account or fund into which the contracting agency deposited moneys the contracting agency reserved for, but did not spend on, including appropriate green technology as part of constructing, reconstructing or renovating a public building; and

(E) An identification of each public improvement contract that uses moneys the contracting agency did not spend in a previous public improvement contract for including appropriate green energy technology as part of constructing, reconstructing or renovating a public building.

(b) Each contracting agency shall compile the information the contracting agency collected under paragraph (a) of this subsection and report the information to the department at times and in a manner the department specifies by rule.

(c) The department shall:

(A) Compile and summarize the information the department receives under paragraph (b) of this subsection and, in the department's compilation and summary, specifically:

(i) Identify contracting agencies that have not complied with the requirements of ORS 279C.527;

(ii) Identify public improvement contracts for which contracting agencies have determined that including green energy technology as part of constructing, reconstructing or renovating a public building was not appropriate; and

(iii) Identify public improvement contracts that use moneys a contracting agency did not spend in a previous public improvement contract on including appropriate green energy technology as part of constructing, reconstructing or renovating a public building.

(B) Deliver annually to the Legislative Assembly, on or before the date on which each regular session of the Legislative Assembly begins, a report concerning contracting agency compliance with ORS 279C.527 that includes the compilation and summary the department prepared under subparagraph (A) of this paragraph.

SECTION 3. The amendments to ORS 279C.527 and 279C.528 by sections 1 and 2 of this 2013 Act apply to a contract for the construction, reconstruction or major renovation of a public building that a contracting agency first advertises or otherwise solicits or, if the contracting agency does not advertise or solicit the contract, to a contract into which the contracting agency first enters on or after the effective date of this 2013 Act.

SECTION 4. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House June 19, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 25, 2013

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State