

Enrolled Senate Bill 634

Sponsored by Senators KNOPP, THOMSEN, Representative WHISNANT; Senators FERRIOLI, GIROD, THATCHER, Representatives HELM, HUFFMAN, JOHNSON, RESCHKE (Presession filed.)

CHAPTER

AN ACT

Relating to using woody biomass as a green energy technology; creating new provisions; amending ORS 279C.527 and 279C.528; and prescribing an effective date.

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

SECTION 1. ORS 279C.527 is amended to read:

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

(a)(A) "Green energy technology" means a system that employs:

- (i) Solar or geothermal energy directly for space or water heating or to generate electricity; or
- (ii) Building design that 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.

(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 less than 128 degrees Fahrenheit if the system is used for a public school building; 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.

(c)(A) "Woody biomass energy technology" means a system that, for space or water heating or as a combined heat and power system, uses a boiler with a lower heating value combustion efficiency of at least 80 percent and that uses as fuel material from trees and woody plants, such as limbs, tops, needles, leaves and other woody parts, that:

- (i) Grows in a forest, a woodland, a farm, a rangeland or a wildland that borders on an urban area; and**
- (ii) Is a by-product of forest management, agriculture, ecosystem restoration or fire prevention or related activities.**

(B) "Woody biomass energy technology" does not include a system that uses for fuel:

- (i) Wood pieces that have been treated with creosote, pentachlorophenol, chromated copper arsenate or other chemical preservatives; or**

(ii) Municipal solid waste.

(2)(a) Except as otherwise provided in this section, a contracting agency that intends to enter into a public improvement contract for constructing a public building or for reconstructing or performing a 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 first make a determination under subsection (3) of this section as to whether green energy technology is appropriate for the public building and, if the contracting agency determines that green energy technology is appropriate, shall ensure that the public improvement contract provides an amount equal to at least 1.5 percent of the total contract price for the purpose of including appropriate green energy technology 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 evaluating whether a contracting agency can construct green energy technology at a site away from the site of the public building in accordance with paragraph (b)(A) of this subsection, the contracting agency shall[.:]

[(A)] compare the costs of constructing green energy technology that employs [solar energy] a particular fuel source or method of energy generation at the site of the public building only with the corresponding costs of green energy technology that employs [solar energy] the same fuel source or method of energy generation 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.]

(d)(A) As an alternative to including appropriate green energy technology as part of the construction, reconstruction or major renovation of a public building, a contracting agency may include woody biomass energy technology as part of constructing, reconstructing or performing a major renovation on the public building if the woody biomass energy technology creates new energy generation capacity that did not exist on the date on which the original building permit for the public building was issued, the contracting agency has considered the potential costs of the woody biomass energy technology and:

(i) The facility that uses woody biomass energy technology is located in an area of the state that complies with standards that the Department of Environmental Quality has adopted for emissions of particulate matter; or

(ii) The contracting agency demonstrates to the Department of Environmental Quality, if the facility that uses woody biomass energy technology is located in an area that does not

comply with standards the department has adopted for emissions of particulate matter, that one of the following two conditions applies:

(I) The fuel that the woody biomass energy technology uses is pelletized; or

(II) The woody biomass energy technology produces particulate matter emissions at the same level as, or a lower level than, a functionally equivalent system that is capable of producing the same energy output and that uses fuel that is pelletized.

(B) Notwithstanding a contracting agency's demonstrations in accordance with subparagraph (A)(ii) of this paragraph, the Department of Environmental Quality may require additional emissions control technologies or specifications before the contracting agency may include woody biomass energy technology in the construction, reconstruction or major renovation of a public building.

(3) In making a determination as to whether green energy technology is appropriate, or whether woody biomass energy technology is a suitable alternative to green energy technology, in constructing, reconstructing or performing a major renovation of a public building, a contracting agency shall list in the determination the total contract price and specify the amount the agency intends to expend on including green energy technology or woody biomass energy technology 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 green energy technology is not appropriate for the public building, subsection (2) of this section does not apply to the public improvement contract, except that if the contracting agency determines that woody biomass energy technology is a suitable alternative, the contracting agency will make the determination specified in subsection (3) of this section for the woody biomass energy technology. A contracting agency's determination under this paragraph must consider whether constructing green energy technology or woody biomass energy technology at the site of the public building is appropriate and whether constructing green energy technology or woody biomass energy technology away from the site of the public building and in accordance with subsection (2)(b) and (c) of this section, or with subsection (2)(d) of this section, as applicable, is appropriate.

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

(A) The contracting agency shall spend an amount equal to at least 1.5 percent of the total contract price to include appropriate green energy technology or woody biomass energy technology as part of a future public building project; and

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

(5)(a) A contracting agency need not set aside the amount described in subsection (4)(b) of this section in an account or otherwise reserve moneys for a future public building at the time the contracting agency makes the determination described in subsection (3) of this section, but the contracting agency shall report the amount described in subsection (4)(b) of this section to the State Department of Energy as provided in ORS 279C.528 [(2)(a)] (2).

(b) 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 or woody biomass energy technology is appropriate to include as part of constructing, reconstructing or performing a 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 is amended to read:

279C.528. (1) 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:

- (a) Using particular green energy technologies in public improvements;
- (b) Determining the cost-effectiveness of green energy technologies;
- (c) Submitting documents required under ORS 279C.527 to the department for review; and
- (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 spent moneys the contracting agency used in including appropriate green energy technology **or woody biomass energy technology** as part of constructing, reconstructing or performing a major renovation of a public building;

(B) An identification of each public improvement contract for which the contracting agency spent moneys to include appropriate green **energy technology or woody biomass energy technology** as part of constructing, reconstructing or performing a major renovation of a public building;

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

(D) The total amount the contracting agency would have spent on each public improvement contract identified in subparagraph (C) of this paragraph and the total aggregated amount that the contracting agency must spend to include green energy technology **or woody biomass energy technology** as part of constructing, reconstructing or performing a major renovation of a future 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 **or woody biomass energy technology** as part of constructing, reconstructing or performing a major renovation of 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, in a manner and on forms that 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 or the reporting requirements set forth in *[this section]* **paragraph (b) of this subsection;**

(ii) Identify public improvement contracts for which contracting agencies have determined that including green energy technology **or woody biomass energy technology** as part of constructing, reconstructing or performing a major renovation of 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 **or woody biomass energy technology** as part of constructing, reconstructing or performing a major renovation of 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 this section and 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 2017 Act apply to public improvement contracts that a contracting agency first advertises or otherwise solicits or, if the contracting agency does not advertise or solicit the public improvement contract, to public improvement contracts into which the contracting agency first enters on or after the effective date of this 2017 Act.

SECTION 4. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.

Passed by Senate April 13, 2017

Received by Governor:

Repassed by Senate July 6, 2017

.....M.,....., 2017

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2017

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Peter Courtney, President of Senate

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Kate Brown, Governor

Passed by House July 6, 2017

Filed in Office of Secretary of State:

.....M.,....., 2017

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Tina Kotek, Speaker of House

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Dennis Richardson, Secretary of State