

Enrolled House Bill 2496

Sponsored by Representative HOLVEY; Representatives POWER, SOLLMAN, WILLIAMS (Presession filed.)

CHAPTER

AN ACT

Relating to energy conservation in public buildings; 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 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] **10** 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[.]; **or**

(iii) Battery storage, if the battery storage is part of a system that generates electricity from solar or geothermal energy on the site of the public building.

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

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

[(B)] (ii) Used for conducting public business.

(B) "Public building" does not include an airport, as defined in ORS 836.005.

(c)(A) "Total contract price" means all of the costs a contracting agency anticipates incurring in all contracts and subcontracts involved in constructing, reconstructing or performing a major renovation of a public building including design or architecture, engineering, transportation or environmental impact assessment and planning, construction management, labor, materials, land surveying and site preparation, demolition, hazardous material removal, required reinforcements or improvements to existing structures or appurtenant infrastructure, insurance, inspections and certifications and, except as provided in subpara-

graph (B) of this paragraph, other costs the contracting agency would not incur but for the construction, reconstruction or major renovation of the public building.

(B) “Total contract price” does not include:

(i) Costs of advertising, soliciting, evaluating bids or proposals for or awarding a public contract;

(ii) Costs of moving contracting agency employees, equipment and furnishings from and to a public building;

(iii) Costs of locating, renting or leasing and preparing to occupy alternative facilities;

(iv) Ordinary operating costs for a public building during periods of reconstruction or renovation;

(v) Costs of storing equipment or furnishings at a site away from a public building;

(vi) Labor costs for employees of a contracting agency;

(vii) Direct costs that are solely for the purpose of retrofitting or improving a public building’s ability to withstand a seismic event; and

(viii) Costs that bear only a tenuous relationship to the construction, reconstruction or major renovation of a public building.

[(c)(A)] **(d)(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 **with a total contract price of \$5 million or more** 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)]* **(5)** of this section as to whether green energy technology is appropriate for the public building *[and,]*.

(b) If *[the]* a contracting agency determines that green energy technology is appropriate, **the contracting agency** 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)] **(3)(a)** A public improvement contract to construct, reconstruct or renovate a public building may provide for constructing green energy technology, **other than battery storage**, 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 ca-

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)] **(b)** In evaluating whether a contracting agency can construct green energy technology, **other than battery storage**, at a site away from the site of the public building in accordance with paragraph *[(b)(A)]* **(a)(A)** of this subsection, the contracting agency shall compare the costs of constructing green energy technology that employs 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 the same fuel source or method of energy generation 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:]

(4)(a) Of the amount that a contracting agency provides in a public improvement contract under subsection (2) of this section for the purpose of including green energy technology as part of the construction, reconstruction or major renovation of a public building, the contracting agency may expend as much as half or, if green energy technology is not appropriate for the public building, the entirety, as follows:

(A) If an analysis under subsection (5)(a)(B) of this section shows that the available total solar resource fraction at the site of the public building is 75 percent or less, the contracting agency may improve energy use efficiency in the public building by:

(i) **Designing, engineering and constructing, reconstructing or renovating the public building to reduce or offset energy use in accordance with guidelines the State Department of Energy adopts by rule; or**

(ii) **Installing or preparing the public building for an installation of devices, technologies and other measures that reduce or offset energy use in accordance with guidelines the department adopts by rule.**

(B) The 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] (b) Notwithstanding a contracting agency's demonstrations in accordance with [subparagraph (A)(ii)] **subparagraph (B)(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)] (5)(a) In making a **written** determination as to whether green energy technology is appropriate, or whether [woody biomass energy technology is a suitable alternative to] **an expenditure for a purpose described in subsection (4) of this section is suitable as an addition to or an alternative to including** green energy technology[,] in constructing, reconstructing or performing a major renovation of a public building, a contracting agency **in the written determination shall:**

(A) 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] **for a purpose described in subsection (4) of this section** as part of the construction, reconstruction or major renovation.

(B) **Show the results of an analysis of the total solar resource fraction available for use at the site on which the contracting agency intends to install green energy technology that uses solar energy for space or water heating or to generate electricity. The contracting agency may conclude that the green energy technology described in this subparagraph is appropriate if the total solar resource fraction exceeds 75 percent.**

(b) 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)] (6)(a) If [the] a contracting agency determines that green energy technology is not appropriate for [the] a 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] **an expenditure for a purpose described in subsection (4) of this section** is a suitable alternative, the contracting agency will make the determination specified in subsection [(3)] (5) of this section for the [woody biomass energy technology] **alternative purpose**. A contracting agency's determination under this paragraph must consider whether constructing green energy technology or [woody biomass energy technology] **making an expenditure for a purpose described in subsection (4) of this section** at the site of the public building is appropriate and whether constructing green energy technology, **other than battery storage**, [or woody biomass energy technology] away from the site of the public building and in accordance with subsection [(2)(b) and (c)] (3)(a) and (b) of this section, or [with subsection (2)(d) of this section, as applicable,] **making an expenditure for a purpose described in subsection (4) of this section away from the site of the public building**, is appropriate.

(b) If subsection (2) of this section does not apply to the public improvement contract **and the contracting agency does not choose to make an expenditure for a purpose described in subsection (4) of this section:**

(A) The contracting agency shall [spend] **expend** 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] **for a purpose described in subsection (4) of this section** as part of a future public building project; and

(B) The amount the contracting agency [spends] **expends** 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.

(7) **A contracting agency may choose to consolidate in one public building, or in one location away from the site of the public building, all or a substantial portion of the green energy technology that the contracting agency would otherwise include as part of the construction, reconstruction or major renovation of one or more other public buildings if:**

(a) **The total amount the contracting agency expends on green energy technology is an aggregate of all of the amounts that, under this section and ORS 279C.528, the contracting agency must expend on each of the public buildings that are part of the same project; and**

(b) **The project, taken as a whole, otherwise meets the requirements set forth in this section and ORS 279C.528.**

[(5)(a)] **(8)(a)** A contracting agency need not set aside the amount described in subsection [(4)(b)] **(6)(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)] **(5)** of this section, but the contracting agency shall report the amount described in subsection [(4)(b)] **(6)(b)** of this section to the State Department of Energy as provided in ORS 279C.528 (2).

(b) Subsection [(4)(b)] **(6)(b)** of this section does not apply to a public improvement contract for which state funds are not directly or indirectly used.

[(6)(a)] **(9)(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]* **an alternative technology described in subsection (4) of this section** 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)] **(6)(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)] **(10)** 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, **methods** and specifications for:

(a) Using particular green energy technologies in public improvements;

(b) Determining the cost-effectiveness of green energy technologies;

(c) **Determining the total solar resource fraction that applies to a public building or to a site on which a contracting agency will construct green energy technology;**

(d) **Including particular costs in the total contract price for a public building;**

(e) **Improving energy use efficiency in a public building;**

[(c)] (f) Submitting documents required under ORS 279C.527 to the department for review; and

[(d)] (g) 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]* **expended** moneys *[the contracting agency used in including]* **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 **or for a purpose described in ORS 279C.527 (4);**

(B) An identification of each public improvement contract for which the contracting agency *[spent]* **expended** 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 **or for a purpose described in ORS 279C.527 (4);**

(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, **and that making an expenditure for a purpose described in ORS 279C.527 (4),** was not appropriate;

(D) The total amount the contracting agency would have *[spent]* **expended** on each public improvement contract identified in subparagraph (C) of this paragraph and the total aggregated

amount that the contracting agency must [*spend*] **expend** 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 **or for a purpose described in ORS 279C.527 (4)**; and

(E) An identification of each public improvement contract that uses moneys the contracting agency did not [*spend in*] **expend on** 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 **or for a purpose described in ORS 279C.527 (4)**.

(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 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, **and that making an expenditure for a purpose described in ORS 279C.527 (4)**, was not appropriate; and

(iii) Identify public improvement contracts that use moneys a contracting agency did not [*spend in*] **expend on** 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 **or for a purpose described in ORS 279C.527 (4)**.

(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 2019 Act apply to procurements that a contracting agency first advertises or otherwise solicits or, if the contracting agency did not advertise or otherwise solicit the procurement, to public contracts into which the contracting agency enters on or after the operative date specified in section 4 of this 2019 Act.

SECTION 4. (1) The amendments to ORS 279C.527 and 279C.528 by sections 1 and 2 of this 2019 Act become operative on January 1, 2020.

(2) The Director of the State Department of Energy and the Director of the Department of Environmental Quality may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the directors, on and after the operative date specified in subsection (1) of this section, to exercise or undertake all of the duties, functions and powers conferred on the directors by the amendments to ORS 279C.527 and 279C.528 by sections 1 and 2 of this 2019 Act.

SECTION 5. This 2019 Act takes effect on the 91st day after the date on which the 2019 regular session of the Eightieth Legislative Assembly adjourns sine die.

Passed by House April 22, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 20, 2019

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

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Bev Clarno, Secretary of State