House Bill 2496

Sponsored by Representative HOLVEY (Presession filed.)

SUMMARY

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

Includes battery storage in definition of “green energy technology.” Defines “total contract price.” Permits contracting agency, as alternative to including green energy technology in construction, reconstruction or major renovation of public building, to make expenditure to improve energy use efficiency in public building. Adds requirement to show results of analysis of total solar resource fraction that applies to site on which contracting agency intends to construct green energy technology that uses solar energy for space or water heating or to generate electricity. Permits contracting agency to use green energy for space or water heating or to generate electricity if total solar resource fraction exceeds 75 percent. Permits contracting agency to enter into agreement with another contracting agency to pool resources or share costs related to including green energy technology or woody biomass energy technology or making expenditure to improve building energy use efficiency in construction, reconstruction or major renovation. Becomes operative on January 1, 2020. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to energy conservation in public buildings; creating new provisions; amending ORS 279C.527, 279C.528, 455.466 and 455.467; 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 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) “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

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.
(B) Used for conducting public business.

(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 subparagraph (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 costs of advertising, soliciting, evaluating bids or proposals for or awarding a public contract, costs of moving contracting agency employees, equipment and furnishings from and to a public building, costs associated with locating, renting or leasing and preparing to occupy alternative facilities, ordinary operating costs for the public building during periods of reconstruction or renovation, costs to store equipment or furnishings at a site away from the public building, labor costs for employees of the contracting agency and costs that bear only a tenuous relationship to the construction, reconstruction or major renovation of the public building.

(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 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.

(b) If the 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.

[2]
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)] (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) 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)] (4) [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] A contracting agency, in addition to using the amount identified as a percentage of the total contract price in subsection (2) of this section to include green energy technology as part of the construction, reconstruction or major renovation of a public building, or as an alternative if the contracting agency determines that green energy technology is not appropriate for the public building, may expend all or a portion of the amount for one or more of these purposes:

(a) Improving energy use efficiency in the public building by:

(A) Designing, engineering and constructing, reconstructing or renovating the public building to reduce or offset energy use to the maximum extent feasible; or

(B) Installing or preparing the public building for an installation of devices, technologies and other measures that reduce or offset energy use to the maximum extent feasible.

[(b)] [Include] Including 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:

[(ii)] (A) 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

[(iii)] (B) 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 fol-
lowing two conditions applies:

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

[(II)(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)(c)] Notwithstanding a contracting agency’s demonstrations in accordance with [subpara-
graph (A)(ii)] paragraph (b)(B) of this [paragraph] subsection, the Department of Environmental
Quality may require additional emissions control technologies or specifications before the contract-
ing 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 ap-
propriate, 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 alter-
native 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 in-
tends 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 paragraph is ap-
propriate 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 ap-
propriate for [the] a public building, subsection (2) of this section does not apply to the public im-
provement 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 sub-
section (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)] (3)(b) and (c) of this
section, or [with subsection (2)(d) of this section, as applicable,] making an expenditure for a pur-
pose 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 sub-
section (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) A contracting agency may enter into an agreement with another contracting agency to pool resources or share costs related to including green energy technology as part of the construction, reconstruction or major renovation of a public building, making an expenditure for a purpose described in subsection (4) of this section or constructing green energy technology at a site away from a public building that will generate energy for use in one or more public buildings owned, leased or occupied by a contracting agency that is a party to the agreement.

(b) Each contracting agency that is a party to an agreement under paragraph (a) of this subsection shall cooperate in making the determinations required under this section. The contracting agencies may agree to submit jointly the reports and documentation required under 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:

ORS 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 the 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. ORS 455.466 is amended to read:
455.466. (1) As used in this section, “essential project” means a:
   (a) State owned or operated development;
   (b) Development of industries in the traded sector as defined in ORS 285A.010 for structures
more than 100,000 square feet in size;
   (c) Project in an industrial site listed by the Oregon Business Development Department as ready
for development and for which the project construction totals more than 100,000 square feet in size;
or
   (d) Development designated by the Director of the Oregon Business Development Department
as essential to the economic well-being of the state.
   (2) Notwithstanding any municipal building inspection program under ORS 455.148 or 455.150,
an applicant for a building permit for an essential project or the municipality having jurisdiction
over an essential project may request in writing that the Department of Consumer and Business
Services administer and enforce the state building code for the project.
   (3) Upon receipt by the Department of Consumer and Business Services of a written request
under this section, the Director of the Department of Consumer and Business Services shall assem-
bly a rapid approval assessment team consisting of such department employees and other persons
as the director considers appropriate. The purpose of the rapid approval assessment team shall be
to provide assistance and advice to the director.
   (4) The Director of the Department of Consumer and Business Services, in consultation with the
rapid approval assessment team, shall determine whether adequate resources are available to ensure
that an essential project may proceed in a timely, consistent and flexible manner. In determining the
availability of resources under this subsection, the director and the rapid approval assessment team
shall give first consideration to the availability of municipal resources. If the director determines
that municipal resources may be inadequate for the essential project, the director may consider
whether state resources or a combination of municipal and state resources is available to ensure
that the essential project may proceed in a timely, consistent and flexible manner. A determination
by the director under this subsection is not appealable.
   (5) The Director of the Department of Consumer and Business Services may take all actions that
the director considers reasonable and necessary to ensure that an essential project may proceed in
a timely, consistent and flexible manner, including but not limited to:
      (a) Establishing policies, procedures and rules as necessary;
      (b) Working directly with local municipalities and other state agencies to resolve conflicts and
disputes related to the state building code;
      (c) Encouraging cooperation between state and municipal building officials and inspectors;
      (d) Developing agreements;
      (e) Developing site-specific dispute resolution and appeals related to state building code re-
quirements;
      (f) Expediting, coordinating or providing building inspection program plan review, permitting
and inspection services;
      (g) Assisting a municipality or seeking assistance from a municipality; and
      (h) Establishing fees to cover the cost of provided services.
(6)(a) As used in this subsection:
(A) “Contracting agency” has the meaning given that term in ORS 279A.010.
(B) “Public building” has the meaning given that term in ORS 279C.527.
(b) The Director of the Department of Consumer and Business Services or a municipality, as appropriate, shall verify as part of any administration or enforcement of the state building code whether a contracting agency that conducted a procurement for an essential project that is a public building has complied with the requirements set forth in ORS 279C.527.

SECTION 4. ORS 455.467 is amended to read:

455.467. (1) Except as provided in subsection (2) of this section, for specialty code plan reviews of simple low-rise residential dwellings, the Department of Consumer and Business Services or a municipality that administers a building inspection program under ORS 455.148 or 455.150 shall approve or disapprove the specialty code building plan:
(a) For a jurisdiction with a population that is less than 300,000, within 10 business days of receiving a complete application, or shall implement the process described in ORS 455.465.
(b) For a jurisdiction with a population that is 300,000 or more, within 15 business days of receiving a complete application, or shall implement the process described in ORS 455.465.
(2) The 10-day and 15-day requirements in subsection (1) of this section do not apply if:
(a) The plan requires approval by federal, state or local agencies outside the jurisdiction of the issuing agency;
(b) The plan is for a complex structure that requires additional review as determined by the department or municipality;
(c) Based on conditions that exist in the affected municipality, the Director of the Department of Consumer and Business Services authorizes a different plan review schedule as described in a building inspection program submitted under ORS 455.148 or 455.150.
(3) For specialty code plan reviews of commercial structures, a municipality shall include in its building inspection program submitted under ORS 455.148 or 455.150 a process for plan review services. The municipality shall include in its program detailed reasons supporting the proposed plan review process. The plan review services provided by the municipality shall:
(a) Allow an applicant to defer the submittal of plans for one or more construction phases for a commercial construction project in accordance with the state building code; and
(b) Allow an applicant to receive permits for each of the phases of a commercial construction project as described in the state building code when the plan review for that phase is approved.
(4) For a phased commercial construction project as described in subsection (3) of this section, the municipality shall inform the applicant of the detailed plans necessary for each phase of the project and the estimated time for initial and phased review of the building plans for conformance with the state building code.
(5) An applicant submitting plans under subsection (3) of this section is responsible for ensuring that the project meets all specialty code requirements and that the project does not proceed beyond the level of approval authorized by the building official.
(6) A municipality that repeatedly fails to meet the plan review period described in this section or otherwise authorized in its building inspection program submitted under ORS 455.148 or 455.150 shall be considered to be engaging in a pattern of conduct of failing to provide timely plan reviews under ORS 455.160.

(7)(a) As used in this subsection:
(A) “Contracting agency” has the meaning given that term in ORS 279A.010.
(B) “Public building” has the meaning given that term in ORS 279C.527.

(b) The director or a municipality, as appropriate, shall verify as part of a specialty code plan review for a structure that is a public building whether the contracting agency that conducted the procurement for the project has complied with the requirements set forth in ORS 279C.527.

SECTION 5. The amendments to ORS 279C.527, 279C.528, 455.466 and 455.467 by sections 1 to 4 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 6 of this 2019 Act.

SECTION 6. (1) The amendments to ORS 279C.527, 279C.528, 455.466 and 455.467 by sections 1 to 4 of this 2019 Act become operative on January 1, 2020.

(2) The Director of the State Department of Energy, the Director of the Department of Environmental Quality and the Director of the Department of Consumer and Business Services 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 all of the duties, functions and powers conferred on the directors by the amendments to ORS 279C.527, 279C.528, 455.466 and 455.467 by sections 1 to 4 of this 2019 Act.

SECTION 7. 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.