Senate Bill 664

Sponsored by Senator LINTHICUM (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.

Expands definition of “green energy technology” for purposes of public improvement contracts. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to allowable green energy technology in public improvement contracts; creating new provisions; amending ORS 279C.527; 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;

(ii) Building design that uses solar energy passively to reduce energy use from other sources by at least 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; 

(iii) Electricity from hydropower, fuel cells or other hydrogen-based technology, ocean wave energy or wind power;

(iv) Electricity or heat from biomass; or

[(iii)] (v) 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;

[(i)] 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)(A) “Public building” means a building that a public body, as defined in ORS 174.109, owns or controls, and that is:

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

(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 en-

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.

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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:

(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.

(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 (5) of this section as to whether green energy technology is appropriate for the public building.

(b) If 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.

(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 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.

(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 (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 particular fuel source or method of energy generation at a location away from the site of the public building.

[(4)(a)] (4) 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:] on improving energy use efficiency in the public building

[(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:

[(ii)] (a) 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)] (b) 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 State Department of Energy 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 pelleted; 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 pelleted.

(b) Notwithstanding a contracting agency’s demonstrations in accordance with 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.

(5)(a) In making a written determination as to whether green energy technology is appropriate, or whether 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 the total contract price and specify the amount the agency intends to expend on including green energy technology or 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.

(6)(a) If a contracting agency determines that green energy technology is not appropriate for a public building, subsection (2) of this section does not apply to the public improvement contract, except that if the contracting agency determines that 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 (5) of this section for the alternative purpose. A contracting agency’s determination under this paragraph must consider whether constructing green energy technology or 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, away from the site of the public building and in accordance with subsection (3)(a) and (b) of this section, or 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 expend an amount equal to at least 1.5 percent of the total contract price to include appropriate green energy technology or 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 expends on the future public building project in ac-
cordance with subparagraph (A) of this paragraph is in addition to any amount required under sub-
section (2) of this section for including appropriate green 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 aggre-
gate 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.

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

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

(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 an alternative tech-
ology 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 (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.

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

SECTION 2. The amendments to ORS 279C.527 by section 1 of this 2021 Act apply to a
public contract that a contracting agency first advertises or otherwise solicits or, if the
contracting agency does not advertise or solicit the public contract, to a public contract into
which a contracting agency enters on or after the operative date specified in section 3 of this
2021 Act.

SECTION 3. (1) The amendments to ORS 279C.527 by section 1 of this 2021 Act become
operative on January 1, 2022.

(2) The Director of the State Department of Energy 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 director, on and after the operative date specified in subsection (1) of this
section, to undertake and exercise all of the duties, functions and powers conferred on the
director by the amendments to ORS 279C.527 by section 1 of this 2021 Act.

SECTION 4. This 2021 Act takes effect on the 91st day after the date on which the 2021
regular session of the Eighty-first Legislative Assembly adjourns sine die.

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