

# A-Engrossed Senate Bill 870

Ordered by the Senate April 12  
Including Senate Amendments dated April 12

Sponsored by Senator LIEBER, Representative MARSH

## 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.

*[Requires Department of Consumer and Business Services to study how to build resiliency and efficiency into buildings. Directs department to submit findings to interim committees of Legislative Assembly related to environment not later than September 15, 2024.]*

**Requires State Department of Energy in consultation with Department of Consumer and Business Services to specify energy performance standard for covered commercial buildings that seeks to maximize reductions in greenhouse gas emissions, includes energy use intensity targets that apply to specific types of buildings and that provides for methods to achieve conditional compliance. Specifies requirements for State Department of Energy and discretion that department may exercise in specifying energy performance standard and developing energy use intensity targets. Requires department to notify eligible building owners concerning energy performance standard and energy use intensity targets and allows department to approve eligible building owner's use of conditional compliance method in lieu of full compliance.**

**Permits municipality to adopt energy performance standard and greenhouse gas emission reduction standards that are more stringent or have broader application than department's standard or targets.**

**Requires eligible building owners to report to department concerning compliance with energy performance standard. Specifies required contents of reports. Requires department to provide support program with information, training, technical assistance and telephone and electronic mail support for meeting energy use intensity targets. Specifies dates by which eligible building owners must comply with energy performance standard. Permits department to impose civil penalty for failure to comply.**

**Directs department to establish requirement and standard under which specified eligible building owners must provide data that would allow department to set benchmark for energy use in and greenhouse gas emissions from certain covered commercial buildings.**

**Requires department to establish program to pay incentives to eligible building owners to encourage compliance with energy performance standard. Permits department to contract with another person to administer payments. Specifies qualifications for and rates of payment.**

**Declares emergency, effective on passage.**

## A BILL FOR AN ACT

1  
2 Relating to resilient efficient buildings; and declaring an emergency.

3       Whereas policies that encourage energy efficiency have been extremely successful in reducing  
4 energy use, avoiding costly investment in new generating capacity, lowering customer energy bills  
5 and reducing air pollution and greenhouse gas emissions; and

6       Whereas the Oregon 2022 biennial energy report states that achieving energy efficiency in ex-  
7 isting buildings is critical for reducing greenhouse gas emissions that result from constructing and  
8 operating buildings in this state; and

9       Whereas studies by the Northwest Power and Conservation Council and by individual Oregon  
10 utilities repeatedly show that efficiency is the region's largest, cheapest and lowest risk energy re-  
11 source and that without improvements in efficiency the region would have needed to invest in ad-

**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.

ditional generation capacity fueled by natural gas; and

Whereas the Northwest Power and Conservation Council forecasts that with an aggressive new energy efficiency policy the region can potentially meet 100 percent of the electricity load growth over the next 20 years and that efficiency improvements can approach the size of the region's hydropower system as an energy resource; and

Whereas energy efficiency investments that reduce energy use in buildings also improve indoor air quality, provide more comfortable homes and workplaces, lower tenant energy bills and otherwise improve the quality of life for residents of this state; and

Whereas the United States Department of Energy states in a 2017 energy and employment report that firms that provide energy efficiency goods and services created more than 65,000 jobs in this state, more than two-thirds of which are in construction, and that the number of jobs continues to grow; and

Whereas buildings represent the second largest source of greenhouse gas emissions in this state, the Legislative Assembly therefore:

(1) Finds that the state has an interest in maximizing the full potential of energy efficiency standards, incentives to retrofit existing buildings, utility programs and building codes to keep energy costs low and to meet statutory goals for increased building efficiency and reduced greenhouse gas emissions; and

(2) Declares that the intent of this 2023 Act is to:

(a) Provide incentives and regulations that encourage greater energy efficiency in existing and new buildings, including energy efficiency in building design and operations and in energy delivery and use;

(b) Establish energy performance standards for existing large commercial buildings; and

(c) Enhance access to commercial building energy consumption data to assist with monitoring progress toward meeting energy performance standards; now, therefore,

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

**SECTION 1. As used in sections 1 to 10 of this 2023 Act:**

**(1)(a) "Agricultural building" means a structure that is used for:**

**(A) Storing, maintaining or repairing farm or forestry machinery and equipment;**

**(B) Raising, harvesting and selling crops or forest products;**

**(C) Feeding, breeding, managing and selling livestock, poultry, fur-bearing animals or honeybees or the produce of livestock, poultry, fur-bearing animals or honeybees;**

**(D) Dairying and selling dairy products; or**

**(E) Any other agricultural, forestry or horticultural use or animal husbandry, or any combination of agricultural, horticultural or animal husbandry uses, including preparing and storing produce raised on the farm for human use and animal use, preparing, processing and storing agricultural and forestry products and goods and disposing, by marketing or otherwise, of farm produce or forest products.**

**(b) "Agricultural building" does not include:**

**(A) A dwelling;**

**(B) A structure used for a purpose other than growing plants in which 10 or more persons are present at any one time;**

**(C) A structure regulated by the State Fire Marshal pursuant to ORS chapter 476;**

**(D) A structure used by the public; or**

**(E) A structure that is subject to the National Flood Insurance Act of 1968 (42 U.S.C 4001**

1 to 4127), as amended, and regulations promulgated under that Act.

2 (2) “Conditional compliance” means a temporary method that a building owner can use  
3 to demonstrate that the building owner has implemented required energy use reduction  
4 strategies when the building owner cannot demonstrate full compliance with a required en-  
5 ergy use intensity target.

6 (3) “Covered commercial building” means a tier 1 building or a tier 2 building.

7 (4) “Eligible building owner” means:

8 (a) An owner of a tier 1 building that must comply with the standard established in sec-  
9 tion 2 of this 2023 Act; or

10 (b) An owner of tier 2 building.

11 (5) “Energy” means:

12 (a) Electricity, including electricity that is delivered through the electric grid and elec-  
13 tricity that is generated at a building site using solar or wind energy resources;

14 (b) Natural gas;

15 (c) Steam, hot water or chilled water used for heating or cooling;

16 (d) Propane;

17 (e) Fuel oil;

18 (f) Wood;

19 (g) Coal; or

20 (h) Any other fuel that meets a covered commercial building’s energy load.

21 (6) “Energy use intensity” means a measurement that weather normalizes a building’s  
22 site energy use relative to the building’s size, calculated by dividing the total net energy the  
23 building consumes in one year by the building’s gross floor area, excluding any parking ga-  
24 rage, and that is reported in thousands of British thermal units per square foot per year.

25 (7) “Energy use intensity target” means a net energy use intensity that complies with  
26 the standard set forth in section 2 of this 2023 Act.

27 (8) “Greenhouse gas” has the meaning given that term in ORS 468A.210.

28 (9)(a) “Gross floor area” means the total number of square feet of a building, measured  
29 from the exterior surfaces of a building’s fixed enclosing walls, including all floor space used  
30 as offices, lobbies, restrooms, equipment storage areas, mechanical rooms, break rooms and  
31 elevator shafts.

32 (b) “Gross floor area” does not include bays or docks outside the building.

33 (10) “Net energy use” means the sum of metered and bulk fuel energy that enters a  
34 building, minus the sum of metered energy that leaves the building.

35 (11) “Savings to investment ratio” means the ratio of the total present value of savings  
36 to the total present value of costs to implement an energy conservation measure or water  
37 conservation measure, in which the numerator of the ratio is the present value of net  
38 savings in energy or water or in maintenance costs not related to fuel use or water use that  
39 are attributable to the energy conservation measure or water conservation measure and the  
40 denominator of the ratio is the present value of the net increase in investment and replace-  
41 ment costs, less the salvage value, of the energy conservation or water conservation meas-  
42 ure.

43 (12) “Semiheated space” means an enclosed space within a covered commercial building  
44 that is heated by a heating system with an output the Department of Consumer and Business  
45 Services specifies in an applicable specialty code.

1 (13) “Tier 1 building” means a building in which the sum of gross floor area for hotel,  
2 motel and nonresidential use equals or exceeds 35,000 square feet, excluding any parking  
3 garage.

4 (14)(a) “Tier 2 building” means:

5 (A) A building with gross floor area, excluding any parking garage, that equals or exceeds  
6 35,000 square feet and that is used as a multifamily residential building, a hospital, a school,  
7 a dormitory or a university building; or

8 (B) A building in which the sum of gross floor area for hotel, motel and nonresidential  
9 use exceeds 20,000 square feet but does not exceed 35,000 square feet, excluding any parking  
10 garage.

11 (b) “Tier 2 building” does not include a covered commercial building that is classified as  
12 a tier 1 building.

13 (15) “Unconditioned space” means an enclosed space within a covered commercial build-  
14 ing that is not:

15 (a) Heated by a heating system or cooled by a cooling system with output capacities the  
16 Department of Consumer and Business Services specifies in an applicable specialty code; or

17 (b) Indirectly heated or cooled in accordance with standards the department specifies in  
18 an applicable specialty code.

19 (16) “Weather normalized” means a method for modifying a building’s energy use inten-  
20 sity in a specific year to account for deviations from the building’s energy use intensity as  
21 the energy use intensity ordinarily occurs during a year in which the weather does not  
22 fluctuate substantially or vary as a consequence of extreme weather events.

23 **SECTION 2.** (1)(a) Not later than December 31, 2024, the State Department of Energy, in  
24 consultation with the Department of Consumer and Business Services, shall adopt rules that  
25 use the American National Standards Institute’s standards for Energy Efficiency in Existing  
26 Buildings (ANSI/ASHRAE/IES Standard 100) as an initial model for specifying an energy  
27 performance standard for covered commercial buildings. In rulemaking proceedings to adopt  
28 or update rules under this paragraph, the State Department of Energy shall disclose the  
29 sources of information, including the model described in this paragraph and any peer-  
30 reviewed science, that the department relies on in developing or updating the energy per-  
31 formance standard. The department shall update the energy performance standard not later  
32 than July 1, 2029, and by the same month and day in each successive period of five years.

33 (b) The energy performance standard described in paragraph (a) of this subsection must:

34 (A) Comply with the requirements of sections 1 to 3 of this 2023 Act;

35 (B) Seek to maximize reductions in greenhouse gas emissions from covered commercial  
36 buildings;

37 (C) Include energy use intensity targets that apply to specific types of buildings;

38 (D) Require utilities to aggregate data for covered commercial buildings that have mul-  
39 tiple meters and provide the aggregated data to eligible building owners for reporting under  
40 section 3 of this 2023 Act; and

41 (E) Provide for methods to achieve conditional compliance with an applicable energy use  
42 intensity target, which must, at a minimum, require:

43 (i) Preparing an energy management plan;

44 (ii) Developing a program for building operations and maintenance that aims at achieving  
45 the applicable energy use intensity target;

1 (iii) Making investments in energy use efficiency measures that aim at achieving the  
2 applicable energy use intensity target; and

3 (iv) Submitting to energy use audits, which may be based upon or linked to ASHRAE  
4 Standard 211 audits.

5 (c) Adoption of the energy performance standard described in paragraph (a) of this sub-  
6 section does not change eligibility criteria for, or benefits or incentives available under, other  
7 programs for energy efficiency demand response.

8 (2)(a) In adopting the energy performance standard described in subsection (1) of this  
9 section, the department:

10 (A) Shall:

11 (i) Develop energy use intensity targets that are not more stringent than the average  
12 energy use intensity for each covered commercial building occupancy classification, adjusting  
13 as necessary for a covered commercial building's unique energy-using features;

14 (ii) Consider, for the purpose of establishing energy use intensity targets, regional and  
15 local data that identifies building energy use, such as existing benchmarking data from the  
16 Energy Star program established under 42 U.S.C. 6294a;

17 (iii) Consider, for the purpose of establishing the energy performance standard, federal  
18 and local programs that relate to energy efficiency standards, aligning where possible re-  
19 quirements under the energy performance standard to avoid duplicative work by regulators  
20 and eligible building owners;

21 (iv) Develop energy use intensity targets for two or more climate zones that represent  
22 energy use in a year with normal weather;

23 (v) Develop energy use intensity targets that exclude energy delivered through electric  
24 vehicle supply equipment; and

25 (vi) Adopt a conditional compliance method that:

26 (I) Requires eligible building owners of covered commercial buildings that do not meet  
27 an energy use intensity target to take action to reduce energy use; and

28 (II) Specifies investment criteria that meet the requirements set forth in paragraph (b)  
29 of this subsection and that ensure progress toward meeting the energy use intensity target;  
30 and

31 (B) May:

32 (i) Consider building occupancy classifications set forth in ANSI/ASHRAE/IES Standard  
33 100 and the United States Environmental Protection Agency's Energy Star portfolio man-  
34 ager; and

35 (ii) Base energy use intensity targets for recently constructed covered commercial  
36 buildings on statewide energy codes that were in effect at the time the covered commercial  
37 building was constructed.

38 (b)(A) Investment criteria the department specifies as part of a conditional compliance  
39 method under paragraph (a) of this subsection must:

40 (i) Ensure that an eligible building owner meets the covered commercial building's energy  
41 use intensity target by implementing energy efficiency measures identified in energy use  
42 audits; and

43 (ii) Except as provided in subparagraph (B) of this paragraph, require an eligible building  
44 owner to implement an optimized bundle of energy efficiency measures that provide maxi-  
45 mum energy savings without resulting in a savings to investment ratio of less than 1.0 or

1 require the eligible building owner to achieve the energy use intensity target by means of  
2 an implementation plan that:

3 (I) Is based on an energy use audit and life-cycle cost analysis from ANSI/ASHRAE/IES  
4 Standard 211 that accounts for the period during which a bundle of energy efficiency meas-  
5 ures provide savings;

6 (II) Reflects the eligible building owner's net costs of implementing energy efficiency  
7 measures, excluding any costs that utility or government grants cover;

8 (III) Allows an exclusion of energy efficiency measures that do not pay back the cost of  
9 the energy efficiency measure over the useful life of the energy efficiency measure;

10 (IV) Allows an exclusion of energy efficiency measures that are excluded under subpar-  
11 agraph (B) of this paragraph; and

12 (V) Allows for phased implementation in which an eligible building owner need not re-  
13 place a system or equipment before the useful life of the system or equipment ends.

14 (B) An eligible building owner need not meet an energy efficiency requirement that would  
15 compromise the historical integrity of a covered commercial building or part of a covered  
16 commercial building that:

17 (i) Is listed on a state or national register of historic places;

18 (ii) Is designated as an historic property under a state or local statute, ordinance, rule  
19 or other legislative act or a survey conducted under a statute, ordinance, rule or other leg-  
20 islative act;

21 (iii) Is certified as a contributing resource within a historic district that is listed on a  
22 national register or is locally designated as a historic district; or

23 (iv) A state historic preservation officer or the keeper of the national register of historic  
24 places has determined in an opinion or certification is eligible to be listed on the national or  
25 state register of historic places either as an individual building or as a building that con-  
26 tributes to a historic district.

27 (3) The department shall create a database of eligible building owners and covered com-  
28 mercial buildings that are subject to the requirements of sections 1 to 3 of this 2023 Act  
29 based on records the department obtains from each county assessor and on other informa-  
30 tion available to the department.

31 (4)(a) Not later than July 1, 2025, the department shall notify eligible building owners of  
32 the requirement to comply with the provisions set forth for tier 1 buildings in sections 1 to  
33 3 of this 2023 Act.

34 (b) The department may approve an eligible building owner's use of a conditional com-  
35 pliance method in lieu of full compliance with an energy use intensity target if the depart-  
36 ment determines that the eligible building owner has the capacity to take the actions and  
37 make the investments required under the conditional compliance method and otherwise  
38 qualifies to use the conditional compliance method.

39 (5) A municipality, as defined in ORS 455.010, may by ordinance, rule or land use process,  
40 adopt an energy performance standard and greenhouse gas emission reduction standards  
41 that are more stringent, or that have broader application, than the energy performance  
42 standard that the department adopts under this section. A municipality shall cooperate with  
43 the department in aligning, where practicable, an energy performance standard the munici-  
44 pality adopts with the energy performance standard the department adopts under this sec-  
45 tion.

1       **SECTION 3.** (1) An eligible building owner of a tier 1 building shall report to the State  
2 Department of Energy concerning the eligible building owner's compliance with the energy  
3 performance standard described in section 2 of this 2023 Act. The eligible building owner shall  
4 submit the report in accordance with the schedule specified in subsection (4) of this section  
5 and shall submit a new report at the end of every successive five-year period. Each report  
6 the eligible building owner submits must include documentation that demonstrates that:

7       (a) The tier 1 building's weather normalized energy use intensity during the previous  
8 calendar year is less than or equal to the applicable energy use intensity target;

9       (b) The eligible building owner is taking actions and making investments in accordance  
10 with a conditional compliance method the department approved; or

11       (c) The tier 1 building is exempt from an energy performance standard that otherwise  
12 would apply to the tier 1 building because:

13       (A) The tier 1 building did not have a certificate of occupancy or temporary certificate  
14 of occupancy during all of the 12 months that preceded the date on which the eligible building  
15 owner's report is due;

16       (B) The tier 1 building did not have an actual rate of occupancy that exceeded 50 percent  
17 of the tier 1 building's capacity during all of the 12 months that preceded the date on which  
18 the eligible building owner's report is due;

19       (C) The sum of the tier 1 building's gross floor area, minus unconditioned spaces and  
20 semiheated spaces, is less than 35,000 square feet;

21       (D) The primary use for the tier 1 building is manufacturing or another industrial use,  
22 as defined in accordance with the following use designations of the International Building  
23 Code:

24       (i) Factory group F; or

25       (ii) High hazard group H;

26       (E) The tier 1 building is an agricultural building; or

27       (F) The eligible building owner or the tier 1 building has undergone or is undergoing fi-  
28 nancial hardship, as measured in accordance with the following criteria:

29       (i) Within the 24 months that precede the date on which the eligible building owner's  
30 report is due, a city or county listed the tier 1 building on the city's or county's annual tax  
31 lien sale list because of arrears in property taxes or water or wastewater charges;

32       (ii) A court appointed receiver controls the tier 1 building because of financial distress;

33       (iii) A financial institution owns the tier 1 building because of a borrower's default;

34       (iv) Within the 24 months that precede the date on which the eligible building owner's  
35 report is due, the eligible building owner acquired the tier 1 building by means of a deed in  
36 lieu of foreclosure;

37       (v) The tier 1 building has a senior mortgage that is subject to a notice of default; or

38       (vi) Other criteria that the department specifies by rule as indicative of financial hard-  
39 ship.

40       (2) The department shall develop methods and procedures for administering reports that  
41 eligible building owners of tier 1 buildings submit to the department under subsection (1) of  
42 this section.

43       (3)(a) The department shall provide a support program to eligible building owners of  
44 covered commercial buildings that includes, at a minimum, information and periodic train-  
45 ing, technical assistance and telephone and electronic mail support that will assist eligible

1 **building owners in complying with the energy performance standard, applicable energy use**  
2 **intensity targets and reporting requirements under sections 1 to 3 of this 2023 Act.**

3 **(b) As part of the support program described in paragraph (a) of this subsection, the**  
4 **department may encourage eligible building owners to seek for maintenance staff accredi-**  
5 **tation from the U.S. Green Building Council’s Green Janitors Education Program.**

6 **(4) An eligible building owner must comply with the energy performance standard**  
7 **adopted under section 2 of this 2023 Act by the following dates:**

8 **(a) If the eligible building owner’s tier 1 building has a gross floor area of 200,000 square**  
9 **feet or more, not later than June 1, 2028;**

10 **(b) If the eligible building owner’s tier 1 building has a gross floor area of 90,000 square**  
11 **feet or more but less than 200,000 square feet, not later than June 1, 2029; and**

12 **(c) If the eligible building owner’s tier 1 building has a gross floor area of 35,000 square**  
13 **feet or more but less than 90,000 square feet, not later than June 1, 2030.**

14 **(5)(a) The department shall notify an eligible building owner of a tier 1 building of a fail-**  
15 **ure to comply with sections 1 to 3 of this 2023 Act if the eligible building owner fails to:**

16 **(A) Submit the report described in subsection (1) of this section by the date required or**  
17 **in a form and manner the department requires;**

18 **(B) Meet the energy performance standard or an applicable energy use intensity target**  
19 **or, in lieu of meeting the standard or target, fails to obtain the department’s approval to use**  
20 **a conditional compliance method;**

21 **(C) Provide accurate reporting that meets the requirements of sections 1 to 3 of this 2023**  
22 **Act; or**

23 **(D) Demonstrate as provided in subsection (1)(c) of this section that the eligible building**  
24 **owner is exempt from an otherwise applicable energy performance standard.**

25 **(b) In the notice described in paragraph (a) of this subsection, the department may**  
26 **specify a date by which the eligible building owner of a tier 1 building must correct the fail-**  
27 **ure the department identified in the notice. In addition, the department shall specify the date**  
28 **by which the eligible building owner’s failure to comply or failure to correct a lack of com-**  
29 **pliance will subject the eligible building owner to a civil penalty under subsection (6) of this**  
30 **section.**

31 **(c) At an eligible building owner’s request, the department shall cite the specific legal**  
32 **authority upon which the department relied as a basis for issuing a notice to the eligible**  
33 **building owner under paragraph (a) of this subsection.**

34 **(6)(a) The department may impose a civil penalty as provided in ORS 183.745 upon an el-**  
35 **igible building owner of a tier 1 building to which the department issued a notice under**  
36 **subsection (5) of this section if the department determines that the eligible building owner:**

37 **(A) Has not complied with the requirement set forth in the notice or has not corrected**  
38 **a lack of compliance by the date for correction that the department specifies in the notice;**  
39 **or**

40 **(B) Otherwise violated a provision of sections 1 to 3 of this 2023 Act or a rule the de-**  
41 **partment adopted under sections 1 to 3 of this 2023 Act.**

42 **(b) A civil penalty the department imposes under paragraph (a) of this subsection may**  
43 **not exceed \$5,000 plus an amount for the duration of a continuing violation, which may not**  
44 **exceed a daily amount that the department calculates by multiplying \$1 per year per square**  
45 **foot of gross floor area of the tier 1 building that is the subject of the department’s notice.**



1 (c) The department shall deposit the proceeds of any civil penalty the department im-  
2 poses and collects under this subsection into the State Department of Energy Account es-  
3 tablished under ORS 469.120 and shall allocate the proceeds for the purpose of administering  
4 the department's energy efficiency programs.

5 **SECTION 4.** (1) In addition to the energy performance standard the State Department  
6 of Energy adopts in accordance with section 2 of this 2023 Act, the department shall adopt  
7 rules to implement sections 1 to 3 of this 2023 Act. The rules must:

8 (a) Ensure timely, accurate and complete reporting of compliance with the requirements  
9 of sections 1 to 3 of this 2023 Act from all tier 1 buildings;

10 (b) Enable the department to effectively enforce the energy performance standard and  
11 energy use intensity targets established under sections 1 to 3 of this 2023 Act;

12 (c) Provide means for affected eligible building owners of tier 1 buildings to appeal deci-  
13 sions and enforcement actions of the department that affect the eligible building owner; and

14 (d) Ensure that an eligible building owner of a tier 1 building is responsible for paying the  
15 costs of compliance with sections 1 to 3 of this 2023 Act.

16 (2) Before adopting rules under this section, the department shall establish and consult  
17 an advisory committee that includes representatives of eligible building owners, tenants of  
18 covered commercial buildings, public utilities, organizations with experience in designing or  
19 implementing energy efficiency programs, local governments, organizations that focus on  
20 environmental justice and other stakeholders the department identifies as needing repre-  
21 sentation. The department shall consult with the advisory committee before amending rules  
22 the department adopts under this section.

23 **SECTION 5.** At the request of the State Department of Energy, each county assessor in  
24 this state shall provide information from existing records data that the department requires  
25 to implement sections 1 to 3 of this 2023 Act, including information about covered commer-  
26 cial buildings within the county.

27 **SECTION 6.** The State Department of Energy shall report not later than January 15,  
28 2025, and by the same date in each succeeding year until 2035, to the Governor and to com-  
29 mittees of the Legislative Assembly that are related to the environment concerning the im-  
30 plementation of the energy performance standard established under section 2 of this 2023  
31 Act. The report must include information about the department's adoption of the  
32 ANSI/ASHRAE/IES Standard 100 as the department's initial model for the energy perform-  
33 ance standard, the financial impact the standard has had on eligible building owners of tier  
34 1 buildings, the amount of any incentives the department provided for compliance and any  
35 other information that is relevant to the department's implementation of sections 1 to 3 of  
36 this 2023 Act.

37 **SECTION 7.** (1) Sections 1 to 3 of this 2023 Act do not require an eligible building owner  
38 to take action to comply with sections 1 to 3 of this 2023 Act:

39 (a) If the eligible building owner owns a tier 2 building; or

40 (b) Before the State Department of Energy adopts an energy performance standard under  
41 section 2 of this 2023 Act, if the eligible building owner owns a tier 1 building.

42 (2) The department may offer incentives for eligible building owners to voluntarily comply  
43 with, or for early compliance with, ANSI/ASHRAE/IES Standard 100 or the energy perform-  
44 ance standard the department establishes under section 2 of this 2023 Act.

45 **SECTION 8.** (1)(a) Not later than December 31, 2024, the State Department of Energy by

1 rule shall establish a requirement and standards under which eligible building owners of tier  
2 2 buildings must provide to the department data that would enable the department to es-  
3 tablish a benchmark for energy use in, and greenhouse gas emissions from, tier 2 buildings.

4 (b) The State Department of Energy shall cooperate with the Department of Education  
5 to establish a requirement to provide the data described in paragraph (a) of this subsection  
6 in a manner that minimizes costs to schools and avoids or minimizes duplication with the  
7 Department of Education's school facility assessments.

8 (2) Not later than July 1, 2025, the State Department of Energy shall notify all eligible  
9 building owners of tier 2 buildings of the requirement and standards the department adopts  
10 by rule under subsection (1) of this section.

11 (3) Not later than July 1, 2028, and by July 1 every five years thereafter, an eligible  
12 building owner of a tier 2 building shall provide the department with data the department  
13 requires in rules the department adopts under subsection (1) of this section.

14 (4) Not later than July 1, 2029, the department shall evaluate and use the data the de-  
15 partment receives from eligible building owners of tier 2 buildings to calculate average en-  
16 ergy use in, and average greenhouse gas emissions from, each of the categories of tier 2  
17 buildings that exist in this state.

18 (5) Not later than July 1, 2025, the department shall establish and consult an advisory  
19 committee to identify and evaluate the financial and nonfinancial implications of establishing  
20 and implementing an energy performance standard for tier 2 buildings. The advisory com-  
21 mittee must include, but is not limited to, representatives of renters, low-income tenants and  
22 environmental justice communities, as defined in ORS 469A.400.

23 (6) Not later than October 1, 2030, the department shall submit a report to the Governor  
24 and to an interim committee of the Legislative Assembly related to energy that:

25 (a) Recommends a cost-effective energy performance standard for tier 2 buildings; and

26 (b) Includes estimates of costs to eligible building owners, and challenges that eligible  
27 building owners would face, in implementing an energy performance standard for tier 2  
28 buildings.

29 **SECTION 9.** (1) As used in this section, "person" means an individual, corporation,  
30 nonprofit corporation, professional corporation, limited liability company, partnership, lim-  
31 ited partnership, limited liability partnership, cooperative, business trust, joint venture or  
32 other form of business entity, including Energy Trust of Oregon.

33 (2) The State Department of Energy may contract with another person to administer  
34 incentive payments to eligible building owners for early compliance with the energy per-  
35 formance standard described in section 2 of this 2023 Act.

36 (3) The person with which the department contracts under subsection (2) of this section  
37 shall administer incentive payments:

38 (a) In a manner that is consistent with rules the department adopts under, and for  
39 compliance that is consistent with, sections 1 to 3 of this 2023 Act; and

40 (b) To eligible building owners that the department certifies as qualifying for incentive  
41 payments under, and at rates established for the payments in, section 10 of this 2023 Act.

42 (4) A person that administers incentive payments on the department's behalf:

43 (a) Remains subject to any obligations the person has or will have to provide energy ef-  
44 ficiency programs or incentives to the person's customers; and

45 (b) Is not liable for excess incentive payments the person makes in reliance on the

1 department's certification or determination of the proper amount of the incentive payment,  
2 if the person is not otherwise responsible for any inaccuracy in the amount of the incentive  
3 payment.

4 **SECTION 10.** (1) The State Department of Energy by rule shall establish a program to  
5 pay incentives to eligible building owners that implement ANSI/ASHRAE/IES Standard 100  
6 or the energy performance standard described in section 2 of this 2023 Act for covered  
7 commercial buildings before adoption and implementation is mandatory. The program must  
8 provide for:

9 (a) An application process;

10 (b) Standards by which the department may qualify an eligible building owner to receive,  
11 or disqualify an eligible building owner from receiving, an incentive payment;

12 (c) A method for verifying a covered commercial building's energy consumption with the  
13 eligible building owner and the electric utility, gas company or thermal energy company that  
14 supplies energy to the covered commercial building for the purpose of qualifying the eligible  
15 building owner to receive an incentive payment;

16 (d) A process for calculating the amount of any incentive payment;

17 (e) An administrative process by which an eligible building owner may appeal the  
18 department's decision to qualify or disqualify the eligible building owner or the department's  
19 determination of the amount of an incentive payment; and

20 (f) A process for authorizing incentive payments and notifying eligible building owners  
21 and persons that administer incentive payments of the department's authorization.

22 (2) To qualify for an incentive payment, an eligible building owner must report to the  
23 department in accordance with section 3 of this 2023 Act by the deadlines and for a period  
24 of time the department specifies by rule. In addition:

25 (a) The eligible building owner must own a tier 1 building that is or will become subject  
26 to the requirements of sections 1 to 3 of this 2023 Act or must own a tier 2 building that  
27 qualifies as provided in subsection (3) of this section;

28 (b) If the covered commercial building is a tier 1 building, the tier 1 building must have  
29 a baseline energy use intensity that exceeds an applicable energy use intensity target by at  
30 least 15 energy use intensity units; and

31 (c) The eligible building owner must comply with any other requirements the department  
32 specifies by rule.

33 (3) An eligible building owner of a tier 2 building may receive an incentive payment of 35  
34 cents per square foot of gross floor area, excluding any parking garage, unconditioned space  
35 or semiheated space if the eligible building owner has submitted to the department, or has  
36 agreed to submit to the department in advance of an established deadline, the data described  
37 in section 8 of this 2023 Act.

38 (4)(a) Subject to subsection (5)(b) of this section and paragraph (c) of this subsection, an  
39 eligible building owner that applies and qualifies for an incentive payment under subsection  
40 (2) or (3) of this section may receive for meeting the energy performance standard described  
41 in section 2 of this 2023 Act early or voluntarily an incentive payment of 85 cents per square  
42 foot of gross floor area of the eligible building owner's covered commercial building, exclud-  
43 ing any parking garage, unconditioned space or semiheated space.

44 (b) The department may authorize additional incentive payments to an eligible building  
45 owner that owns a tier 2 multifamily residential building and that enters into a binding

1 agreement not to displace tenants from the multifamily residential building.

2 (c) The department may authorize an incentive payment only if funds are available for  
3 the payment and contingent upon an eligible building owner's compliance with the require-  
4 ments of this section and any rules the department adopts to govern incentive payments.

5 (5)(a) Before qualifying an eligible building owner to receive an incentive payment under  
6 this section, the department shall review the eligible building owner's application and verify  
7 any report the eligible building owner must provide under section 3 of this 2023 Act and any  
8 energy consumption the department must measure for the purposes of the qualification. If  
9 the department determines that an eligible building owner qualifies for an incentive payment,  
10 the department shall certify the qualification to the eligible building owner and to the person  
11 that administers incentive payments under section 9 of this 2023 Act.

12 (b) The department may not certify an eligible building owner as qualified for an incen-  
13 tive payment if the incentive payment would exceed:

14 (A) \$ \_\_\_\_\_ for a tier 1 building or a tier 2 building with more than 35,000 square  
15 feet of gross floor area; or

16 (B) \$ \_\_\_\_\_ for a tier 2 building with 35,000 or fewer square feet of gross floor  
17 area.

18 (6) Not later than September 30, 2026, and by the same date every two years thereafter,  
19 the department shall report to interim committees of the Legislative Assembly related to  
20 energy concerning the operations and results of the incentive program the department es-  
21 tablishes under this section. The report must include recommendations for aligning the in-  
22 centive program with greenhouse gas emission reduction goals that meet or exceed the goals  
23 specified in ORS 468A.205.

24 **SECTION 11.** This 2023 Act being necessary for the immediate preservation of the public  
25 peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect  
26 on its passage.

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