

SENATE AMENDMENTS TO SENATE BILL 870

By COMMITTEE ON ENERGY AND ENVIRONMENT

April 12

1 In line 2 of the printed bill, delete the period and insert “; and declaring an emergency.

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

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

8 “Whereas studies by the Northwest Power and Conservation Council and by individual Oregon
9 utilities repeatedly show that efficiency is the region’s largest, cheapest and lowest risk energy re-
10 source and that without improvements in efficiency the region would have needed to invest in ad-
11 ditional generation capacity fueled by natural gas; and

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

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

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

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

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

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

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

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

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

1 Delete lines 4 through 9 and insert:

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

3 **“(1)(a) ‘Agricultural building’ means a structure that is used for:**

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

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

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

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

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

14 **“(b) ‘Agricultural building’ does not include:**

15 **“(A) A dwelling;**

16 **“(B) A structure used for a purpose other than growing plants in which 10 or more per-**
17 **sons are present at any one time;**

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

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

20 **“(E) A structure that is subject to the National Flood Insurance Act of 1968 (42 U.S.C**
21 **4001 to 4127), as amended, and regulations promulgated under that Act.**

22 **“(2) ‘Conditional compliance’ means a temporary method that a building owner can use**
23 **to demonstrate that the building owner has implemented required energy use reduction**
24 **strategies when the building owner cannot demonstrate full compliance with a required en-**
25 **ergy use intensity target.**

26 **“(3) ‘Covered commercial building’ means a tier 1 building or a tier 2 building.**

27 **“(4) ‘Eligible building owner’ means:**

28 **“(a) An owner of a tier 1 building that must comply with the standard established in**
29 **section 2 of this 2023 Act; or**

30 **“(b) An owner of tier 2 building.**

31 **“(5) ‘Energy’ means:**

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

34 **“(b) Natural gas;**

35 **“(c) Steam, hot water or chilled water used for heating or cooling;**

36 **“(d) Propane;**

37 **“(e) Fuel oil;**

38 **“(f) Wood;**

39 **“(g) Coal; or**

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

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

45 **“(7) ‘Energy use intensity target’ means a net energy use intensity that complies with**

1 the standard set forth in section 2 of this 2023 Act.

2 “(8) ‘Greenhouse gas’ has the meaning given that term in ORS 468A.210.

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

7 “(b) ‘Gross floor area’ does not include bays or docks outside the building.

8 “(10) ‘Net energy use’ means the sum of metered and bulk fuel energy that enters a
9 building, minus the sum of metered energy that leaves the building.

10 “(11) ‘Savings to investment ratio’ means the ratio of the total present value of savings
11 to the total present value of costs to implement an energy conservation measure or water
12 conservation measure, in which the numerator of the ratio is the present value of net
13 savings in energy or water or in maintenance costs not related to fuel use or water use that
14 are attributable to the energy conservation measure or water conservation measure and the
15 denominator of the ratio is the present value of the net increase in investment and replace-
16 ment costs, less the salvage value, of the energy conservation or water conservation meas-
17 ure.

18 “(12) ‘Semiheated space’ means an enclosed space within a covered commercial building
19 that is heated by a heating system with an output the Department of Consumer and Business
20 Services specifies in an applicable specialty code.

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

24 “(14)(a) ‘Tier 2 building’ means:

25 “(A) A building with gross floor area, excluding any parking garage, that equals or ex-
26 ceeds 35,000 square feet and that is used as a multifamily residential building, a hospital, a
27 school, a dormitory or a university building; or

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

31 “(b) ‘Tier 2 building’ does not include a covered commercial building that is classified as
32 a tier 1 building.

33 “(15) ‘Unconditioned space’ means an enclosed space within a covered commercial build-
34 ing that is not:

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

37 “(b) Indirectly heated or cooled in accordance with standards the department specifies
38 in an applicable specialty code.

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

43 “SECTION 2. (1)(a) Not later than December 31, 2024, the State Department of Energy,
44 in consultation with the Department of Consumer and Business Services, shall adopt rules
45 that use the American National Standards Institute’s standards for Energy Efficiency in

1 Existing Buildings (ANSI/ASHRAE/IES Standard 100) as an initial model for specifying an
2 energy performance standard for covered commercial buildings. In rulemaking proceedings
3 to adopt or update rules under this paragraph, the State Department of Energy shall disclose
4 the sources of information, including the model described in this paragraph and any peer-
5 reviewed science, that the department relies on in developing or updating the energy per-
6 formance standard. The department shall update the energy performance standard not later
7 than July 1, 2029, and by the same month and day in each successive period of five years.

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

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

10 “(B) Seek to maximize reductions in greenhouse gas emissions from covered commercial
11 buildings;

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

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

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

18 “(i) Preparing an energy management plan;

19 “(ii) Developing a program for building operations and maintenance that aims at achiev-
20 ing the applicable energy use intensity target;

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

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

25 “(c) Adoption of the energy performance standard described in paragraph (a) of this
26 subsection does not change eligibility criteria for, or benefits or incentives available under,
27 other programs for energy efficiency demand response.

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

30 “(A) Shall:

31 “(i) Develop energy use intensity targets that are not more stringent than the average
32 energy use intensity for each covered commercial building occupancy classification, adjusting
33 as necessary for a covered commercial building’s unique energy-using features;

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

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

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

43 “(v) Develop energy use intensity targets that exclude energy delivered through electric
44 vehicle supply equipment; and

45 “(vi) Adopt a conditional compliance method that:

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

3 **“(II) Specifies investment criteria that meet the requirements set forth in paragraph (b)**
4 **of this subsection and that ensure progress toward meeting the energy use intensity target;**
5 **and**

6 **“(B) May:**

7 **“(i) Consider building occupancy classifications set forth in ANSI/ASHRAE/IES Standard**
8 **100 and the United States Environmental Protection Agency’s Energy Star portfolio man-**
9 **ager; and**

10 **“(ii) Base energy use intensity targets for recently constructed covered commercial**
11 **buildings on statewide energy codes that were in effect at the time the covered commercial**
12 **building was constructed.**

13 **“(b)(A) Investment criteria the department specifies as part of a conditional compliance**
14 **method under paragraph (a) of this subsection must:**

15 **“(i) Ensure that an eligible building owner meets the covered commercial building’s en-**
16 **ergy use intensity target by implementing energy efficiency measures identified in energy**
17 **use audits; and**

18 **“(ii) Except as provided in subparagraph (B) of this paragraph, require an eligible building**
19 **owner to implement an optimized bundle of energy efficiency measures that provide maxi-**
20 **imum energy savings without resulting in a savings to investment ratio of less than 1.0 or**
21 **require the eligible building owner to achieve the energy use intensity target by means of**
22 **an implementation plan that:**

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

26 **“(II) Reflects the eligible building owner’s net costs of implementing energy efficiency**
27 **measures, excluding any costs that utility or government grants cover;**

28 **“(III) Allows an exclusion of energy efficiency measures that do not pay back the cost**
29 **of the energy efficiency measure over the useful life of the energy efficiency measure;**

30 **“(IV) Allows an exclusion of energy efficiency measures that are excluded under sub-**
31 **paragraph (B) of this paragraph; and**

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

34 **“(B) An eligible building owner need not meet an energy efficiency requirement that**
35 **would compromise the historical integrity of a covered commercial building or part of a**
36 **covered commercial building that:**

37 **“(i) Is listed on a state or national register of historic places;**

38 **“(ii) Is designated as an historic property under a state or local statute, ordinance, rule**
39 **or other legislative act or a survey conducted under a statute, ordinance, rule or other leg-**
40 **islative act;**

41 **“(iii) Is certified as a contributing resource within a historic district that is listed on a**
42 **national register or is locally designated as a historic district; or**

43 **“(iv) A state historic preservation officer or the keeper of the national register of his-**
44 **toric places has determined in an opinion or certification is eligible to be listed on the na-**
45 **tional or state register of historic places either as an individual building or as a building that**

1 contributes to a historic district.

2 “(3) The department shall create a database of eligible building owners and covered
3 commercial buildings that are subject to the requirements of sections 1 to 3 of this 2023 Act
4 based on records the department obtains from each county assessor and on other informa-
5 tion available to the department.

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

9 “(b) The department may approve an eligible building owner’s use of a conditional com-
10 pliance method in lieu of full compliance with an energy use intensity target if the depart-
11 ment determines that the eligible building owner has the capacity to take the actions and
12 make the investments required under the conditional compliance method and otherwise
13 qualifies to use the conditional compliance method.

14 “(5) A municipality, as defined in ORS 455.010, may by ordinance, rule or land use pro-
15 cess, adopt an energy performance standard and greenhouse gas emission reduction stan-
16 dards that are more stringent, or that have broader application, than the energy
17 performance standard that the department adopts under this section. A municipality shall
18 cooperate with the department in aligning, where practicable, an energy performance
19 standard the municipality adopts with the energy performance standard the department
20 adopts under this section.

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

27 “(a) The tier 1 building’s weather normalized energy use intensity during the previous
28 calendar year is less than or equal to the applicable energy use intensity target;

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

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

33 “(A) The tier 1 building did not have a certificate of occupancy or temporary certificate
34 of occupancy during all of the 12 months that preceded the date on which the eligible building
35 owner’s report is due;

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

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

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

44 “(i) Factory group F; or

45 “(ii) High hazard group H;

1 “(E) The tier 1 building is an agricultural building; or
2 “(F) The eligible building owner or the tier 1 building has undergone or is undergoing fi-
3 nancial hardship, as measured in accordance with the following criteria:
4 “(i) Within the 24 months that precede the date on which the eligible building owner’s
5 report is due, a city or county listed the tier 1 building on the city’s or county’s annual tax
6 lien sale list because of arrears in property taxes or water or wastewater charges;
7 “(ii) A court appointed receiver controls the tier 1 building because of financial distress;
8 “(iii) A financial institution owns the tier 1 building because of a borrower’s default;
9 “(iv) Within the 24 months that precede the date on which the eligible building owner’s
10 report is due, the eligible building owner acquired the tier 1 building by means of a deed in
11 lieu of foreclosure;
12 “(v) The tier 1 building has a senior mortgage that is subject to a notice of default; or
13 “(vi) Other criteria that the department specifies by rule as indicative of financial hard-
14 ship.
15 “(2) The department shall develop methods and procedures for administering reports that
16 eligible building owners of tier 1 buildings submit to the department under subsection (1) of
17 this section.
18 “(3)(a) The department shall provide a support program to eligible building owners of
19 covered commercial buildings that includes, at a minimum, information and periodic train-
20 ing, technical assistance and telephone and electronic mail support that will assist eligible
21 building owners in complying with the energy performance standard, applicable energy use
22 intensity targets and reporting requirements under sections 1 to 3 of this 2023 Act.
23 “(b) As part of the support program described in paragraph (a) of this subsection, the
24 department may encourage eligible building owners to seek for maintenance staff accredi-
25 tation from the U.S. Green Building Council’s Green Janitors Education Program.
26 “(4) An eligible building owner must comply with the energy performance standard
27 adopted under section 2 of this 2023 Act by the following dates:
28 “(a) If the eligible building owner’s tier 1 building has a gross floor area of 200,000 square
29 feet or more, not later than June 1, 2028;
30 “(b) If the eligible building owner’s tier 1 building has a gross floor area of 90,000 square
31 feet or more but less than 200,000 square feet, not later than June 1, 2029; and
32 “(c) If the eligible building owner’s tier 1 building has a gross floor area of 35,000 square
33 feet or more but less than 90,000 square feet, not later than June 1, 2030.
34 “(5)(a) The department shall notify an eligible building owner of a tier 1 building of a
35 failure to comply with sections 1 to 3 of this 2023 Act if the eligible building owner fails to:
36 “(A) Submit the report described in subsection (1) of this section by the date required
37 or in a form and manner the department requires;
38 “(B) Meet the energy performance standard or an applicable energy use intensity target
39 or, in lieu of meeting the standard or target, fails to obtain the department’s approval to use
40 a conditional compliance method;
41 “(C) Provide accurate reporting that meets the requirements of sections 1 to 3 of this
42 2023 Act; or
43 “(D) Demonstrate as provided in subsection (1)(c) of this section that the eligible building
44 owner is exempt from an otherwise applicable energy performance standard.
45 “(b) In the notice described in paragraph (a) of this subsection, the department may

1 specify a date by which the eligible building owner of a tier 1 building must correct the fail-
2 ure the department identified in the notice. In addition, the department shall specify the date
3 by which the eligible building owner's failure to comply or failure to correct a lack of com-
4 pliance will subject the eligible building owner to a civil penalty under subsection (6) of this
5 section.

6 “(c) At an eligible building owner's request, the department shall cite the specific legal
7 authority upon which the department relied as a basis for issuing a notice to the eligible
8 building owner under paragraph (a) of this subsection.

9 “(6)(a) The department may impose a civil penalty as provided in ORS 183.745 upon an
10 eligible building owner of a tier 1 building to which the department issued a notice under
11 subsection (5) of this section if the department determines that the eligible building owner:

12 “(A) Has not complied with the requirement set forth in the notice or has not corrected
13 a lack of compliance by the date for correction that the department specifies in the notice;
14 or

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

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

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

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

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

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

32 “(c) Provide means for affected eligible building owners of tier 1 buildings to appeal de-
33 cisions and enforcement actions of the department that affect the eligible building owner;
34 and

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

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

44 “SECTION 5. At the request of the State Department of Energy, each county assessor
45 in this state shall provide information from existing records data that the department re-

1 quires to implement sections 1 to 3 of this 2023 Act, including information about covered
2 commercial buildings within the county.

3 **“SECTION 6.** The State Department of Energy shall report not later than January 15,
4 2025, and by the same date in each succeeding year until 2035, to the Governor and to com-
5 mittees of the Legislative Assembly that are related to the environment concerning the im-
6 plementation of the energy performance standard established under section 2 of this 2023
7 Act. The report must include information about the department’s adoption of the
8 ANSI/ASHRAE/IES Standard 100 as the department’s initial model for the energy perform-
9 ance standard, the financial impact the standard has had on eligible building owners of tier
10 1 buildings, the amount of any incentives the department provided for compliance and any
11 other information that is relevant to the department’s implementation of sections 1 to 3 of
12 this 2023 Act.

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

15 **“(a)** If the eligible building owner owns a tier 2 building; or

16 **“(b)** Before the State Department of Energy adopts an energy performance standard un-
17 der section 2 of this 2023 Act, if the eligible building owner owns a tier 1 building.

18 **“(2)** The department may offer incentives for eligible building owners to voluntarily
19 comply with, or for early compliance with, ANSI/ASHRAE/IES Standard 100 or the energy
20 performance standard the department establishes under section 2 of this 2023 Act.

21 **“SECTION 8.** (1)(a) Not later than December 31, 2024, the State Department of Energy
22 by rule shall establish a requirement and standards under which eligible building owners of
23 tier 2 buildings must provide to the department data that would enable the department to
24 establish a benchmark for energy use in, and greenhouse gas emissions from, tier 2
25 buildings.

26 **“(b)** The State Department of Energy shall cooperate with the Department of Education
27 to establish a requirement to provide the data described in paragraph (a) of this subsection
28 in a manner that minimizes costs to schools and avoids or minimizes duplication with the
29 Department of Education’s school facility assessments.

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

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

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

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

45 **“(6)** Not later than October 1, 2030, the department shall submit a report to the Governor

1 and to an interim committee of the Legislative Assembly related to energy that:

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

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

6 “**SECTION 9.** (1) As used in this section, ‘person’ means an individual, corporation,
7 nonprofit corporation, professional corporation, limited liability company, partnership, lim-
8 ited partnership, limited liability partnership, cooperative, business trust, joint venture or
9 other form of business entity, including Energy Trust of Oregon.

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

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

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

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

19 “(4) A person that administers incentive payments on the department’s behalf:

20 “(a) Remains subject to any obligations the person has or will have to provide energy
21 efficiency programs or incentives to the person’s customers; and

22 “(b) Is not liable for excess incentive payments the person makes in reliance on the
23 department’s certification or determination of the proper amount of the incentive payment,
24 if the person is not otherwise responsible for any inaccuracy in the amount of the incentive
25 payment.

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

31 “(a) An application process;

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

34 “(c) A method for verifying a covered commercial building’s energy consumption with the
35 eligible building owner and the electric utility, gas company or thermal energy company that
36 supplies energy to the covered commercial building for the purpose of qualifying the eligible
37 building owner to receive an incentive payment;

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

39 “(e) An administrative process by which an eligible building owner may appeal the
40 department’s decision to qualify or disqualify the eligible building owner or the department’s
41 determination of the amount of an incentive payment; and

42 “(f) A process for authorizing incentive payments and notifying eligible building owners
43 and persons that administer incentive payments of the department’s authorization.

44 “(2) To qualify for an incentive payment, an eligible building owner must report to the
45 department in accordance with section 3 of this 2023 Act by the deadlines and for a period

1 of time the department specifies by rule. In addition:

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

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

8 “(c) The eligible building owner must comply with any other requirements the depart-
9 ment specifies by rule.

10 “(3) An eligible building owner of a tier 2 building may receive an incentive payment of
11 35 cents per square foot of gross floor area, excluding any parking garage, unconditioned
12 space or semiheated space if the eligible building owner has submitted to the department,
13 or has agreed to submit to the department in advance of an established deadline, the data
14 described in section 8 of this 2023 Act.

15 “(4)(a) Subject to subsection (5)(b) of this section and paragraph (c) of this subsection,
16 an eligible building owner that applies and qualifies for an incentive payment under sub-
17 section (2) or (3) of this section may receive for meeting the energy performance standard
18 described in section 2 of this 2023 Act early or voluntarily an incentive payment of 85 cents
19 per square foot of gross floor area of the eligible building owner’s covered commercial
20 building, excluding any parking garage, unconditioned space or semiheated space.

21 “(b) The department may authorize additional incentive payments to an eligible building
22 owner that owns a tier 2 multifamily residential building and that enters into a binding
23 agreement not to displace tenants from the multifamily residential building.

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

27 “(5)(a) Before qualifying an eligible building owner to receive an incentive payment under
28 this section, the department shall review the eligible building owner’s application and verify
29 any report the eligible building owner must provide under section 3 of this 2023 Act and any
30 energy consumption the department must measure for the purposes of the qualification. If
31 the department determines that an eligible building owner qualifies for an incentive payment,
32 the department shall certify the qualification to the eligible building owner and to the person
33 that administers incentive payments under section 9 of this 2023 Act.

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

36 “(A) \$_____ for a tier 1 building or a tier 2 building with more than 35,000
37 square feet of gross floor area; or

38 “(B) \$_____ for a tier 2 building with 35,000 or fewer square feet of gross floor
39 area.

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

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

4
