

SB 870-3  
(LC 927)  
3/24/23 (TSB/ps)

Requested by Senator LIEBER

**PROPOSED AMENDMENTS TO  
SENATE BILL 870**

1 In line 2 of the printed bill, after “buildings” insert “; and declaring an  
2 emergency”.

3 After line 2, insert:

4 “Whereas policies that encourage energy efficiency have been extremely  
5 successful in reducing energy use, avoiding costly investment in new gener-  
6 ating capacity, lowering customer energy bills and reducing air pollution and  
7 greenhouse gas emissions; and

8 “Whereas the Oregon 2022 biennial energy report states that achieving  
9 energy efficiency in existing buildings is critical for reducing greenhouse gas  
10 emissions that result from constructing and operating buildings in this state;  
11 and

12 “Whereas studies by the Northwest Power and Conservation Council and  
13 by individual Oregon utilities repeatedly show that efficiency is the region’s  
14 largest, cheapest and lowest risk energy resource and that without improve-  
15 ments in efficiency the region would have needed to invest in additional  
16 generation capacity fueled by natural gas; and

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

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

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

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

12 “(1) Finds that the state has an interest in maximizing the full potential  
13 of energy efficiency standards, incentives to retrofit existing buildings, util-  
14 ity programs and building codes to keep energy costs low and to meet stat-  
15 utory goals for increased building efficiency and reduced greenhouse gas  
16 emissions; and

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

18 “(a) Provide incentives and regulations that encourage greater energy ef-  
19 ficiency in existing and new buildings, including energy efficiency in build-  
20 ing design and operations and in energy delivery and use;

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

23 “(c) Enhance access to commercial building energy consumption data to  
24 assist with monitoring progress toward meeting energy performance stan-  
25 dards; now, therefore,”.

26 Delete lines 4 through 9 and insert:

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

28 **“(1)(a) ‘Agricultural building’ means a structure that is located on  
29 a farm or forest operation and is used for:**

30 **(A) Storing, maintaining or repairing farm or forestry machinery**

1 and equipment;

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

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

6 (D) Dairying and selling dairy products; or

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

13 (b) “Agricultural building” does not include:

14 (A) A dwelling;

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

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

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

20 (E) A structure that is subject to sections 4001 to 4127, title 42,  
21 United States Code (the National Flood Insurance Act of 1968) as  
22 amended, and regulations promulgated under that Act.

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

28 “(3) ‘Covered commercial building’ means a tier 1 building or a tier  
29 2 building.

30 “(4) ‘Eligible building owner’ means:

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

3       “(b) An owner of tier 2 building.

4       “(5) ‘Energy’ means:

5       “(a) Electricity, including electricity that is delivered through the  
6 electric grid and electricity that is generated at a building site using  
7 solar or wind energy resources;

8       “(b) Natural gas;

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

10       “(d) Propane;

11       “(e) Fuel oil;

12       “(f) Wood;

13       “(g) Coal; or

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

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

22       “(7) ‘Energy use intensity target’ means a net energy use intensity  
23 that complies with the standard set forth in section 2 of this 2023 Act.

24       “(8) ‘Greenhouse gas’ has the meaning given that term in ORS  
25 468A.210.

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

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

3       **“(10) ‘Net energy use’ means the sum of metered and bulk fuel en-**  
4 **ergy that enters a building, minus the sum of metered energy that**  
5 **leaves the building.**

6       **“(11) ‘Savings to investment ratio’ means the ratio of the total**  
7 **present value of savings to the total present value of costs to imple-**  
8 **ment an energy conservation measure or water conservation measure,**  
9 **in which the numerator of the ratio is the present value of net savings**  
10 **in energy or water or in maintenance costs not related to fuel use or**  
11 **water use that are attributable to the energy conservation measure**  
12 **or water conservation measure and the denominator of the ratio is the**  
13 **present value of the net increase in investment and replacement costs,**  
14 **less the salvage value, of the energy conservation or water conserva-**  
15 **tion measure.**

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

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

23       **“(14)(a) ‘Tier 2 building’ means:**

24       **“(A) A building with gross floor space, excluding any parking ga-**  
25 **rage, that equals or exceeds 35,000 square feet and that is used as a**  
26 **multifamily residential building, a hospital, a school, a dormitory or**  
27 **a university building; or**

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

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

3       **“(15) ‘Unconditioned space’ means an enclosed space within a cov-**  
4 **ered commercial building that is not:**

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

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

10       **“(16) ‘Weather normalized’ means a method for modifying a**  
11 **building’s energy use intensity in a specific year to account for devi-**  
12 **ations from the building’s energy use intensity as the energy use in-**  
13 **tensity ordinarily occurs during a year in which the weather does not**  
14 **fluctuate substantially or vary as a consequence of extreme weather**  
15 **events.**

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

30       **“(b) The energy performance standard described in paragraph (a)**

1 of this subsection must:

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

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

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

8 “(D) Provide for methods to achieve conditional compliance with  
9 an applicable energy use intensity target, which must, at a minimum,  
10 require:

11 “(i) Preparing an energy management plan;

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

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

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

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

20 “(A) Shall:

21 “(i) Develop energy use intensity targets that are not more strin-  
22 gent than the average energy use intensity for each covered commer-  
23 cial building occupancy classification, adjusting as necessary for a  
24 covered commercial building’s unique energy-using features;

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

29 “(iii) Consider, for the purpose of establishing the energy perform-  
30 ance standard, federal and local programs that relate to energy effi-

1 **ciency standards, aligning where possible requirements under the**  
2 **energy performance standard to avoid duplicative work by regulators**  
3 **and eligible building owners;**

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

6 **“(v) Develop energy use intensity targets that exclude energy de-**  
7 **livered through electric vehicle supply equipment; and**

8 **“(vi) Adopt a conditional compliance method that:**

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

12 **“(II) Specifies investment criteria that meet the requirements set**  
13 **forth in paragraph (b) of this subsection and that ensure progress to-**  
14 **ward meeting the energy use intensity target; and**

15 **“(B) May:**

16 **“(i) Consider building occupancy classifications set forth in**  
17 **ANSI/ASHRAE/IES Standard 100 and the United States Environmental**  
18 **Protection Agency’s Energy Star portfolio manager; and**

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

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

25 **“(i) Ensure that an eligible building owner meets the covered com-**  
26 **mercial building’s energy use intensity target by implementing energy**  
27 **efficiency measures identified in energy use audits; and**

28 **“(ii) Except as provided in subparagraph (B) of this paragraph, re-**  
29 **quire an eligible building owner to implement an optimized bundle of**  
30 **energy efficiency measures that provide maximum energy savings**

1 without resulting in a savings-to-investment ratio of less than 1.0 or  
2 require the eligible building owner to achieve the energy use intensity  
3 target by means of an implementation plan that:

4 “(I) Is based on an energy use audit and life-cycle cost analysis  
5 from ANSI/ASHRAE/IES Standard 100 that accounts for the period  
6 during which a bundle of energy efficiency measures provide savings;

7 “(II) Reflects the eligible building owner’s net costs of implement-  
8 ing energy efficiency measures, excluding any costs that utility or  
9 government grants cover;

10 “(III) Allows an exclusion of energy efficiency measures that do not  
11 pay back the cost of the energy efficiency measure over the useful life  
12 of the energy efficiency measure;

13 “(IV) Allows an exclusion of energy efficiency measures that are  
14 excluded under subparagraph (B) of this paragraph; and

15 “(V) Allows for phased implementation in which an eligible building  
16 owner need not replace a system or equipment before the useful life  
17 of the system or equipment ends.

18 “(B) An eligible building owner need not meet an energy efficiency  
19 requirement that would compromise the historical integrity of a cov-  
20 ered commercial building or part of a covered commercial building  
21 that:

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

23 “(ii) Is designated as an historic property under a state or local  
24 statute, ordinance, rule or other legislative act or a survey conducted  
25 under a statute, ordinance, rule or other legislative act;

26 “(iii) Is certified as a contributing resource within a historic district  
27 that is listed on a national register or is locally designated as a his-  
28 toric district; or

29 “(iv) A state historic preservation officer or the keeper of the na-  
30 tional register of historic places has determined in an opinion or cer-

1 tification is eligible to be listed on the national or state register of  
2 historic places either as an individual building or as a building that  
3 contributes to a historic district.

4 “(3) The department shall create a database of eligible building  
5 owners and covered commercial buildings that are subject to the re-  
6 quirements of sections 1 to 3 of this 2023 Act based on records the de-  
7 partment obtains from each county assessor and on other information  
8 available to the department.

9 “(4)(a) Not later than July 1, 2025, the department shall notify eli-  
10 gible building owners of the requirement to comply with the provisions  
11 set forth for tier 1 buildings in sections 1 to 3 of this 2023 Act.

12 “(b) The department may approve an eligible building owner’s use  
13 of a conditional compliance method in lieu of full compliance with an  
14 energy use intensity target if the department determines that the eli-  
15 gible building owner has the capacity to take the actions and make the  
16 investments required under the conditional compliance method and  
17 otherwise qualifies to use the conditional compliance method.

18 “(5) Notwithstanding ORS 455.040, a municipality, as defined in ORS  
19 455.010, may by ordinance, rule or land use process, adopt an energy  
20 performance standard and greenhouse gas emission reduction stan-  
21 dards that are more stringent, or that have broader application, than  
22 the energy performance standard that the department adopts under  
23 this section. A municipality shall cooperate with the department in  
24 aligning, where practicable, an energy performance standard the  
25 municipality adopts with the energy performance standard the de-  
26 partment adopts under this section.

27 **“SECTION 3. (1) An eligible building owner of a tier 1 building shall**  
28 **report to the State Department of Energy concerning the eligible**  
29 **building owner’s compliance with the energy performance standard**  
30 **described in section 2 of this 2023 Act. The eligible building owner shall**

1 submit the report in accordance with the schedule specified in sub-  
2 section (4) of this section and shall submit a new report at the end of  
3 every successive five-year period. Each report the eligible building  
4 owner submits must include documentation that demonstrates that:

5 “(a) The tier 1 building’s weather normalized energy use intensity  
6 during the previous calendar year is less than or equal to the appli-  
7 cable energy use intensity target;

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

11 “(c) The tier 1 covered commercial building is exempt from an en-  
12 ergy performance standard that otherwise would apply to the tier 1  
13 building because:

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

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

21 “(C) The sum of the tier 1 building’s gross floor area, minus un-  
22 conditioned spaces and semiheated spaces, is less than 35,000 square  
23 feet;

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

27 “(i) Factory group F; or

28 “(ii) High hazard group H;

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

30 “(F) The eligible building owner or the tier 1 building has undergone

1 or is undergoing financial hardship, as measured in accordance with  
2 the following criteria:

3 “(i) Within the 24 months that precede the date on which the eli-  
4 gible building owner’s report is due, a city or county listed the tier 1  
5 building on the city’s or county’s annual tax lien sale list because of  
6 arrears in property taxes or water or wastewater charges;

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

9 “(iii) A financial institution owns the tier 1 building because of a  
10 borrower’s default;

11 “(iv) Within the 24 months that precede the date on which the eli-  
12 gible building owner’s report is due, the eligible building owner ac-  
13 quired the tier 1 building by means of a deed in lieu of foreclosure;

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

16 “(vi) Other criteria that the department specifies by rule as indic-  
17 ative of financial hardship.

18 “(2) The department shall develop methods and procedures for ad-  
19 ministering reports that eligible building owners of tier 1 buildings  
20 submit to the department under subsection (1) of this section.

21 “(3)(a) The department shall provide a support program to eligible  
22 building owners of covered commercial buildings that includes, at a  
23 minimum, information and periodic training, technical assistance and  
24 telephone and electronic mail support that will assist eligible building  
25 owners in complying with the energy performance standard, applicable  
26 energy use intensity targets and reporting requirements under  
27 sections 1 to 3 of this 2023 Act.

28 “(b) As part of the support program described in paragraph (a) of  
29 this subsection, the department may encourage eligible building own-  
30 ers to seek for maintenance staff accreditation from the U.S. Green

1 **Building Council’s Green Janitors Education Program.**

2 **“(4) An eligible building owner must comply with the energy per-**  
3 **formance standard adopted under section 2 of this 2023 Act by the**  
4 **following dates:**

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

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

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

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

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

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

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

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

27 **“(b) In the notice described in paragraph (a) of this subsection, the**  
28 **department may specify a date by which the eligible building owner**  
29 **of a tier 1 building must correct the failure the department identified**  
30 **in the notice. In addition, the department shall specify the date by**

1 which the eligible building owner’s failure to comply or failure to  
2 correct a lack of compliance will subject the eligible building owner  
3 to a civil penalty under subsection (6) of this section.

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

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

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

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

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

24 “(c) The department shall deposit the proceeds of any civil penalty  
25 the department imposes and collects under this subsection into the  
26 State Department of Energy Account established under ORS 469.120  
27 and shall allocate the proceeds for the purpose of administering the  
28 department’s energy efficiency programs.

29 “SECTION 4. (1) In addition to the energy performance standard the  
30 State Department of Energy adopts in accordance with section 2 of

1 this 2023 Act, the department shall adopt rules to implement sections  
2 1 to 3 of this 2023 Act. The rules must:

3 “(a) Ensure timely, accurate and complete reporting of compliance  
4 with the requirements of sections 1 to 3 of this 2023 Act from all tier  
5 1 buildings;

6 “(b) Enable the department to effectively enforce the energy per-  
7 formance standard and energy use intensity targets established under  
8 sections 1 to 3 of this 2023 Act;

9 “(c) Provide means for affected eligible building owners of tier 1  
10 buildings to appeal decisions and enforcement actions of the depart-  
11 ment that affect the eligible building owner; and

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

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

24 “SECTION 5. At the request of the State Department of Energy,  
25 each county assessor in this state shall provide information from ex-  
26 isting records data that the department requires to implement sections  
27 1 to 3 of this 2023 Act, including about covered commercial buildings  
28 within the county.

29 “SECTION 6. The State Department of Energy shall report not later  
30 than January 15, 2025, and by the same date in each succeeding year

1 until 2035, to the Governor and to committees of the Legislative As-  
2 sembly that are related to the environment concerning the imple-  
3 mentation of the energy performance standard established under  
4 section 2 of this 2023 Act. The report must include information about  
5 the department’s adoption of the ANSI/ASHRAE/IES Standard 100 as  
6 the department’s initial model for the energy performance standard,  
7 the financial impact the standard has had on eligible building owners  
8 of tier 1 buildings, the amount of any incentives the department pro-  
9 vided for compliance and any other information that is relevant to the  
10 department’s implementation of sections 1 to 3 of this 2023 Act.

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

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

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

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

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

28 **“(b) The State Department of Energy shall cooperate with the De-**  
29 **partment of Education to establish a requirement to provide the data**  
30 **described in paragraph (a) of this subsection in a manner that avoids**

1 or minimizes duplication with the Department of Education’s efforts  
2 to establish energy use and greenhouse gas emission benchmarks for  
3 schools.

4 “(2) Not later than July 1, 2025, the State Department of Energy  
5 shall notify all eligible building owners of tier 2 buildings of the re-  
6 quirement and standards the department adopts by rule under sub-  
7 section (1) of this section.

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

12 “(4) Not later than July 1, 2029, the State Department of Energy  
13 shall evaluate and use the data the department receives from eligible  
14 building owners of tier 2 buildings to calculate average energy use in,  
15 and average greenhouse gas emissions from, each of the categories of  
16 tier 2 buildings that exist in this state.

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

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

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

29 “(b) Includes estimates of costs to eligible building owners, and  
30 challenges that eligible building owners would face, in implementing

1 an energy performance standard for tier 2 buildings.

2 **“SECTION 9. (1) The State Department of Energy shall contract**  
3 **with another person to administer incentive payments to eligible**  
4 **building owners for early compliance with the energy performance**  
5 **standard described in section 2 of this 2023 Act.**

6 **“(2) The person with which the department contracts under sub-**  
7 **section (1) of this section shall administer incentive payments:**

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

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

14 **“(3) A person that administers incentive payments on the**  
15 **department’s behalf:**

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

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

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

30 **“(a) An application process;**

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

4       **“(c) A method for verifying a covered commercial building’s energy**  
5 **consumption with the eligible building owner and the electric utility,**  
6 **gas company or thermal energy company that supplies energy to the**  
7 **covered commercial building for the purpose of qualifying the eligible**  
8 **building owner to receive an incentive payment;**

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

10       **“(e) An administrative process by which an eligible building owner**  
11 **may appeal the department’s decision to qualify or disqualify the eli-**  
12 **gible building owner or the department’s determination of the amount**  
13 **of an incentive payment; and**

14       **“(f) A process for authorizing incentive payments and notifying el-**  
15 **igible building owners and persons that administer incentive payments**  
16 **of the department’s authorization.**

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

21       **“(a) The eligible building owner must own a tier 1 building that is**  
22 **or will become subject to the requirements of sections 1 to 3 of this**  
23 **2023 Act or must own a tier 2 building that qualifies as provided in**  
24 **subsection (3) of this section;**

25       **“(b) If the covered commercial building is a tier 1 building, the tier**  
26 **1 building must have a baseline energy use intensity that exceeds an**  
27 **applicable energy use intensity target by at least 15 energy use inten-**  
28 **sity units;**

29       **“(c) At least one electric utility, gas company or thermal energy**  
30 **company that provides or delivers energy to the covered commercial**

1 **building is a person that administers incentive payments as provided**  
2 **in section 9 of this 2023 Act; and**

3 **“(d) The eligible building owner must comply with any other re-**  
4 **quirements the department specifies by rule.**

5 **“(3) An eligible building owner of a tier 2 building may receive an**  
6 **incentive payment if the eligible building owner has submitted to the**  
7 **department, or has agreed to submit to the department in advance of**  
8 **an established deadline, the data described in section 8 of this 2023 Act.**

9 **“(4)(a) Subject to subsection (5)(b) of this section and paragraph (c)**  
10 **of this subsection, an eligible building owner that applies and qualifies**  
11 **for an incentive payment under subsection (2) or (3) of this section**  
12 **may receive as an incentive payment:**

13 **“(A) Eighty-five cents per square foot of gross floor area, excluding**  
14 **any parking garage, unconditioned space or semiheated space, for a**  
15 **tier 1 building or a tier 2 building with more than 35,000 square feet**  
16 **of gross floor area; or**

17 **“(B) Thirty cents per square foot of gross floor area, excluding any**  
18 **parking garage, unconditioned space or semiheated space, for a tier 2**  
19 **building with 35,000 or fewer square feet of gross floor area.**

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

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

28 **“(5)(a) Before qualifying an eligible building owner to receive an**  
29 **incentive payment under this section, the department shall review the**  
30 **eligible building owner’s application and verify any report the eligible**

1 building owner must provide under section 3 of this 2023 Act and any  
2 energy consumption the department must measure for the purposes  
3 of the qualification. If the department determines that an eligible  
4 building owner qualifies for an incentive payment, the department  
5 shall certify the qualification to the eligible building owner and to the  
6 person that administers incentive payments under section 9 of this  
7 2023 Act.

8 “(b) The department may not certify an eligible building owner as  
9 qualified for an incentive payment if the incentive payment would ex-  
10 ceed:

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

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

15 “(6) Not later than September 30, 2026, and by the same date every  
16 two years thereafter, the department shall report to interim commit-  
17 tees of the Legislative Assembly related to energy concerning the op-  
18 erations and results of the incentive program the department  
19 establishes under this section. The report must include recommen-  
20 dations for aligning the incentive program with greenhouse gas emis-  
21 sion reduction goals that meet or exceed the goals specified in ORS  
22 468A.205.

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

26