

Enrolled House Bill 2987

Sponsored by Representative HOLVEY; Senator JOHNSON

CHAPTER

AN ACT

Relating to compliance with green energy technology mandates for public buildings; creating new provisions; amending ORS 279C.527 and 279C.528; and declaring an emergency.

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

SECTION 1. ORS 279C.527 is amended to read:

279C.527. (1) As used in this section and in ORS 279C.528:

(a)(A) "Green energy technology" means a system that employs:

(i) Solar or geothermal energy directly for space or water heating or to generate electricity; or

(ii) Building design that uses solar energy passively to reduce energy use from other sources by at least 20 percent from a level required under ORS 276.900 to 276.915 or achieved in buildings constructed according to state building code standards that the Department of Consumer and Business Services approves under ORS 455.496.

(B) "Green energy technology" does not include a system that:

(i) Uses water, groundwater or the ground as a heat source at temperatures less than 140 degrees Fahrenheit; or

(ii) Incorporates solar energy indirectly into other methods for generating energy, such as from the action of waves on water, from hydroelectric facilities or from wind-powered turbines.

(b) "Public building" means a building that a public body, as defined in ORS 174.109, owns or controls, and that is:

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

(B) Used for conducting public business.

(2)(a) Except as otherwise provided in this section, **a contracting agency that intends to enter into a public improvement contract for [the construction of] constructing a public building or for [the reconstruction or] reconstructing or performing a major renovation of a public building, if the cost of the reconstruction or major renovation exceeds 50 percent of the value of the public building, shall [contain and reserve] first make a determination under subsection (3) of this section as to whether green energy technology is appropriate for the public building and, if the contracting agency determines that green energy technology is appropriate, shall ensure that the public improvement contract provides** an amount equal to at least 1.5 percent of the total contract price for the purpose of including appropriate green energy technology as part of the construction, reconstruction or major renovation of the public building.

(b) A public improvement contract to construct, reconstruct or renovate a public building may provide for constructing green energy technology at a site that is located away from the site of the public building if:

(A) Constructing green energy technology away from the site of the public building and using the energy from the green energy technology at the site of the public building is more cost-effective, taking into account additional costs associated with transmitting generated energy to the site of the public building, than is constructing and using green energy technology at the site of the public building;

(B) The green energy technology that is located away from the site of the public building is located within this state and in the same county as, or in a county adjacent to, the site of the public building; and

(C) The public improvement contract provides that all of the moneys for constructing green energy technology away from the site of the public building must fund new energy generating capacity that does not replace or constitute a purchase and use of energy generated from green energy technology that:

(i) Employs solar energy and that existed on the date that the original building permit for the public building was issued; or

(ii) Employs geothermal energy and for which construction was completed before January 1, 2013.

(c) In *[making the determination required]* **evaluating whether a contracting agency can construct green energy technology at a site away from the site of the public building** *[under]* **in accordance with** paragraph (b)(A) of this subsection, *[a]* **the** contracting agency shall:

(A) Compare the costs of constructing green energy technology that employs solar energy at the site of the public building only with the corresponding costs of green energy technology that employs solar energy at a location away from the site of the public building; and

(B) Compare the costs of green energy technology that employs geothermal energy at the site of the public building only with the corresponding costs of green energy technology that employs geothermal energy at a location away from the site of the public building.

(3) *[Before entering into a public improvement contract described in subsection (2) of this section, a contracting agency shall prepare a written determination of whether including green energy technology as part of the construction, reconstruction or major renovation of the public building is appropriate. The]* **In making a determination as to whether green energy technology is appropriate in constructing, reconstructing or performing a major renovation of a public building, a** contracting agency shall list in the determination the total contract price and specify the amount the agency intends to expend on including green energy technology as part of the construction, reconstruction or major renovation. The State Department of Energy shall develop a form that a contracting agency may use to prepare the written determination described in this subsection.

(4)(a) If the contracting agency determines that green energy technology is not appropriate for the public building, subsection (2) of this section does not apply to the public improvement contract. A contracting agency's determination under this paragraph must consider whether constructing green energy technology at the site of the public building is appropriate and whether constructing green energy technology away from the site of the public building and in accordance with subsection (2)(b) and (c) of this section is appropriate.

(b) If subsection (2) of this section does not apply to the public improvement contract:

(A) The contracting agency shall spend an amount equal to at least 1.5 percent of the total contract price to include appropriate green energy technology as part of a future public building project; and

(B) The amount the contracting agency spends on the future public building project in accordance with subparagraph (A) of this paragraph is in addition to any amount required under subsection (2) of this section for including appropriate green energy technology as part of the future public building project.

(5)(a) **A contracting agency need not set aside the amount described in subsection (4)(b) in an account or otherwise reserve moneys for a future public building at the time the contracting agency makes the determination described in subsection (3) of this section, but the**

contracting agency shall report the amount described in subsection (4)(b) to the State Department of Energy as provided in ORS 279C.528 (2)(a).

(b) Subsection (4)(b) of this section does not apply to a public improvement contract for which state funds are not directly or indirectly used.

(6)(a) This section does not exempt an authorized state agency, as defined in ORS 276.905, from complying with ORS 276.900 to 276.915, except that an authorized state agency, without complying with ORS 276.900 to 276.915, may determine that green energy technology is appropriate to include as part of *[the construction, reconstruction or]* **constructing, reconstructing or performing a major renovation of a public building.**

(b) A contracting agency may not use an amount described in subsection (4)(b) of this section to comply with requirements set forth in ORS 276.900 to 276.915 or with a state building code standard that the Department of Consumer and Business Services approves under ORS 455.496.

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

SECTION 2. ORS 279C.528 is amended to read:

279C.528. (1) Each contracting agency, in soliciting, awarding and administering public improvement contracts that are subject to ORS 279C.527, is subject to rules the State Department of Energy adopts that include, but are not limited to, requirements and specifications for:

(a) Using particular green energy technologies in public improvements;

(b) Determining the cost-effectiveness of green energy technologies;

(c) Submitting documents required under ORS 279C.527 to the department for review; and

(d) Determining whether a structure is a public building subject to the requirements of ORS 279C.527.

(2)(a) Each contracting agency shall collect and maintain information concerning the contracting agency's compliance with ORS 279C.527, which must include, at a minimum:

(A) Records that show how the contracting agency *[disposed of]* **spent** moneys the contracting agency *[reserved for]* **used in** including appropriate green energy technology as part of constructing, reconstructing or *[renovating]* **performing a major renovation of a public building;**

(B) An identification of each public improvement contract for which the contracting agency spent moneys *[reserved for including]* **to include** appropriate green technology as part of constructing, reconstructing or *[renovating]* **performing a major renovation of a public building;**

(C) An identification of each public improvement contract for which the contracting agency determined that including green technology as part of constructing, reconstructing or *[renovating]* **performing a major renovation of a public building** was not appropriate;

(D) *[An identification of the account or fund into which the contracting agency deposited moneys the contracting agency reserved for, but did not spend on, including appropriate green technology as part of constructing, reconstructing or renovating a public building]* **The total amount the contracting agency would have spent on each public improvement contract identified in subparagraph (C) of this paragraph and the total aggregated amount that the contracting agency must spend to include green energy technology as part of constructing, reconstructing or performing a major renovation of a future public building;** and

(E) An identification of each public improvement contract that uses moneys the contracting agency did not spend in a previous public improvement contract for including appropriate green energy technology as part of constructing, reconstructing or *[renovating]* **performing a major renovation of a public building.**

(b) Each contracting agency shall compile the information the contracting agency collected under paragraph (a) of this subsection and report the information to the department at times, *[and]* in a manner **and on forms that** the department specifies by rule.

(c) The department shall:

(A) Compile and summarize the information the department receives under paragraph (b) of this subsection and, in the department's compilation and summary, specifically:

(i) Identify contracting agencies that have not complied with the requirements of ORS 279C.527 **or the reporting requirements set forth in this section;**

(ii) Identify public improvement contracts for which contracting agencies have determined that including green energy technology as part of constructing, reconstructing or [*renovating*] **performing a major renovation of** a public building was not appropriate; and

(iii) Identify public improvement contracts that use moneys a contracting agency did not spend in a previous public improvement contract on including appropriate green energy technology as part of constructing, reconstructing or [*renovating*] **performing a major renovation of** a public building.

(B) Deliver annually to the Legislative Assembly, on or before the date on which each regular session of the Legislative Assembly begins, a report concerning contracting agency compliance with **this section and** ORS 279C.527 that includes the compilation and summary the department prepared under subparagraph (A) of this paragraph.

SECTION 3. The amendments to ORS 279C.527 and 279C.528 by sections 1 and 2 of this 2015 Act apply to public improvement contracts that a contracting agency first advertises or otherwise solicits or, if the contracting agency does not advertise or solicit the public improvement contract, to public improvement contracts into which the contracting agency enters on or after the operative date specified in section 4 of this 2015 Act.

SECTION 4. (1) The amendments to ORS 279C.527 and 279C.528 by sections 1 and 2 of this 2015 Act become operative January 1, 2016.

(2) The State Department of Energy, the Oregon Department of Administrative Services, the Department of Transportation, the Attorney General or a contracting agency that adopts rules under ORS 279A.065 may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department, the Attorney General or the contracting agency to exercise, on or after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the department, the Attorney General or the contracting agency by the amendments to ORS 279C.527 and 279C.528 by sections 1 and 2 of this 2015 Act.

SECTION 5. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by House April 23, 2015

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 4, 2015

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State