

D R A F T

SUMMARY

Requires contracting agency to set aside 1.5 percent of public improvement contract price for including green energy technology in renovation of public building if cost of renovation exceeds \$1 million.

Requires State Department of Energy to establish technical advisory committee to review contracting agency determination of whether including green energy technology in public building is feasible. Requires contracting agency to spend amount not used for green energy technology in public building on future or alternative public building project within one year.

Removes Oregon University System exemption from requirement to spend 1.5 percent of public improvement contract price on including green energy technology.

A BILL FOR AN ACT

Relating to green energy technology use in public buildings; creating new provisions; amending ORS 279C.527 and 351.086.

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

SECTION 1. ORS 279C.527, as amended by section 1, chapter 83, Oregon Laws 2012, is amended to read:

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

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

(A) Geothermal electricity generation or direct use of geothermal energy for space or water heating that reduces energy use from other sources by at least 20 percent from a level otherwise specified by law:

(i) At the site of a public building; or

(ii) Away from the site of a public building if the geothermal source is within this state and is in the same county as the public building or an ad-

jacent county, if using energy from a geothermal source that is away from the site of the public building is more cost-effective than using geothermal energy from a source at the site of the public building, if generating or using geothermal energy at the site of the public building is not feasible and if in addition to geothermal energy the public building includes additional new capacity for renewable electricity generation.

(B) Solar electricity generation, solar thermal generation or passive solar energy generation, if the system that employs passive solar energy generation reduces energy use from other sources by at least 20 percent from a level otherwise specified by law:

(i) At the site of a public building; or

(ii) Away from the site of a public building if the solar energy source is within this state and is in the same county as the public building or an adjacent county, if using energy from a solar energy source that is away from the site of the public building is more cost-effective than using solar energy from a source at the site of the public building, if generating or using solar energy at the site of the public building is not feasible and if in addition to solar energy the public building includes additional new capacity for renewable electricity generation.

(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) Except as otherwise provided in this section, a public improvement contract for the construction of a public building or for the reconstruction or 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]* **\$1 million**, shall contain an amount equal to at least 1.5 percent of the total contract price for the inclusion of appropriate green energy technology in the public building.

(3)(a) Before entering into a public improvement contract described in

subsection (2) of this section, a contracting agency shall prepare a written determination of whether *[the inclusion of]* **including** green energy technology in the construction, reconstruction or major renovation of the public building is appropriate. The contracting agency shall *[include]* **list** in the determination the total contract price and the amount the agency intends to expend on *[the inclusion of]* **including** green energy technology in the public building.

(b) The State Department of Energy shall:

(A) Develop a form **that** a contracting agency may use to prepare the written determination described in this subsection.

(B) Establish by rule a technical advisory committee and a process to review the written determinations contracting agencies make under paragraph (a) of this subsection. The department by rule shall prescribe the qualifications for membership on the technical advisory committee and the criteria the committee will apply to review the contracting agencies' determinations.

(4)(a) If the contracting agency determines that including green energy technology in the construction, reconstruction or major renovation of the public building is not appropriate **and the department, in consultation with the department's technical advisory committee, agrees in writing with the contracting agency's determination**, subsection (2) of this section does not apply to the public improvement contract. *[However:]*

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

[(a)] **(A)** The contracting agency shall spend, **within one year after constructing, reconstructing or renovating the public building that is initially subject to the requirement under subsection (2) of this section**, an amount equal to at least 1.5 percent of the total contract price **of the public building the contracting agency constructed, reconstructed or renovated** on *[the inclusion of]* **including** appropriate green energy technology in a future public building project **or an alternative public**

building project, provided that the department, after consulting with the department's technical advisory committee, approves in writing of the contracting agency's decision to include green energy technology in the future or alternative public building project; and

[(b)] (B) The amount the contracting agency spends on the future or alternative public building project pursuant to [paragraph (a) of this subsection] **subparagraph (A) of this paragraph** is in addition to any amount required under subsection (2) of this section for [the inclusion of] **including** appropriate green energy technology in the future or alternative public building project.

(5) Subsection (4) of this section does not apply to a public improvement contract [for which] **that does not use** state funds [are not] directly or indirectly [used].

(6) 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 in the construction, reconstruction or major renovation of a public building.

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

SECTION 2. ORS 351.086, as amended by section 48, chapter 104, Oregon Laws 2012, is amended to read:

351.086. (1) Except as otherwise provided in this chapter and ORS chapter 352, the provisions of ORS chapters 182, 240, 270, 273, 276, 278, 279A, 279B, 279C, 282, 283, 291 and 292 and ORS 180.060, 180.160, 180.210, 180.220, 180.225 and 180.230 do not apply to the Oregon University System.

(2) Notwithstanding subsection (1) of this section, the provisions of ORS 182.100, 182.109, 240.167, 276.073 to 276.090, 279A.065 (2), 279B.055 (3), 279C.380 (1)(a) and (3), **279C.527, 279C.528**, 279C.600 to 279C.625, 279C.800, 279C.810, 279C.825, 279C.830, 279C.835, 279C.840, 279C.845, 279C.850, 279C.855, 279C.860, 279C.865, 279C.870, 283.085 to 283.092, 291.200, 291.201 to 291.222, 291.223,

291.224 (2) and (6), 291.226, 291.272 to 291.278, 291.322 to 291.334, 291.405, 291.407, 291.445, 292.043 and 292.044 apply to the Oregon University System.

(3) Notwithstanding subsection (1) of this section, ORS 273.413 to 273.456 apply to any structure, equipment or asset owned by the Oregon University System that is encumbered by a certificate of participation.

(4) Notwithstanding subsection (6) of this section:

(a) The provisions of ORS chapters 35, 190, 192, 244 and 297 and ORS 30.260 to 30.460, 184.480, 184.483, 184.486, 184.488, 200.005 to 200.025, 200.045 to 200.090, 200.100 to 200.120, 200.160 to 200.200, 236.605 to 236.640, 243.650 to 243.782, 243.800, 243.820, 243.830, 243.850, 243.910 to 243.945, 307.090 and 307.112 apply to the Oregon University System under the same terms as they apply to other public bodies other than the State of Oregon.

(b) The provisions of ORS chapter 286A and ORS 293.115, 293.117, 293.130, 293.169, 293.171, 293.205 to 293.225, 293.250, 293.265 to 293.280, 293.285, 293.295, 293.321, 293.353, 293.375, 293.406, 293.465 to 293.485, 293.490, 293.495, 293.525, 293.701 to 293.820, 293.875, 293.880 and 293.990 apply to the Oregon University System under the same terms as they apply to state agencies with moneys held by the State Treasurer, to the Oregon University System Fund established in ORS 351.506 and to any other moneys deposited with or held by the State Treasurer for the Oregon University System.

(5) Notwithstanding subsections (1) and (6) of this section, the Oregon University System and its agents and employees remain subject to all statutes and administrative rules of this state that create rights, benefits or protections in favor of military veterans, service members and families of service members to the same extent as an agency of this state would be subject to such statutes and administrative rules.

(6)(a) Except as provided by paragraph (b) of this subsection, the Oregon University System, as a distinct governmental entity, is not subject to any provision of law enacted after January 1, 2011, with respect to any governmental entity, that is unique to governmental entities, unless the provision specifically provides that it applies to the Oregon University System.

(b) To the same extent as state agencies that borrow through the State Treasurer or that have moneys held in the State Treasury, the Oregon University System is subject to any provision of law enacted after January 1, 2011, that relates to or affects the borrowings of the Oregon University System through the State Treasurer or the deposit, payment or investment of moneys held in the Oregon University System Fund or any other moneys held for the Oregon University System in the State Treasury.

(7) In carrying out the duties, functions and powers imposed by law upon the Oregon University System, the State Board of Higher Education or the Chancellor of the Oregon University System may contract with any public agency for the performance of such duties, functions and powers as the board or chancellor considers appropriate.

SECTION 3. The amendments to ORS 279C.527 and 351.086 by sections 1 and 2 of this 2013 Act apply to a contract for constructing, reconstructing or renovating a public building that a contracting agency first advertises or otherwise solicits or, if the contracting agency does not advertise or solicit the contract, to a contract into which the contracting agency first enters on or after the effective date of this 2013 Act.