

Senate Bill 504

Sponsored by Senator LINTHICUM; Senator OLSEN (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Expands definition of "green energy technology" for purposes of public improvement contracts. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to allowable green energy technology in public improvement contracts; creating new provisions; amending ORS 279C.527 and 279C.528; and prescribing an effective date.

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 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[.];

(iii) Electricity from hydropower, fuel cells or other hydrogen-based technology, ocean wave energy or wind power; or

(iv) Electricity or heat from biomass.

(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 less than 128 degrees Fahrenheit if the system is used for a public school building[; 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.

[*(c)*(A) "*Woody biomass energy technology*" means a system that, for space or water heating or as a combined heat and power system, uses a boiler with a lower heating value combustion efficiency of at least 80 percent and that uses as fuel material from trees and woody plants, such as limbs, tops, needles, leaves and other woody parts, that:]

[*(i)* *Grows in a forest, a woodland, a farm, a rangeland or a wildland that borders on an urban*

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 *area; and]*

2 *[(ii) Is a by-product of forest management, agriculture, ecosystem restoration or fire prevention or*
3 *related activities.]*

4 *[(B) “Woody biomass energy technology” does not include a system that uses for fuel:]*

5 *[(i) Wood pieces that have been treated with creosote, pentachlorophenol, chromated copper arsenate*
6 *or other chemical preservatives; or]*

7 *[(ii) Municipal solid waste.]*

8 (2)(a) Except as otherwise provided in this section, a contracting agency that intends to enter
9 into a public improvement contract for constructing a public building or for reconstructing or per-
10 forming a major renovation of a public building, if the cost of the reconstruction or major renovation
11 exceeds 50 percent of the value of the public building, shall first make a determination under sub-
12 section (3) of this section as to whether green energy technology is appropriate for the public
13 building and, if the contracting agency determines that green energy technology is appropriate, shall
14 ensure that the public improvement contract provides an amount equal to at least 1.5 percent of the
15 total contract price for the purpose of including appropriate green energy technology as part of the
16 construction, reconstruction or major renovation of the public building.

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

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

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

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

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

34 (ii) Employs geothermal energy and for which construction was completed before January 1,
35 2013.

36 (c) In evaluating whether a contracting agency can construct green energy technology at a site
37 away from the site of the public building in accordance with paragraph (b)(A) of this subsection, the
38 contracting agency shall compare the costs of constructing green energy technology that employs
39 a particular fuel source or method of energy generation at the site of the public building only with
40 the corresponding costs of green energy technology that employs the same **particular** fuel source
41 or method of energy generation at a location away from the site of the public building.

42 *[(d)(A) As an alternative to including appropriate green energy technology as part of the con-*
43 *struction, reconstruction or major renovation of a public building, a contracting agency may include*
44 *woody biomass energy technology as part of constructing, reconstructing or performing a major reno-*
45 *vation on the public building if the woody biomass energy technology creates new energy generation*

1 *capacity that did not exist on the date on which the original building permit for the public building*
 2 *was issued, the contracting agency has considered the potential costs of the woody biomass energy*
 3 *technology and:]*

4 *[(i) The facility that uses woody biomass energy technology is located in an area of the state that*
 5 *complies with standards that the Department of Environmental Quality has adopted for emissions of*
 6 *particulate matter; or]*

7 *[(ii) The contracting agency demonstrates to the Department of Environmental Quality, if the fa-*
 8 *ility that uses woody biomass energy technology is located in an area that does not comply with*
 9 *standards the department has adopted for emissions of particulate matter, that one of the following two*
 10 *conditions applies:]*

11 *[(I) The fuel that the woody biomass energy technology uses is pelletized; or]*

12 *[(II) The woody biomass energy technology produces particulate matter emissions at the same level*
 13 *as, or a lower level than, a functionally equivalent system that is capable of producing the same energy*
 14 *output and that uses fuel that is pelletized.]*

15 *[(B) Notwithstanding a contracting agency's demonstrations in accordance with subparagraph*
 16 *(A)(ii) of this paragraph, the Department of Environmental Quality may require additional emissions*
 17 *control technologies or specifications before the contracting agency may include woody biomass energy*
 18 *technology in the construction, reconstruction or major renovation of a public building.]*

19 (3) In making a determination as to whether green energy technology is appropriate[, *or whether*
 20 *woody biomass energy technology is a suitable alternative to green energy technology,]* in constructing,
 21 reconstructing or performing a major renovation of a public building, a contracting agency shall list
 22 in the determination the total contract price and specify the amount the agency intends to expend
 23 on including green energy technology [*or woody biomass energy technology*] as part of the con-
 24 struction, reconstruction or major renovation. The State Department of Energy shall develop a form
 25 that a contracting agency may use to prepare the written determination described in this subsection.

26 (4)(a) If the contracting agency determines that green energy technology is not appropriate for
 27 the public building, subsection (2) of this section does not apply to the public improvement
 28 contract[, *except that if the contracting agency determines that woody biomass energy technology is a*
 29 *suitable alternative, the contracting agency will make the determination specified in subsection (3) of*
 30 *this section for the woody biomass energy technology*]. A contracting agency's determination under
 31 this paragraph must consider whether constructing green energy technology [*or woody biomass en-*
 32 *ergy technology*] at the site of the public building is appropriate and whether constructing green
 33 energy technology [*or woody biomass energy technology*] away from the site of the public building
 34 and in accordance with subsection (2)(b) and (c) of this section[, *or with subsection (2)(d) of this*
 35 *section, as applicable,]* is appropriate.

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

37 (A) The contracting agency shall spend an amount equal to at least 1.5 percent of the total
 38 contract price to include appropriate green energy technology [*or woody biomass energy*
 39 *technology*] as part of a future public building project; and

40 (B) The amount the contracting agency spends on the future public building project in accord-
 41 ance with subparagraph (A) of this paragraph is in addition to any amount required under sub-
 42 section (2) of this section for including appropriate green energy technology [*or woody biomass*
 43 *energy technology*] as part of the future public building project.

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

1 contracting agency makes the determination described in subsection (3) of this section, but the
 2 contracting agency shall report the amount described in subsection (4)(b) of this section to the State
 3 Department of Energy as provided in ORS 279C.528 (2).

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

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

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

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

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

17 279C.528. (1) Each contracting agency, in soliciting, awarding and administering public im-
 18 provement contracts that are subject to ORS 279C.527, is subject to rules the State Department of
 19 Energy adopts that include, but are not limited to, requirements and specifications for:

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

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

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

23 (d) Determining whether a structure is a public building subject to the requirements of ORS
 24 279C.527.

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

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

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

33 (C) An identification of each public improvement contract for which the contracting agency de-
 34 termined that including green energy technology [*or woody biomass energy technology*] as part of
 35 constructing, reconstructing or performing a major renovation of a public building was not appro-
 36 priate;

37 (D) The total amount the contracting agency would have spent on each public improvement
 38 contract identified in subparagraph (C) of this paragraph and the total aggregated amount that the
 39 contracting agency must spend to include green energy technology [*or woody biomass energy tech-*
 40 *nology*] as part of constructing, reconstructing or performing a major renovation of a future public
 41 building; and

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

1 (b) Each contracting agency shall compile the information the contracting agency collected un-
2 der paragraph (a) of this subsection and report the information to the department at times, in a
3 manner and on forms that the department specifies by rule.

4 (c) The department shall:

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

7 (i) Identify contracting agencies that have not complied with the requirements of ORS 279C.527
8 or the reporting requirements set forth in paragraph (b) of this subsection;

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

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

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

20 **SECTION 3. The amendments to ORS 279C.527 and 279C.528 by sections 1 and 2 of this**
21 **2019 Act apply to a public contract that a contracting agency first advertises or otherwise**
22 **solicits or, if the contracting agency does not advertise or solicit the public contract, to a**
23 **public contract into which a contracting agency enters on or after the operative date speci-**
24 **fied in section 4 of this 2019 Act.**

25 **SECTION 4. (1) The amendments to ORS 279C.527 and 279C.528 by sections 1 and 2 of this**
26 **2019 Act become operative on January 1, 2020.**

27 **(2) The Director of the State Department of Energy may adopt rules and take any other**
28 **action before the operative date specified in subsection (1) of this section that is necessary**
29 **to enable the director, on and after the operative date specified in subsection (1) of this**
30 **section, to exercise all of the duties, functions and powers conferred on the director by the**
31 **amendments to ORS 279C.527 and 279C.528 by sections 1 and 2 of this 2019 Act.**

32 **SECTION 5. This 2019 Act takes effect on the 91st day after the date on which the 2019**
33 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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