

# Senate Bill 664

Sponsored by Senator LINTHICUM (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

1  
2 Relating to allowable green energy technology in public improvement contracts; creating new pro-  
3 visions; amending ORS 279C.527; and prescribing an effective date.

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

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

6 279C.527. (1) As used in this section and ORS 279C.528:

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

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

9 (ii) Building design that uses solar energy passively to reduce energy use from other sources  
10 by at least 10 percent from a level required under ORS 276.900 to 276.915 or achieved in buildings  
11 constructed according to state building code standards that the Department of Consumer and Busi-  
12 ness Services approves under ORS 455.496; *[or]*

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

15 **(iv) Electricity or heat from biomass; or**

16 *[(iii)]* (v) Battery storage, if the battery storage is part of a system that generates electricity  
17 from solar or geothermal energy on the site of the public building.

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

19 *[(i)]* uses water, groundwater or the ground as a heat source at temperatures less than 140 de-  
20 grees Fahrenheit, or less than 128 degrees Fahrenheit if the system is used for a public school  
21 building; *or]*

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

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

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

27 (ii) Used for conducting public business.

28 (B) "Public building" does not include an airport, as defined in ORS 836.005.

29 (c)(A) "Total contract price" means all of the costs a contracting agency anticipates incurring  
30 in all contracts and subcontracts involved in constructing, reconstructing or performing a major  
31 renovation of a public building including design or architecture, engineering, transportation or en-

**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 vironmental impact assessment and planning, construction management, labor, materials, land sur-  
 2 veying and site preparation, demolition, hazardous material removal, required reinforcements or  
 3 improvements to existing structures or appurtenant infrastructure, insurance, inspections and cer-  
 4 tifications and, except as provided in subparagraph (B) of this paragraph, other costs the contracting  
 5 agency would not incur but for the construction, reconstruction or major renovation of the public  
 6 building.

7 (B) "Total contract price" does not include:

8 (i) Costs of advertising, soliciting, evaluating bids or proposals for or awarding a public con-  
 9 tract;

10 (ii) Costs of moving contracting agency employees, equipment and furnishings from and to a  
 11 public building;

12 (iii) Costs of locating, renting or leasing and preparing to occupy alternative facilities;

13 (iv) Ordinary operating costs for a public building during periods of reconstruction or reno-  
 14 vation;

15 (v) Costs of storing equipment or furnishings at a site away from a public building;

16 (vi) Labor costs for employees of a contracting agency;

17 (vii) Direct costs that are solely for the purpose of retrofitting or improving a public building's  
 18 ability to withstand a seismic event; and

19 (viii) Costs that bear only a tenuous relationship to the construction, reconstruction or major  
 20 renovation of a public building.

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

25 *[(i) Grows in a forest, a woodland, a farm, a rangeland or a wildland that borders on an urban  
 26 area; and]*

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

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

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

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

33 (2)(a) Except as otherwise provided in this section, a contracting agency that intends to enter  
 34 into a public improvement contract with a total contract price of \$5 million or more for constructing  
 35 a public building or for reconstructing or performing a major renovation of a public building, if the  
 36 cost of the reconstruction or major renovation exceeds 50 percent of the value of the public building,  
 37 shall first make a determination under subsection (5) of this section as to whether green energy  
 38 technology is appropriate for the public building.

39 (b) If a contracting agency determines that green energy technology is appropriate, the con-  
 40 tracting agency shall ensure that the public improvement contract provides an amount equal to at  
 41 least 1.5 percent of the total contract price for the purpose of including appropriate green energy  
 42 technology as part of the construction, reconstruction or major renovation of the public building.

43 (3)(a) A public improvement contract to construct, reconstruct or renovate a public building may  
 44 provide for constructing green energy technology, other than battery storage, at a site that is lo-  
 45 cated away from the site of the public building if:

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

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

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

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

15 (ii) Employs geothermal energy and for which construction was completed before January 1,  
 16 2013.

17 (b) In evaluating whether a contracting agency can construct green energy technology, other  
 18 than battery storage, at a site away from the site of the public building in accordance with para-  
 19 graph (a)(A) of this subsection, the contracting agency shall compare the costs of constructing green  
 20 energy technology that employs a particular fuel source or method of energy generation at the site  
 21 of the public building only with the corresponding costs of green energy technology that employs  
 22 the same **particular** fuel source or method of energy generation at a location away from the site  
 23 of the public building.

24 [(4)(a)] (4) Of the amount that a contracting agency provides in a public improvement contract  
 25 under subsection (2) of this section for the purpose of including green energy technology as part of  
 26 the construction, reconstruction or major renovation of a public building, the contracting agency  
 27 may expend as much as half or, if green energy technology is not appropriate for the public building,  
 28 the entirety, [as follows:] **on improving energy use efficiency in the public building**

29 [(A)] if an analysis under subsection (5)(a)(B) of this section shows that the available total solar  
 30 resource fraction at the site of the public building is 75 percent or less[.]. The contracting agency  
 31 may improve energy use efficiency in the public building by:

32 [(i)] (a) Designing, engineering and constructing, reconstructing or renovating the public build-  
 33 ing to reduce or offset energy use in accordance with guidelines the State Department of Energy  
 34 adopts by rule; or

35 [(ii)] (b) Installing or preparing the public building for an installation of devices, technologies  
 36 and other measures that reduce or offset energy use in accordance with guidelines the  
 37 [department] **State Department of Energy** adopts by rule.

38 [(B)] *The contracting agency may include woody biomass energy technology as part of constructing,  
 39 reconstructing or performing a major renovation on the public building if the woody biomass energy  
 40 technology creates new energy generation capacity that did not exist on the date on which the original  
 41 building permit for the public building was issued, the contracting agency has considered the potential  
 42 costs of the woody biomass energy technology and:]*

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

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

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

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

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

13        (5)(a) In making a written determination as to whether green energy technology is appropriate,  
14 or whether an expenditure for a purpose described in subsection (4) of this section is suitable as an  
15 addition to or an alternative to including green energy technology in constructing, reconstructing  
16 or performing a major renovation of a public building, a contracting agency in the written determi-  
17 nation shall:

18        (A) List the total contract price and specify the amount the agency intends to expend on in-  
19 cluding green energy technology or for a purpose described in subsection (4) of this section as part  
20 of the construction, reconstruction or major renovation.

21        (B) Show the results of an analysis of the total solar resource fraction available for use at the  
22 site on which the contracting agency intends to install green energy technology that uses solar en-  
23 ergy for space or water heating or to generate electricity. The contracting agency may conclude  
24 that the green energy technology described in this subparagraph is appropriate if the total solar  
25 resource fraction exceeds 75 percent.

26        (b) The State Department of Energy shall develop a form that a contracting agency may use to  
27 prepare the written determination described in this subsection.

28        (6)(a) If a contracting agency determines that green energy technology is not appropriate for a  
29 public building, subsection (2) of this section does not apply to the public improvement contract,  
30 except that if the contracting agency determines that an expenditure for a purpose described in  
31 subsection (4) of this section is a suitable alternative, the contracting agency will make the deter-  
32 mination specified in subsection (5) of this section for the alternative purpose. A contracting  
33 agency's determination under this paragraph must consider whether constructing green energy  
34 technology or making an expenditure for a purpose described in subsection (4) of this section at the  
35 site of the public building is appropriate and whether constructing green energy technology, other  
36 than battery storage, away from the site of the public building and in accordance with subsection  
37 (3)(a) and (b) of this section, or making an expenditure for a purpose described in subsection (4) of  
38 this section away from the site of the public building, is appropriate.

39        (b) If subsection (2) of this section does not apply to the public improvement contract and the  
40 contracting agency does not choose to make an expenditure for a purpose described in subsection  
41 (4) of this section:

42        (A) The contracting agency shall expend an amount equal to at least 1.5 percent of the total  
43 contract price to include appropriate green energy technology or for a purpose described in sub-  
44 section (4) of this section as part of a future public building project; and

45        (B) The amount the contracting agency expends on the future public building project in ac-

1 cordance with subparagraph (A) of this paragraph is in addition to any amount required under sub-  
 2 section (2) of this section for including appropriate green energy technology as part of the future  
 3 public building project.

4 (7) A contracting agency may choose to consolidate in one public building, or in one location  
 5 away from the site of the public building, all or a substantial portion of the green energy technology  
 6 that the contracting agency would otherwise include as part of the construction, reconstruction or  
 7 major renovation of one or more other public buildings if:

8 (a) The total amount the contracting agency expends on green energy technology is an aggre-  
 9 gate of all of the amounts that, under this section and ORS 279C.528, the contracting agency must  
 10 expend on each of the public buildings that are part of the same project; and

11 (b) The project, taken as a whole, otherwise meets the requirements set forth in this section and  
 12 ORS 279C.528.

13 (8)(a) A contracting agency need not set aside the amount described in subsection (6)(b) of this  
 14 section in an account or otherwise reserve moneys for a future public building at the time the  
 15 contracting agency makes the determination described in subsection (5) of this section, but the  
 16 contracting agency shall report the amount described in subsection (6)(b) of this section to the State  
 17 Department of Energy as provided in ORS 279C.528 (2).

18 (b) Subsection (6)(b) of this section does not apply to a public improvement contract for which  
 19 state funds are not directly or indirectly used.

20 (9)(a) This section does not exempt an authorized state agency, as defined in ORS 276.905, from  
 21 complying with ORS 276.900 to 276.915, except that an authorized state agency, without complying  
 22 with ORS 276.900 to 276.915, may determine that green energy technology or an alternative tech-  
 23 nology described in subsection (4) of this section is appropriate to include as part of constructing,  
 24 reconstructing or performing a major renovation of a public building.

25 (b) A contracting agency may not use an amount described in subsection (6)(b) of this section  
 26 to comply with requirements set forth in ORS 276.900 to 276.915 or with a state building code  
 27 standard that the Department of Consumer and Business Services approves under ORS 455.496.

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

30 **SECTION 2. The amendments to ORS 279C.527 by section 1 of this 2021 Act apply to a**  
 31 **public contract that a contracting agency first advertises or otherwise solicits or, if the**  
 32 **contracting agency does not advertise or solicit the public contract, to a public contract into**  
 33 **which a contracting agency enters on or after the operative date specified in section 3 of this**  
 34 **2021 Act.**

35 **SECTION 3. (1) The amendments to ORS 279C.527 by section 1 of this 2021 Act become**  
 36 **operative on January 1, 2022.**

37 **(2) The Director of the State Department of Energy may adopt rules and take any other**  
 38 **action before the operative date specified in subsection (1) of this section that is necessary**  
 39 **to enable the director, on and after the operative date specified in subsection (1) of this**  
 40 **section, to undertake and exercise all of the duties, functions and powers conferred on the**  
 41 **director by the amendments to ORS 279C.527 by section 1 of this 2021 Act.**

42 **SECTION 4. This 2021 Act takes effect on the 91st day after the date on which the 2021**  
 43 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**