

SB 870-1
(LC 927)
2/20/23 (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 3 of this 2023 Act:**

28 **“(1)(a) ‘Agricultural structure’ means a structure that houses farm**
29 **implements, hay, grain, poultry, livestock or other horticultural pro-**
30 **ducts.**

1 **“(b) ‘Agricultural structure’ does not include a structure that the**
2 **public uses or that is a place of human habitation or employment**
3 **where agricultural products are processed, treated or packaged.**

4 **“(2) ‘Conditional compliance’ means a temporary method that a**
5 **building owner can use to demonstrate that the building owner has**
6 **implemented required energy use reduction strategies when the build-**
7 **ing owner cannot demonstrate full compliance with a required energy**
8 **use intensity target.**

9 **“(3) ‘Covered commercial building’ means a building in which the**
10 **sum of gross floor space for hotel, motel, dormitory and nonresidential**
11 **use exceeds 50,000 square feet, excluding any parking garage.**

12 **“(4) ‘Eligible building owner’ means:**

13 **“(a) An owner of a covered commercial building that must comply**
14 **with the standard established in section 2 of this 2023 Act; or**

15 **“(b) An owner of a residential building in which the floor area ex-**
16 **ceeds 50,000 gross square feet, excluding any parking garage, and that**
17 **consists of more than two dwelling units in which residents or tenants**
18 **occupy the dwelling units on other than a transitory basis.**

19 **“(5) ‘Energy’ means:**

20 **“(a) Electricity, including electricity that is delivered through the**
21 **electric grid and electricity that is generated at a building site using**
22 **solar or wind energy resources;**

23 **“(b) Natural gas;**

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

25 **“(d) Propane;**

26 **“(e) Fuel oil;**

27 **“(f) Wood;**

28 **“(g) Coal; or**

29 **“(h) Any other fuel that meets a covered commercial building’s**
30 **energy load.**

1 **“(6) ‘Energy use intensity’ means a measurement that normalizes**
2 **a building’s site energy use relative to the building’s size, calculated**
3 **by dividing the total net energy the building consumes in one year by**
4 **the building’s gross floor area, excluding any parking garage, and that**
5 **is reported in thousands of British Thermal Units per square foot per**
6 **year.**

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

9 **“(8) ‘Greenhouse gas’ has the meaning given that term in ORS**
10 **468A.210.**

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

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

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

21 **“(11) ‘Savings to investment ratio’ means the ratio of the total**
22 **present value of savings to the total present value of costs to imple-**
23 **ment an energy conservation measure or water conservation measure,**
24 **in which the numerator of the ratio is the present value of net savings**
25 **in energy or water or in maintenance costs not related to fuel use or**
26 **water use that are attributable to the energy conservation measure**
27 **or water conservation measure and the denominator of the ratio is the**
28 **present value of the net increase in investment and replacement costs,**
29 **less the salvage value, of the energy conservation or water conserva-**
30 **tion measure.**

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

5 “(13) ‘Unconditioned space’ means an enclosed space within a cov-
6 ered commercial building that is not:

7 “(a) Heated by a heating system or cooled by a cooling system with
8 output capacities the department specifies in an applicable specialty
9 code; or

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

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

18 “SECTION 2. (1)(a) Not later than December 31, 2023, the Depart-
19 ment of Consumer and Business Services shall adopt rules that use the
20 American National Standards Institute’s standards for Energy Effi-
21 ciency in Existing Buildings (ANSI/ASHRAE/IES Standard 100-2018)
22 as an initial model for specifying an energy performance standard for
23 covered commercial buildings. In rulemaking proceedings to adopt or
24 update rules under this paragraph, the department shall disclose the
25 sources of information, including the model described in this para-
26 graph and any peer-reviewed science, that the department relies on in
27 developing or updating the energy performance standard. The depart-
28 ment shall update the energy performance standard not later than
29 July 1, 2029, and by the same month and day in each successive period
30 of five years.

1 **“(b) The energy performance standard described in paragraph (a)**
2 **of this subsection must:**

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

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

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

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

12 **“(i) Preparing an energy management plan;**

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

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

17 **“(iv) Submitting to energy use 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) Develop energy use intensity targets for two or more climate**
30 **zones that represent energy use in a year with normal weather; and**

1 **“(iv) Adopt a conditional compliance method that:**

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

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

8 **“(B) May:**

9 **“(i) Consider building occupancy classifications set forth in**
10 **ANSI/ASHRAE/IES Standard 100-2018 and the United States Environ-**
11 **mental Protection Agency’s Energy Star portfolio manager; and**

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

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

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

21 **“(ii) Except as provided in subparagraph (B) of this paragraph, re-**
22 **quire an eligible building owner to implement an optimized bundle of**
23 **energy efficiency measures that provide maximum energy savings**
24 **without resulting in a savings-to-investment ratio of less than 1.0 or**
25 **require the eligible building owner to achieve the energy use intensity**
26 **target by means of an implementation plan that:**

27 **“(I) Is based on an investment grade energy use audit and life-cycle**
28 **cost analysis that accounts for the period during which a bundle of**
29 **energy efficiency measures provide savings;**

30 **“(II) Reflects the eligible building owner’s net costs of implement-**

1 ing energy efficiency measures, excluding any costs that utility or
2 government grants cover;

3 “(III) Allows an exclusion of energy efficiency measures that do not
4 pay back the cost of the energy efficiency measure over the useful life
5 of the energy efficiency measure;

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

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

11 “(B) An eligible building owner need not meet an energy efficiency
12 requirement that would compromise the historical integrity of a cov-
13 ered commercial building or part of a covered commercial building
14 that:

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

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

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

22 “(iv) A state historic preservation officer or the keeper of the na-
23 tional register of historic places has determined in an opinion or cer-
24 tification is eligible to be listed on the national or state register of
25 historic places either as an individual building or as a building that
26 contributes to a historic district.

27 “(3) The department shall create a database of eligible building
28 owners and covered commercial buildings that are subject to the re-
29 quirements of sections 1 to 3 of this 2023 Act based on records the de-
30 partment obtains from each county assessor and on other information

1 available to the department.

2 “(4)(a) Not later than July 1, 2024, the department shall notify eli-
3 gible building owners of the requirement to comply with the provisions
4 set forth for covered commercial buildings in sections 1 to 3 of this
5 2023 Act.

6 “(b) The department may approve an eligible building owner’s use
7 of a conditional compliance method in lieu of full compliance with an
8 energy use intensity target if the department determines that the eli-
9 gible building owner has the capacity to take the actions and make the
10 investments required under the conditional compliance method and
11 otherwise qualifies to use the conditional compliance method.

12 **“SECTION 3. (1) An eligible building owner shall report to the De-**
13 **partment of Consumer and Business Services concerning the eligible**
14 **building owner’s compliance with the energy performance standard**
15 **described in section 2 of this 2023 Act. The eligible building owner shall**
16 **submit the report in accordance with the schedule specified in sub-**
17 **section (4) of this section and shall submit a new report at the end of**
18 **every successive five-year period. Each report the eligible building**
19 **owner submits must include documentation that demonstrates that:**

20 “(a) The covered commercial building’s weather normalized energy
21 use intensity during the previous calendar year is less than or equal
22 to the applicable energy use intensity target;

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

26 “(c) The covered commercial building is exempt from an energy
27 performance standard that otherwise would apply to the covered
28 commercial building because:

29 “(A) The covered commercial building did not have a certificate of
30 occupancy or temporary certificate of occupancy during all of the 12

1 months that preceded the date on which the eligible building owner's
2 report is due;

3 “(B) The covered commercial building did not have an actual rate
4 of occupancy that exceeded 50 percent of the covered commercial
5 building's capacity during all of the 12 months that preceded the date
6 on which the eligible building owner's report is due;

7 “(C) The sum of the covered commercial building's gross floor area,
8 minus unconditioned spaces and semiheated spaces, is less than 35,000
9 square feet;

10 “(D) The primary use for the covered commercial building is man-
11 ufacturing or another industrial use, as defined in accordance with the
12 following use designations of the International Building Code:

13 “(i) Factory group F; or

14 “(ii) High hazard group H;

15 “(E) The covered commercial building is an agricultural structure;
16 or

17 “(F) The eligible building owner or the covered commercial building
18 has undergone or is undergoing financial hardship, as measured in
19 accordance with the following criteria:

20 “(i) Within the 24 months that precede the date on which the eli-
21 gible building owner's report is due, a city or county listed the covered
22 commercial building on the city's or county's annual tax lien sale list
23 because of arrears in property taxes or water or wastewater charges;

24 “(ii) A court appointed receiver controls the covered commercial
25 building because of financial distress;

26 “(iii) A financial institution owns the covered commercial building
27 because of a borrower's default;

28 “(iv) Within the 24 months that precede the date on which the eli-
29 gible building owner's report is due, the eligible building owner ac-
30 quired the covered commercial building by means of a deed in lieu of

1 **foreclosure;**

2 **“(v) The covered commercial building has a senior mortgage that**
3 **is subject to a notice of default; or**

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

6 **“(2) The department shall develop methods and procedures for ad-**
7 **ministering reports that eligible building owners submit to the de-**
8 **partment under subsection (1) of this section.**

9 **“(3) The department shall provide a support program to eligible**
10 **building owners that includes, at a minimum, information and periodic**
11 **training, technical assistance and telephone and electronic mail sup-**
12 **port that will assist eligible building owners in complying with the**
13 **energy performance standard, applicable energy use intensity targets**
14 **and reporting requirements under sections 1 to 3 of this 2023 Act.**

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

18 **“(a) If the eligible building owner’s covered commercial building has**
19 **a gross floor area of 200,000 square feet or more, not later than June**
20 **1, 2028;**

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

24 **“(c) If the eligible building owner’s covered commercial building has**
25 **a gross floor area of 35,000 square feet or more but less than 90,000**
26 **square feet, not later than June 1, 2030.**

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

30 **“(A) Submit the report described in subsection (1) of this section**

1 by the date required or in a form and manner the department requires;

2 “(B) Meet the energy performance standard or an applicable energy
3 use intensity target or, in lieu of meeting the standard or target, fails
4 to obtain the department’s approval to use a conditional compliance
5 method;

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

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

11 “(b) In the notice described in paragraph (a) of this subsection, the
12 department may specify a date by which the eligible building owner
13 must correct the failure the department identified in the notice. In
14 addition, the department shall specify the date by which the eligible
15 building owner’s failure to comply or failure to correct a lack of
16 compliance will subject the eligible building owner to a civil penalty
17 under subsection (6) of this section.

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

22 “(6)(a) The department may impose a civil penalty as provided in
23 ORS 183.745 upon an eligible building owner to which the department
24 issued a notice under subsection (5) of this section if the department
25 determines that the eligible building owner:

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

29 “(B) Otherwise violated a provision of sections 1 to 3 of this 2023
30 Act or a rule the department adopted under sections 1 to 3 of this 2023

1 **Act.**

2 **“(b) A civil penalty the department imposes under paragraph (a) of**
3 **this subsection may not exceed \$5,000 for each violation or, in the case**
4 **of a continuing violation of up to one year in duration, an additional**
5 **maximum amount that the department calculates by multiplying one**
6 **dollar by the number of square feet in the gross floor area of the**
7 **covered commercial building that is the subject of the department’s**
8 **notice.**

9 **“(c) The department shall deposit the proceeds of any civil penalty**
10 **the department imposes and collects under this subsection into the**
11 **Consumer and Business Services Fund established under ORS 455.230**
12 **and shall allocate the proceeds for the purpose of administering the**
13 **department’s energy efficiency programs.**

14 **“SECTION 4. In addition to the energy performance standard the**
15 **Department of Consumer and Business Services adopts in accordance**
16 **with section 2 of this 2023 Act, the department shall adopt rules to**
17 **implement sections 1 to 3 of this 2023 Act. The rules must:**

18 **“(1) Ensure timely, accurate and complete reporting of compliance**
19 **with the requirements of sections 1 to 3 of this 2023 Act from all cov-**
20 **ered commercial buildings;**

21 **“(2) Enable the department to effectively enforce the energy per-**
22 **formance standard and energy use intensity targets established under**
23 **sections 1 to 3 of this 2023 Act;**

24 **“(3) Provide means for affected eligible building owners to appeal**
25 **decisions and enforcement actions of the department that affect the**
26 **eligible building owner; and**

27 **“(4) Ensure that an eligible building owner is responsible for paying**
28 **the costs of compliance with sections 1 to 3 of this 2023 Act and that**
29 **prevent the eligible building owner from passing the costs to tenants**
30 **or other persons or recouping or defraying the costs by means of fees,**

1 charges or other impositions upon other persons.

2 **“SECTION 5. At the request of the Department of Consumer and**
3 **Business Services, each county assessor in this state shall provide in-**
4 **formation from existing records data that the department requires to**
5 **implement sections 1 to 3 of this 2023 Act, including about covered**
6 **commercial buildings within the county.**

7 **“SECTION 6. The Department of Consumer and Business Services**
8 **shall report not later than January 15, 2024, and by the same date in**
9 **each succeeding year until 2035, to the Governor and to committees**
10 **of the Legislative Assembly that are related to the environment con-**
11 **cerning the implementation of the energy performance standard es-**
12 **tablished under section 2 of this 2023 Act. The report must include**
13 **information about the department’s adoption of the**
14 **ANSI/ASHRAE/IES Standard 100-2018 as the department’s initial**
15 **model for the energy performance standard, the financial impact the**
16 **standard has had on eligible building owners, the amount of any in-**
17 **centives the department provided for compliance and any other infor-**
18 **mation that is relevant to the department’s implementation of**
19 **sections 1 to 3 of this 2023 Act.**

20 **“SECTION 7. Sections 1 to 3 of this 2023 Act do not require an eli-**
21 **gible building owner to take action to comply with sections 1 to 3 of**
22 **this 2023 Act before the Department of Consumer and Business Ser-**
23 **vices adopts an energy performance standard under section 2 of this**
24 **2023 Act, but the department may offer incentives for eligible building**
25 **owners’ early compliance with ANSI/ASHRAE/IES Standard 100-2018.**

26 **“SECTION 8. This 2023 Act being necessary for the immediate**
27 **preservation of the public peace, health and safety, an emergency is**
28 **declared to exist, and this 2023 Act takes effect on its passage.”.**

29