

SB 870-4
(LC 927)
3/31/23 (TSB/ps)

Requested by Senator LIEBER

**PROPOSED AMENDMENTS TO
SENATE BILL 870**

1 In line 2 of the printed bill, delete the period and insert “; and declaring
2 an emergency.

3 “Whereas policies that encourage energy efficiency have been extremely
4 successful in reducing energy use, avoiding costly investment in new gener-
5 ating capacity, lowering customer energy bills and reducing air pollution and
6 greenhouse gas emissions; and

7 “Whereas the Oregon 2022 biennial energy report states that achieving
8 energy efficiency in existing buildings is critical for reducing greenhouse gas
9 emissions that result from constructing and operating buildings in this state;
10 and

11 “Whereas studies by the Northwest Power and Conservation Council and
12 by individual Oregon utilities repeatedly show that efficiency is the region’s
13 largest, cheapest and lowest risk energy resource and that without improve-
14 ments in efficiency the region would have needed to invest in additional
15 generation capacity fueled by natural gas; and

16 “Whereas the Northwest Power and Conservation Council forecasts that
17 with an aggressive new energy efficiency policy the region can potentially
18 meet 100 percent of the electricity load growth over the next 20 years and
19 that efficiency improvements can approach the size of the region’s
20 hydropower system as an energy resource; and

21 “Whereas energy efficiency investments that reduce energy use in

1 buildings also improve indoor air quality, provide more comfortable homes
2 and workplaces, lower tenant energy bills and otherwise improve the quality
3 of life for residents of this state; and

4 “Whereas the United States Department of Energy states in a 2017 energy
5 and employment report that firms that provide energy efficiency goods and
6 services created more than 65,000 jobs in this state, more than two-thirds of
7 which are in construction, and that the number of jobs continues to grow;
8 and

9 “Whereas buildings represent the second largest source of greenhouse gas
10 emissions in this state, the Legislative Assembly therefore:

11 “(1) Finds that the state has an interest in maximizing the full potential
12 of energy efficiency standards, incentives to retrofit existing buildings, util-
13 ity programs and building codes to keep energy costs low and to meet stat-
14 utory goals for increased building efficiency and reduced greenhouse gas
15 emissions; and

16 “(2) Declares that the intent of this 2023 Act is to:

17 “(a) Provide incentives and regulations that encourage greater energy ef-
18 ficiency in existing and new buildings, including energy efficiency in build-
19 ing design and operations and in energy delivery and use;

20 “(b) Establish energy performance standards for existing large commercial
21 buildings; and

22 “(c) Enhance access to commercial building energy consumption data to
23 assist with monitoring progress toward meeting energy performance stan-
24 dards; now, therefore,”.

25 Delete lines 4 through 9 and insert:

26 **“SECTION 1. As used in sections 1 to 10 of this 2023 Act:**

27 **“(1)(a) ‘Agricultural building’ means a structure that is used for:**

28 **“(A) Storing, maintaining or repairing farm or forestry machinery**
29 **and equipment;**

30 **“(B) Raising, harvesting and selling crops or forest products;**

1 **“(C) Feeding, breeding, managing and selling livestock, poultry,**
2 **fur-bearing animals or honeybees or the produce of livestock, poultry,**
3 **fur-bearing animals or honeybees;**

4 **“(D) Dairying and selling dairy products; or**

5 **“(E) Any other agricultural, forestry or horticultural use or animal**
6 **husbandry, or any combination of agricultural, horticultural or animal**
7 **husbandry uses, including preparing and storing produce raised on the**
8 **farm for human use and animal use, preparing, processing and storing**
9 **agricultural and forestry products and goods and disposing, by mar-**
10 **keting or otherwise, of farm produce or forest products.**

11 **“(b) ‘Agricultural building’ does not include:**

12 **“(A) A dwelling;**

13 **“(B) A structure used for a purpose other than growing plants in**
14 **which 10 or more persons are present at any one time;**

15 **“(C) A structure regulated by the State Fire Marshal pursuant to**
16 **ORS chapter 476;**

17 **“(D) A structure used by the public; or**

18 **“(E) A structure that is subject to the National Flood Insurance**
19 **Act of 1968 (42 U.S.C 4001 to 4127), as amended, and regulations**
20 **promulgated under that Act.**

21 **“(2) ‘Conditional compliance’ means a temporary method that a**
22 **building owner can use to demonstrate that the building owner has**
23 **implemented required energy use reduction strategies when the build-**
24 **ing owner cannot demonstrate full compliance with a required energy**
25 **use intensity target.**

26 **“(3) ‘Covered commercial building’ means a tier 1 building or a tier**
27 **2 building.**

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

29 **“(a) An owner of a tier 1 building that must comply with the**
30 **standard established in section 2 of this 2023 Act; or**

1 **“(b) An owner of tier 2 building.**

2 **“(5) ‘Energy’ means:**

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

6 **“(b) Natural gas;**

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

8 **“(d) Propane;**

9 **“(e) Fuel oil;**

10 **“(f) Wood;**

11 **“(g) Coal; or**

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

14 **“(6) ‘Energy use intensity’ means a measurement that weather**
15 **normalizes a building’s site energy use relative to the building’s size,**
16 **calculated by dividing the total net energy the building consumes in**
17 **one year by the building’s gross floor area, excluding any parking ga-**
18 **rage, and that is reported in thousands of British thermal units per**
19 **square foot per year.**

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

22 **“(8) ‘Greenhouse gas’ has the meaning given that term in ORS**
23 **468A.210.**

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

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

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

4 “(11) ‘Savings to investment ratio’ means the ratio of the total
5 present value of savings to the total present value of costs to imple-
6 ment an energy conservation measure or water conservation measure,
7 in which the numerator of the ratio is the present value of net savings
8 in energy or water or in maintenance costs not related to fuel use or
9 water use that are attributable to the energy conservation measure
10 or water conservation measure and the denominator of the ratio is the
11 present value of the net increase in investment and replacement costs,
12 less the salvage value, of the energy conservation or water conserva-
13 tion measure.

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

18 “(13) ‘Tier 1 building’ means a building in which the sum of gross
19 floor area for hotel, motel and nonresidential use equals or exceeds
20 35,000 square feet, excluding any parking garage.

21 “(14)(a) ‘Tier 2 building’ means:

22 “(A) A building with gross floor area, excluding any parking garage,
23 that equals or exceeds 35,000 square feet and that is used as a multi-
24 family residential building, a hospital, a school, a dormitory or a uni-
25 versity building; or

26 “(B) A building in which the sum of gross floor area for hotel, motel
27 and nonresidential use exceeds 20,000 square feet but does not exceed
28 35,000 square feet, excluding any parking garage.

29 “(b) ‘Tier 2 building’ does not include a covered commercial building
30 that is classified as a tier 1 building.

1 **“(15) ‘Unconditioned space’ means an enclosed space within a cov-**
2 **ered commercial building that is not:**

3 **“(a) Heated by a heating system or cooled by a cooling system with**
4 **output capacities the Department of Consumer and Business Services**
5 **specifies in an applicable specialty code; or**

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

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

14 **“SECTION 2. (1)(a) Not later than December 31, 2024, the State De-**
15 **partment of Energy, in consultation with the Department of Consumer**
16 **and Business Services, shall adopt rules that use the American Na-**
17 **tional Standards Institute’s standards for Energy Efficiency in Exist-**
18 **ing Buildings (ANSI/ASHRAE/IES Standard 100) as an initial model for**
19 **specifying an energy performance standard for covered commercial**
20 **buildings. In rulemaking proceedings to adopt or update rules under**
21 **this paragraph, the State Department of Energy shall disclose the**
22 **sources of information, including the model described in this para-**
23 **graph and any peer-reviewed science, that the department relies on in**
24 **developing or updating the energy performance standard. The depart-**
25 **ment shall update the energy performance standard not later than**
26 **July 1, 2029, and by the same month and day in each successive period**
27 **of five years.**

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

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

1 **Act;**

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

4 **“(C) Include energy use intensity targets that apply to specific types**
5 **of buildings;**

6 **“(D) Require utilities to aggregate data for covered commercial**
7 **buildings that have multiple meters and provide the aggregated data**
8 **to eligible building owners for reporting under section 3 of this 2023**
9 **Act; and**

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

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

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

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

18 **“(iv) Submitting to energy use audits, which may be based upon or**
19 **linked to ASHRAE Standard 211 audits.**

20 **“(c) Adoption of the energy performance standard described in**
21 **paragraph (a) of this subsection does not change eligibility criteria for,**
22 **or benefits or incentives available under, other programs for energy**
23 **efficiency demand response.**

24 **“(2)(a) In adopting the energy performance standard described in**
25 **subsection (1) of this section, the department:**

26 **“(A) Shall:**

27 **“(i) Develop energy use intensity targets that are not more strin-**
28 **gent than the average energy use intensity for each covered commer-**
29 **cial building occupancy classification, adjusting as necessary for a**
30 **covered commercial building’s unique energy-using features;**

1 “(ii) Consider, for the purpose of establishing energy use intensity
2 targets, regional and local data that identifies building energy use,
3 such as existing benchmarking data from the Energy Star program
4 established under 42 U.S.C. 6294a;

5 “(iii) Consider, for the purpose of establishing the energy perform-
6 ance standard, federal and local programs that relate to energy effi-
7 ciency standards, aligning where possible requirements under the
8 energy performance standard to avoid duplicative work by regulators
9 and eligible building owners;

10 “(iv) Develop energy use intensity targets for two or more climate
11 zones that represent energy use in a year with normal weather;

12 “(v) Develop energy use intensity targets that exclude energy de-
13 livered through electric vehicle supply equipment; and

14 “(vi) Adopt a conditional compliance method that:

15 “(I) Requires eligible building owners of covered commercial
16 buildings that do not meet an energy use intensity target to take
17 action to reduce energy use; and

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

21 “(B) May:

22 “(i) Consider building occupancy classifications set forth in
23 ANSI/ASHRAE/IES Standard 100 and the United States Environmental
24 Protection Agency’s Energy Star portfolio manager; and

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

28 “(b)(A) Investment criteria the department specifies as part of a
29 conditional compliance method under paragraph (a) of this subsection
30 must:

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

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

10 “(I) Is based on an energy use audit and life-cycle cost analysis
11 from ANSI/ASHRAE/IES Standard 211 that accounts for the period
12 during which a bundle of energy efficiency measures provide savings;

13 “(II) Reflects the eligible building owner’s net costs of implement-
14 ing energy efficiency measures, excluding any costs that utility or
15 government grants cover;

16 “(III) Allows an exclusion of energy efficiency measures that do not
17 pay back the cost of the energy efficiency measure over the useful life
18 of the energy efficiency measure;

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

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

24 “(B) An eligible building owner need not meet an energy efficiency
25 requirement that would compromise the historical integrity of a cov-
26 ered commercial building or part of a covered commercial building
27 that:

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

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

1 under a statute, ordinance, rule or other legislative act;

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

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

10 “(3) The department shall create a database of eligible building
11 owners and covered commercial buildings that are subject to the re-
12 quirements of sections 1 to 3 of this 2023 Act based on records the de-
13 partment obtains from each county assessor and on other information
14 available to the department.

15 “(4)(a) Not later than July 1, 2025, the department shall notify eli-
16 gible building owners of the requirement to comply with the provisions
17 set forth for tier 1 buildings in sections 1 to 3 of this 2023 Act.

18 “(b) The department may approve an eligible building owner’s use
19 of a conditional compliance method in lieu of full compliance with an
20 energy use intensity target if the department determines that the eli-
21 gible building owner has the capacity to take the actions and make the
22 investments required under the conditional compliance method and
23 otherwise qualifies to use the conditional compliance method.

24 “(5) A municipality, as defined in ORS 455.010, may by ordinance,
25 rule or land use process, adopt an energy performance standard and
26 greenhouse gas emission reduction standards that are more stringent,
27 or that have broader application, than the energy performance stand-
28 ard that the department adopts under this section. A municipality
29 shall cooperate with the department in aligning, where practicable, an
30 energy performance standard the municipality adopts with the energy

1 performance standard the department adopts under this section.

2 **“SECTION 3. (1) An eligible building owner of a tier 1 building shall**
3 **report to the State Department of Energy concerning the eligible**
4 **building owner’s compliance with the energy performance standard**
5 **described in section 2 of this 2023 Act. The eligible building owner shall**
6 **submit the report in accordance with the schedule specified in sub-**
7 **section (4) of this section and shall submit a new report at the end of**
8 **every successive five-year period. Each report the eligible building**
9 **owner submits must include documentation that demonstrates that:**

10 **“(a) The tier 1 building’s weather normalized energy use intensity**
11 **during the previous calendar year is less than or equal to the appli-**
12 **cable energy use intensity target;**

13 **“(b) The eligible building owner is taking actions and making in-**
14 **vestments in accordance with a conditional compliance method the**
15 **department approved; or**

16 **“(c) The tier 1 building is exempt from an energy performance**
17 **standard that otherwise would apply to the tier 1 building because:**

18 **“(A) The tier 1 building did not have a certificate of occupancy or**
19 **temporary certificate of occupancy during all of the 12 months that**
20 **preceded the date on which the eligible building owner’s report is due;**

21 **“(B) The tier 1 building did not have an actual rate of occupancy**
22 **that exceeded 50 percent of the tier 1 building’s capacity during all of**
23 **the 12 months that preceded the date on which the eligible building**
24 **owner’s report is due;**

25 **“(C) The sum of the tier 1 building’s gross floor area, minus un-**
26 **conditioned spaces and semiheated spaces, is less than 35,000 square**
27 **feet;**

28 **“(D) The primary use for the tier 1 building is manufacturing or**
29 **another industrial use, as defined in accordance with the following use**
30 **designations of the International Building Code:**

1 “(i) Factory group F; or
2 “(ii) High hazard group H;
3 “(E) The tier 1 building is an agricultural building; or
4 “(F) The eligible building owner or the tier 1 building has undergone
5 or is undergoing financial hardship, as measured in accordance with
6 the following criteria:

7 “(i) Within the 24 months that precede the date on which the eli-
8 gible building owner’s report is due, a city or county listed the tier 1
9 building on the city’s or county’s annual tax lien sale list because of
10 arrears in property taxes or water or wastewater charges;

11 “(ii) A court appointed receiver controls the tier 1 building because
12 of financial distress;

13 “(iii) A financial institution owns the tier 1 building because of a
14 borrower’s default;

15 “(iv) Within the 24 months that precede the date on which the eli-
16 gible building owner’s report is due, the eligible building owner ac-
17 quired the tier 1 building by means of a deed in lieu of foreclosure;

18 “(v) The tier 1 building has a senior mortgage that is subject to a
19 notice of default; or

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

22 “(2) The department shall develop methods and procedures for ad-
23 ministering reports that eligible building owners of tier 1 buildings
24 submit to the department under subsection (1) of this section.

25 “(3)(a) The department shall provide a support program to eligible
26 building owners of covered commercial buildings that includes, at a
27 minimum, information and periodic training, technical assistance and
28 telephone and electronic mail support that will assist eligible building
29 owners in complying with the energy performance standard, applicable
30 energy use intensity targets and reporting requirements under

1 sections 1 to 3 of this 2023 Act.

2 “(b) As part of the support program described in paragraph (a) of
3 this subsection, the department may encourage eligible building own-
4 ers to seek for maintenance staff accreditation from the U.S. Green
5 Building Council’s Green Janitors Education Program.

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

9 “(a) If the eligible building owner’s tier 1 building has a gross floor
10 area of 200,000 square feet or more, not later than June 1, 2028;

11 “(b) If the eligible building owner’s tier 1 building has a gross floor
12 area of 90,000 square feet or more but less than 200,000 square feet, not
13 later than June 1, 2029; and

14 “(c) If the eligible building owner’s tier 1 building has a gross floor
15 area of 35,000 square feet or more but less than 90,000 square feet, not
16 later than June 1, 2030.

17 “(5)(a) The department shall notify an eligible building owner of a
18 tier 1 building of a failure to comply with sections 1 to 3 of this 2023
19 Act if the eligible building owner fails to:

20 “(A) Submit the report described in subsection (1) of this section
21 by the date required or in a form and manner the department requires;

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

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

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

1 “(b) In the notice described in paragraph (a) of this subsection, the
2 department may specify a date by which the eligible building owner
3 of a tier 1 building must correct the failure the department identified
4 in the notice. In addition, the department shall specify the date by
5 which the eligible building owner’s failure to comply or failure to
6 correct a lack of compliance will subject the eligible building owner
7 to a civil penalty under subsection (6) of this section.

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

12 “(6)(a) The department may impose a civil penalty as provided in
13 ORS 183.745 upon an eligible building owner of a tier 1 building to
14 which the department issued a notice under subsection (5) of this
15 section if the department determines that the eligible building owner:

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

19 “(B) Otherwise violated a provision of sections 1 to 3 of this 2023
20 Act or a rule the department adopted under sections 1 to 3 of this 2023
21 Act.

22 “(b) A civil penalty the department imposes under paragraph (a) of
23 this subsection may not exceed \$5,000 plus an amount for the duration
24 of a continuing violation, which may not exceed a daily amount that
25 the department calculates by multiplying \$1 per year per square foot
26 of gross floor area of the tier 1 building that is the subject of the
27 department’s notice.

28 “(c) The department shall deposit the proceeds of any civil penalty
29 the department imposes and collects under this subsection into the
30 State Department of Energy Account established under ORS 469.120

1 and shall allocate the proceeds for the purpose of administering the
2 department's energy efficiency programs.

3 **“SECTION 4. (1) In addition to the energy performance standard the**
4 **State Department of Energy adopts in accordance with section 2 of**
5 **this 2023 Act, the department shall adopt rules to implement sections**
6 **1 to 3 of this 2023 Act. The rules must:**

7 **“(a) Ensure timely, accurate and complete reporting of compliance**
8 **with the requirements of sections 1 to 3 of this 2023 Act from all tier**
9 **1 buildings;**

10 **“(b) Enable the department to effectively enforce the energy per-**
11 **formance standard and energy use intensity targets established under**
12 **sections 1 to 3 of this 2023 Act;**

13 **“(c) Provide means for affected eligible building owners of tier 1**
14 **buildings to appeal decisions and enforcement actions of the depart-**
15 **ment that affect the eligible building owner; and**

16 **“(d) Ensure that an eligible building owner of a tier 1 building is**
17 **responsible for paying the costs of compliance with sections 1 to 3 of**
18 **this 2023 Act.**

19 **“(2) Before adopting rules under this section, the department shall**
20 **establish and consult an advisory committee that includes represen-**
21 **tatives of eligible building owners, tenants of covered commercial**
22 **buildings, public utilities, organizations with experience in designing**
23 **or implementing energy efficiency programs, local governments, or-**
24 **ganizations that focus on environmental justice and other**
25 **stakeholders the department identifies as needing representation. The**
26 **department shall consult with the advisory committee before amend-**
27 **ing rules the department adopts under this section.**

28 **“SECTION 5. At the request of the State Department of Energy,**
29 **each county assessor in this state shall provide information from ex-**
30 **isting records data that the department requires to implement sections**

1 1 to 3 of this 2023 Act, including information about covered commercial
2 buildings within the county.

3 **“SECTION 6.** The State Department of Energy shall report not later
4 than January 15, 2025, and by the same date in each succeeding year
5 until 2035, to the Governor and to committees of the Legislative As-
6 sembly that are related to the environment concerning the imple-
7 mentation of the energy performance standard established under
8 section 2 of this 2023 Act. The report must include information about
9 the department’s adoption of the ANSI/ASHRAE/IES Standard 100 as
10 the department’s initial model for the energy performance standard,
11 the financial impact the standard has had on eligible building owners
12 of tier 1 buildings, the amount of any incentives the department pro-
13 vided for compliance and any other information that is relevant to the
14 department’s implementation of sections 1 to 3 of this 2023 Act.

15 **“SECTION 7. (1)** Sections 1 to 3 of this 2023 Act do not require an
16 eligible building owner to take action to comply with sections 1 to 3
17 of this 2023 Act:

18 **“(a)** If the eligible building owner owns a tier 2 building; or

19 **“(b)** Before the State Department of Energy adopts an energy per-
20 formance standard under section 2 of this 2023 Act, if the eligible
21 building owner owns a tier 1 building.

22 **“(2)** The department may offer incentives for eligible building own-
23 ers to voluntarily comply with, or for early compliance with,
24 ANSI/ASHRAE/IES Standard 100 or the energy performance standard
25 the department establishes under section 2 of this 2023 Act.

26 **“SECTION 8. (1)(a)** Not later than December 31, 2024, the State De-
27 partment of Energy by rule shall establish a requirement and stan-
28 dards under which eligible building owners of tier 2 buildings must
29 provide to the department data that would enable the department to
30 establish a benchmark for energy use in, and greenhouse gas emis-

1 sions from, tier 2 buildings.

2 “(b) The State Department of Energy shall cooperate with the De-
3 partment of Education to establish a requirement to provide the data
4 described in paragraph (a) of this subsection in a manner that mini-
5 mizes costs to schools and avoids or minimizes duplication with the
6 Department of Education’s school facility assessments.

7 “(2) Not later than July 1, 2025, the State Department of Energy
8 shall notify all eligible building owners of tier 2 buildings of the re-
9 quirement and standards the department adopts by rule under sub-
10 section (1) of this section.

11 “(3) Not later than July 1, 2028, and by July 1 every five years
12 thereafter, an eligible building owner of a tier 2 building shall provide
13 the department with data the department requires in rules the de-
14 partment adopts under subsection (1) of this section.

15 “(4) Not later than July 1, 2029, the department shall evaluate and
16 use the data the department receives from eligible building owners of
17 tier 2 buildings to calculate average energy use in, and average
18 greenhouse gas emissions from, each of the categories of tier 2
19 buildings that exist in this state.

20 “(5) Not later than July 1, 2025, the department shall establish and
21 consult an advisory committee to identify and evaluate the financial
22 and nonfinancial implications of establishing and implementing an
23 energy performance standard for tier 2 buildings. The advisory com-
24 mittee must include, but is not limited to, representatives of renters,
25 low-income tenants and environmental justice communities, as defined
26 in ORS 469A.400.

27 “(6) Not later than October 1, 2030, the department shall submit a
28 report to the Governor and to an interim committee of the Legislative
29 Assembly related to energy that:

30 “(a) Recommends a cost-effective energy performance standard for

1 tier 2 buildings; and

2 “(b) Includes estimates of costs to eligible building owners, and
3 challenges that eligible building owners would face, in implementing
4 an energy performance standard for tier 2 buildings.

5 **“SECTION 9. (1) As used in this section, ‘person’ means an indi-
6 vidual, corporation, nonprofit corporation, professional corporation,
7 limited liability company, partnership, limited partnership, limited li-
8 ability partnership, cooperative, business trust, joint venture or other
9 form of business entity, including Energy Trust of Oregon.**

10 **“(2) The State Department of Energy may contract with another
11 person to administer incentive payments to eligible building owners
12 for early compliance with the energy performance standard described
13 in section 2 of this 2023 Act.**

14 **“(3) The person with which the department contracts under sub-
15 section (2) of this section shall administer incentive payments:**

16 **“(a) In a manner that is consistent with rules the department
17 adopts under, and for compliance that is consistent with, sections 1
18 to 3 of this 2023 Act; and**

19 **“(b) To eligible building owners that the department certifies as
20 qualifying for incentive payments under, and at rates established for
21 the payments in, section 10 of this 2023 Act.**

22 **“(4) A person that administers incentive payments on the
23 department’s behalf:**

24 **“(a) Remains subject to any obligations the person has or will have
25 to provide energy efficiency programs or incentives to the person’s
26 customers; and**

27 **“(b) Is not liable for excess incentive payments the person makes
28 in reliance on the department’s certification or determination of the
29 proper amount of the incentive payment, if the person is not otherwise
30 responsible for any inaccuracy in the amount of the incentive pay-**

1 **ment.**

2 **“SECTION 10. (1) The State Department of Energy by rule shall**
3 **establish a program to pay incentives to eligible building owners that**
4 **implement ANSI/ASHRAE/IES Standard 100 or the energy perform-**
5 **ance standard described in section 2 of this 2023 Act for covered com-**
6 **mercial buildings before adoption and implementation is mandatory.**
7 **The program must provide for:**

8 **“(a) An application process;**

9 **“(b) Standards by which the department may qualify an eligible**
10 **building owner to receive, or disqualify an eligible building owner from**
11 **receiving, an incentive payment;**

12 **“(c) A method for verifying a covered commercial building’s energy**
13 **consumption with the eligible building owner and the electric utility,**
14 **gas company or thermal energy company that supplies energy to the**
15 **covered commercial building for the purpose of qualifying the eligible**
16 **building owner to receive an incentive payment;**

17 **“(d) A process for calculating the amount of any incentive payment;**

18 **“(e) An administrative process by which an eligible building owner**
19 **may appeal the department’s decision to qualify or disqualify the eli-**
20 **gible building owner or the department’s determination of the amount**
21 **of an incentive payment; and**

22 **“(f) A process for authorizing incentive payments and notifying el-**
23 **igible building owners and persons that administer incentive payments**
24 **of the department’s authorization.**

25 **“(2) To qualify for an incentive payment, an eligible building owner**
26 **must report to the department in accordance with section 3 of this 2023**
27 **Act by the deadlines and for a period of time the department specifies**
28 **by rule. In addition:**

29 **“(a) The eligible building owner must own a tier 1 building that is**
30 **or will become subject to the requirements of sections 1 to 3 of this**

1 **2023 Act or must own a tier 2 building that qualifies as provided in**
2 **subsection (3) of this section;**

3 **“(b) If the covered commercial building is a tier 1 building, the tier**
4 **1 building must have a baseline energy use intensity that exceeds an**
5 **applicable energy use intensity target by at least 15 energy use inten-**
6 **sity units; and**

7 **“(c) The eligible building owner must comply with any other re-**
8 **quirements the department specifies by rule.**

9 **“(3) An eligible building owner of a tier 2 building may receive an**
10 **incentive payment of 35 cents per square foot of gross floor area, ex-**
11 **cluding any parking garage, unconditioned space or semiheated space**
12 **if the eligible building owner has submitted to the department, or has**
13 **agreed to submit to the department in advance of an established**
14 **deadline, the data described in section 8 of this 2023 Act.**

15 **“(4)(a) Subject to subsection (5)(b) of this section and paragraph (c)**
16 **of this subsection, an eligible building owner that applies and qualifies**
17 **for an incentive payment under subsection (2) or (3) of this section**
18 **may receive for meeting the energy performance standard described**
19 **in section 2 of this 2023 Act early or voluntarily an incentive payment**
20 **of 85 cents per square foot of gross floor area of the eligible building**
21 **owner’s covered commercial building, excluding any parking garage,**
22 **unconditioned space or semiheated space.**

23 **“(b) The department may authorize additional incentive payments**
24 **to an eligible building owner that owns a tier 2 multifamily residential**
25 **building and that enters into a binding agreement not to displace**
26 **tenants from the multifamily residential building.**

27 **“(c) The department may authorize an incentive payment only if**
28 **funds are available for the payment and contingent upon an eligible**
29 **building owner’s compliance with the requirements of this section and**
30 **any rules the department adopts to govern incentive payments.**

1 “(5)(a) Before qualifying an eligible building owner to receive an
2 incentive payment under this section, the department shall review the
3 eligible building owner’s application and verify any report the eligible
4 building owner must provide under section 3 of this 2023 Act and any
5 energy consumption the department must measure for the purposes
6 of the qualification. If the department determines that an eligible
7 building owner qualifies for an incentive payment, the department
8 shall certify the qualification to the eligible building owner and to the
9 person that administers incentive payments under section 9 of this
10 2023 Act.

11 “(b) The department may not certify an eligible building owner as
12 qualified for an incentive payment if the incentive payment would ex-
13 ceed:

14 “(A) \$_____ for a tier 1 building or a tier 2 building with more
15 than 35,000 square feet of gross floor area; or

16 “(B) \$_____ for a tier 2 building with 35,000 or fewer square
17 feet of gross floor area.

18 “(6) Not later than September 30, 2026, and by the same date every
19 two years thereafter, the department shall report to interim commit-
20 tees of the Legislative Assembly related to energy concerning the op-
21 erations and results of the incentive program the department
22 establishes under this section. The report must include recommen-
23 dations for aligning the incentive program with greenhouse gas emis-
24 sion reduction goals that meet or exceed the goals specified in ORS
25 468A.205.

26 “SECTION 11. 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