

House Bill 2987

Sponsored by Representative HOLVEY

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**.

Removes requirement for contracting agency to hold in account or otherwise reserve moneys for including green energy technology in constructing, reconstructing or performing major renovation on public building if contracting agency determines that including green energy technology is not appropriate.

Requires contracting agency to report to State Department of Energy amount that contracting agency would have spent to include green energy technology in constructing, reconstructing or performing major renovation of public building had contracting agency determined that doing so was appropriate.

Requires department to report to Legislative Assembly contracting agency compliance with reporting mandates and other mandates.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to compliance with green energy technology mandates for public buildings; creating new
3 provisions; amending ORS 279C.527 and 279C.528; and declaring an emergency.

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 in 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; or

9 (ii) Building design that uses solar energy passively to reduce energy use from other sources
10 by at least 20 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.

13 (B) "Green energy technology" does not include a system that:

14 (i) Uses water, groundwater or the ground as a heat source at temperatures less than 140 de-
15 grees Fahrenheit; or

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

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

20 (A) Used or occupied by employees of the public body; or

21 (B) Used for conducting public business.

22 (2)(a) Except as otherwise provided in this section, **a contracting agency that intends to en-**
23 **ter into** a public improvement contract for [*the construction of*] **constructing** a public building or
24 for [*the reconstruction or*] **reconstructing or performing** a major renovation of a public building,
25 if the cost of the reconstruction or major renovation exceeds 50 percent of the value of the public

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 building, shall [*contain and reserve*] **first make a determination under subsection (3) of this**
 2 **section as to whether green energy technology is appropriate for the public building and, if**
 3 **the contracting agency determines that green energy technology is appropriate, shall ensure**
 4 **that the public improvement contract provides** an amount equal to at least 1.5 percent of the
 5 total contract price for the purpose of including appropriate green energy technology as part of the
 6 construction, reconstruction or major renovation of the public building.

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

10 (A) Constructing green energy technology away from the site of the public building and using
 11 the energy from the green energy technology at the site of the public building is more cost-effective,
 12 taking into account additional costs associated with transmitting generated energy to the site of the
 13 public building, than is constructing and using green energy technology at the site of the public
 14 building;

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

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

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

24 (ii) Employs geothermal energy and for which construction was completed before January 1,
 25 2013.

26 (c) In [*making the determination required*] **evaluating whether a contracting agency can**
 27 **construct green energy technology at a site away from the site of the public building**
 28 [*under*] **in accordance with** paragraph (b)(A) of this subsection, [*a*] **the** contracting agency shall:

29 (A) Compare the costs of constructing green energy technology that employs solar energy at the
 30 site of the public building only with the corresponding costs of green energy technology that em-
 31 ploys solar energy at a location away from the site of the public building; and

32 (B) Compare the costs of green energy technology that employs geothermal energy at the site
 33 of the public building only with the corresponding costs of green energy technology that employs
 34 geothermal energy at a location away from the site of the public building.

35 (3) [*Before entering into a public improvement contract described in subsection (2) of this section,*
 36 *a contracting agency shall prepare a written determination of whether including green energy technol-*
 37 *ogy as part of the construction, reconstruction or major renovation of the public building is appropriate.*

38 **The]** **In making a determination as to whether green energy technology is appropriate in**
 39 **constructing, reconstructing or performing a major renovation of a public building, a** con-
 40 tracting agency shall list in the determination the total contract price and specify the amount the
 41 agency intends to expend on including green energy technology as part of the construction, recon-
 42 struction or major renovation. The State Department of Energy shall develop a form that a con-
 43 tracting agency may use to prepare the written determination described in this subsection.

44 (4)(a) If the contracting agency determines that green energy technology is not appropriate for
 45 the public building, subsection (2) of this section does not apply to the public improvement contract.

1 A contracting agency's determination under this paragraph must consider whether constructing
 2 green energy technology at the site of the public building is appropriate and whether constructing
 3 green energy technology away from the site of the public building and in accordance with subsection
 4 (2)(b) and (c) of this section is appropriate.

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

6 (A) The contracting agency shall spend an amount equal to at least 1.5 percent of the total
 7 contract price to include appropriate green energy technology as part of a future public building
 8 project; and

9 (B) The amount the contracting agency spends on the future public building project in accord-
 10 ance with subparagraph (A) of this paragraph is in addition to any amount required under sub-
 11 section (2) of this section for including appropriate green energy technology as part of the future
 12 public building project.

13 **(5)(a) A contracting agency need not set aside the amount described in subsection (4)(b)**
 14 **in an account or otherwise reserve moneys for a future public building at the time the con-**
 15 **tracting agency makes the determination described in subsection (3) of this section, but the**
 16 **contracting agency shall report the amount described in subsection (4)(b) to the State De-**
 17 **partment of Energy as provided in ORS 279C.528 (2)(a).**

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

20 (6)(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 is appropriate to include
 23 as part of *[the construction, reconstruction or]* **constructing, reconstructing or performing** a major
 24 renovation of a public building.

25 (b) A contracting agency may not use an amount described in subsection (4)(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 (7) Notwithstanding the provisions of ORS 174.108 (3), this section applies to intergovernmental
 29 entities described in ORS 174.108 (3).

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

31 279C.528. (1) Each contracting agency, in soliciting, awarding and administering public im-
 32 provement contracts that are subject to ORS 279C.527, is subject to rules the State Department of
 33 Energy adopts that include, but are not limited to, requirements and specifications for:

- 34 (a) Using particular green energy technologies in public improvements;
- 35 (b) Determining the cost-effectiveness of green energy technologies;
- 36 (c) Submitting documents required under ORS 279C.527 to the department for review; and
- 37 (d) Determining whether a structure is a public building subject to the requirements of ORS
 38 279C.527.

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

41 (A) Records that show how the contracting agency *[disposed of]* **spent** moneys the contracting
 42 agency *[reserved for]* **used in** including appropriate green energy technology as part of constructing,
 43 reconstructing or *[renovating]* **performing a major renovation of** a public building;

44 (B) An identification of each public improvement contract for which the contracting agency
 45 spent moneys *[reserved for including]* **to include** appropriate green technology as part of construct-

ing, reconstructing or *[renovating]* **performing a major renovation of** a public building;

(C) An identification of each public improvement contract for which the contracting agency determined that including green technology as part of constructing, reconstructing or *[renovating]* **performing a major renovation of** a public building was not appropriate;

(D) *[An identification of the account or fund into which the contracting agency deposited moneys the contracting agency reserved for, but did not spend on, including appropriate green technology as part of constructing, reconstructing or renovating a public building]* **The total amount the contracting agency would have spent on each public improvement contract identified in subparagraph (C) of this paragraph and the total aggregated amount that the contracting agency must spend to include green energy technology as part of constructing, reconstructing or performing a major renovation of a future public building;** and

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

(b) Each contracting agency shall compile the information the contracting agency collected under paragraph (a) of this subsection and report the information to the department at times, *[and]* in a manner **and on forms that** the department specifies by rule.

(c) The department shall:

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

(i) Identify contracting agencies that have not complied with the requirements of ORS 279C.527 **or the reporting requirements set forth in this section;**

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

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

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

SECTION 3. The amendments to ORS 279C.527 and 279C.528 by sections 1 and 2 of this 2015 Act apply to public improvement contracts that a contracting agency first advertises or otherwise solicits or, if the contracting agency does not advertise or solicit the public improvement contract, to public improvement contracts into which the contracting agency enters on or after the operative date specified in section 4 of this 2015 Act.

SECTION 4. (1) The amendments to ORS 279C.527 and 279C.528 by sections 1 and 2 of this 2015 Act become operative January 1, 2016.

(2) The State Department of Energy, the Oregon Department of Administrative Services, the Department of Transportation, the Attorney General or a contracting agency that adopts rules under ORS 279A.065 may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department, the Attorney General or the contracting agency to exercise, on or after the operative date specified in subsection

1 (1) of this section, all of the duties, functions and powers conferred on the department, the
2 Attorney General or the contracting agency by the amendments to ORS 279C.527 and
3 279C.528 by sections 1 and 2 of this 2015 Act.

4 SECTION 5. This 2015 Act being necessary for the immediate preservation of the public
5 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
6 on its passage.

7
