

House Bill 2497

Sponsored by Representative HOLVEY (at the request of Oregon Solar Energy Industries Association) (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**.

Adds battery storage to definition of "green energy technology" for public buildings that are emergency shelters or facilities for public safety.

Requires Director of Department of Consumer and Business Services or appropriate municipality, if project or essential project is public building with anticipated cost of \$1 million or more, to conduct plan review of project or essential project that determines and verifies that contracting agency that conducts procurement for project or essential project has complied with requirements to set aside 1.5 percent of contract price to include green energy technology in construction, reconstruction or major renovation of public building. Provides that building permit for project or essential project may not be issued until contracting agency complies with requirements.

Becomes operative on January 1, 2020.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to green energy technology requirements for public buildings; creating new provisions;
3 amending ORS 279C.527, 455.466 and 455.467; 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 *[or]*

10 (ii) Building design that uses solar energy passively to reduce energy use from other sources
11 by at least 20 percent from a level required under ORS 276.900 to 276.915 or achieved in buildings
12 constructed according to state building code standards that the Department of Consumer and Busi-
13 ness Services approves under ORS 455.496[.]; **or**

14 **(iii) Battery storage, if the public building that uses battery storage is an emergency**
15 **shelter or a facility for public safety and if the battery storage is part of a system that**
16 **generates electricity from solar or geothermal energy on the site of the public building.**

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

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

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

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

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

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 (B) Used for conducting public business.

2 (c)(A) “Woody biomass energy technology” means a system that, for space or water heating or
 3 as a combined heat and power system, uses a boiler with a lower heating value combustion effi-
 4 ciency of at least 80 percent and that uses as fuel material from trees and woody plants, such as
 5 limbs, tops, needles, leaves and other woody parts, that:

6 (i) Grows in a forest, a woodland, a farm, a rangeland or a wildland that borders on an urban
 7 area; and

8 (ii) Is a by-product of forest management, agriculture, ecosystem restoration or fire prevention
 9 or related activities.

10 (B) “Woody biomass energy technology” does not include a system that uses for fuel:

11 (i) Wood pieces that have been treated with creosote, pentachlorophenol, chromated copper
 12 arsenate or other chemical preservatives; or

13 (ii) Municipal solid waste.

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

23 (b) A public improvement contract to construct, reconstruct or renovate a public building may
 24 provide for constructing green energy technology, **other than battery storage**, at a site that is
 25 located away from the site of the public building if:

26 (A) Constructing green energy technology away from the site of the public building and using
 27 the energy from the green energy technology at the site of the public building is more cost-effective,
 28 taking into account additional costs associated with transmitting generated energy to the site of the
 29 public building, than is constructing and using green energy technology at the site of the public
 30 building;

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

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

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

40 (ii) Employs geothermal energy and for which construction was completed before January 1,
 41 2013.

42 (c) In evaluating whether a contracting agency can construct green energy technology, **other**
 43 **than battery storage**, at a site away from the site of the public building in accordance with para-
 44 graph (b)(A) of this subsection, the contracting agency shall compare the costs of constructing green
 45 energy technology that employs a particular fuel source or method of energy generation at the site

1 of the public building only with the corresponding costs of green energy technology that employs
 2 the same fuel source or method of energy generation at a location away from the site of the public
 3 building.

4 (d)(A) As an alternative to including appropriate green energy technology as part of the con-
 5 struction, reconstruction or major renovation of a public building, a contracting agency may include
 6 woody biomass energy technology as part of constructing, reconstructing or performing a major
 7 renovation on the public building if the woody biomass energy technology creates new energy gen-
 8 eration capacity that did not exist on the date on which the original building permit for the public
 9 building was issued, the contracting agency has considered the potential costs of the woody biomass
 10 energy technology and:

11 (i) The facility that uses woody biomass energy technology is located in an area of the state that
 12 complies with standards that the Department of Environmental Quality has adopted for emissions
 13 of particulate matter; or

14 (ii) The contracting agency demonstrates to the Department of Environmental Quality, if the
 15 facility that uses woody biomass energy technology is located in an area that does not comply with
 16 standards the department has adopted for emissions of particulate matter, that one of the following
 17 two conditions applies:

18 (I) The fuel that the woody biomass energy technology uses is pelletized; or

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

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

26 (3) In making a determination as to whether green energy technology is appropriate, or whether
 27 woody biomass energy technology is a suitable alternative to green energy technology, in con-
 28 structing, reconstructing or performing a major renovation of a public building, a contracting
 29 agency shall list in the determination the total contract price and specify the amount the agency
 30 intends to expend on including green energy technology or woody biomass energy technology as part
 31 of the construction, reconstruction or major renovation. The State Department of Energy shall de-
 32 velop a form that a contracting agency may use to prepare the written determination described in
 33 this subsection.

34 (4)(a) If the contracting agency determines that green energy technology is not appropriate for
 35 the public building, subsection (2) of this section does not apply to the public improvement contract,
 36 except that if the contracting agency determines that woody biomass energy technology is a suitable
 37 alternative, the contracting agency will make the determination specified in subsection (3) of this
 38 section for the woody biomass energy technology. A contracting agency's determination under this
 39 paragraph must consider whether constructing green energy technology or woody biomass energy
 40 technology at the site of the public building is appropriate and whether constructing green energy
 41 technology, **other than battery storage**, or woody biomass energy technology away from the site
 42 of the public building and in accordance with subsection (2)(b) and (c) of this section, or with sub-
 43 section (2)(d) of this section, as applicable, is appropriate.

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

45 (A) The contracting agency shall spend an amount equal to at least 1.5 percent of the total

1 contract price to include appropriate green energy technology or woody biomass energy technology
2 as part of a future public building project; and

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

7 (5)(a) A contracting agency need not set aside the amount described in subsection (4)(b) of this
8 section in an account or otherwise reserve moneys for a future public building at the time the
9 contracting agency makes the determination described in subsection (3) of this section, but the
10 contracting agency shall report the amount described in subsection (4)(b) of this section to the State
11 Department of Energy as provided in ORS 279C.528 (2).

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

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

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

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

24 **SECTION 2.** ORS 455.466 is amended to read:

25 455.466. (1) As used in this section, "essential project" means a:

26 (a) State owned or operated development;

27 (b) Development of industries in the traded sector as defined in ORS 285A.010 for structures
28 more than 100,000 square feet in size;

29 (c) Project in an industrial site listed by the Oregon Business Development Department as ready
30 for development and for which the project construction totals more than 100,000 square feet in size;
31 or

32 (d) Development designated by the Director of the Oregon Business Development Department
33 as essential to the economic well-being of the state.

34 (2) Notwithstanding any municipal building inspection program under ORS 455.148 or 455.150,
35 an applicant for a building permit for an essential project or the municipality having jurisdiction
36 over an essential project may request in writing that the Department of Consumer and Business
37 Services administer and enforce the state building code for the project.

38 (3) Upon receipt by the Department of Consumer and Business Services of a written request
39 under this section, the Director of the Department of Consumer and Business Services shall assem-
40 ble a rapid approval assessment team consisting of such department employees and other persons
41 as the director considers appropriate. The purpose of the rapid approval assessment team shall be
42 to provide assistance and advice to the director.

43 (4) The Director of the Department of Consumer and Business Services, in consultation with the
44 rapid approval assessment team, shall determine whether adequate resources are available to ensure
45 that an essential project may proceed in a timely, consistent and flexible manner. In determining the

1 availability of resources under this subsection, the director and the rapid approval assessment team
 2 shall give first consideration to the availability of municipal resources. If the director determines
 3 that municipal resources may be inadequate for the essential project, the director may consider
 4 whether state resources or a combination of municipal and state resources is available to ensure
 5 that the essential project may proceed in a timely, consistent and flexible manner. A determination
 6 by the director under this subsection is not appealable.

7 (5) The Director of the Department of Consumer and Business Services may take all actions that
 8 the director considers reasonable and necessary to ensure that an essential project may proceed in
 9 a timely, consistent and flexible manner, including but not limited to:

10 (a) Establishing policies, procedures and rules as necessary;

11 (b) Working directly with local municipalities and other state agencies to resolve conflicts and
 12 disputes related to the state building code;

13 (c) Encouraging cooperation between state and municipal building officials and inspectors;

14 (d) Developing agreements;

15 (e) Developing site-specific dispute resolution and appeals related to state building code re-
 16 quirements;

17 (f) Expediting, coordinating or providing building inspection program plan review, permitting
 18 and inspection services;

19 (g) Assisting a municipality or seeking assistance from a municipality; and

20 (h) Establishing fees to cover the cost of provided services.

21 **(6)(a) As used in this subsection:**

22 **(A) "Contracting agency" has the meaning given that term in ORS 279A.010.**

23 **(B) "Public building" has the meaning given that term in ORS 279C.527.**

24 **(b) If an essential project is a public building with an anticipated cost of \$1 million or**
 25 **more, the director or a municipality, as appropriate, shall conduct a plan review that, at a**
 26 **minimum, determines and verifies that the contracting agency that conducted the procure-**
 27 **ment for the essential project has complied with the requirements set forth in ORS 279C.527.**
 28 **If the director or the municipality finds that the contracting agency has not complied with**
 29 **the requirements, a building permit may not be issued for the essential project until the**
 30 **contracting agency has complied.**

31 **SECTION 3.** ORS 455.467 is amended to read:

32 455.467. (1) Except as provided in subsection (2) of this section, for specialty code plan reviews
 33 of simple low-rise residential dwellings, the Department of Consumer and Business Services or a
 34 municipality that administers a building inspection program under ORS 455.148 or 455.150 shall ap-
 35 prove or disapprove the specialty code building plan:

36 (a) For a jurisdiction with a population that is less than 300,000, within 10 business days of re-
 37 ceiving a complete application, or shall implement the process described in ORS 455.465.

38 (b) For a jurisdiction with a population that is 300,000 or more, within 15 business days of re-
 39 ceiving a complete application, or shall implement the process described in ORS 455.465.

40 (2) The 10-day and 15-day requirements in subsection (1) of this section do not apply if:

41 (a) The plan requires approval by federal, state or local agencies outside the jurisdiction of the
 42 issuing agency;

43 (b) The plan is for a complex structure that requires additional review as determined by the
 44 department or municipality; or

45 (c) Based on conditions that exist in the affected municipality, the Director of the Department

1 of Consumer and Business Services authorizes a different plan review schedule as described in a
 2 building inspection program submitted under ORS 455.148 or 455.150.

3 (3) For specialty code plan reviews of commercial structures, a municipality shall include in its
 4 building inspection program submitted under ORS 455.148 or 455.150 a process for plan review ser-
 5 vices. The municipality shall include in its program detailed reasons supporting the proposed plan
 6 review process. The plan review services provided by the municipality shall:

7 (a) Allow an applicant to defer the submittal of plans for one or more construction phases for
 8 a commercial construction project in accordance with the state building code; and

9 (b) Allow an applicant to receive permits for each of the phases of a commercial construction
 10 project as described in the state building code when the plan review for that phase is approved.

11 (4) For a phased commercial construction project as described in subsection (3) of this section,
 12 the municipality shall inform the applicant of the detailed plans necessary for each phase of the
 13 project and the estimated time for initial and phased review of the building plans for conformance
 14 with the state building code.

15 (5) An applicant submitting plans under subsection (3) of this section is responsible for ensuring
 16 that the project meets all specialty code requirements and that the project does not proceed beyond
 17 the level of approval authorized by the building official.

18 (6) A municipality that repeatedly fails to meet the plan review period described in this section
 19 or otherwise authorized in its building inspection program submitted under ORS 455.148 or 455.150
 20 shall be considered to be engaging in a pattern of conduct of failing to provide timely plan reviews
 21 under ORS 455.160.

22 **(7)(a) As used in this subsection:**

23 **(A) “Contracting agency” has the meaning given that term in ORS 279A.010.**

24 **(B) “Public building” has the meaning given that term in ORS 279C.527.**

25 **(b) If a project is a public building with an anticipated cost of \$1 million or more, the**
 26 **director or a municipality, as appropriate, shall conduct a plan review that, at a minimum,**
 27 **determines and verifies that the contracting agency that conducted the procurement for the**
 28 **project has complied with the requirements set forth in ORS 279C.527. If the director or the**
 29 **municipality finds that the contracting agency has not complied with the requirements, a**
 30 **building permit may not be issued for the project until the contracting agency has complied.**

31 **SECTION 4. The amendments to ORS 279C.527, 455.466 and 455.467 by sections 1 to 3 of**
 32 **this 2019 Act apply to procurements that a contracting agency first advertises or otherwise**
 33 **solicits or, if the contracting agency did not advertise or otherwise solicit the procurement,**
 34 **to public contracts into which the contracting agency enters on or after the operative date**
 35 **specified in section 5 of this 2019 Act.**

36 **SECTION 5. (1) The amendments to ORS 279C.527, 455.466 and 455.467 by sections 1 to 3**
 37 **of this 2019 Act become operative on January 1, 2020.**

38 **(2) The Director of the State Department of Energy may adopt rules and take any other**
 39 **action before the operative date specified in subsection (1) of this section that is necessary**
 40 **to enable the director, on and after the operative date specified in subsection (1) of this**
 41 **section, to exercise all of the duties, functions and powers conferred on the director by the**
 42 **amendments to ORS 279C.527, 455.466 and 455.467 by sections 1 to 3 of this 2019 Act.**

43 **SECTION 6. This 2019 Act takes effect on the 91st day after the date on which the 2019**
 44 **regular session of the Eightieth Legislative Assembly adjourns sine die.**