

Fact Sheet: Key Agency Directives and Dates for HB 3409



OFFICE OF
SUSTANABILITY
Oregon Department of
Administrative Services

[House Bill 3409](#), signed by Governor Kotek, contains several directives that relate to energy use and greenhouse gas (GHG) emissions in state agency buildings. This legislation requires agencies to assess building energy use and GHGs and invest in buildings to meet specified energy use intensity targets (EUI) by specific deadlines. This fact sheet briefly summarizes agency requirements and suggested next steps.

DAS and ODOE will be providing support to agencies to implement the legislation. It is not too soon, however, to begin discussions with your agency facility, planning and budgeting teams on the implications of this law and the resources and investments needed for compliance.

Specifically, state agencies are directed to:

A. Assess Building Energy Use and GHG Emissions

- Conduct a comprehensive assessment of energy use and GHG emissions of agency-owned buildings. This includes a methodology to:
 - Examine and quantify each building's GHG emissions.
 - Identify equipment or use that contributes to GHG emissions from each building.
 - Quantify the useful life of all equipment that contributes to GHG emissions.
- DAS intends to establish a statewide contract for consultant services that agencies can use to support these assessments. Agencies will be responsible for funding their assessments.
- Assessment requirements will likely exempt buildings under a certain size, or of certain use types (e.g., no mechanical cooling).
- DAS will create a searchable database that provides baseline data for all agencies to use in planning energy and GHG reductions in projects.

B. Coordinate with DAS on Capital Project Oversight

- Agencies are directed to coordinate with DAS to review/oversee all agency capital building projects over \$1 million.
- DAS is developing guidelines for sustainable design of these capital building projects and the process for their review and oversight.

C. Comply with a Building Energy Performance Standard (BPS) based on [ASHRAE 100 Requirements](#)

- The BPS will apply to "Tier 1" buildings, which means a building in which the sum of the gross floor area for hotel, motel and nonresidential use equals or exceeds 35,000 square feet, excluding any parking garage.
- "Tier 2" buildings will have energy benchmarking and reporting requirements. A "Tier 2" building means:
 - A building with gross floor area, excluding any parking garage, that equals or exceeds 35,000 square feet and that is used as a multifamily residential building, a hospital, a school, a dormitory or a university building; or
 - A building in which the sum of gross floor area for hotel, motel and nonresidential use exceeds 20,000 square feet but does not exceed 35,000 square feet, excluding any parking garage.

- A BPS may include actions requiring owners of subject buildings to:
 - Develop an energy management plan for agency buildings that must be reviewed and approved. This plan includes descriptions of energy use, documented occupancy, operating hours, equipment schedules and equipment on site.
 - Develop an operations and management plan that includes a statement of performance objectives (performance, thermal comfort, air quality and energy efficiency), an inventory of items, statement of condition indicators, list of inspection and maintenance tasks and a statement of inspection and maintenance frequency.
 - Document a list of maintenance items for all equipment and systems. This includes polling occupants, or physically inspecting and providing information that is displayed at each piece of equipment.
 - Designate an energy manager for completion of BPS tasks and documentation.
- A critical component of a BPS is meeting an EUI target. Specific EUI targets will be determined by ODOE through rulemaking in 2024 and will differ from the targets currently listed in the SEED report and scorecards.
- Buildings will demonstrate compliance with a BPS by:
 - Meeting a weather normalized EUI target based on the specific building type;
 - Developing and implementing a plan for conditional compliance that includes energy audits and investment in energy efficiency measures (EEMs) toward achievement of the EUI target; or
 - Documenting an exemption due to an allowed reason such as low occupancy, financial hardship or through use as an exempted building type such as an agricultural or industrial building.
- Compliance with the BPS in all agency buildings over 35,000 gross square feet will be required by a specified date, phased in by largest buildings first:
 - 200,000 square feet or more, not later than June 1, 2028.
 - 90,000 square feet or more but less than 200,000 square feet, not later than June 1, 2029; and
 - 35,000 square feet or more but less than 90,000 square feet, not later than June 1, 2030.
- Non-compliant buildings may be required to pay a penalty of up to \$5,000 plus \$1 per square foot per year.
- Incentives may be available to assist with early or voluntary compliance with a BPS.
- Note that agencies will need a full year of data prior to the deadlines to demonstrate their EUI. For example, if a building doesn't already meet the target EUI then energy efficiency measures needed to bring the largest buildings (200,000 square feet or more) in alignment with the target would need to be completed by the end of 2026. Other, smaller buildings would need to install EEMs by the end of 2027 or 2028, depending on size. The conditional compliance pathway may provide building owners with more time to plan, assess and implement energy efficiency measures.
- ODOE must adopt rules to administer the BPS program by December 31, 2024.

D. Establish Revolving Fund for Energy Projects

- Any project that produces savings, develops cogeneration facilities, or uses renewable resources must deposit 100% of net savings into a revolving fund to be used for energy efficient projects and improvements. Additional guidance on this process will be forthcoming from ODOE/DAS.

E. Compliance Dates

- Legislation does not specify dates for Sections A, B and D, above. DAS and ODOE will collaborate with agencies to further develop guidance and agency directives for compliance.

F. Suggested Next Steps for Agencies

- While ODOE rules are over a year away, start planning and budgeting for energy assessments and energy efficiency investments in your buildings now – particularly the largest ones over their energy target.
- Review your agency’s building performance in the latest [ODOE SEED report](#) to the legislature. Identify buildings not meeting their energy performance targets (note: these will differ from the eventual statewide BPS EUI targets).
- Leverage available low- or no-cost energy audit programs from [Energy Trust of Oregon](#) or other utilities to get a jump start on opportunities to improve energy use in buildings above their energy use targets.
- Proactively plan and budget (FY 25-27) for energy efficiency and GHG reduction investments in key buildings in your agency’s portfolio. Specify the EUI targets buildings must meet in renovation projects.
- Plan for increased workload to support projects and ongoing energy management. Consider building operator and/or energy management training or accreditations for staff.
- Message your leadership that non-compliance with energy performance targets may result in significant civil penalties for your agency – energy efficiency investment is a priority.
- Reach out to the DAS Office of Sustainability to be connected to resources and support. Steve.markham@das.oregon.gov.