
SECOND SUBSTITUTE HOUSE BILL 1390

AS AMENDED BY THE SENATE

Passed Legislature - 2023 Regular Session

State of Washington 68th Legislature 2023 Regular Session

By House Capital Budget (originally sponsored by Representatives Ramel, Berry, Duerr, Doglio, Pollet, and Reed)

READ FIRST TIME 02/24/23.

1 AN ACT Relating to district energy systems; amending RCW
2 19.27A.210; adding a new section to chapter 19.27A RCW; and creating
3 a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature recognizes that building
6 decarbonization is necessary to achieve the state's climate goals.
7 Washington is a member of the national building performance standards
8 coalition and is leading the nation with existing building
9 performance standards. District energy policy could be used in
10 coordination with any future statewide building performance standards
11 policies to reduce commercial and large state-owned building
12 emissions.

13 Due to the increased prevalence of extreme summer heat events,
14 the ability to cool space at our state-run campus facilities,
15 including correctional facilities, is an essential function of
16 maintaining humane living, working, and learning conditions.

17 Upgrading existing district energy systems has great potential to
18 increase efficiency, oftentimes more so than a building-by-building
19 approach.

20 Upgrading and constructing district energy systems will employ
21 skilled labor, including trades that have historically performed work

1 on fossil fuel energy sources. This work will be an important part of
2 a just transition to a clean energy economy.

3 For state-owned facilities connected to district energy systems,
4 the legislature recognizes that it may take years, multiple budget
5 cycles, and commitments as anchor customers to develop and upgrade
6 campus district energy systems, but remains committed to steadily
7 investing in plans developed by these agencies and their selected
8 providers. Having plans for multiyear customer commitments or
9 spending programs will set the state and private sector up well for
10 applying for federal grants and resources and to appropriately plan
11 capital, operating, and climate commitment act funding for these
12 investments over time.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.27A
14 RCW to read as follows:

15 (1) The definitions in this subsection apply throughout this
16 section unless the context clearly requires otherwise.

17 (a) "Campus" means a collection of buildings served by a district
18 heating, cooling, water reuse, or power system.

19 (b) "Campus district energy system" means a district energy
20 system that provides heating, cooling, or heating and cooling to a
21 campus through a distributed system providing steam, hot water, or
22 cool water to three or more buildings with more than 100,000 square
23 feet of combined conditioned space, where the system and all
24 connected buildings are owned by:

25 (i) A single entity;

26 (ii) A public-private partnership in which a private entity owns
27 the systems providing heating, cooling, or heating and cooling to
28 buildings owned by one public entity; or

29 (iii) Two private entities in which one private entity owns the
30 connected buildings and another private entity owns the system
31 providing heating, cooling, or heating and cooling to the buildings.

32 (c) "State campus district energy system" means a district energy
33 system that provides heating, cooling, or heating and cooling to a
34 campus through a distributed system providing steam, hot water, or
35 cool water to five or more buildings with more than 100,000 square
36 feet of combined conditioned space, where the system and all
37 connected buildings are owned by the state of Washington or by a
38 public-private partnership including one public buildings owner and
39 one private entity.

1 (2) (a) The owner of a state campus district energy system must
2 develop a decarbonization plan that provides a strategy for up to 15
3 years for the state campus district energy system. The department of
4 commerce may approve a decarbonization plan that is based on a
5 planning time frame longer than 15 years. The decarbonization plan
6 must include:

7 (i) Mechanisms to replace fossil fuels in the heating plants,
8 including a schedule for replacement;

9 (ii) An evaluation of possible options to partner with nearby
10 sources and uses of waste heat and cooling;

11 (iii) An examination of opportunities to add buildings or other
12 facilities to the system once it is decarbonized, a strategy to
13 incentivize growth of a decarbonized system, and requirements for
14 facilities joining the system; and

15 (iv) An evaluation, prioritization, and scheduled plan of
16 reducing energy use through conservation efforts both at the central
17 plant and in the buildings connected to district energy systems that
18 results in meeting the campus energy use intensity target.

19 (b) The owner of a state campus district energy system is
20 encouraged to include the following considerations in a
21 decarbonization plan:

22 (i) Distribution network upgrades;

23 (ii) On-site energy storage facilities;

24 (iii) Space cooling for residential facilities;

25 (iv) Labor and workforce, including state registered
26 apprenticeship utilization;

27 (v) Options for public-private partnerships;

28 (vi) Incorporation of industrial symbiosis projects or networks
29 as described in chapter 308, Laws of 2021.

30 (c) The owner of a state campus district energy system must
31 consult with the electric utility and the natural gas utility serving
32 the site of the system during decarbonization plan development.

33 (3) (a) The owner of a state campus district energy system must
34 begin developing a decarbonization plan by June 30, 2024, and must
35 submit a final decarbonization plan to the department of commerce by
36 June 30, 2025.

37 (b) Upon submittal to the department of commerce, decarbonization
38 plans must be reviewed and approved by the department of commerce.
39 The department of commerce may ask for a decarbonization plan to be

1 revised and resubmitted if it does not meet standards as determined
2 by the department of commerce.

3 (c) Every five years after June 30, 2025, the owner of a state
4 campus district energy system must resubmit the decarbonization plan,
5 along with a progress report on the implementation of the
6 decarbonization plan, to the department of commerce.

7 (4) The department of commerce must provide a summary report on
8 the decarbonization plans required in subsection (3) of this section
9 to the governor and the appropriate committees of the legislature by
10 December 1, 2025.

11 (5) The owner of a state campus district energy system is not
12 required to meet the energy use intensity target in all the connected
13 buildings that are heated, cooled, or heated and cooled by the
14 system, or to conduct an investment grade audit, to otherwise comply
15 with the state energy performance standard requirements in RCW
16 19.27A.200 through 19.27A.250 if the following conditions for an
17 alternative compliance pathway are met:

18 (a) The owner of a state campus district energy system is
19 implementing a department of commerce-approved decarbonization plan
20 or has fully implemented a department of commerce-approved
21 decarbonization plan for the state campus district energy system and
22 all of its connected buildings that, when fully implemented, meets
23 the energy use intensity target established for the campus at the
24 time of required measurement and verification. The owner may apply
25 for phased implementation through conditional compliance in
26 accordance with requirements of the decarbonization plan;

27 (b) The owner of the state campus district energy system meets
28 the benchmarking, energy management, and operations and maintenance
29 planning requirements under RCW 19.27A.200 through 19.27A.250 for the
30 state campus district energy system and all of its connected
31 buildings; and

32 (c) The owner of a state campus district energy system submits a
33 request to the department of commerce once during every five-year
34 compliance cycle as part of documentation submitted in accordance
35 with RCW 19.27A.210(7), and the department of commerce approves the
36 request.

37 (6) The owner of a campus district energy system may submit a
38 request to the department of commerce to opt-in to the process for
39 approval of an alternative compliance pathway as outlined in this
40 section. If approved by the department of commerce, the campus

1 district energy system must follow all of the requirements outlined
2 for a state campus district energy system in this section, and the
3 department of commerce must apply all authorities granted under this
4 section for state campus district energy systems to such a campus
5 district energy system.

6 **Sec. 3.** RCW 19.27A.210 and 2021 c 65 s 19 are each amended to
7 read as follows:

8 (1)(a) By November 1, 2020, the department must establish by rule
9 a state energy performance standard for covered commercial buildings.

10 (b) In developing energy performance standards, the department
11 shall seek to maximize reductions of greenhouse gas emissions from
12 the building sector. The standard must include energy use intensity
13 targets by building type and methods of conditional compliance that
14 include an energy management plan, operations and maintenance
15 program, energy efficiency audits, and investment in energy
16 efficiency measures designed to meet the targets. The department
17 shall use ANSI/ASHRAE/IES standard 100-2018 as an initial model for
18 standard development. The department must update the standard by July
19 1, 2029, and every five years thereafter. Prior to the adoption or
20 update of the standard, the department must identify the sources of
21 information it relied upon, including peer-reviewed science.

22 (2) In establishing the standard under subsection (1) of this
23 section, the department:

24 (a) Must develop energy use intensity targets that are no greater
25 than the average energy use intensity for the covered commercial
26 building occupancy type with adjustments for unique energy using
27 features. The department must also develop energy use intensity
28 targets for additional property types eligible for incentives in RCW
29 19.27A.220. The department must consider regional and local building
30 energy utilization data, such as existing energy star benchmarking
31 data, in establishing targets for the standard. Energy use intensity
32 targets must be developed for two or more climate zones and be
33 representative of energy use in a normal weather year;

34 (b) May consider building occupancy classifications from ANSI/
35 ASHRAE/IES standard 100-2018 and the United States environmental
36 protection agency's energy star portfolio manager when developing
37 energy use intensity targets;

1 (c) May implement lower energy use intensity targets for more
2 recently built covered commercial buildings based on the state energy
3 code in place when the buildings were constructed;

4 (d) (i) Must adopt a conditional compliance method that ensures
5 that covered commercial buildings that do not meet the specified
6 energy use intensity targets are taking action to achieve reduction
7 in energy use, including investment criteria for conditional
8 compliance that ensure that energy efficiency measures identified by
9 energy audits are implemented to achieve a covered commercial
10 building's energy use intensity target. The investment criteria must
11 require that a building owner adopt an implementation plan to meet
12 the energy intensity target or implement an optimized bundle of
13 energy efficiency measures that provides maximum energy savings
14 without resulting in a savings-to-investment ratio of less than 1.0,
15 except as exempted in (d) (ii) of this subsection. The implementation
16 plan must be based on an investment grade energy audit and a life-
17 cycle cost analysis that accounts for the period during which a
18 bundle of measures will provide savings. The building owner's cost
19 for implementing energy efficiency measures must reflect net cost,
20 excluding any costs covered by utility or government grants. The
21 implementation plan may exclude measures that do not pay for
22 themselves over the useful life of the measure and measures excluded
23 under (d) (ii) of this subsection. The implementation plan may include
24 phased implementation such that the building owner is not required to
25 replace a system or equipment before the end of the system or
26 equipment's useful life;

27 (ii) For those buildings or structures that are listed in the
28 state or national register of historic places; designated as a
29 historic property under local or state designation law or survey;
30 certified as a contributing resource with a national register listed
31 or locally designated historic district; or with an opinion or
32 certification that the property is eligible to be listed on the
33 national or state registers of historic places either individually or
34 as a contributing building to a historic district by the state
35 historic preservation officer or the keeper of the national register
36 of historic places, no individual energy efficiency requirement need
37 be met that would compromise the historical integrity of a building
38 or part of a building;

39 (e) Must provide an alternative compliance pathway for an owner
40 of a state campus district energy system, in accordance with section

1 2 of this act, and more broadly for the owner of any campus district
2 energy system that is approved by the department to opt-in in
3 accordance with section 2(6) of this act;

4 (f) Must guarantee that the owner of a state campus district
5 energy system is not required to implement more than one energy
6 management plan and more than one operations and maintenance plan for
7 the campus;

8 (g) Must guarantee that a state campus district energy system, as
9 defined in section 2 of this act, and all buildings connected to a
10 state campus district energy system, are in compliance with any
11 requirements for campus buildings to implement energy efficiency
12 measures identified by an energy audit if:

13 (i) The energy audit demonstrates the energy savings from the
14 state campus district energy system energy efficiency measures will
15 be greater than the energy efficiency measures identified for the
16 campus buildings; and

17 (ii) The state campus district energy system implements the
18 energy efficiency measures.

19 (3) Based on records obtained from each county assessor and other
20 available information sources, the department must create a database
21 of covered commercial buildings and building owners required to
22 comply with the standard established in accordance with this section.

23 (4) By July 1, 2021, the department must provide the owners of
24 covered buildings with notification of compliance requirements.

25 (5) The department must develop a method for administering
26 compliance reports from building owners.

27 (6) The department must provide a customer support program to
28 building owners including, but not limited to, outreach and
29 informational material, periodic training, phone and email support,
30 and other technical assistance.

31 (7) The building owner of a covered commercial building must
32 report the building owner's compliance with the standard to the
33 department in accordance with the schedule established under
34 subsection (8) of this section and every five years thereafter. For
35 each reporting date, the building owner must submit documentation to
36 demonstrate that:

37 (a) The weather normalized energy use intensity of the covered
38 commercial building measured in the previous calendar year is less
39 than or equal to the energy use intensity target; or

1 (b) The covered commercial building has received conditional
2 compliance from the department based on energy efficiency actions
3 prescribed by the standard; or

4 (c) The covered commercial building is exempt from the standard
5 by demonstrating that the building meets one of the following
6 criteria:

7 (i) The building did not have a certificate of occupancy or
8 temporary certificate of occupancy for all (~~twelve~~) 12 months of
9 the calendar year prior to the building owner compliance schedule
10 established under subsection (8) of this section;

11 (ii) The building did not have an average physical occupancy of
12 at least (~~fifty~~) 50 percent throughout the calendar year prior to
13 the building owner compliance schedule established under subsection
14 (8) of this section;

15 (iii) The sum of the building's gross floor area minus
16 unconditioned and semiconditioned spaces, as defined in the
17 Washington state energy code, is less than (~~fifty thousand~~) 50,000
18 square feet;

19 (iv) The primary use of the building is manufacturing or other
20 industrial purposes, as defined under the following use designations
21 of the international building code: (A) Factory group F; or (B) high
22 hazard group H;

23 (v) The building is an agricultural structure; or

24 (vi) The building meets at least one of the following conditions
25 of financial hardship: (A) The building had arrears of property taxes
26 or water or wastewater charges that resulted in the building's
27 inclusion, within the prior two years, on a city's or county's annual
28 tax lien sale list; (B) the building has a court appointed receiver
29 in control of the asset due to financial distress; (C) the building
30 is owned by a financial institution through default by a borrower;
31 (D) the building has been acquired by a deed in lieu of foreclosure
32 within the previous (~~twenty-four~~) 24 months; (E) the building has a
33 senior mortgage subject to a notice of default; or (F) other
34 conditions of financial hardship identified by the department by
35 rule.

36 (8) A building owner of a covered commercial building must meet
37 the following reporting schedule for complying with the standard
38 established under this section:

39 (a) For a building with more than (~~two hundred twenty thousand~~)
40 220,000 gross square feet, June 1, 2026;

1 (b) For a building with more than (~~ninety thousand~~) 90,000
2 gross square feet but less than (~~two hundred twenty thousand and~~
3 ~~one~~) 220,001 gross square feet, June 1, 2027; and

4 (c) For a building with more than (~~fifty thousand~~) 50,000 gross
5 square feet but less than (~~ninety thousand and one~~) 90,001 square
6 feet, June 1, 2028.

7 (9)(a) The department may issue a notice of violation to a
8 building owner for noncompliance with the requirements of this
9 section. A determination of noncompliance may be made for any of the
10 following reasons:

11 (i) Failure to submit a compliance report in the form and manner
12 prescribed by the department;

13 (ii) Failure to meet an energy use intensity target or failure to
14 receive conditional compliance approval;

15 (iii) Failure to provide accurate reporting consistent with the
16 requirements of the standard established under this section; and

17 (iv) Failure to provide a valid exemption certificate.

18 (b) In order to create consistency with the implementation of the
19 standard and rules adopted under this section, the department must
20 reply and cite the section of law, code, or standard in a notice of
21 violation for noncompliance with the requirements of this section
22 when requested to do so by the building owner or the building owner's
23 agent.

24 (10) The department is authorized to impose an administrative
25 penalty upon a building owner for failing to submit documentation
26 demonstrating compliance with the requirements of this section. The
27 penalty may not exceed an amount equal to (~~five thousand dollars~~)
28 \$5,000 plus an amount based on the duration of any continuing
29 violation. The additional amount for a continuing violation may not
30 exceed a daily amount equal to (~~one dollar~~) \$1 per year per gross
31 square foot of floor area. The department may by rule increase the
32 maximum penalty rates to adjust for the effects of inflation.

33 (11) Administrative penalties collected under this section must
34 be deposited into the low-income weatherization and structural
35 rehabilitation assistance account created in RCW 70A.35.030.

36 (12) The department must adopt rules as necessary to implement
37 this section, including but not limited to:

38 (a) Rules necessary to ensure timely, accurate, and complete
39 reporting of building energy performance for all covered commercial
40 buildings;

1 (b) Rules necessary to enforce the standard established under
2 this section; and

3 (c) Rules that provide a mechanism for appeal of any
4 administrative penalty imposed by the department under this section.

5 (13) Upon request by the department, each county assessor must
6 provide property data from existing records to the department as
7 necessary to implement this section.

8 (14) By January 15, 2022, and each year thereafter through 2029,
9 the department must submit a report to the governor and the
10 appropriate committees of the legislature on the implementation of
11 the state energy performance standard established under this section.
12 The report must include information regarding the adoption of the
13 ANSI/ASHRAE/IES standard 100-2018 as an initial model, the financial
14 impact to building owners required to comply with the standard, the
15 amount of incentives provided under RCW 19.27A.220 and 19.27A.230,
16 and any other significant information associated with the
17 implementation of this section.

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