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**SENATE BILL 5057**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senators Mullet and Schoesler

Prefiled 12/15/22.

1       AN ACT Relating to creating a work group to evaluate the costs of  
2 the state energy performance standard for covered commercial  
3 buildings; amending RCW 19.27A.210 and 19.27A.250; creating a new  
4 section; and providing an expiration date.

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

6       **Sec. 1.** 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.

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

3 (a) Must develop energy use intensity targets that are no greater  
4 than the average energy use intensity for the covered commercial  
5 building occupancy type with adjustments for unique energy using  
6 features. The department must also develop energy use intensity  
7 targets for additional property types eligible for incentives in RCW  
8 19.27A.220. The department must consider regional and local building  
9 energy utilization data, such as existing energy star benchmarking  
10 data, in establishing targets for the standard. Energy use intensity  
11 targets must be developed for two or more climate zones and be  
12 representative of energy use in a normal weather year;

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

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

20 (d) (i) Must adopt a conditional compliance method that ensures  
21 that covered commercial buildings that do not meet the specified  
22 energy use intensity targets are taking action to achieve reduction  
23 in energy use, including investment criteria for conditional  
24 compliance that ensure that energy efficiency measures identified by  
25 energy audits are implemented to achieve a covered commercial  
26 building's energy use intensity target. The investment criteria must  
27 require that a building owner adopt an implementation plan to meet  
28 the energy intensity target or implement an optimized bundle of  
29 energy efficiency measures that provides maximum energy savings  
30 without resulting in a savings-to-investment ratio of less than 1.0,  
31 except as exempted in (d) (ii) of this subsection. The implementation  
32 plan must be based on an investment grade energy audit and a life-  
33 cycle cost analysis that accounts for the period during which a  
34 bundle of measures will provide savings. The building owner's cost  
35 for implementing energy efficiency measures must reflect net cost,  
36 excluding any costs covered by utility or government grants. The  
37 implementation plan may exclude measures that do not pay for  
38 themselves over the useful life of the measure and measures excluded  
39 under (d) (ii) of this subsection. The implementation plan may include  
40 phased implementation such that the building owner is not required to

1 replace a system or equipment before the end of the system or  
2 equipment's useful life;

3 (ii) For those buildings or structures that are listed in the  
4 state or national register of historic places; designated as a  
5 historic property under local or state designation law or survey;  
6 certified as a contributing resource with a national register listed  
7 or locally designated historic district; or with an opinion or  
8 certification that the property is eligible to be listed on the  
9 national or state registers of historic places either individually or  
10 as a contributing building to a historic district by the state  
11 historic preservation officer or the keeper of the national register  
12 of historic places, no individual energy efficiency requirement need  
13 be met that would compromise the historical integrity of a building  
14 or part of a building.

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

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

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

23 (6) The department must provide a customer support program to  
24 building owners including, but not limited to, outreach and  
25 informational material, periodic training, phone and email support,  
26 and other technical assistance.

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

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

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

1 (c) The covered commercial building is exempt from the standard  
2 by demonstrating that the building meets one of the following  
3 criteria:

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

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

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

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

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

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

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

35 (a) For a building with more than (~~two hundred twenty thousand~~)  
36 220,000 gross square feet, June 1, (~~2026~~) 2028;

37 (b) For a building with more than (~~ninety thousand~~) 90,000  
38 gross square feet but less than (~~two hundred twenty thousand and~~  
39 ~~one~~) 220,001 gross square feet, June 1, (~~2027~~) 2029; and

1 (c) For a building with more than (~~fifty thousand~~) 50,000 gross  
2 square feet but less than (~~ninety thousand and one~~) 90,001 square  
3 feet, June 1, (~~2028~~) 2030.

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

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

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

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

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

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

21 (10) The department is authorized to impose an administrative  
22 penalty upon a building owner for failing to submit documentation  
23 demonstrating compliance with the requirements of this section. The  
24 penalty may not exceed an amount equal to (~~five thousand dollars~~)  
25 \$5,000 plus an amount based on the duration of any continuing  
26 violation. The additional amount for a continuing violation may not  
27 exceed a daily amount equal to (~~one dollar~~) \$1.00 per year per  
28 gross square foot of floor area. The department may by rule increase  
29 the maximum penalty rates to adjust for the effects of inflation.

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

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

35 (a) Rules necessary to ensure timely, accurate, and complete  
36 reporting of building energy performance for all covered commercial  
37 buildings;

38 (b) Rules necessary to enforce the standard established under  
39 this section; and

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

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

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

16 **Sec. 2.** RCW 19.27A.250 and 2022 c 177 s 3 are each amended to  
17 read as follows:

18 (1) (a) By December 1, (~~2023~~) 2025, the department must adopt by  
19 rule a state energy management and benchmarking requirement for tier  
20 2 covered buildings. The department shall include a small business  
21 economic impact statement pursuant to chapter 19.85 RCW as part of  
22 the rule making.

23 (b) In establishing the requirements under (a) of this  
24 subsection, the department must adopt requirements for building owner  
25 implementation consistent with the standard established pursuant to  
26 RCW 19.27A.210(1) and limited to energy management planning,  
27 operations and maintenance planning, and energy use analysis through  
28 benchmarking and associated reporting and administrative procedures.  
29 Administrative procedures must include exemptions for financial  
30 hardship and an appeals process for administrative determinations,  
31 including penalties imposed by the department.

32 (c) The department must provide a customer support program to  
33 building owners including, but not limited to, outreach and  
34 informational materials that connect tier 2 covered building owners  
35 to utility resources, periodic training, phone and email support, and  
36 other technical assistance. The customer support program must include  
37 enhanced technical support, such as benchmarking assistance and  
38 assistance in developing energy management and operations and  
39 maintenance plans, for tier 2 covered buildings whose owners

1 typically do not employ dedicated building managers including, but  
2 not limited to, multifamily housing, child care facilities, and  
3 houses of worship. The department shall prioritize underresourced  
4 buildings with a high energy use per square foot, buildings in rural  
5 communities, buildings whose tenants are primarily small businesses,  
6 and buildings located in high-risk communities according to the  
7 department of health's environmental health disparities map.

8 (d)(i) The department may adopt rules related to the imposition  
9 of an administrative penalty not to exceed 30 cents per square foot  
10 upon a tier 2 covered building owner for failing to submit  
11 documentation demonstrating compliance with the requirements of this  
12 subsection.

13 (ii) Administrative penalties collected under this section must  
14 be deposited into the low-income weatherization and structural  
15 rehabilitation assistance account created in RCW 70A.35.030 and  
16 reinvested into the program, where feasible, to support compliance  
17 with the standard.

18 (2) By July 1, (~~2025~~) 2027, the department must provide the  
19 owners of tier 2 covered buildings with notification of the  
20 requirements the department has adopted pursuant to this section that  
21 apply to tier 2 covered buildings.

22 (3) The owner of a tier 2 covered building must report the  
23 building owner's compliance with the requirements adopted by the  
24 department to the department in accordance with the schedule  
25 established under subsection (4) of this section and every five years  
26 thereafter. For each reporting date, the building owner must submit  
27 documentation to demonstrate that the building owner has developed  
28 and implemented the procedures adopted by the department by rule,  
29 limited to energy management planning, operations and maintenance  
30 planning, and energy use analysis through benchmarking.

31 (4) By July 1, (~~2027~~) 2029, tier 2 covered building owners must  
32 submit reports to the department as required by the rules adopted in  
33 subsection (1) of this section.

34 (5)(a) By July 1, (~~2029~~) 2031, the department must evaluate  
35 benchmarking data to determine energy use and greenhouse gas  
36 emissions averages by tier 2 covered building type.

37 (b) The department must submit a report to the legislature and  
38 the governor by October 1, (~~2029~~) 2031, with recommendations for  
39 cost-effective building performance standards for tier 2 covered  
40 buildings. The report must contain information on estimated costs to

1 building owners to implement the performance standards and  
2 anticipated implementation challenges.

3 (c) (i) By December 31, (~~2030~~) 2032, the department must adopt  
4 rules for performance standards for tier 2 covered buildings.

5 (ii) In adopting these performance standards, the department must  
6 consider the age of the building in setting energy use intensity  
7 targets.

8 (iii) The department may adopt performance standards for  
9 multifamily residential buildings on a longer timeline schedule than  
10 for other tier 2 covered buildings.

11 (iv) The rules may not take effect before the end of the (~~2031~~)  
12 2033 regular legislative session.

13 (v) The department must include a small business economic impact  
14 statement pursuant to chapter 19.85 RCW as part of the rule making.

15 NEW SECTION. **Sec. 3.** (1) The Washington State University  
16 extension energy program, with assistance from the state energy  
17 office, must convene a work group to:

18 (a) Report on the financial impacts to state-owned buildings  
19 required to comply with the state energy performance standard as  
20 reported under RCW 19.27A.210(14).

21 (b) Make recommendations to the legislature regarding energy  
22 efficiency in the building sector that include, but are not limited  
23 to:

24 (i) Identifying energy efficiency investments or other  
25 strategies, and related timelines, for increasing energy efficiency  
26 in the buildings sector;

27 (ii) Providing a cost-benefit analysis of options, including  
28 energy efficiency, to meet the goal of reducing greenhouse gas  
29 emissions from the buildings sector; and

30 (iii) Recommending any changes to chapter 285, Laws of 2019.

31 (2) The work group convened under this section must consist of,  
32 at a minimum: One representative of the office of the superintendent  
33 of public instruction; one representative of each of the state's  
34 public four-year institutions of higher education; one representative  
35 of the state board for community and technical colleges; one  
36 representative of the department of social and health services; one  
37 representative of the department of corrections; one representative  
38 of the department of enterprise services; and two representatives of  
39 a national association for industrial and office parks.



1           (3) Subject to the availability of amounts appropriated for this  
2 specific purpose, and in compliance with RCW 43.01.036, the  
3 Washington State University extension energy program must submit to  
4 the appropriate committees of the legislature:

5           (a) Financial impacts as required under subsection (1)(a) of this  
6 section by December 15, 2023; and

7           (b) A final report with recommendations as required under  
8 subsection (1)(b) of this section by September 1, 2024.

9           (4) This section expires January 1, 2025.

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