
SUBSTITUTE SENATE BILL 5057

State of Washington

68th Legislature

2023 Regular Session

By Senate Environment, Energy & Technology (originally sponsored by Senators Mullet, Schoesler, Gildon, Short, Torres, Van De Wege, Wellman, and L. Wilson)

READ FIRST TIME 02/17/23.

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; creating new sections; and
4 providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that improving
7 the energy efficiency of buildings is the most cost-effective means
8 to meet the state's emissions and energy goals for buildings. The
9 clean buildings state energy performance standard sets energy use
10 intensity targets for buildings that must be met over time. The
11 energy use intensity targets are regionally appropriate, weather-
12 normalized means and are established according to building size and
13 type. Buildings built after 2015 have a lower energy use intensity
14 target than those built before 2015.

15 (2) The legislature acknowledges that the global pandemic had a
16 significant impact on the economy and has made it difficult for some
17 building owners to comply with the state energy performance standard
18 under the current timelines. Therefore, for tier 1 covered buildings,
19 the legislature intends to delay compliance with the standard for one
20 year.

1 (3) Furthermore, the legislature recognizes that building owners
2 need certainty when applying for and receiving any of the exemptions
3 provided in RCW 19.27A.210. While building owners currently may not
4 apply for an exemption more than 365 days in advance of their
5 scheduled compliance date, the legislature intends to ensure that the
6 department of commerce pursues an emergency rule to allow tier 1
7 covered building owners to apply for an exemption three years in
8 advance of their scheduled compliance date.

9 **Sec. 2.** RCW 19.27A.210 and 2021 c 65 s 19 are each amended to
10 read as follows:

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

13 (b) In developing energy performance standards, the department
14 shall seek to maximize reductions of greenhouse gas emissions from
15 the building sector. The standard must include energy use intensity
16 targets by building type and methods of conditional compliance that
17 include an energy management plan, operations and maintenance
18 program, energy efficiency audits, and investment in energy
19 efficiency measures designed to meet the targets. The department
20 shall use ANSI/ASHRAE/IES standard 100-2018 as an initial model for
21 standard development. The department must update the standard by July
22 1, 2029, and every five years thereafter. Prior to the adoption or
23 update of the standard, the department must identify the sources of
24 information it relied upon, including peer-reviewed science.

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

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

37 (b) May consider building occupancy classifications from ANSI/
38 ASHRAE/IES standard 100-2018 and the United States environmental

1 protection agency's energy star portfolio manager when developing
2 energy use intensity targets;

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

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

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

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

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

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

9 (6) The department must provide a customer support program to
10 building owners including, but not limited to, outreach and
11 informational material, periodic training, phone and email support,
12 and other technical assistance.

13 (7) The building owner of a covered commercial building must
14 report the building owner's compliance with the standard to the
15 department in accordance with the schedule established under
16 subsection ~~((8))~~ (9) of this section and every five years
17 thereafter. For each reporting date, the building owner must submit
18 documentation to demonstrate that:

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

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

25 (c) The covered commercial building is exempt from the standard
26 ~~((by demonstrating))~~ for the five-year compliance period if it is
27 demonstrated that the building meets one of the following criteria:

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

32 (ii) The building did not have an average physical occupancy of
33 at least ~~((fifty))~~ 50 percent throughout the calendar year prior to
34 the building owner compliance schedule established under subsection
35 ~~((8))~~ (9) of this section;

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

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

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

6 (vi) The building meets at least one of the following conditions
7 of financial hardship: (A) The building had arrears of property taxes
8 or water or wastewater charges that resulted in the building's
9 inclusion, within the prior two years, on a city's or county's annual
10 tax lien sale list; (B) the building has a court appointed receiver
11 in control of the asset due to financial distress; (C) the building
12 is owned by a financial institution through default by a borrower;
13 (D) the building has been acquired by a deed in lieu of foreclosure
14 within the previous (~~twenty-four~~) 24 months; (E) the building has a
15 senior mortgage subject to a notice of default; or (F) other
16 conditions of financial hardship identified by the department by
17 rule. Starting July 1, 2023, a building owner may apply for a
18 financial hardship exemption three years in advance of each
19 compliance requirement.

20 (8) A building owner of a covered commercial building must meet
21 the following reporting schedule for complying with the (~~standard~~
22 ~~established~~) energy benchmarking, an operations and maintenance
23 program, and an energy management plan established as part of the
24 standard under this section:

25 (a) For a building with more than (~~two hundred twenty thousand~~)
26 220,000 gross square feet, June 1, 2026;

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

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

33 (9) A building owner of a covered commercial building must meet
34 the following reporting schedule for complying with the site-based
35 energy use intensity target established as part of the standard under
36 this section:

37 (a) For a building with more than 220,000 gross square feet, June
38 1, 2027;

39 (b) For a building with more than 90,000 gross square feet but
40 less than 220,001 gross square feet, June 1, 2028; and

1 (c) For a building with more than 50,000 gross square feet but
2 less than 90,001 gross square feet, June 1, 2029.

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

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

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

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

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

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

20 ~~((10))~~ (11) The department is authorized to impose an
21 administrative penalty upon a building owner for failing to submit
22 documentation demonstrating compliance with the requirements of this
23 section. The penalty may not exceed an amount equal to ~~((five~~
24 ~~thousand dollars))~~ \$5,000 plus an amount based on the duration of any
25 continuing violation. The additional amount for a continuing
26 violation may not exceed a daily amount equal to ~~((one dollar))~~ \$1.00
27 per year per gross square foot of floor area. The department may by
28 rule increase the maximum penalty rates to adjust for the effects of
29 inflation.

30 ~~((11))~~ (12) Administrative penalties collected under this
31 section must be deposited into the low-income weatherization and
32 structural rehabilitation assistance account created in RCW
33 70A.35.030.

34 ~~((12))~~ (13) The department must adopt rules as necessary to
35 implement this section, including but not limited to:

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

39 (b) Rules necessary to enforce the standard established under
40 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))~~ (14) Upon request by the department, each county
4 assessor must provide property data from existing records to the
5 department as necessary to implement this section.

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

16 NEW SECTION. **Sec. 3.** (1) The department of commerce must
17 convene a work group to:

18 (a) Report on the financial impacts to all tier 1 covered
19 buildings required to comply with the state energy performance
20 standard under RCW 19.27A.210;

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 membership convened under this section must
32 include, but not be limited to: One representative of the office of
33 the superintendent of public instruction; one representative of each
34 of the state's public four-year institutions of higher education; one
35 representative of the state board for community and technical
36 colleges; one representative of the department of social and health
37 services; one representative of the department of corrections; one
38 representative of the department of enterprise services; one
39 representative of health care; one representative of local

1 government; one representative from an organization representing
2 privately owned tier 1 covered buildings; and two representatives of
3 a national association for industrial and office parks.

4 (3) Subject to the availability of amounts appropriated for this
5 specific purpose, and in compliance with RCW 43.01.036, the
6 department of commerce must submit to the appropriate committees of
7 the legislature:

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

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

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

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