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**SUBSTITUTE SENATE BILL 5722**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Nguyen, Llias, Lovelett, Nobles, Pedersen, Saldaña, and Stanford; by request of Office of the Governor)

1 AN ACT Relating to reducing greenhouse gas emissions in  
2 buildings; amending RCW 19.27A.200, 19.27A.220, and 19.27A.230;  
3 adding a new section to chapter 19.27A RCW; creating a new section;  
4 and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that in order to  
7 meet the statewide greenhouse gas emissions limits in RCW 70A.45.020,  
8 the state must require performance standards for existing buildings.

9 In order to have a comprehensive understanding of the need and  
10 potential for updating the state's building stock, including the  
11 "split incentive issue" in which tenants are responsible for energy  
12 costs and building owners are responsible for choices about energy  
13 systems and building maintenance, more robust benchmarking and  
14 reporting for building performance, operations, and maintenance is  
15 needed. While the state has adopted comprehensive reporting  
16 requirements for larger buildings, it currently lacks similar  
17 requirements for smaller buildings. It is the intent of the  
18 legislature to extend existing building benchmarking, energy  
19 management, and operations and maintenance planning requirements to  
20 smaller commercial and multifamily residential buildings in order to

1 assess the needs and opportunities for job creation and incentives  
2 and environmental and public health improvements.

3 The legislature further finds that in order to meet the statewide  
4 greenhouse gas emissions limits in the energy sectors of the economy,  
5 more resources must be directed toward achieving decarbonization of  
6 building heating and cooling loads, while continuing to relieve  
7 energy burdens that exist in overburdened communities. These  
8 resources must include comprehensive customer support, outreach, and  
9 technical assistance. These efforts must include notifying building  
10 owners of requirements through communications campaigns, providing  
11 resources to aid in compliance, and delivering training to equip  
12 building owners, and the industry, to be successful.

13 **Sec. 2.** RCW 19.27A.200 and 2019 c 285 s 2 are each amended to  
14 read as follows:

15 The definitions in this section apply throughout RCW 19.27A.210,  
16 19.27A.220, 19.27A.230, ~~((and))~~ 19.27A.240, and sections 3 and 4 of  
17 this act unless the context clearly requires otherwise.

18 (1) "Agricultural structure" means a structure designed and  
19 constructed to house farm implements, hay, grain, poultry, livestock,  
20 or other horticultural products, and that is not a place used by the  
21 public or a place of human habitation or employment where  
22 agricultural products are processed, treated, or packaged.

23 (2) "Baseline energy use intensity" means a building's weather  
24 normalized energy use intensity measured using the previous year to  
25 making an application for an incentive under RCW 19.27A.220.

26 (3) (a) "Building owner" means an individual or entity possessing  
27 title to a building.

28 (b) In the event of a land lease, "building owner" means the  
29 entity possessing title to the building on leased land.

30 (4) "Building tenant" means a person or entity occupying or  
31 holding possession of a building or premises pursuant to a rental  
32 agreement.

33 (5) "Conditional compliance" means a temporary compliance method  
34 used by covered building owners that demonstrate the owner has  
35 implemented energy use reduction strategies required by the standard,  
36 but has not demonstrated full compliance with the energy use  
37 intensity target.

38 (6) "Consumer-owned utility" has the same meaning as defined in  
39 RCW 19.27A.140.

1 (7) "Covered (~~commercial~~) building" (~~means~~) includes a tier 2  
2 covered building or a building where the sum of nonresidential,  
3 hotel, motel, and dormitory floor areas exceeds (~~fifty thousand~~)  
4 50,000 gross square feet, excluding the parking garage area.

5 (8) "Department" means the department of commerce.

6 (9) "Director" means the director of the department of commerce  
7 or the director's designee.

8 (10) "Electric utility" means a consumer-owned utility or an  
9 investor-owned utility.

10 (11) "Eligible building owner" means: (a) The owner of a covered  
11 (~~commercial~~) building required to comply with the standard  
12 established in RCW 19.27A.210; or (b) the owner of a multifamily  
13 residential building where the floor area exceeds (~~fifty thousand~~)  
14 50,000 gross square feet, excluding the parking garage area.

15 (12) "Energy" includes: Electricity, including electricity  
16 delivered through the electric grid and electricity generated at the  
17 building premises using solar or wind energy resources; natural gas,  
18 including natural gas derived from renewable sources, synthetic  
19 sources, and fossil fuel sources; district steam; district hot water;  
20 district chilled water; propane; fuel oil; wood; coal; or other fuels  
21 used to meet the energy loads of a building.

22 (13) "Energy use intensity" means a measurement that normalizes a  
23 building's site energy use relative to its size. A building's energy  
24 use intensity is calculated by dividing the total net energy consumed  
25 in one year by the gross floor area of the building, excluding the  
26 parking garage. "Energy use intensity" is reported as a value of  
27 thousand British thermal units per square foot per year.

28 (14) "Energy use intensity target" means the net energy use  
29 intensity of a covered (~~commercial~~) building that has been  
30 established for the purposes of complying with the standard  
31 established under RCW 19.27A.210.

32 (15) "Gas company" includes every corporation, company,  
33 association, joint stock association, partnership, and person, their  
34 lessees, trustees, or receiver appointed by any court whatsoever, and  
35 every city or town owning, controlling, operating, or managing any  
36 gas plant within this state.

37 (16) "Greenhouse gas" includes carbon dioxide, methane, nitrous  
38 oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

39 (17) (a) "Gross floor area" means the total number of square feet  
40 measured between the exterior surfaces of the enclosing fixed walls

1 of a building, including all supporting functions such as offices,  
2 lobbies, restrooms, equipment storage areas, mechanical rooms, break  
3 rooms, and elevator shafts.

4 (b) "Gross floor area" does not include outside bays or docks.

5 (18) "Investor-owned utility" means a ~~((company owned by~~  
6 ~~investors, that meets one of the definitions of RCW 80.04.010, and~~  
7 ~~that is engaged in distributing electricity))~~ corporation owned by  
8 investors that meets the definition of "corporation" as defined in  
9 RCW 80.04.010 and is engaged in distributing either electricity or  
10 natural gas, or both, to more than one retail electric customer in  
11 the state.

12 (19) "Multifamily residential building" means a covered  
13 multifamily building containing sleeping units or more than ~~((two))~~  
14 five dwelling units where occupants are primarily permanent in  
15 nature.

16 (20) "Net energy use" means the sum of metered and bulk fuel  
17 energy entering the building, minus the sum of metered energy leaving  
18 the building or campus. Renewable energy produced on a campus that is  
19 not attached to a covered building may be included.

20 (21) "Qualifying utility" means a consumer-owned or investor-  
21 owned gas or electric utility that serves more than ~~((twenty-five~~  
22 ~~thousand))~~ 25,000 customers in the state of Washington.

23 (22) "Savings-to-investment ratio" means the ratio of the total  
24 present value savings to the total present value costs of a bundle of  
25 an energy or water conservation measure estimated over the projected  
26 useful life of each measure. The numerator of the ratio is the  
27 present value of net savings in energy or water and nonfuel or  
28 nonwater operation and maintenance costs attributable to the proposed  
29 energy or water conservation measure. The denominator of the ratio is  
30 the present value of the net increase in investment and replacement  
31 costs less salvage value attributable to the proposed energy or water  
32 conservation measure.

33 (23) "Standard" means the state energy performance standard for  
34 covered ~~((commercial))~~ buildings established under RCW 19.27A.210.

35 (24) "Thermal energy company" has the same meaning as defined in  
36 RCW 80.04.550.

37 (25) "Weather normalized" means a method for modifying the  
38 measured building energy use in a specific weather year to energy use  
39 under normal weather conditions.

1 (26) "Tier 1 covered building" means a building where the sum of  
2 nonresidential, hotel, motel, and dormitory floor areas are equal to  
3 or exceed 50,000 gross square feet, excluding the parking garage  
4 area.

5 (27) "Tier 2 covered building" means a building where the sum of  
6 multifamily residential, nonresidential, hotel, motel, and dormitory  
7 floor areas exceeds 20,000 gross square feet, excluding the parking  
8 garage area, but does not exceed 50,000 gross square feet. Tier 2  
9 covered buildings also include multifamily buildings where floor  
10 areas are equal to or exceed 50,000 gross square feet.

11 NEW SECTION. Sec. 3. A new section is added to chapter 19.27A  
12 RCW to read as follows:

13 (1) (a) By December 1, 2023, the department must adopt by rule a  
14 state energy management and benchmarking requirement for tier 2  
15 covered buildings. The department shall include a small business  
16 economic impact statement pursuant to chapter 19.85 RCW as part of  
17 the rule making.

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

27 (c) The department must provide a customer support program to  
28 building owners including, but not limited to, outreach and  
29 informational materials that connect building owners to utility  
30 resources, periodic training, phone and email support, and other  
31 technical assistance. The customer support program must include  
32 enhanced technical support, such as benchmarking assistance and  
33 assistance in developing energy management and operations and  
34 maintenance plans, for covered buildings whose owners typically do  
35 not employ dedicated building managers including, but not limited to,  
36 multifamily housing, child care facilities, and houses of worship.  
37 The department shall consider underresourced buildings with a high  
38 energy use per square foot, buildings in rural communities, buildings  
39 whose tenants are primarily small businesses, and those located in

1 high-risk communities according to the department of health's  
2 environmental health disparities map.

3 (d) The department shall establish an incentive program.  
4 Incentive assistance must be directed to supplement the cost to the  
5 building owner or tenant for these activities, less utility  
6 incentives and annual utility savings resulting from these  
7 requirements.

8 (e) The department is authorized to implement a tiered incentive  
9 structure for upgrading multifamily buildings to provide an enhanced  
10 incentive payment to multifamily building owners willing to commit to  
11 antidisplacement provisions.

12 (f)(i) The department is authorized to adopt rules related to the  
13 imposition of an administrative penalty not to exceed 30 cents per  
14 square foot upon a building owner for failing to submit documentation  
15 demonstrating compliance with the requirements of this section.

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

21 (2) By July 1, 2025, the department must provide the owners of  
22 tier 2 covered buildings with notification of the requirements the  
23 department has adopted pursuant to this section that apply to tier 2  
24 covered buildings.

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

34 (4) By July 1, 2027, tier 2 covered building owners must submit  
35 reports to the department as required by the rules adopted in  
36 subsection (1) of this section.

37 (5) By July 1, 2029, the department must evaluate benchmarking  
38 data to determine energy use and greenhouse gas emissions averages by  
39 building type. The department must submit a report to the legislature  
40 and the governor by October 1, 2029, with recommendations for cost-

1 effective building performance standards for tier 2 covered  
2 buildings. The report must contain information on estimated costs to  
3 building owners to implement the standard and anticipated  
4 implementation challenges. The department is authorized to adopt  
5 rules for inclusion of tier 2 covered buildings in the state energy  
6 performance standard, including greenhouse gas emissions, created in  
7 RCW 19.27A.210, beginning in 2030. In adopting performance standards,  
8 the department shall consider age of the building in setting targets  
9 for tier 2 buildings. The department is authorized to adopt  
10 performance standards for multifamily residential buildings on a  
11 longer timeline schedule than other tier 2 buildings. By December 31,  
12 2030, the department shall adopt rules for performance standards for  
13 tier 2 buildings. The rules may not take effect before the end of the  
14 2031 regular legislative session.

15 (6) The department shall include a small business economic impact  
16 statement pursuant to chapter 19.85 RCW as part of the rule making.

17 **Sec. 4.** RCW 19.27A.220 and 2021 c 315 s 18 are each amended to  
18 read as follows:

19 (1) The department must establish a state energy performance  
20 standard early adoption incentive program consistent with the  
21 requirements of this section.

22 (2) The department must adopt application and reporting  
23 requirements for the incentive program. Building energy reporting for  
24 the incentive program must be consistent with the energy reporting  
25 requirements established under RCW 19.27A.210.

26 (3) Upon receiving documentation demonstrating that a building  
27 owner qualifies for an incentive under this section, the department  
28 must authorize each applicable entity administering incentive  
29 payments, as provided in RCW 19.27A.240, to make an incentive payment  
30 to the building owner. When a building is served by more than one  
31 entity offering incentives or more than one type of fuel, incentive  
32 payments must be proportional to the energy use intensity reduction  
33 of each specific fuel provided by each entity for tier 1 buildings.  
34 The department may authorize any participating utility, regardless of  
35 fuel specific savings, serving a tier 2 building to administer the  
36 incentive payment.

37 (4) (~~An~~) A tier 1 eligible building owner may receive an  
38 incentive payment in the amounts specified in subsection (6)(a) of  
39 this section only if the following requirements are met:

1 (a) The building is either: (i) A covered commercial building  
2 subject to the requirements of the standard established under RCW  
3 19.27A.210; or (ii) a multifamily residential building where the  
4 floor area exceeds (~~(fifty thousand)~~) 50,000 gross square feet,  
5 excluding the parking garage area;

6 (b) The building's baseline energy use intensity exceeds its  
7 applicable energy use intensity target by at least (~~(fifteen)~~) 15  
8 energy use intensity units;

9 (c) At least one electric utility, gas company, or thermal energy  
10 company providing or delivering energy to the covered commercial  
11 building is participating in the incentive program by administering  
12 incentive payments as provided in RCW 19.27A.240; and

13 (d) The building owner complies with any other requirements  
14 established by the department.

15 (5) (~~(a)~~) An eligible building owner who meets the requirements  
16 of subsection (4) of this section may submit an application to the  
17 department for an incentive payment in a form and manner prescribed  
18 by the department. The application must be submitted in accordance  
19 with the following schedule:

20 (~~(i)~~) (a) For a building with more than (~~(two hundred twenty~~  
21 ~~thousand)~~) 220,000 gross square feet, beginning July 1, 2021, through  
22 June 1, 2025;

23 (~~(ii)~~) (b) For a building with more than (~~(ninety thousand)~~)  
24 90,000 gross square feet but less than (~~(two hundred twenty thousand~~  
25 ~~and one)~~) 220,001 gross square feet, beginning July 1, 2021, through  
26 June 1, 2026; and

27 (~~(iii)~~) (c) For a building with more than (~~(fifty thousand)~~)  
28 50,000 gross square feet but less than (~~(ninety thousand and one)~~)  
29 90,001 gross square feet, beginning July 1, 2021, through June 1,  
30 2027.

31 (6)(a) A tier 2 eligible building owner may receive an incentive  
32 payment in the amounts specified in (b) of this subsection only if  
33 all required benchmarking, energy management, and operations and  
34 maintenance planning documentation has been submitted to the  
35 department and an incentive application has been completed. An  
36 eligible tier 2 building owner may submit an application beginning  
37 July 1, 2024, through June 1, 2030.

38 (b) The department must review each application and determine  
39 whether the applicant is eligible for the incentive program and if  
40 funds are available for the incentive payment within the limitation



1 established in RCW 19.27A.230. If the department certifies an  
2 application, it must provide verification to the building owner and  
3 each entity participating as provided in RCW 19.27A.240 and providing  
4 service to the building owner.

5 ~~((6))~~ (7)(a) A tier 1 eligible building owner that  
6 demonstrates early compliance with the applicable energy use  
7 intensity target under the standard established under RCW 19.27A.210  
8 may receive a base incentive payment of ~~((eighty-five))~~ 85 cents per  
9 gross square foot of floor area, excluding parking, unconditioned, or  
10 semiconditioned spaces.

11 ~~((7))~~ (b) A tier 2 eligible building owner that demonstrates  
12 compliance with the applicable benchmarking, energy management, and  
13 operations and maintenance planning requirements may receive a base  
14 incentive payment of 30 cents per gross square foot of floor area,  
15 excluding parking, unconditioned, or semiconditioned spaces.

16 (8) The incentives provided in subsection ~~((6))~~ (7) of this  
17 section are subject to the limitations and requirements of this  
18 section, including any rules or procedures implementing this section.

19 ~~((8))~~ (9) The department must establish requirements for the  
20 verification of energy consumption by the building owner and each  
21 participating electric utility, gas company, and thermal energy  
22 company.

23 ~~((9))~~ (10) The department must provide an administrative  
24 process for an eligible building owner to appeal a determination of  
25 an incentive eligibility or amount.

26 ~~((10))~~ (11) By September 30, 2025, and every two years  
27 thereafter, the department must report to the appropriate committees  
28 of the legislature on the results of the incentive program under this  
29 section and may provide recommendations to improve the effectiveness  
30 of the program. The 2025 report to the legislature must include  
31 recommendations for aligning the incentive program established under  
32 this section consistent with a goal of reducing greenhouse gas  
33 emissions from substitutes, as defined in RCW 70A.60.010.

34 ~~((11))~~ (12) The department may adopt rules to implement this  
35 section.

36 **Sec. 5.** RCW 19.27A.230 and 2019 c 285 s 5 are each amended to  
37 read as follows:

38 (1) The department may not issue a certification for ~~((an))~~ a  
39 tier 1 incentive application under RCW 19.27A.220(6)(a) if doing so

1 is likely to result in total incentive payments under RCW 19.27A.220  
2 in excess of ((seventy-five million dollars)) \$75,000,000.

3 (2) The department may not issue certification for a tier 2  
4 incentive application under RCW 19.27A.220(6)(b) if doing so is  
5 likely to result in total incentive payments under RCW  
6 19.27A.220(6)(b) in excess of \$150,000,000.

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